

Resolving Deep Fractures – Cuba, the United States and Robert Burt's Institutional Egalitarianism

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Introduction

Institutions, even when they acquire an everyday quality by those people that embody them, are made precisely to transcend them. Therefore, political communities are more than the individuals that comprise them, which is not always obvious. In fact, in the deepest sense, encounters and disagreements dwell “among those living who are dead and those yet to be born.”¹ Robert Burt worked on a notion of equality that does not overlook precisely this unfathomable dimension of political reality: institutions comprise the living, the dead, and the unborn. This conception can be denominated institutional egalitarianism. His mark addresses institutions assumed as an intergenerational legacy. There lies Burt's deep concern for the positions of the founders and builders of the United States of America.² There also lies his continuing concern with the balanced distribution of authority among the executive, legislative and judicial branches.³ And from there lies, finally, his eagerness to submit his conception of institutional egalitarianism to an acid test, confronting it with “contemporary social conflicts that cause deep divisions.”⁴

This text will address one of those deep conflicts against the backdrop of Burt's institutional egalitarianism: the historic confrontation between the United States and Cuba, that is, between a

● In memory of Robert Burt, my professor of unquestionable humanity.

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¹ Burke 1999 [1795]: 359.

² In the narrative laid out in *Constitución y conflicto*, names like Abraham Lincoln, James Madison, Alexander Hamilton, John Marshall, and many others stand out. See Burt 2000 [1992]: 17 y ss.

³ Which contrasts sharply with the judicial supremacy, thus making it necessary to “an institutional claim equal and no higher authority by the Court regarding the interpretation of the Constitution”. (*Ibíd.*: 20)

⁴ *Ibíd.*: 23.

predominantly liberal manner of conceiving political life, on the one hand, and a socialist one, on the other. In 1959, approximately 90 miles off the coast of the United States there occurred the most radical rupture with liberal tradition witnessed by Latin American constitutionalism: the adoption in Cuba as a state ideology of Marxism-Leninism synchronized with anticolonial Martí thought, a socialist Constitution articulated from democratic centralism⁵, a state economy that promotes socialist state property, a single Communist party,⁶ and a government guided by the leading role of the working class or working public.⁷ Undoubtedly, the route and form of the State that ultimately produced the 1959 Cuban revolution has been one of the issues most ignored by contemporary Latin American constitutionalists.⁸ Paradoxically, from the perspective of contemporary Latin American history, the importance of the Cuban Revolution in the political life of the region in the second half of the twentieth century – above all under the rigors of the harsh Cold War – could only come to be compared with the decisive influence exercised by the Mexican Revolution in the first half of this century.⁹

Having said that, is the enormous distance between the ideology of the American and Cuban states completely irreconcilable? Is it possible to unravel some threads in this very intricate skein in order to explain some causes of the greatest conflicts? What utility would there be in attempting to establish certain basic coordinates that illuminate the walls within which this

⁵ Discussing the Constitution of 1976, described at the time by Jorge Tapia-Valdes - former Minister of Justice of the government of Salvador Allende - as "the first socialist constitution enacted in the Americas and in the area of the globe called 'West', a fact in itself significant on several levels. " (Tapia-Valdés 1977: 87)

⁶ It is noteworthy that, in agreement with Article 5 of the Constitution, the Communist Party of Cuba can organize "joint efforts toward the goals of building socialism and the progress toward a communist society." (Gaceta Oficial de la República de Cuba 2003: 8)

⁷ See the Constitution of Cuba, among others, the Preamble and Articles 1, 4, 5, 38, 39 and 54.

⁸ In this regard, the analyst Rafael Rojas believes that the Cuban Revolution was primarily an ideological and political referentiality, which was not accompanied by an equivalent influence in the Constitutional sphere. See Rojas 2011: 2 y ss.

⁹ The "social question" addressed in the Mexican Constitution of 1917 - the culmination of the Revolution - would be awakened in later constitutional processes such as Brazil in 1937, Bolivia in 1938, Cuba in 1940, and both Argentina and Costa Rica in 1949. See Gargarella 2015: 7.

profound conflict is being waged? And even more importantly, will there be some common ground, however shaky, on which these countries can rest gestures of mutual understanding against a background of extreme differences? In the piece that follows, some angles of these questions will be addressed with the object of confronting the deep fracture existing between Cuba and the United States. I discuss a fracture that, after more than half a century after the Cuban revolution and more than a quarter century after the fall, at least formally, of the curtain of the Cold War, could be perfectly described as historic.

Given the complex historical tension between the two nations and considering Burt's institutional egalitarianism, this work will urge a change of perspective in relation to the traditional positions taken by either side (Section 1) without necessarily "solving" all of the conflicts but rather "transforming" or "recreating" them (section 2), avoiding at all costs falling into a politics of extremes (section 3) and instead redirecting toward an autonomous framework, which is not heteronomous. This framework is directed towards the management of mutual relations (section 4). Let us examine each of these points.

Measuring the deep fracture: the need for a change in perspective

The vast political distance between the neighboring countries of the United States and Cuba in reality constitutes a dispute having "deep divisions."¹⁰ The successful 1959 Cuban Revolution and its clearly socialist stamp promptly led to the sudden rupture of relations between the two countries, triggering events of great tension in the region and even the world. This caused great disequilibrium, given the possibility of the two superpowers, the United States and the Soviet

¹⁰ Burt 2000 [1992]: 23.

Union, resorting to sophisticated nuclear armament, demonstrated by the serious incident of the Bay of Pigs. Since then, both countries have had different sources of disputes, highlighted **in the** economic arena. On the American side, controversy exists over the compensation claim for all the expropriations undertaken by the Revolution against the properties of U.S. nationals¹¹, while from the Cuban side, the greatest claim has been directed against the economic, commercial, and financial embargo imposed by the United States.

According to a secret CIA document from the early 1980s revealed by the passage of time, “the issue of the ‘embargo’ is historically, legally and politically connected with the allegations that of compensation for the property confiscated by the Revolution.”¹² The Cuban authorities, as they set forth in the initial considerations of Decree Law 302 of 2012, amending the Immigration Act, consider the blockade “genocidal and illegal.”¹³ The Cold War and its strongly militaristic language, far from laying the possible basis for negotiations, however remote, left the legacy of the *fait accompli*, which incredibly, has been extended until today. Such is the case of the Guantanamo base and uncomfortable flight monitoring that are operated there in the name of Cuban sovereignty.¹⁴ What should be done then with the heavy inertia of these two countries that grew accustomed to the strong language of unilateral measures, even today, when there are

¹¹ We are talking about "nationalization of 1963 and the so-called revolutionary offensive that extended confiscatory actions until 1968." (Noguera 2004: 49)

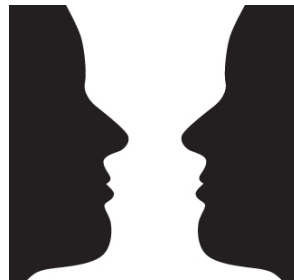
¹² CIA *circa* 1980: 12. [Author's translation; the original English quotations are mine] At the beginning of the 1980s it was conjectured that Castro, under pressure from a "strong negotiation process" might be willing to pay a small percentage as compensation of US property expropriated. See *ibid.*: 2.

¹³ Gaceta Oficial de la República de Cuba 2012: 1357. Considerations also indicate that the US "has historically used its immigration policy toward Cuba purposes of hostility, subversion and destabilization, and the legitimate interests of our people and the Cuban emigration own ; (...) [Likewise it has promoted] the commission of violent criminal acts, obstruction of international medical cooperation and the brain drain with political objectives. (*Ibidem.*)

¹⁴ The report said the CIA stresses that an eventual negotiation with Fidel Castro "will likely lead to a definitive commitment by the United States to waive the Guantanamo naval base as well as put an end to flights of established oversight." (CIA *circa* 1980: 3)

winds of change that would appear to help improve bilateral relations¹⁵? How do we leave behind the persistent — and often camouflaged — coordinates inherited from the Cold War?

In *Constitution and Conflict*, in reference to the American political context, Robert Burt refers to the existence of settings that are in turn “fundamentally **unit level and intensely polarized conflict**.”¹⁶ Burt attends to the very suggestive “ambiguous image of figure / background, a drawing that viewed from one angle is a vase and viewed from another represents two opposing faces in profile. Faced with this ambiguous image, one cannot simultaneously see the vase and the two faces, even when one knows that with a slight change of visual perspective, one of the image disappears to give place to the other.”¹⁷ I think he had in mind a picture like this:¹⁸



The thorny relations between Cuba and the United States, which have a strong legacy of unilateral and militaristic measures courtesy of the Cold War, but have recently tilted to preliminary talks and "riskier" approaches that are just beginning to take place could be seen

¹⁵ Indeed, the process of establishing embassies on either side of the border has been undertaken, with changes in political, economic, social and cultural matters expected to begin to occur. If indeed strong tradition of the continued imposition of unilateral measures manages to be left behind, which is precisely the danger noted above. Nor is it a minor factor to consider who will be the next President of the United States, since Barack Obama is nearing the end of his second term. Today the competition seems to be lining up between Hillary Clinton (Democratic Party) and Donald Trump (GOP).

¹⁶ Burt 2000 [1992]: 55.

¹⁷ *Ibid.*: 56.

¹⁸ Face vase. Available at: <https://www.google.com.co/#q=double+face+vase>

against the light of the the double-faced vase. One of those faces is the logic of the Cold War, a face that many believe expired or extinct, but one that — often surreptitiously — is repeatedly reprinted. What is interesting, from the view of Burt's institutional egalitarianism, is that equality is also at stake in the manner in which we, through institutions, face conflicts, particularly those conflicts with deep divisions. This is because in those conflicts seen as irreconcilable, "mutual respect for the equality of persons or of political institutions . . . [seems] inconceivable."¹⁹ On the contrary, what is expected is that what falls within our radius of will — for the United States and Cuba, from within the political will of each country — will choose to see the double-faced vase one way and not another, definitively leaving behind that face, dating from the logic of the Cold War, where mutual respect for equality appeared frankly inconceivable. The decision, as with other things, settles in a change relatively conscious of perspective.²⁰

And it will not be easy to do, because the change of perspective obviously entails a change of mentality. In this regard, one should not ignore that Cuba has for more than half a century forged its political project of government under internal and external conditions that have been openly hostile and adverse. Cuba's constitutionalism could be described as a constitutionalism of adversity.²¹ This adversity includes having had the development of change through a revolution, perhaps the greatest global superpower as a direct rival, and and a drastic adjustment after the

¹⁹ Burt 2000 [1992]: 22.

²⁰ It is the change of perspective that Burt claims in the field of litigation, in order to mutate the image of "profiling confrontation" by a "unity". Véase *ibíd.*: 56.

²¹ Cuban writer and sociologist Aurelio Alonso (2007: 14-16) points in this regard: "Critics of the Cuban socialist project tend to object that the rulers of the island have become accustomed to subordinate its design to US policy toward Cuba. After living day to day and reflecting on the distance traveled since 1959, I struggle to see how it could be otherwise. In fact, to relentlessly resist cultural economic erosion, politics, and all sorts of this onslaught, the theorem that will make Castro immortal is demonstrating how much can be achieved in such adverse conditions. "Meanwhile, Boaventura de Sousa Santos warns that "Cuba is perhaps the only country in the world where external conditions are not an excuse for incompetence or corruption of leaders. They are a cruel and decisive fact. "(Santos 2009: 33)

support of the other superpower came to an end with the collapse of the Soviet Union in the early nineties.²² Cuban revolutionaries seemed to be aware of this, as we can read in the introductory part of the 1976 Constitution: “We will show how you can make Revolution with democratic principles, how to practice democracy with a party, and we will do it in the most difficult conditions.”²³ Cuba opted for what has been called “its own route to socialism,”²⁴ guided “by the ideas of José Martí and the political and social ideas of Marx, Engels and Lenin,”²⁵ and inspired by “those who promoted, joined, and developed the first organizations of workers and peasants, spread socialist ideas and founded the first Marxist and Marxist-Leninist . . . [aware that] when man has been freed from all forms of exploitation – slavery, servitude, and capitalism – entire human dignity is achieved.”²⁶

The adversity that has confronted the Cuban political project also partly explains the strong and bombastic institutional language often employed. For example, in the antecedents of the 2002 constitutional reform, it was claimed: “Despite the threats of all kinds and economic war imposed by the U.S. government aimed to humiliate, stifle and exterminate our people, the Cuban nation has grown in these glorious years of Revolution to achieve high educational, cultural and social indicators, with an illiteracy rate of 0.2%, a rate of primary school enrollment of 100%, a rate of secondary school enrollment of 99.7%, an infant mortality rate of 6.2 per thousand live births, with 590 doctors, 743 nurses and 630.6 hospital beds per hundred thousand

²² To this it must be added that Cuba hosts a conception of Marxism-Leninism in many ways taken as a reference to the Soviet bloc, a reality that was (and that still is) completely alien.

²³ Constitution of Cuba: 4. Versión disponible en la Biblioteca ACNUR –Agencia de la ONU para los Refugiados– en: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/0511>

²⁴ Pagani 2006: 5.

²⁵ Constitution of Cuba, Gaceta Oficial de la República de Cuba 2003: 8.

²⁶ *Ibídem*.

inhabitants and a life expectancy at birth of 76 years.”²⁷ Likewise, the Constitution, with a similar air of complaint, establishes in Article 12 that the “Republic of Cuba espouses anti-imperialist and internationalist principles and . . . condemns imperialism, the promoter and supporter of all fascist, colonialist, neocolonialist, and racist demonstrations, as the main force of aggression and war and the worst enemy of the people.”²⁸

Could there be an attempt to bring closer two sides, which seem irreconcilable, with the serious effect that the ideal of a minimal recognition of mutual equality remains repeatedly postponed under the sordid logic inherited from the Cold War? From Burt’s institutional egalitarianism, the change of perspective does not necessarily signify defusing deep conflict but rather recreating it. We shall see.

Recognizing deep fracture: the transformation and recreation of conflict

In its contemporary history, Cuba has experienced varying degrees of transition. The Cuban sociologist Aurelio Alonso states that it “would be wrong to pretend that any process that is defined as socialist today can be conceived as anything other than a transition.”²⁹ It is in socialism that basic rules – such as the 2002 Constitutional Reform Act – establish as a reality what is apparently here to stay: “Socialism and the revolutionary political and social system established in this Constitution [of 1976], tested by years of heroic resistance against aggressions

²⁷ Ley de Reforma Constitucional de junio 26 de 2002: 1-2. Versión disponible en la Biblioteca Jurídica UNAM – Universidad Nacional Autónoma de México– en: <http://biblio.juridicas.unam.mx/libros/6/2525/53.pdf>

²⁸ Constitution of Cuba, Gaceta Oficial de la República de Cuba 2003: 9 –art. 12–.

²⁹ Alonso 2007: 1. In this respect he clarifies that “in Cuba the Revolution of 1959 began a process of transition to break dependent capitalism from a strong socialist orientation within an ocean of complications. And after the collapse of the Soviet system, in Cuba, a second process opened with a series of economic and institutional reforms, which could be described as a transition from the failed socialist model towards finding a viable socialism.” (*Ibíd.*: 20-21)

of all kinds and the economic war of the governments of the most powerful imperialist power that has existed and having demonstrated its ability to transform the country and create an entirely new and just society, it is irrevocable, and Cuba will never return to capitalism.”³⁰ In this sense, the 1976 Cuban Constitution establishes that “[a]ll citizens have the right to fight by all means, including armed struggle, when there is no other possible recourse, against anyone who tries to overthrow the political, social order and economic established by this Constitution.”³¹ Does framing the situation in these terms imply that Cuba and the United States are inevitably intended to appeal to the language of *fait accompli* and unilateral measures that for more than half a century have characterized their bilateral relationship, or rather, their estrangement? Does this mean that the entrenched, antiquated language of the Cold War remains part of the key foreign policy that has linked these two nations for decades?

The answer, from Burt’s institutional egalitarianism, tends to be no, as both internal and external institutional conflicts are certainly capable of being recreated and rerouted. As counterintuitive as it sounds, it is preferable in politics to have authorities that “redirect conflicts” to others who seek their “complete suppression.” The latter attitude, in fact, tends to perpetuate and escalate the conflict to its most extreme facets. This is because the radical suppression of conflict involves usually an intolerant attitude that eventually clogs social valves of flow and escape, necessary to understand and deal with differences and disagreements that constitute the daily life of societies that claim to be genuinely democratic. In this line of thought, Burt recommends – particularly within Spanish-speaking countries – to avoid, rather than emulate, “the recurring tendency of the [United States] Supreme Court to suppress conflicts, arising from an excessive fear of their

³⁰ Ley de Reforma Constitucional de junio 26 de 2002: 2 –Art. 3–. Versión disponible en la Biblioteca Jurídica UNAM –Universidad Nacional Autónoma de México– en: <http://biblio.juridicas.unam.mx/libros/6/2525/53.pdf>

³¹ Constitución de la República de Cuba, Gaceta Oficial de la República de Cuba 2003: 8 –art. 3–.

diluting implications. This suppressive effort is the result of an inadequate understanding by judges and constitutional law scholars about the proper and possible role of judicial intervention in driving and even increasing political conflict as a way of promoting democratic values.”³² This reflection on the proper role of judges in a democracy³³ can be extrapolated to the existing reality between the U.S. and Cuba: it is necessary to recreate and transform the sources of conflict, not in order to seek their elimination – given that Cuba is a socialist system, while the United States is one of liberal-capitalist court – but with the goal of redirecting and even increasing the political conflict while simultaneously deescalating military action, and above all, the *fear* of nuclear military actions, a product of the stubborn logic of the Cold War. Only at this level can a minimum mutual recognition of equality between the two countries be activated, a task that until now has proved to be an “inconceivable” objective.³⁴

We would do well to remember that the reality of a deep conflict, in Burt’s terms, should make us recognize “that no group definitively prevails over another.”³⁵ To prevail *definitively* over another is in fact the language of colonialism – and, incidentally, the Cold War – that resists in different ways the possibility that alternative projects, different ways of seeing the social world, can coexist. This is the fundamental reason that Burt concludes that the death penalty should be abolished, to the extent that this “punishment includes the premise that the total annihilation of

³² Burt 2000 [1992]: 16.

³³ The proper role of judges in democracy leads to Burt rejecting the view that the constitutional court assumes as the authority that resolves final and definitive constitutional disputes. Instead, failures of interim analysis - not deep – are preferable, as they are temporary because “the party is the winner cannot be attributed a definitive victory. His triumph is merely temporary and will be subject to subsequent reversal potential if your opponent decides to bring the debate to the legislative arena.” (*Ibid.*: 490)

³⁴ *Ibid.*: 22

³⁵ *Ibid.*: 483. Quoting Justice Louis Brandeis, Burt expresses the same thing this way: “No [adversary] should feel that he is under the power - at the mercy - of the other.” (*Ibid.*). The maxim that emerges for the judicial authority to properly fulfill its role is then as follows: it “[should] troubleshoot inequality without creating a state of inequality imposed by the courts.” (*Ibid.*: 494)

an opponent and absolute rupture of any further relationship with him is a justified resolution of social conflict.”³⁶ But clearly it is not. Again, such “suppression” of the conflict of is extreme and aggressively conflictive, and, therefore, should be recreated and redirected towards other settings of confrontation and confluence, which is not infrequently forgotten, among diverse actors.

The unquestioned powers – as well as the unquestioned decisions that also come from judicial authority – often become obstacles to public work to recreate, transform, and redirect conflicts. For others, it is a great mistake to think that “institutions or individuals enjoy the unquestioned power to subdue others. This unquestioned power is essentially antidemocratic – no matter who holds it or how they got it.”³⁷ The idea, instead, would promote the formation of democratically answerable powers, in a balance that does not promote rigid and full parity, but rather a minimum and basic recognition of equality between the involved parties.³⁸ Tracking this noble – but also difficult – ideal requires moving away from a setting in which political extremes prevail, as will be discussed in the next section.

Facing the deep fracture: the inconvenience of a politics of extremes

Today, global and local political phenomena continue to be determined significantly by Manichean positions, whether openly or covertly. Realities and diversity of attitudes, with actors and influences as dissimilar as the circumstances that unite or separate them, end up being swept

³⁶ *Ibid.*: 502.

³⁷ *Ibid.*: 503.

³⁸ It was that, according to Burt, the kind of balance “that haunted Lincoln openly in defining the Civil War: neither total victory nor total defeat, all within the framework of recognizing both a continuous and contentious relationship.” (*Ibid.*: 495)

away by the leveling standards of good and evil, black and white, all or nothing. It could well be another of the contemporary burdens inherited from Cold War logic, where anyone who was not aligned with a front tended to be assumed as a suspect or as an enemy of the front. The major problem with this way of perceiving political reality is that it widens the minefield – or in the same vein, shrinks and besieges the fertile space – on which everyday experiences and common recognition can be consolidated, which is nothing other than the practical language of equality. For Burt, the central feature of Manichean politics “is the uncompromising hostility among political opponents. Because these opponents have no intention of recognizing the slightest possibility of a common basis, they are unable to imagine a relationship based on mutual respect.”³⁹ In this manner, the position that considers political and social conflicts – in particular, conflicts of deep division – is reduced to a confrontation in which one wins or completely loses, constituting a politics of extremes.

United States and Cuba face a situation where one of the greatest challenges is abandoning policies rooted in extremes. Perhaps the greatest danger that could spoil this purpose from the American side would be to continue reading the Cuban dynamics as dating from recalcitrant codes generated under the Cold War; from the Cuban side, we could say much, but we emphasize the iron verticality that seems to characterize the Cuban model – explicable in part by the continuing harassment that the Island has suffered for decades⁴⁰ –, within which nuance often

³⁹ *Ibíd.*: 480.

⁴⁰ Boaventura de Sousa Santos (2009: 29) states in this regard: "The harassment to which Cuba has been subjected for decades has led to a closing of ranks in defense that has often excluded the nuances and well-intentioned criticism. But times are changing, and anchored in the pure resistance undermines the possibility of a mutually fruitful, creative exchange between the left inside and outside of Cuba. "

ends up being expelled.⁴¹ The result is that in the absence of shades, black and white tend to quickly absorb the political space. It is worth at this point to explore the Cuban reality. An interesting case is the manner in which Cuba has included the notion of property in the 1976 Constitution, a document in which the aspirations of the Revolution of 1959 remained protected.

The Revolution established the Socialist state type of property in Cuba, which achieved constitutional status with the 1976 Constitution of 1976.⁴² Historically, this has at times been a more or less rigid approach. I believe that the momentum behind the first form of understanding is an example – certainly debatable – of a policy of extremes. This is because under the original constitutional framework of 1976, state ownership was conceived in a totalizing and all-encompassing way⁴³, eliminating alternative forms of property, and, in particular, transfer of ownership, not necessarily incompatible with state management of the means of production. typical policy ends. This totalizing trait, typical of a politics of extremes, was precisely what the 1992 constitutional reform, which had a much more flexible nature, sought to placate. In that reform, the exclusive domain of the State was modified from all means of production to only

⁴¹ (Ortiz *et al.* 2009: 16) It is not unusual that Latin-American analysts identify Cuba with a radical project. Thus, for example, they have classified the left in Latin America thus: "moderate left (Chile, Brazil and Uruguay), a populist left (Argentina, Ecuador, Venezuela and Bolivia) and orthodox communist left Cuba." (Ortiz *et al.* 2009. 16)

⁴² Article 15 of the Constitution establishes: "They are socialist state ownership of all the people: a) the lands that do not belong to small farmers or cooperatives formed by them, the subsoil, mines, natural resources (...) b) sugar mills, factories, chief means of transportation, and few businesses, banks and facilities have been nationalized and expropriated from the imperialist, landholders and bourgeoisie (...) These assets cannot be transferred property to natural or legal persons, except in cases exceptional in that the partial or total transmission of any economic objective is for the purposes of development of the country and do not affect the political, social and economic foundations of the State, after approval by the Council of Ministers or its Executive Committee. (Gaceta Oficial de la República de Cuba 2003: 10 –art. 15–)

⁴³ This does not mean that from the beginning, certain forms of property were not exempt from state socialist regime, such as small farmers or cooperatives formed by them -arts. 15 and 19 of the Constitution, or as considered personal property" on income and savings derived from one's own work on housing that has the legal title and of the other possessions and objects which serve to satisfy the cultural and material needs of the person. The ownership of the means and instruments of personal or family work is also guaranteed, which cannot be used to obtain income from the exploitation of other people's work. "(Constitution of the Republic of Cuba, Official Gazette of the Republic of Cuba 2003: 11 -art 21-). Still, it has been argued that this type of individual properties were anyway included within the state control through price regulation and national economic planning. See Rojas 2011: 11.

those means of production that were considered *fundamental*.⁴⁴ In addition, other forms of alternative state property were enabled that opened the possibility of transfer of all or part of a natural or legal person's domain, whether exceptionally, in those cases where "some economic objective was set aside for the purposes of national development and did not affect the political, social, and economic foundations of the State, with the approval of the Council of Ministers or its Executive Committee."⁴⁵ So, while the initial 1976 regulations prohibited mixed forms of ownership – due to the exclusive and all-inclusive use of state domain – the 1992 constitutional reform sought precisely its unfolding and fomentation.⁴⁶

One of the biggest challenges facing contemporary socialist Cuba is converting wild forms of clandestine or semi-clandestine capitalism in settings for the development of cooperatives or communitarian forms of appropriation of goods and services.⁴⁷ To do this, the mixed decision-making processes, they hybrid public policies in ownership and production, and finally, the promotion of areas not linked to the rigid attachment to a political blueprint of extremes, seems to be the most recommendable prescription. Combinations that put the small farmer in continuous institutional interaction with specialists generated by the Revolution, the rooted state sector with the mixed industrial joint ventures, the post-revolutionary technocrats with pre-revolutionary Communists, the craftsman with the non-state urban worker, are examples of appropriate socioeconomic forms that only Cuba could articulate in the American context to

⁴⁴ "The Republic of Cuba is governed by the economic system based on socialist property of all the people of the basic means of production and the abolition of the exploitation of man by man." (*Ibid.*: 10 –art. 14–)

⁴⁵ Constitution of Cuba, Gaceta Oficial de la República de Cuba 2003: 10 –art. 15–

⁴⁶ Albert Noguera (2004: 51) points out that agricultural production before the 1992 reform had 3 basic forms: state ownership covering 82% of the territory of the country, cooperative ownership with 8% of land and private property small farmers with 10%. After the reform this production was reorganized into 4 sectors: state, cooperative, individual -campesino private, individually beneficial owner or relatives- and the mixed sector – mixed companies -, the new actor of the Cuban rural economy.

⁴⁷ Véase Santos 2009: 34. Noguera (2004: 52) warns that the underground economy in Cuba "has never disappeared and still today continues to play an important role in distorting equal access to economic resources."

better service its political project. It bears remembering that Cuba is among the countries in Latin America that have achieved a greater degree of class transformation; while there are areas where the indicators are relatively satisfactory – like education and health – there are others that still seem to require much more attention – such as agriculture, the grave trend of growing inequality, excessive restriction of freedoms or insufficient political participation of ordinary citizens.⁴⁸

It has been said that “from the Marxist-Leninist perspective, the Constitution does not have ‘constitutive’ nature but rather a ‘declaratory’ one. The Constitution recognizes the power relations actually in force, and the rights and freedoms in the way they are now, and not as promises of how they will exist in the future.”⁴⁹ This would explain in part why it took seventeen years to decant the Revolution of 1959 in the 1976 Constitution. Whether this is true or not, the important thing is that gaps and significant differences can still be seen between the constitutional text and Cuban reality: what until now has been argued is that one of several ways to bring Cuba and the U.S. closer – and to achieve a minimum basis of understanding with the United States – is to leave behind the eroded logic of the politics of extremes. The final section will add one last ingredient to be considered in order to better cope with a deep fissure like the one that exists between the United States and Cuba, namely, the articulation of autonomous spaces of rapprochement.

⁴⁸ Véase Santos 2009: 35. The Cuban sociologist Aurelio Alonso, meanwhile, highlights outstanding political and social debts in order to "ensure that the strategy of environmental recovery constrains the scope of economic policies, a more equitable stratification of income within Cuban society, the satisfaction of priority needs whose deficit rate in real poverty indicators (uneven and poor nutrition, poor housing), confronting corruption and social anomie and (...) the configuration of channels of effective public participation in decision-making mechanisms in all instances, with the consequential redefinition of the role of the state apparatus and the Party in the country's political leadership management. " (Alonso 2007: 29-31)

⁴⁹ Tapia-Valdés 1977: 95.

Beyond the deep fracture: heteronomous and autonomous frameworks of mutual understanding

One of the structural points outlined by Robert Burt – supported by figures of historical stature as James Madison and Abraham Lincoln – consists in the pursuit of equality, including unanimity, among the actors and institutions that form government, “whose intertwined powers and overlapping constituencies tend to promote compromise rather than direct confrontation.”⁵⁰ This is achieved, from the angle of institutional design, by promoting autonomous structures of public decision rather than purely heteronomous government structures. While in a rigid and hierarchical chain of institutions oriented toward a higher and ultimate authority prevails in the heteronomous framework, in the autonomous framework predominates an intertwined and fluctuating articulation superimposed over those institutions, without which none of them can make a conclusive and definitive claim of authority over the others.

Burt’s institutional egalitarianism certainly rests on institutional autonomy understood in this way, that is, as a dynamic opposed to institutional heteronomy. It evokes the opposition “heteronomy / autonomy” classically developed by Jean Piaget in his analysis of the development of the moral side of minors. For Piaget, the consciousness of moral rules occurred when heteronomy achieved transformation into the autonomy of the child, namely, when “in effect the game rule stops being for the child an external law, in particular of a sacred character imposed by adults; instead, it appears as the result of a free decision, worthy of being respected

⁵⁰ Burt 2000 [1992]: 115-116. It is in this sense that the Supreme Court should be “‘coordinated’ with the other organs of government, rather than hierarchically above them, with respect to the task of interpreting the Constitution.” (*Ibid.*: 116)

to the extent to which it has been constructed from a place of mutual consent.”⁵¹ For this reason, in Piaget’s political archaeology, “democracy arises from theocracy and gerontocracy, leaving behind the transgressions of opinion to allow breaks with procedure.”⁵² The autonomous frameworks of reference allow the child to perceive the rules as no longer “external and coercive, but rather those that can be adapted and modified according to the trends of the group,”⁵³ leaving the child to think “that it was better in the past and that the only way to avoid problems is through a religious respect for the established order. Now the child believes in the value of experiencing different events as well as having the endorsement of the collective opinion.”⁵⁴

For Burt, within this same line of thought, one of the greatest historical problems of the United States was falling into a collective heteronomous reading of the political reality, which, under the context of the events that led to the Civil War, pushed the country into an “increasingly rigid view of an inevitable and irremediable conflict [that] gave impetus and imagined credibility to the institutional claims of the [Supreme] Court to elevate themselves ‘above politics’ as the supreme speaking body of the Constitution.”⁵⁵ So, suddenly the people thought “American society was divided by irreconcilable conflicts and that judicial authority could promise some kind of transcendental solution.”⁵⁶

⁵¹ Piaget 1999 [1932]: 57. The “heteronomous morality” constitutes the first stage of the moral development of minors in Piaget, a reading that took many revisions and subsequent adjustments, such as those made by Lawrence Kohlberg, who, more than heteronomy, saw obedience and punishment. Al respecto, véase Gibbs 2003: 61 y ss.

⁵² Piaget 1999 [1932]: 57. In that past - the theocracy and gerontocracy - “custom always prevailed over the rights.” (*Ibid.*: 64)

⁵³ *Ibid.*: 62.

⁵⁴ *Ibid.*: 57. Here also “the rule of cooperation replaces the constraint, thus becoming an effective moral norm” (*Ibid.* 62) It is in this sense that the “establishment of rules is a necessary condition for reaching agreements.” (*Ibid.*: 63)

⁵⁵ Burt 2000 [1992]: 22.

⁵⁶ *Ibidem*. The United States, throughout the nineteenth century, was framed in an authoritative, heteronomous model to the extent that “the Supreme Court adhered to a conception of judicial supremacy - expansive application after the end of the Civil War - which stood in Lincolnian antithesis to the conception of equality in political relations and institutional relations correlative structure conceived by Madison.” (*Ibid.*: 149)

But the institutional egalitarianism drawn by Burt opposes transcendental solutions articulated by a supreme and ultimate authority – be it judicial, legislative or administrative – as was above noted. In the particular case of judicial supremacy, it is inadequate to advocate for it even in times of crisis, because if the judge in these circumstances sees himself as the final authority, he is likely to end up ceding, confessedly or not, before government claims to expand its powers to preserve or restore law and order to the detriment of civil liberties. In the words of Burt: “The ideal of the rule of law is not safeguarded when the Court gives an official stamp of legitimacy to dubious exercises of governmental authority based on the claim of national security. This was the profound and unfortunate action of the Court in *Korematsu*.”⁵⁷

Therefore, he proposes an alternative way of judicial action in times of crisis – that does not call for total judicial abdication toward the executive, nor, on the other, under the full control of the executive branch. Burt calls for the judiciary to conceive itself more as a special advocate for the interests of the rule of law and less as the final authority that decides the exception: the result is that the judge, independently and freed from the weight of being the one with the last word, should at least make visible to the public the damage inflicted on the state in those cases where he ends up opting for the path of the pure preservation of public order.⁵⁸ In effect, the maintenance of public order as the ultimate reason carries the danger of dismissing other legitimate, equally important, rivaling purposes that, above all, tend to relegate to the background the question of appropriate and proportional means that should be employed. What ends up being sought – and not infrequently, with high doses of improvisation and despair – is

⁵⁷ Burt 2001: 309. *Korematsu* was the case of excluding the Japanese during World War II, in which the constitutional court alarmingly backed a racist military measure, namely the confinement of people of Japanese descent in "relocation centers" begun in 1942.

⁵⁸ Véase *ibíd.*: 299, 304.

restoring public order “by any means.” Given this state of affairs, the idea is that the figure remains – an autonomous, not heteronomous – judge as a special advocate for the interests of the rule of law, to remind citizens and authorities in moderate government schemes, as they are constitutional democracies, the incontestable and ultimate rationale should be, in one way or another, institutional counterbalance.

All of these lessons about the autonomy/heteronomy binary could well be employed in the case of the deep divide between Cuba and the United States, the main focus of this work. Indeed, in the unlikely alternative that an external authority – “final and ultimate” – can get to heteronomously solve the basic points of this deep conflict, what is required are genuinely autonomous, flexible, and interlaced structures in different decision-making areas. This is necessary so that, leaving aside conclusive and definitive claims of authority, the countries begin to negotiate several of the existing historical differences. Burt’s institutional egalitarianism here poses a flat rejection of “a rigid conception of equality susceptible to being applied with force by an ‘enlightened’ or ‘target’ authority.”⁵⁹ This type of objective observation should not resort to a heteronomous mode, but rather to “fully subjective evaluations of the same opponents involved in the social conflict.”⁶⁰ Nor should we forget that a legitimate tactic in tackling deep conflicts consists of *moving them* to institutional forums where they can be reflected, addressed and even dispelled in the light of distinct frameworks of understanding.⁶¹

⁵⁹ Burt 2000 [1992]: 146.

⁶⁰ *Ibíd.*: 147.

⁶¹ Referring to the American constitutional history, Burt states that “the founders themselves do not reach an agreement themselves on how to create institutions to achieve closer to unanimity, and did not resolve this disagreement, but implicitly rather transported their constitutional scheme”. (*Ibíd.*: 78) [Cursivas fuera del texto]

Such initiatives, for their fulfillment, require coordination with autonomous structures of public decision like those that have been outlined. In this regard, it is necessary to remember that Cuba appears to have a constitutionalism of adversity. Its quest for autonomy has clashed directly with external and internal obstacles of all kinds.⁶² Undoubtedly, many of them are tied to the fact of coming from a socialist revolution itself. Because of this, Fidel Castro stated that “this country [Cuba] can destroy itself; this Revolution can destroy itself, but who can not destroy it is them; us yes, we can destroy it, and it would be our fault.”⁶³ This phrase covers significant challenges. For example, in a system that in many ways has depended on the strength of a charismatic leader, a still pending task would be to completely depersonalize political spheres of public decision. Another pending task, no less difficult, would be to look much more closely at the lessons that can be obtained – of the adventures and misadventures – of the wave of leftist governments in the region in recent decades, in countries like Bolivia, Uruguay, Venezuela, Chile, Argentina and Ecuador, to only name a few. What can the experiences of these leftist countries say for the Cuban left?⁶⁴ At the macro level, it could be arguably said that the Latin American region, in different ways, has lacked the autonomous frameworks of understanding, both at the sub-national level and the external and supranational level. With this in mind, and this must be emphasized, the program of political structures will always be under continuous construction.

⁶² Looking back in history, you could say the same of the United States.

⁶³ Quoted in Santos 2009: 37. Interestingly, something similar could also be noted about the past, present and future of the United States, obviously keeping historical distance.

⁶⁴ The inverse is also certainly a valid question: what can the experiences of the Cuban left tell you about the left in the region?

Conclusions

Examining the recent events in the thorny relations that have been maintained for over half a century between the United States and Cuba, it seems that the moment has arrived to abandon the elusive but pointed logic of the Cold War. The new winds of rapprochement between the two nations should serve to promote greater understanding of the political projects that, with great effort, have been fought on either side. This text has argued that a possible useful framework for this rapprochement can be found in what I have called institutional egalitarianism, inspired by the thought of Robert Burt.

Based on a fluctuating and interlaced exercise superimposed over the authority of different institutions, I have held that it is time to confront a deep political fracture between the neighboring countries of Cuba and the United States. In particular, I have encouraged the bold change in perspectives, not to clearly solve all the sources of conflict, but rather to transform and recreate them, escaping the repeated politics of extremes to construct instead autonomous, not heteronomous, governmental structures on either side of the fissures.

Institutions are made to transcend people. Political communities are much more than the individuals that compose them. Deep conflicts are ways of pushing to the extreme perspectives and ideals that, through mutual contrast and reference, are remade. To reforge deep, reciprocal fractures, is, therefore, to reforge one's own fractures. Since the foreign dwells in oneself, and in the institutions of the living, dwell, in different ways, those that are still unborn and those that have died.

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