

Cuba's 1940 Constitution: A Reinterpretation.

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Two keys for the interpretation of Cuba's 1940 Constitution have been so dominant that they have become standard: On one hand the 1940 Constitution is taken for the greatest consensus-building process of the Cuban republic and, on the other hand, its failure is attributed to the absence of accessory legislation which left the Constitution with little normative reach. In this piece, I will offer a rereading of the second key. To do so, I review the debates over the mortgage moratorium and racial discrimination. It is my hypothesis that the solutions found for both problems in 1940 – in the former case by deferring the moratorium in favor of those whose debts were outstanding for more than twenty years and in the second by constitutionally establishing criminal sanction for racial discrimination – offered answers for issues that remain crucial in the here and now. Likewise, there were good reasons for high expectations regarding the future normative order created by the 1940 Constitution. It consecrated a social criterion for democracy and a sense of nationhood that was inclusive and sensitive to “the people.” This piece does not address the causes of the 1940 Constitution's “failure” – which could be the subject for another study – but it does seek to nuance the discourse about its general ineffectiveness.

Eliminating the mortgage moratorium

It is ironic that “Cuba's number one problem,” the matter that comprised, in 1939, the “soul of the Constituent Assembly,” has not been taken up in order to judge the effectiveness of

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the 1940 Constitution. I am referring to the “Great Problem” of mortgage debt. When, in October 1939, President Laredo Bru vetoed a liquidation bill, even though its critics noted that the bill favored creditors, that veto was debated in Congress up until the eve of the Constituent Assembly, which took the matter into its own hands, considering it “the most important discussion of this Convention,” “a question of honor for and on behalf of the Cuban people” (Diario de Sesiones de la Convencion Constituyente 1940c).

The problem of the moratorium can be summarized as follows: The effects of the Great Depression, crisis in the sugar industry, the sudden increase in the prices of products of basic need, the low value of the currency, cash shortages, the lack of public credit institutions, foreign ownership of the banks, and the lack of an efficacious bankruptcy system combined to make it impossible for people to make their mortgage payments. Thousands of properties were auctioned off for next to nothing. Consider two examples: A building containing 24 apartments in the Vedado district owned by a certain E. Montoulieu assessed at a value of 200,000 pesos was auctioned to a E. Sarra in 1932 for 5000 pesos (Asociacion Nacional de Propietarios 1939a, p. 40). In 1927, one Marcial Facio borrowed 30,000 pesos from Chase National Bank, giving as collateral a certificate for 30% of the net value of the Bahia Honda Sugar Company, whose total value was estimated at 400,000 pesos. In the loan contract the agreed valuation in case of auction was 100,000 pesos. In 1929 the bank foreclosed on the property and auctioned it off for 2000 pesos (Asociacion Nacional de Propietarios 1939a, p. 38).

Solutions for this problem existed within private law, through the civil code itself or the concept of *rebus sic stantibus*. According to the latter, when, due to *force majeure*, the conditions that give rise to an agreement drastically change, making the agreed terms disproportionately burdensome for one of the parties given the new extraordinary and

unforeseeable circumstances, the doctrine permits the modification or even annulment of the contract (Goldenberg, 1977). Herein lay the first face of the dilemma: whether to solve the problem by appealing to the civil law, thus recognizing the legitimacy of the contracts while granting an exceptional “civil” way out or to treat the problem from an economic rights perspective to justify, in contrast, a “public” rule to resolve the matter. The problem is that each of these avenues out of the dilemma led to a very different destination.

For those who defended the moratorium, it was of utter importance to avoid the “peace brought by tombstones.” For them, absent the moratorium, Cuba would be a “cemetery of debtors” (Asociacion Credito Territorial, 4 October 1939). An estimated 200,000 families in a population of 4 million were affected by the mortgage crisis. The defenders of the lenders argued that liquidating the moratorium and accepting its retroactive application to private contracts would lead to the collapse of credit, the end of private property and the capitalist system, and the bankruptcy of the Cuban economy.²

Defenders of the “public” solution to the moratorium problem were engaged in many crucial political battles leading up to 1940: to ensure that the Constituent Assembly would actually occur; to challenge liberal economic policies; to legitimate state intervention in the economy; to adjudicate the costs of social rights; to advance a conception of the state as “creator” or rights; and to redefine who constituted the “people” and what constituted “democracy.”

² Raúl de Cárdenas, presidente de la Asociación Nacional Pro-Restauración del Crédito Cubano, se expresaba en estos términos: “El asunto de la reevaluación tiene un interés tan excepcional que el problema de la constitucionalidad [del proyecto de ley de liquidatoria] resulta secundario. El aspecto primordial es el del quebranto inmenso que han de sufrir los intereses públicos con la desaparición del crédito.”(...) “Y a eso vamos nosotros: si se aprueba la ley, el país entero experimentará la sensación de estar en un estado de disolución.” (Asociación Nacional Pro-Restauración del Crédito Cubano 1939, p. 7) Raúl de Cárdenas se presentó como candidato a la Constituyente de 1940 (no resultó electo), por el partido Demócrata Republicano, con un lema que recogía el núcleo de esta campaña: “El principio fundamental para recuperar el crédito es la irretroactividad de las leyes civiles que nazcan de la contratación privada”. (Dr. Raúl de Cárdenas ... 6 de noviembre de 1939)

Towards the end of the 1930s, holding a “sovereign” Constituent Assembly faced several barriers: Article 115 of the 1935 Constitutional Law, the need for political amnesty, and the university problem. Once these obstacles were overcome, the liquidation of the mortgage moratorium became “the” problem. The key to solving it involved avoiding the “paradox of a national convention without a nation” (Asociacion Nacional Pro-Deudores, 25 October 1939). This camp felt that going to the Constituent Assembly without having liquidated the moratorium was the equivalent of going in order to pronounce to the people “the panegyric of its misfortune.” The resulting text would be no more than a report on the loss of Cuban property, land, employment, and business. The usurers would have won the “great battle” over the justice fought for in the 1930 revolution.³

Those in favor of the moratorium felt that economic liberalism was the main cause of the disaster. They questioned the “sanctity” of the contracts and the imposition of property rights over the right to life (the slogan of the National Building Owners’ Association was “life comes first”). The predominance of liberal notions, according to their critics, made it impossible to chart a course towards “humane capitalism.” The pro-debtor defense, within the general framework of rejecting unlimited property rights and calling for greater state intervention in the economy, represented an ambition to reestablish Cuban capitalism on new bases.

The Keynesian demand for “euthanasia of the rentier” took the form in Cuba of a critique of the “parasitic” mortgage lender which heralded “productive capitalism” considered capable of politically controlling speculative financial capitalism. This idea was expressed in the following way: “There are two types of capital. There is capital that enters the fray and there is capital that remains static. Active capital circulates through audacious, creative investments that lead to,

³ North American ownership of some of the lending banks meant that FDR’s government was also an actor in this equation, one that will not be discussed here.

without doubt, national wealth and public prosperity. Static capital limits itself to risk avoidance and a solid return through conservative, somber investments, which commonly translates to general impoverishment and real estate markets cornered by a handful of usurious capitalists” (“Editorial,” 1936b, pp. 17, 45). The model for “productive capitalism” held, for its part, promise for higher employment and for a type of capitalism more easily reformed.

Small debtors, industrial tycoons, and large landowners converged on this point, including J.M. Casanova and the Revolutionary Communist Union Coalition. For the latter, which was immersed in a strategy for greater engagement with different social groups as well as greater electoral competitiveness, defeating the moratorium would open the path for rejecting “laws of direct taxes and for erecting an impassable wall protecting the laws for the people so energetically sought by the masses.” This is why “following the moratorium come [not only]: constituent assembly, a path to national recovery, improvement of the people, defeat of foreign exploiters, a sovereign homeland” (*Opiniones de hoy*, 17 October 1939), but also advances for the “managed economy” which at the time already regulated the sugar and coffee industries and was starting to regulate that of tobacco, fixing the prices of raw materials, establishing minimum wages, and intervening in every productive economy of the State in an effort to diversify economic activity from a perspective that saw the state as an actor in the program and demanding of it the creation of instruments such as a national banking system. From this perspective, the State was not merely “empowered” but rather was “obliged” to “develop” the nation. “That archaic concept of the State as mere tax collector whose function is merely gathering funds in the Treasury is no longer in force anywhere. The State is a scientific regulator of the public economy and its mission is to protect and stimulate the basic agriculture and industries of the country through just and far-sighted laws” (Jose Cambeyro, 1936).

During this process, various sectors came to self-identify as “the people,” going beyond the typical paternalistic discourse (the “humble” rejected that label; they were “men,” organized and exigent, not “the meek” dispossessed of the capacity to fight) (“We do not see the motives behind the veto in the veto itself,” 26 October 1939). A vast poli-classist spectrum saw itself as a single moral and political subject: the “debtors” and the “workers.” Laborers, bureaucrats, middle management, the middle classes and large landowners all perceived the problem facing the country as a single issue that affected all the classes horizontally.⁴

Unlike “vertical” integration – within a single social zone, for example, the bond represented by the salary that links workers to patrons – this horizontal experience was key for the political constitution of the country. The conflict that creditors attempted to portray as a fight “between capitalists” was reinterpreted by the debtors as “the problem of the Cuban people.” “We are the 99%” has been repeated ever since. “My words,” Jose Antonio Echeverria would say on behalf of the Pro-Mortgage Preemption Committee (during a public hearing in the Senate on the moratorium), “are simply a brief, benevolent expression of the feelings and sentiment of 99% of the population” (National Building Owners’ Association, 1939b). The trope comes up again and again: “The National Building Owners’ Association, respected by all provincial and municipal councils, which represents Cuba’s middle class, with all of its friends who are the rest of the Cuban workers, that, the whole people, with the sole exception of those directly implicated” (National Building Owners’ Association, 1939b, p. 43).

This discourse was produced within a symbolic complex that can be accurately qualified as “populist”⁵: polarization between “people” and “oligarchy” – represented by the “Sarra’s, the

⁴ Ver este enfoque en (Thompson 1979:31).

⁵ The author’s definition of Latin American populism: 1) structural factors – centralized economy, bureaucratizing administration, urbanizing the country; 2) cultural dimensions – relaunching ‘nationalism’ as a legitimate project, polarizing the population; 3) political processes – new types of demands, social democratization, challenging

Falla Gutierrez's, and the rest of their co-usurers and ... foreign enemies of the Republic" (*Opiniones de hoy*, 17 October 1939); refutation of "left-right" differences in favor of "national," "non-partisan" problems (Sergio Carbo, 18 October 1939); the qualification of capital as "public enemy number one" ("Editorial" 1936b pp. 17, 45) parallel to the implementation of measures to protect it; demands for a technical government and state planning⁶ against government following "old politics"; expanding social rights and the conceptualization of democracy as a "third path" between fascism and communism to favor social democracy.⁷

All of this sets the stage for a better understanding of the debate over the appropriation of the term "democracy" at the time. The expression "true democracy" meant in this context a sort of "substantial" democracy (Rosanvallon, 2007). Batista, whom Knight qualifies as a "slippery populist" (Knight, 2005, 231), was in fact more populist than he was shifty: he emerged from this process as a leader of the defense of a social conception of democracy.⁸ The "true concept of

entrenched liberal forms of domination. En mi argumento, el populismo, en su tipo histórico conocido como "populismo latinoamericano", es un tipo ideal de ejercicio político constituido por: 1) factores estructurales —economía dirigida, arribo de nuevos sectores al mundo del trabajo asalariado, urbanización, migraciones, conquista del Estado por actores burgueses—; 2) a dimensiones culturales —relanzamiento del nacionalismo como sinónimo de "proyecto legítimo de país", al mismo tiempo inclusivo de actores sociales y disolutivo de identidades "culturales", afirmado sobre una polarización ideológica entre el pueblo y el "antipueblo"; y 3) a procesos específicamente políticos —inscripción de demandas de distinto signo en el Estado, democratización social e impugnación de las formas liberales de dominación. Este enfoque es deudor de tesis como las de (Vilas 2009) y (Knight 2005, 231). Por su tema, en este texto no es necesario entrar a considerar el problema de los "neopopulismos". Ver otros enfoques sobre el populismo en: (Cammack 2000)(Bremmer 2006) (Conniff 1999), (Vilas 2003)(Quijano 1998)(Roxborough 1987)(Hermet 2003) y (Canovan 1981).

⁶ **The author questions the tendency to characterize Latin American populism in the 30s and 40s as 'constant improvisation.'** La idea según la cual el populismo latinoamericano de los 1930 y 1940 sometió a la "improvisación constante" su política económica, tesis atravesada a su vez por la noción de su "desapego por la institucionalidad" es una generalización ahistórica. Este es un enfoque más preciso: "Presentar la política económica del populismo como fruto de una estrategia puede resultar excesivo en algunas de sus manifestaciones concretas; en algunos países (Argentina, Brasil, México) corresponden al populismo los primeros experimentos en planificación del desarrollo, pero en otros fue más bien resultado de un encadenamiento de acciones producto de las circunstancias, o la continuidad de enfoques que habían comenzado a tener presencia como respuesta a determinados estímulos externos. En general es admitido que, producto de programaciones articuladas o resultado de determinadas coyunturas, la macroeconomía del populismo presentó convergencias evidentes con una variedad de enfoques que en la misma época venían siendo puestos en práctica por las principales economías capitalistas (...)" (Vilas 2009)

⁷ Entre los autores que han comprendido como "populista" este escenario en Cuba ver: (Annino 1994), (Kapcia 1997) y (Whitney 2010).

⁸ **Batista supported the moratorium from the beginning, saying "To save the debtors is to save the Republic."** Batista desde el principio apoyó la moratoria, diciendo que "salvar a los deudores es salvar a la República". Si bien la

democracy,” he used to say, was based on the notion that “individual interest, like the interests of collectivities, must be sacrificed for the general interest of the nation, being true democracy nothing other than the general interest; as individual and collective interests, instruments of social organization, are often at odds with the general interest” (“True democracy is that which satisfies the interests of the people,” 10 January 1938).

It was along these paths that the fight over the character of “decommercialization” was waged, a fight sparked by the establishment of social rights and the dispute over who should bear their costs. The insistence upon the prohibition of paying salaries with tokens or vouchers (which remained a widespread practice through the mid and late 1930s⁹) was pronounced against a practice that restricted access to the market for basic goods while failing to put the State in a position to compensate for the lost access. This is reflective of how capital was “freed” from both the state and the markets. Pressure to impede payment via vouchers, or to establish official salaries, sought to express itself in terms of “rights” against freed or unrestricted capital. In the struggle for “rights,” the response of those against the moratorium was to consider the law that established it as a “privilege” (indicating a normatively unjustifiable, from a democratic perspective, privatization of public power to protect landowners) and to qualify the nascent body of social rights as “demagogic” declarations. The debtors responded that the law concerned “national interest” (thus both legitimate and universal) and the workers insisted that the state was the agent for the protection and assurance of social rights. Through this process the State was pressured to “operate” as an institutional resource in favor of both the debtors and the workers.

moratoria es un importante botón de muestra, no es el único de este proceso. El Ejército fue el destinatario principal en que confiaron las denuncias obreras contra incumplimientos de leyes sociales y fue el mismo que hizo penetrar al Estado cubano ante zonas sociales antes poco o nada “contactadas” por el Estado, a través de campañas de escuelas rurales, institutos cívicos militares y lucha antituberculosis.

⁹ En 1936 y 1937, violando la Ley Arteaga, se reportaban pagos en vales, entre otros, en los centrales Santa María, Gómez Mena, Delicias, San José, Jobabo, España y Mabay. (Opinión ajena 1936b; Opinión Ajena 1936a, p. 13, 1937b, p. 13, Opinión ajena 1936a, p. 13, Opinión Ajena 1937a, pp. 9 y 48, 1936b, p. 13)

Contrary to the paleoliberal thesis, they held that political institutions were not only meant to protect rights already acquired, but also to create new ones. Notwithstanding, the enforceability of the entire catalogue of social rights (minimum wages, maximum work weeks, paid time off, and benefits for nationals) came up against limits: cheap labor from the Antilles continued to be brought in for harvests, lowering wages, and the brunt of the cost of the newly created social rights was also borne by the workers.¹⁰ “In Cuba there has already existed a managed economy at the expense of the poor soul who suffered from it, whom the State has never paid anything” (*Asociación Crédito Territorial*, 6 October 1939). In general, the expansion of rights were limited by the contradiction, typically capitalist, between accumulation and legitimation. Laredo Bru expressed it this way when he vetoed the 1930 moratorium: “The existence of and trust in credit is, without doubt, general, fundamental and permanent, and what interests all Cubans, is that at no time should incalculable quantities of such great interest should be affected in such a way that it benefits but one of the parties struggling over the problem of the moratorium and its liquidation” (*El veto del Ejecutivo*, 1939, p. 32).

The “social” acceptance of democracy, however, did not end the dispute over democracy. Even after consolidating his power – after employing authoritarian means such as selective purges of the military, expelling “undesirable” foreigners, and closing newspapers – Batista respected the demo-liberal political institutions of the country (if in 1936 he instigated the impeachment of President Gomez, in 1939 he respected the veto of President Laredo Bru, a key

¹⁰ En octubre de 1936, tres personas que pidieron omitir su nombre (era práctica frecuente el despido para quienes protestaran, junto a la acusación de “comunistas”) enviaron una carta a *Carteles*, declarando lo siguiente: El Central España, en Matanzas, en manos de intereses norteamericanos [gracias a procesos técnicos] aprovecha energía barata durante la refinación, bajando los costos en 40% por debajo de los corrientes en cualquier refinería de la ciudad de Cárdenas, la ciudad más cercana al central. Este emplea obreros residentes en su propio batey y en el pueblo de Perico. Viéndose por la ley obligado a pagar un peso de jornal mínimo, la administración del central descuenta a todo el personal que gane no más de un peso, 0.20 ctvos por servicio de luz y agua. “Si usted vive en Perico, paga a la compañía 0.20 por el agua que toma durante el trabajo, y la luz que alumbra el lugar donde usted trabaja para ellos.” (“Opinión Ajena” 1936c, pp. 13 y 54)

decision with which Batista had manifested disagreement) and declared himself defender of civil power (recognizing the possible overturn of the veto by Congress). On a more general level, Batista's "corporative" projects did not aim to replace the logic of the representative system. The Cuban criticisms of economic liberalism did not take aim at the structure of liberal democracy: "Cuba does not have major political questions to resolve in this magnificent meeting [the Constituent Assembly of 1940], but it is replete with agonizing economic interrogations" (*Asociación Nacional Pro-Deudores*, 25 October 1939). Except for the ABC's corporative proposal for a functional senate, which was rejected, no other alternative governing regimes apart from the representative one understood as an "indivisible" part of the "democratic-republican-representative" triad were considered (*Diario de Sesiones de la Convención Constituyente*, pp. 2-38).¹¹

The general tendency to judge the relationship between "substantialism" and political representation in populism as overly weak fails to consider the criticism of the actually existing representative government when that government is expressly categorized as "insufficient" in

¹¹ No hay que ver aquí una defensa "incondicional" de "la democracia" en singular. El régimen representativo, con el sistema de partidos, funcionaba también como un resguardo de la posesión del poder político por parte de las elites, que se reservaban el derecho legítimo de hablar por "el pueblo" y limitaban con ello las vías de intervención popular en la política. Esto último era una de los objetivos fundamentales del corporativismo democrático de los 1930, que se imaginaba como un "complemento" a la democracia liberal, para suplir las deficiencias "individualistas" de esta y otorgar representación a diversos sectores sociales, más allá de los partidos políticos. La revista *Carteles* fue uno de los voceros más agudos de este enfoque en los 1930: "La implantación de una cámara de elección corporativa no sólo estimularía, sino que haría obligatoria la corresponsabilización de esas superiores fuerzas ciudadanas en la administración pública". ("Editorial" 1936c, p. 17) Sin embargo, *Carteles* decía también: "¿Es posible que todas estas reformas que de un modo tan radical mermaría en las prerrogativas e influencias de los legisladores y los partidos sean propuestas y aceptadas por los actuales miembros del Congreso? Por eso no llevan trazas de prosperar las iniciativas corporativistas, y, en cambio, encuentra [camino] favorable la implantación de un sistema semiparlamentario, mediante el cual, miel sobre hojuelas, aumentarían considerablemente las facultades e influencia de los legisladores, sin ningún resultado práctico que no fuera de un orden puramente político, ya que, en el mejor de los casos, sólo serviría de dique más o menos efectivo contra la recurrencia del hábito revolucionario. ("Editorial" 1936a) Orestes Ferrara comprendía el problema cuando observaba la "contradicción" entre el "régimen representativo" y la "revolución", o entre representación e intervención popular directa: "¿Qué es régimen representativo? Es la ordenada marcha que el pueblo sigue, al poner en los curules del Estado a los que obtengan el mayor número de votos, yaquí hay tres partidos que se califican de revolucionarios. ¿Qué es la Revolución? La desordenada, aunque noble marcha de la voluntad popular, ocupando los poderes por encima de la forma, y por encima del método representativo." (*Diario de Sesiones de la Convención Constituyente*, pp. 2-38)

contexts such as that of Cuba. This criticism was raised in the late 1930s in some democratic sectors to justify an “authoritarian regime” to protect the “common good”: “In Cuba there remains much to be done, and whoever manages to do it will be welcome.... If an authoritarian regime managed to disinfect the administration, making it more suitable, more moral, and less onerous, that regime would not cause as much reserve. What would make it oppressive, and therefore despotic, would be any failure to pursue any finality other than that of maintaining its power, than that of repressing all freedom, than that of switching, following the same harmful course, the form of simulated institutionality that the Republic has adopted for so long” (“Editorial,” 1937). This perspective offers a better explanation for the behavior of Batista, and reveals more of the meanings democracy took at the time – one of which was “just authoritarianism” – than those offered by the supposed “doctrinal” voices criticizing “populism” versus liberal representative institutionality. The global context turned out to be favorable to these criticisms. For Cuba, the example of Lázaro Cárdenas was closer, one visualized by many actors as “democratic conduct” combined with traits of an authoritarian political system.

Cuban “corporative” proposals, including that of the ABC, appear to have been of the “societal” type, focusing on the power of social organizations committed to democratic configurations, and opposed to the “statist” corporative types, such as the fascist model. At the time, democratic corporativism joined populism in the *Zeitgeist* critical of liberalism, fascism, and communism. Keynes, in his search for solutions to the tragic consequences of the *laissez-faire* crisis (1929-1933), found answers “somewhere between the individual and the modern State,” and looked back at the medieval conceptions of “separate autonomies” as a possible exit from the crisis (Keynes 1963). Harold Laski challenged the state’s “right of sovereignty” and identified the heart of legitimacy as a space for multiple actors among which the State

participated as one more of the social groups. The syndicalist proposal of Sorel, the social solidarity of Leon Duguit, and the pluralist theory of G.H.D. Cole refute the sovereign unity of the State and reconstruct the political on the basis of the existence of multiple social groups and economic realities. Following this logic, the politicization of the economical implied the democratization of the political. In Cuba, Miguel Suarez Fernandez (of the Authentic Cuban Revolutionary Party) declared, during the 1940 Convention, that he was proud to be considered “not liberal,” when he defended “pure democracy, native democracy, full democracy” (*Diario de Sesiones de la Convención Constituyente*, p. 20).

This notion of democracy implied broadening the civil society to create a space which would be, through political participation, competent to self-attribute rights and contest harmful decisions taken by others. The problem of the moratorium provoked great public debate, civic acts of protest involving thousands of citizens, the formation of collective actors,¹² channels for deliberation, for the negotiation of demands, and to put pressure on the representative regime. In response to the “impressionability” of the masses, accused in functionalist theories on populism as being “manipulable,” such as that of Germini (1962), Batista stated “contrary to those who think that citizen consciousness is suffering from collective insanity ... the masses are living moments of sincere enthusiasm, certain that their hour of vindication has arrived” (“Those who defend the better cause will triumph. Says Batista,” 13 November 1939).

After much debate, the 1940 Constitution extended the moratorium in the following way: “debts that do not exceed one thousand pesos must be amortized by June 1960. Debts between one and fifty thousand pesos must be amortized by June 1965, and on the same day in 1970 for debts over fifty thousand pesos.” The arguments that swayed the debates were those I have

¹² Por ejemplo, del lado de los deudores, la Asociación Nacional de Propietarios, el Comité Nacional Pro-Deudores, y la Asociación de Crédito Territorial; y, en contra de la moratoria, la Asociación Pro Restauración del Crédito Cubano y la Asociación Conservadora.

described as of the “debtors,” or, according to them, the “Cuban people.” The triumph is not attributable to any one actor, but rather to the deployment of civil society in favor of a “substantialist” concept of democracy defined in terms of an “expansionist” notion of rights.

The crime of racial discrimination

The problem of racial discrimination was another “great” topic under debate around 1940. Although more studied than the debates around the moratorium, its discussion also seems scant when assessing the normative effectiveness of the 1940 Constitution. In the Constituent Assembly, actors very distinct from one another had already gone to much effort to portray themselves as defenders of racial equality. In fact, the motion to establish in the constitution the crime of racial discrimination was unanimously passed (Articles 10 and 20). The achievement was celebrated by the National Federation for Cuban Societies of Colored Race as “patriotic elevation” (*Diario de Sesiones de la Convención Constituyente* 1940d, p. 2).

Despite the social, economic, and professional advance of black sectors that began in the early years of the Republic, discrimination remained a concrete problem in Cuba during the late 1930s. In May 1937, the Union Hotel in Havana refused lodging for two young delegates “of color” who had come for a meeting of the Worker’s Maternity Fund.¹³ In Santiago, the “La Socapa” beach resort refused entry to families of color. In August 1937, the Havana mayor’s office cancelled its scholarship program because certain schools were not admitting the black students who had received them. Towards January 1938, the black press denounced the private enterprises and aristocratic centers that controlled the beaches in Havana, Cienfuegos, and Santiago, and that banned the access of blacks to them. Discrimination also affected foreigners:

¹³ After he lodged his complaint, the hotel owner had to pay a fine of only two *pesos*. Ante su reclamo, se le impuso al dueño del hotel solo dos pesos de multa. (“Discriminación”, 1936, p. 11)

the African-American congressman Arthur Mitchell was refused lodging in the Saratoga Hotel (“The brotherhood of young Cubans and discrimination,” 4 January 1937).

Discrimination affected blacks in social spheres, in access to employment, commerce, and services, and to landowning and banking services. According to anti-racist activists, land and business registries revealed black representation of “not even 2%. Land ownership, which everywhere determines the possession of the principal productive element of wealth, is for them a distant illusion” (Primitivo Ramirez Ros 1916, p. 10). Contrasting cases of egalitarian access for whites and blacks, such as the Juguiani Club, were considered an exception that demonstrated how important it was for the elites to maintain the “barrier of social interaction” as an instrument to preserve racialized social hierarchies (Juan Marinello 1936, p. 2).

The discussions of “race,” of the place of the black, of the black Cuban or the Afro-Cuban, were, in the society at that time, in the center of discussions over key issues. They affected the notion of democracy and how nationality was to be defined. In these respects it became necessary to examine the historic frontiers of access for blacks, as subjects, to Cuban society, which were in turn contrary to the legitimacy Cuba’s cultural complex whose social structure had been shaped through discourse and practices such as “the risk of race war” and the assimilation of “witchcraft” and religious practices of African origin.

The “race war” symbol had existed prior to the “little race war” of 1912. In 1893 Juan Gualberto Gomez criticized the use of that term to interpret the formation of political parties “along color lines” in the context of the transformation of political parties that was occurring at the time (Juan Gualberto Gomez 1943). In the 1940 Constituent Convention, when the subject of discrimination was brought up by either side, some delegate, albeit one in a small minority, would brandish the term. Delio Nuñez Mesa of the Liberal Party considered it to be “anti-Cuban

and anti-patriotic to address the problem of racism in Cuba: I believe that all of us, without exception, must take great care with this subject, because it is very dangerous” (*Diario de Sesiones de la Convención Constituyente* 1940b, pp. 6–15).

The press, in the years preceding 1940, continued to present certain common offenses as “religious crimes.” Deeds involving the desecration of tombs to collect bones and, above all, the kidnapping and murder of children were very often reported in a sensational manner that stimulated the social fear of blacks and were often set next to reports of “festivals of saints” that made both appear to pertain to an undivided “savage sect to the fetish gods” (“Dead, the little girl Gloria, of bullet wounds. Kidnapper also killed.” 1 February 1938). In December 1936 in the El Vedado district of Havana, the police took by surprise a “saint festival,” and required the attendees to pay a 25-peso surety to go free (“Witches and healers of Holguin, Oriente, accused,” 10 March 1939). In February 1937, the press attested that the saints Changó, Obatalá, Ochúm, and Yemayá had been “occupied” in another saint festival (“Raids on centers of witchcraft carried out in the 14th district,” 20 February 1937).

The differences between witchcraft and religion and between offenses and liturgical practices that had been documented at the time in the work of Lachatañeré and of Ortiz were not reflected in the police jargon referring to Afro-Cuban religious systems (Fernando Ortiz 1939a; Rómulo Lachatañeré 1939). But the differences were also ignored in the discourse of the Constituent Convention. In the debates of the type of morality that would be required of the citizenry, the proposal that “Christian morality” be synonymous with “public morality” triumphed. For the greater part of the convention delegates there was no question of the “universality” of Christian morality. The only “religions” that are mentioned in these debates are

spiritualism and free masonry. In discussions over the proper type of state secularism and the duty not to protect specific religions, there was no mention of “Afro-Cuban” religions.

In 1940, because of the pressure of strong anti-racist activism, as scientific as it was political,¹⁴ and bolstered by the framework imposed by fascism on racism, questioning the racial boundaries and finding a “Cuban” solution to the “negro problem” had become imperative. While some of the barriers already described survived intact, many others were undermined significantly. On balance, the horizon of racial democracy went from merely overcoming the “PIC trauma” (referring to the political exclusion of the Independent Colored Party) to “integrating” blacks into Cuban society and culture. Various proposals were made in the attempt to achieve it, and different versions of nationality were elaborated. It is a dynamic that was largely hidden from view: the definition of the place of the negro in Cuban society was part of several national projects that were fighting each other at the time.

Towards 1940 at least four different national projects across which the “race question” clearly cut can be identified: (1) the Cuban “race” as part of “The American Race”; (2) black “race” as “oppressed nationality”; (3) the Cuban nation as an “ethnic conglomeration” to which blacks need not “be integrated,” for they are part of the very origin of what it means to be “Cuban”; and (4) “Cubanness” as a product of the Afro-Cuban fusion.

¹⁴ Regarding scientific activism, I refer to actions such as the **inclusión in the 8th Pan-American Scientific Conference (Washington D.C., May 1940) of a clause rejecting any scientific support for discrimination against any social group on the basis of race.** Con activismo científico me refiero a acciones como la siguiente. A instancias de Fernando Ortiz, el octavo Congreso científico panamericano, celebrado en Washington en mayo de 1940, concluyó en uno de sus acuerdos: “considerando que la expresión ‘raza’ implica una herencia común de características físicas en grupos humanos y que no se ha demostrado que tenga conexión alguna causal con realizaciones culturales, cualidades psicológicas, religiones ni lenguajes, el octavo congreso científico panamericano resuelve: que la antropología rehúsa prestar apoyo científico alguno a la discriminación contra cualquier grupo social, lingüístico, religioso o político, bajo pretexto de ser un grupo racialmente inferior”. (“Las razas ante las leyes y las costumbres”, 1940, pp. 128–129) Con activismo político me refiero a labor que en la esfera pública realizaban centenares de sociedades “de color”, asociaciones como Adelante, la Asociación Nacional contra la Discriminación Racial, etcétera.

The “American race” was the official proposition of the “21 American Republics.” It reflected the region’s position in response to the world war, the rise of United States power and leadership, and perhaps somewhat to a “pacification” project to improve relations between Latin America and Spain. At the same time, the proposal favored a differentiation of the “American race” from other “races” and the uses of “race” by fascist movements. In the early decades of the 20th century, a graphic representation of the proposal can be found in the cartoon Liborio (who is a white peasant representing the common Cuban with a utopic agrarian and nationalist bent – at a time when Cuban peasants scarcely owned any land – who sees the “negro” as external to his identity. The Independent Colored Party responded to this symbol with another “pure native-born,” the black character José Rosario.¹⁵) In the 1930s, this ‘Americanist’ nationalism was propagated through images such as “the (poor) white and the negro,” races that were separate but maintained fraternal relations that were promoted by the official Dia de la raza celebrations.¹⁶

The thesis of the “negro race” as “oppressed nationality” was defended by the Communist Party as part of a dual strategy. If on one side they defended racial equality for the entire nation, there was also, on another side, a racial corollary. The notion of “separate”

¹⁵ About the personification of Cuba in the figure of a white peasant named Liborio, and eventually the creation of another character, the black José Rosario. Según Julián V. Serra: “Alguien ha tenido la peregrina idea de personificar al grupo humano en la típica figura del campesino blanco de este país. Esta premeditada ocurrencia carece de un detalle digno de ser tomado en consideración; y es que el tal Liborio es blanco, o parece serlo, y no se explica que siendo el pueblo cubano uno de los más heterogéneos del mundo, pueda estar bien personificado en la típica figura de este humilde ciudadano que por su tipo, no representan nada más que a una de las dos entidades étnicas que forman el total de la población cubana.” En contraste, el autor del texto proponía “la no menos interesante figura de José Rosario, el cual tenemos el alto honor de presentar como cubano criollo también.” José Rosario era de “carácter enérgico y un valor rayano en la temeridad, con poca instrucción, con muy buen sentido práctico, de costumbres en extremo sencillas y sin pretensión alguna (...)” (Previsión, ¿25 de diciembre de 1909?)

¹⁶ Literally, “the Day of the Race.” According to Julian V. Serra, “Someone had the outlandish idea of personifying a group of humans in the typical figure of the white peasant in this country. This premeditated occurrence misses a detail worthy of consideration: that Liborio is white, or appears to be white, and there is no explanation of how the Cuban people, one of the most heterogeneous societies in the world, could be suitably personified in the typical figure of this humble citizen who represents nothing more than one of the two ethnic entities that form the Cuban population.” In contrast, the other of the text proposed “the no less interesting figure of José Rosario, who we have the high privilege to present as yet one more Cuban criollo [native-born].” José Rosario had an “energetic character, courage bordering on fearlessness, little education but very good common sense, extremely simple habits and without any pretension” (Previsión, 25 December 1909 [check])

nationality justified the creation of a separate “black eastern strip.” The reasoning, which was shared by the National Workers’ Confederation of Cuba, was that although “the negro masses could be characterized as a national minority,” comprising slightly more than 20% of the island’s total population, in the predominantly black eastern zones of the island (La Maya, Caney, Cobre, Guantánamo, Palma Soriano, Baracoa, Santiago, and part of Bayamo), it was estimated that more than 50% of the population was black, and that they occupied a contiguous territory, possessed their own economy, a common language, and a unitary culture (“The black question”).

Against this thesis, certain actors observed, from an approach that is now known as “intersectionality,” that from the oppression of “the black masses, with the masses of poor women, arises from a regime of double oppression: general oppression based on class, and specific, based on race or sex” (Agustín Alarcón 1936, p. 12). They criticized the concept of a “strip” based on “race” as contradictory given the existence of various sources of black oppression. As the Communist Party maintained its defense of racial equality at the national level on another front, however, specifically targeting workers, and in that group the black workers who suffered discrimination, that party was able to attract many militants and allies among the “negros” to the point that communism became closely associated with racial vindications (De la Fuente, 2001, pp. 264-276). The idea of the separate “strip,” which was abandoned in 1935 – as an error – was contemporaneous to the idea of “a nation *within* a nation” promoted by W.E.B. Du Bois in response to the black oppression in the United States. In 1936, Du Bois would still insist on the “tactical use” of segregation (*See* Sandro Medrazza 2008).

As for the thesis of Cuban nationality as an “ethnic conglomeration” that was mixed but not “mestizo” in the sense that Ortiz gives to the term, the negro’s cause was the cause of nationality. Without neglecting the psychological and cultural influence in eastern Cuba of the

“French” blacks from Haiti and Asians, the ethnic conglomerate of Cuba was comprised of blacks from Africa and whites from Spain. This perspective was critical of “Afro-Cubanism,” another project for nationality that will be discussed further down. The Cuban nationality thesis held that the geography, economy, history, and culture had forged “a Cuban type” that did not respond to either Africa or Spain. “It reflected Cuba, a new spatio-temporal reality.” To speak of “nationality,” to pronounce “Cuban,” was to speak as much of the white as of the black (Alberto Arredondo 1938, p. 7). Such approaches criticized the *comparsas* (the singing and dancing processions most visible during carnival that were “recuperated” in 1937 after having been prohibited since colonial days) as an “invented tradition” that reflected current Cuban needs and circumstances rather than any “pure” form from an African past. They felt that the “confusion” between *comparsas* (organized groups with aesthetic value) and *congas* (lines of revelers and musicians without any artistic value) would cause the “nefarious theories of racial inequality and negro backwardness” boil again (Arredondo 1939 and 1937). They therefore questioned the “de-politicization” of the so-called “black poetry” which celebrated accounts of black life that blacks did not wish to experience and in fact were striving to leave behind (Juan Luis Martin 1937, p. 7).

The “Cubanness” nationality project took the *mestizo* character of Cuban society as the “essence” of the nation. As I esteem that it is the project that “triumphed” in 1940, I will devote more detailed attention to it. The best known formulation of this project was provided by Fernando Ortiz: “Cubanness is mainly the peculiar quality of one culture, that of Cuba.... [It] is a condition of the soul, a complex of sentiments, ideas, and attitudes. But there is also a denser Cubanness that could be said to emanate from the core of the homeland to enshroud and permeate us ... something that attracts and enamors us like a woman who for us at once one and

triune: mother, wife, and daughter” (Fernando Ortiz 1939b, p. 3). Ortiz tied together organic and voluntarist theories of the nation into an open construction: one is Cuban for having been born in Cuba and forming part of its community of culture, and for being “aware of being Cuban and willingly wanting to be it.” *Ajiaco*, a traditional Cuban stew and the most powerful metaphor for the *mestizo* conception of “Cubanness,” was elaborated by Ortiz between 1939 and 1940 and then theorized as “transculturation.”¹⁷ The symbol of *ajiaco* – that for Ortiz comprehends the pain and loss of those who were forced into the national “pot” as slaves – implies a resolve whose tenor has been taken up in our days by critics of “ethnic nationalisms” to elaborate a concept of the nation that is normatively defensible – not committed to an essentialist argument, but capable of taking culture as one relevant criterion that with the entire set of criteria can be submitted to civic precepts plausibly recognizable as universal.

In the Cuban context, towards 1940, the “Afro-Cuban *mestizo*” concept of nationality was not just shared by “liberals” like Ortiz. Thinkers situated more to the left of Ortiz also took it up. The “new black” of Gustavo Urrutia, who questioned the capacity of “our current demoliberalism” to resolve the social and black problems in Cuba, was also “Afro-Cuban.” The “new black” “has turned towards the promotion of some form of socialism, of the left for most individuals, compatible with our idiosyncrasies and the reality of our international relations” (Gustavo Urrutia 1937, p. 7). The Marxist Pinto Albio did not understand “the ill effect that the word ‘Afro-Cuban’ had on Mr. Arredondo” (Angel Pinto 1937, p. 11).

¹⁷ On the preference for the term ‘transculturation’ to denominate a transition from one culture to another in which various processes – aculturation, disculturation, and neoculturation – simultaneously play out. Según Ortiz “el vocablo *transculturación* expresa mejor las diferentes fases del proceso transitivo de una cultura a otra, porque este no consiste solamente en adquirir una nueva y distinta cultura, que es lo en rigor indicado por la voz inglesa *aculturation*, sino que el proceso implica también necesariamente la pérdida o desarraigo de una cultura precedente, lo que pudiera decirse una *desculturación*, y, además, significa la consiguiente creación de nuevos fenómenos culturales que pudieran denominarse de *neoculturación*. Al fin, como bien sostiene la escuela de Malinowski, en todo abrazo de coberturas sucede lo que en la cúpula genética de los individuos: la criatura siempre tiene algo de ambos progenitores, pero también siempre es distinta de cada uno de los dos. En conjunto, el proceso es una *transculturación* y este vocablo comprende todas las fases de su parábola”.(Fernando Ortiz 1940, p. 278)

“Cubanness” was thus a resource for a certain nationalism that sought to *re-create* the nation. At the time, it was considered an “invented tradition,” just as the very word “Cubanness.” In the constituent debates, Ferrara understood the meaning of the term “nationalism” according to how it had been used until the First World War. “The idea of Cubanness reflects the old slogan ‘With the Homeland right or wrong’”¹⁸ (*Diario de Sesiones de la Convención Constituyente* 1940a, pp. 10–13). The elder liberal could not have put it more clearly than this: “Why have we have invented this Cubanness?” (*Diario de Sesiones de la Convención Constituyente* 1940a, pp. 10–13). The response is found in the productive use of Cuba’s *mestizaje* (cultural blend) and the Latin American populist nationalism.¹⁹

These are the different ways “Cubanness” was treated on the island around 1940. “Ideally Cuba would be One of race and spirit, the colonial period would have been an apt preparation for the democratic republic and the republic would be a success of civic capacity ... We agree. But in the reality where sane, adult minds insist on living, without resorting to opium-induced fantasies, Cuba is and will be *mestizo*, if it is to be Cuba and not something else” (José Antonio Ramos 1937, p. 111). There was even some criticism of the term “Afro-Cuban” from the radicals that celebrated Cuba’s *mestizo* character as both *democratic* and *national*. “We are *mestizo* and we should be proud of our *mestizo* heritage. For it is already proven that pure races grow poor and degenerate. Mixing blood, from the viewpoint of modern biologists, appears to be a factor in

¹⁸ *La patria con razón o sin ella.*

¹⁹ ‘*Mestizaje*’ was habitually represented in the context of “Latin American populism,” after much elaboration and pejorative association, as the prototypical ideal of the national. Después de una larga elaboración, y de significados peyorativos, el mestizaje fue presentado, habitualmente en el marco de los “populismos latinoamericanos”, como el ideal prototípico de lo nacional. Las visiones virreinales y coloniales sobre el mestizo, que suponían la mezcla de “lo peor” de las culturas “española” e “indígena” habían sido abandonadas por nociones que lo dignificaron en tanto lo contrario: el espíritu que, por no estar anclado en parte alguna, capitaliza las ventajas de la mezcla con vocación moderna y emprendedora. En ese curso, el adjetivo “mestizo” evolucionó hacia el sustantivo “mestizaje”. (Zermeño-Padilla 2008) La revolución mexicana convirtió al mestizaje en su fundamento cultural —tratando a los indígenas más como mexicanos que como indígenas— y lo tradujo en política estatal. Por ese camino, el cardenismo empleó el discurso mesticista.

enrichment. We owe our personality, our future possibilities, to our *mestizo* heritage. We are new peoples, risen ...from dissimilar races” (J. I. Jiménez Grullón 1936, p. 5). The idea was held to have been “consecrated”: “The Catholic Church was the first to recognize this reality that prudes try to hide, by designating Caridad del Cobre as the Protector of Cuba. A *mestizo* protectress for a *mestizo* country” (Armando Hernández 1937, p. 5).

The concept of “Cubanness” operated within a semantic field distinct from the one to which Orestes Ferrara attributed it. Latin American nationalism was acquiring at this time new content of a populist nature. Hobsbawm has called it “third wave” nationalism in Latin America, a phase that begins with the Mexican and Russian Revolutions and is characterized by the active and positive participation of populist movements in the national politics of their countries (Hobsbawm 2009, 334). Nationalism, by way of “Cubanness” on the island, represented the ideology that made national unity possible. It represented the inclusive space of the nation, the melting pot of integration for social, racial, sexual, and regional differences, and the possibility to develop a national economy. In the process, the consecration of social rights and the deepening demands for full citizenship that were wrapped up in this nationalism coexisted with structures of social exclusion and the bourgeois project of State capture.

For critics of *mestizaje*, as a sort of “ethno-populism” (Gottberg 2002), “Cubanness” had worked in this context as the “reconciling myth of the nation.” The price to pay for reconciliation was the formal abolition of differences, or formally “overcoming” them, a need related to the discourse for social harmony and national unity that the new populist orders required to maintain what is now called “governability.”²⁰ Following this path, the “national unity” discourse in the

²⁰ This populism resides in a conflict that makes politics tense and goes beyond institution dimensions, confronting classist, racialized resistance of the dominant sectors. Ese populismo habita en un conflicto que tensa lo político y desborda lo institucional y enfrenta resistencias clasistas y racializadas de los sectores dominantes frente al acceso de nuevos sujetos a la esfera de lo político. El campo político vive rupturas que, lejos de celebrar las reglas del juego

populist context sought specific objectives: social inclusion, the formation of internal markets, industrialization, and the (bourgeois) nationalization of the country's resources. This reform-mindedness committed itself to manage pluralism institutionally and administer a concept of the people that implied the ethnopopulist dissolution of inequality (Gottberg 2002).

This said, the *mestizo* proposal of the “Cubanists” also served as a democratic resource. As Moore has described, it was part of a complex of interpenetrated, often conflicting discourses – racial, nationalist, and artistic. If in this complex Afro-Cuban expressions were “stylized” for consumption by non-black sectors, they still also served to preserve Afro-Cuban traditions (Moore 1997) and produced effects that were “certainly undesirable for the dominant classes” (De la Fuente 2001, 263). *Mestizaje* was not presented only as a question of “race recognition.” Populism was assimilationist with regards the ethnic/racial questions, but it was redistributive with regards social questions. Cubanness was not only a “racial” notion, for it equally involved the demands for social rights, for more work for nationals, for the nationalization of education, parity for siblings, etc (it was not a coincidence that the majority of the defenders of “Cubanness” would go on to defend the mortgage moratorium). The cultural penetration of *mestizaje* as synonym for nationality, rather than a representation of nationality, was settled on this reality: it operated as a framework that produced a type of “civic” recognition – respect and dignity for the “races” and a favorable position regarding integration – as well as economic redistribution in the form of protected social rights.

Such was the medley of problems behind the passing of the criminal sanction against “racial discrimination” in 1940. On the surface, the discussion of the matter seemed to center on whether the word “discrimination” was the most “adequate” choice. Marquez Sterling noted that

existentes, a las cuales los actores deberían subordinarse, ponen en disputa nuevas reglas en medio de fuertes colisiones por los desplazamientos que supone el empeño de redistribuir poder entre clases y grupos sociales antes imposibilitados de acceder a sus estructuras.

the word “did not appear in dictionaries.” Nuñez Mesa believed that “discrimination” did not exist and that, if it did, it was only because those who suffered it failed to exercise their rights. The word that rivaled “discrimination” was “nuisance” (*molestia*). Garcia Agüero defined the former this way: “Discriminacion, in our understanding and that of the masses, is an act through which someone with the capacity of performing that act establishes differences between two distinct groups of the population in order to disparage, deprive of economic, social, or life opportunities of any nature only one of the two groups to the advantage of the other in a deliberate way” (*Diario de Sesiones de la Convención Constituyente* 1940b). Meanwhile, the Communist assembly delegation proposed adding the word “color” to the precept on discrimination, which would result in a double movement: on one side an effort was made to negate the existence of races while on the other the reality of racism was put into question.

In the debate over the word “discrimination,” yet another background factor was relevant: opposition to both racial paternalism and to depoliticizing the “color” problem. For an example of racial paternalism, we have the words of Casanova: “I practice friendship with the black race in Cuba. Whatever people say, many blacks are merchants, colonists, and senior employees in the sugar ranches on my property, and they have never been without my advice or my protection” (*Diario de Sesiones de la Convención Constituyente* 1940b, pp. 6–15). It was in response to the paternalism and calls to depoliticize race that, after the debates, the use of the word “discrimination” was unanimously approved at the Convention in a conceptual framework that politicized the difference: racism was not to be understood merely as “moral prejudice.” The “prejudice” also recognizably arose from designs to monopolize social, economic, and cultural resources. This position, which was not exclusively held by the Communists,²¹ coincided with

²¹ Others who ascribed to this position were Emilio Ochoa (of the Cuban Revolutionary Party) and Ramón Zaydín (of Republication Action) (unlike Casanova, from the Liberal Party, or Mañach e Ichaso of the ABC. Ramón Zaydín

the ways in which anti-racist sectors in civil society battled discrimination. When the “case” of Congressman Mitchell occurred, the Brotherhood of Young Cubans made a pronouncement “against acts that run counter to democratic equality” and against “discrimination.” The term itself was employed by this and other groups, such as the National Association against Racial Discrimination, who made racism a priority in debates among civil society actors in Cuba.

Inscribing this word in the constitutional text meant extracting the problem from the sphere of “morality,” opening the way to considering its social and legal sanctions, and giving it greater power within the complicated network of discourses, including that of “Cubanness.” From the discussion over affirmative action for blacks in employment, proposed by the communist bloc, remains this from Article 74: “The Ministry of Employment will take care, as one of the essential parts of its permanent social policy, to assure that, in the distribution of employment opportunities in industry and commerce, no discriminatory practices of any type prevail. In the removal of personnel, and in the creation of new positions, distributing employment opportunities without distinction of race or color, as long as the required aptitudes are met, will be obligatory.”

Raimundo Despaigne, explaining what blacks could expect from the Constituent Assembly, wrote: “No precept should enter the new constitution that reflects the negative or reactionary traditions, traditions which may be honorable for the meager minority of the Cuban population that has benefitted through the 35 years of the Republic, but that mean nothing to the great majority ...that are the people, who have so diligently worked so that the next Constitution

aseguraba: “Se ha hablado en diversas sesiones (...) del propósito de nacionalizar a Cuba, del propósito de crear un espíritu nacional, que sea la dínamo de la cubanidad. (...) Ese espíritu de cubanidad, ese espíritu nacional, no podrá crearse en nuestra Cuba mientras no podamos borrar todos los prejuicios, todas las reservas, todos los recelos creado en el campo social, y mientras no ascendamos a la paridad económica, para dar a todos los individuos, que integran la nación, sin discriminaciones de ninguna clase, los recursos que los armen en el orden económico para la subsistencia de la vida, y en el orden moral para la captación de la cultura”. Estos principios estaban contenidos también en el programa del partido Acción Republicana. (Diario de Sesiones de la Convención Constituyente 1940e, p. 26)

embodies all their aspirations. The negro problem is so bound to the rhythm of human events that it cannot be said that so much work has been done for Cuba without posing and definitively resolving the deplorable situation of the black community, who has contributed and still contributes, with its labor, to Cuba. The black community cannot look with indifference when it is discriminated in this way.” The debate over “discrimination” in 1940 took up some of these expectations for good reason.

Conclusion

In this piece I have gone over two of the central questions in Cuban public date in the late 1930s. I have studied the conflict over the mortgage moratorium and the creation of the criminal offense prohibiting racial discrimination, many of the dimensions of these debates, and the manner that they ended up regulated by the 1940 Constitution. The analysis makes it possible to reach three conclusions of distinct orders:

(a) The analysis establishes that the 1940 Constitution accomplished central aspirations on a constitutional order: bringing into discussion the existing public debate at the time of its adoption; normatively fixing the values socially considered most just in that context; leaving open the possibility of interpreting those values more radically in the future; and representing a pact between different social, economic, and political forces to increase the political field of support for the Constitution.

(b) The analysis shows how collective action, public debate, and the broadening of civil society turned out to be crucial for the legal consecration of social expectations long in incubation. It can be seen from the intensity of the disputes over the language and terms that this consecration did not lead to diluted requirements in the constitutional text. My research establishes that the fight over the moratorium implicated state models in conflict, the character of

Cuban capitalism at the moment, the definition of the “people,” and the force of a democratic model of expansive rights. The constitutional stipulation of a crime against racial discrimination represented a move beyond the “PIC trauma,” the halt of a sense of “Cubanness” that would exclude blacks and their culture from the nation, the “triumph” of an inclusive national model sensitive to the make-up of its people, and the development of a politicized conception of anti-racism.

(c) The theoretical focus of the text contributes to the current debate in Latin American intellectual history over the acceptations and significations of populism, liberalism, and democracy during the 20th century in the region. It shows how historic Latin American populism, of which the Cuban process that led to the 1940 Constitution forms part, aspired to emulate the notions of social democracy of the time to rival fascism and communism and constitute its own alternative for mass democracy.

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