

POPULAR PARTICIPATION IN THE CONSTITUTION OF THE ILLIBERAL STATE—AN EMPIRICAL STUDY OF POPULAR ENGAGEMENT AND CONSTITUTIONAL REFORM IN CUBA AND THE CONTOURS OF CUBAN SOCIALIST DEMOCRACY 2.0

Larry Catá Backer*

Flora Sapio**

James Korman***

No necessity can be more urgent and imperious, than that of avoiding anarchy.... Traced to this source, the voice of a people—uttered under the necessity of avoiding the greatest of calamities, through the organs of a government so constructed as to suppress the expression of all partial and selfish interests, and to give a full and faithful utterance to the sense of the whole community, in reference to its common welfare—may, without impiety, be called the voice of God.¹

INTRODUCTION

Is it possible to speak of democracy in illiberal states?² Is it possible to

* Member, Coalition for Peace and Ethics Working Group on Cuba; W. Richard and Mary Eshelman Faculty Scholar Professor of Law and International Affairs, Pennsylvania State University, Contact: 239 Lewis Katz Building, University Park, PA or lcb11@psu.edu. My thanks to my research assistants, Miaoqiang Dai (SIA 2019), Dr. Shan Gao (Penn State SJD 2018), and the members of the Coalition for Peace and Ethics, for their support and feedback. Portions of the theoretical foundation of this article were presented at the Annual Meeting of the Association for the Study of the Cuban Economy, July 2018.

** Member, Coalition for Peace and Ethics Working Group on Cuba, Università degli Studi di Napoli “Orientale” (Italy).

*** Member, Coalition for Peace and Ethics Working Group on Cuba, Pennsylvania State School of International Affairs (MIA 2019).

¹ JOHN C. CALHOUN, UNION AND LIBERTY: THE POLITICAL PHILOSOPHY OF JOHN C. CALHOUN 34 (Ross M. Lence, ed., Liberty Fund 1992 (1856)).

² The concept of “liberal democracy” is easy enough to state and well supported by a vast academic literature, and yet “liberal democracy” as existing in the West has taken many different forms, leading some scholars to state that “the meaning of ‘liberal democracy’ and the liberal-democratic discourse has been an ever-developing and ever-changing one.” SYLVIA CHAN, LIBERALISM, DEMOCRACY AND DEVELOPMENT 14 (2002). See generally EAMONN CALLAN, CREATING CITIZENS: POLITICAL EDUCATION AND LIBERAL DEMOCRACY (1991) (discussing the theory of liberal democracy); PATRICK DUNLEAVY, THEORIES OF THE STATE: THE POLITICS OF LIBERAL DEMOCRACY 4–6 (1987) (discussing the same); STEPHEN HOLMES, PASSIONS AND CONSTRAINT: ON THE THEORY OF LIBERAL DEMOCRACY Ch. 1 (1995) (discussing the same). Deviations from prevailing definitions are usually classified as variations of illiberal states or systems, which are therefore not democratic. See, e.g., TOM GINSBURG, JUDICIAL REVIEW IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES 10 (2003); Aziz Huq & Tom Ginsburg, *How to Lose a Constitutional Democracy*, 65 UCLA L. REV. 78, 122 (2018). It is worth noting, though, that this flowering of orthodoxy has been driven by many academics and policymakers deeply invested in the ideologies of “liberalism” as classically understood, and with that ideology

develop a space for popular participation in a Party-State political system?³ Can such civic spaces exist beyond the direct control and management of the Party-State apparatus? Might civic spaces have some effect where a society is asked to reform its constitutional order?

If asked by Western intellectuals at all, these are the sort of questions that are presented rhetorically. They are uttered symbolically to suggest the difference between contemporary—and idealized—exemplars of liberal democratic orders and the less desirable or broken systems of illiberal “democratic” constitutional orders.⁴ Yet these are questions that are worth taking seriously. The object of such inquiry ought not be the attempt at the construction of yet another variant of strategies for getting illiberal democratic or constitutional orders to be more like us. Rather the object ought to be to examine the possibility that, within their own premises, non-liberal democratic constitutional orders might create, tolerate, or embed a measure of direct popular participation in some form.⁵ More interesting, is the relationship between the formal construction of popular participation of this sort and the robustness of its actualization. Thus, in the study of illiberal democratic constitutional orders, it is necessary to consider the extent of a formal space for participation, and its effectiveness as implemented.

The question is not merely academic or theoretical. Nor are the issues confined to the laboratory of historical failures. In 2018, the Marxist-Leninist political order of Cuba attempted to cap off a nearly decade long effort to revise its political and economic order by amending its 1976 Constitution.⁶ That amendment process, though heavily curated by the *Partido Comunista Cubano*

a set of quite specific guiding premises about the precise practices of “democracy” has been formulated. See, e.g., NORMAN DORSEN, MICHEL ROSENFELD, ANDRÁS SAJÓ, SUSSANE BAER & SUSANNA MANCINI, *COMPARATIVE CONSTITUTIONALISM: CASES AND MATERIALS* (3rd ed., 2016).

³ For the purposes of this article, a Party-State system refers to a political, economic and social system in which political leadership is vested in a vanguard, usually Communist, Party, which exercises authority over and guides the operation of the administrative organs of government. The People’s Republic of China represents an influential variation of the model. See Larry Catá Backer, *Party, People, Government and State: On Constitutional Values and the Legitimacy of the Chinese State-party Rule of Law System*, 30 *BU INT’L L.J.* 331, 332 (2012). Cuba represents another. See LARRY CATÁ BACKER, *CUBA’S CARIBBEAN MARXISM: ESSAYS ON IDEOLOGY, GOVERNMENT, SOCIETY, AND ECONOMY IN THE POST FIDEL CASTRO ERA* Ch. 2 (2018) [hereinafter *CUBA’S CARIBBEAN MARXISM*] (on file with author).

⁴ See Fareed Zakaria, *The Rise of Illiberal Democracy*, 76 *FOREIGN AFF.* 22, 22–24 (1997).

⁵ See generally Larry Catá Backer, *From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems*, 113 *PA. ST. L. REV.* 671, 730–32 (2008) (discussing the authors’ view of constitutions and constitutional orders from a theoretical perspective).

⁶ Mark Frank, *Cuba’s Proposed New Constitution: What Will Change*, *REUTERS* (Aug. 13, 2018, 11:54 AM), <https://www.reuters.com/article/us-cuba-constitution-explainer/cubas-proposed-new-constitution-what-will-change-idUSKBN1KY1UC>.

(PCC) was itself to be legitimated both by a heavily managed process of formal commentary on the constitutional draft and thereafter by a popular plebiscite seeking voter approval of the final version.⁷ The results of the Cuban constitutional referendum, held Sunday, February 24, 2019, were not unexpected—a large majority of Cuban voters affirmed the changes to the Cuban constitution.⁸ Yet almost three quarter of a million voters—9% of the more than 7,800,000 voters—voted no, while over 4% of the ballots were deemed irregular.⁹ The positive vote was lower than the previous positive vote obtained for the last constitutional revision project in 1976.¹⁰ The results produced the usual (over)reactions from supporters and critics of the current government and its political principles.¹¹ But more telling was the quite lively popular debate that occurred around the margins of the official performance of popular consultation. That official consultation was implemented through a set of stylized consultations, and the product of those consultations producing a final document were then submitted for and popular affirmation through plebiscite, that is, through the vote of the entire Cuban electorate to vote for or against the adoption of the revised constitution.¹² It is from a deeper study of those margins, not merely tolerated but in a sense supported by the state apparatus through its social media, that one might be able to theorize an emerging and quite distinct practice of popular participation within the structures of an illiberal constitutional state.

A. *The Cuban Context*

Narrations of Cuba's trajectory of political development start by observing how from 1959 to 1976 Cuba was without a formal constitution. In 1959, Cuba adopted *Ley Fundamental*, but this document is generally seen as lacking the

⁷ The popular plebiscite was held on February 24, 2019 and convened on December 22, 2018. See *Convocan a Referendo Sobre Nueva Constitución Cubana*, BOHEMIA (Dec. 22, 2018), <http://bohemia.cu/nacionales/2018/12/convocan-a-referendo-sobre-nueva-constitucion-cubana/>.

⁸ Comisión Electoral Nacional, *Informe de la Comisión Electoral Nacional Sobre los Resultados Finales de la Votación en Referendo Constitucional del 24 de Febrero del 2019*, CUBADEBATE (Mar. 1, 2019), <http://www.CubaDebate.cu/noticias/2019/03/01/comision-electoral-nacional-fija-cifras-definitivas-90-15-de-electores-votaron-en-referendo-constitucional/#.XM2mPqZ7kyk>.

⁹ *Id.*

¹⁰ Marc Frank & Nelson Acosta, *Cubans Overwhelmingly Ratify New Socialist Constitution*, REUTERS (Feb. 25, 2019, 12:00 PM), <https://www.reuters.com/article/us-cuba-constitution-referendum-idUSKCN1QE22Y>.

¹¹ See, e.g., *id.* (reporting on the ratification of the new constitution).

¹² *Id.*; see n. 67, *infra*. For a discussion of the plebiscite in liberal democratic states, see, Henry W. Ehrmann, *Direct Democracy in France*, 57 AM. POL. SCI. REV. 883–901 (1963) (on the use of plebiscites in France at the end of the 4th and the beginning of the 5th Republic).

requisites of a constitution.¹³ The fact that institutional development in Cuba did not take place in the immediate aftermath of the 1959 Revolution can be explained with the PCC's views about democracy.¹⁴ The revolutionary government saw the locus of democracy not in institutions of the Party or the State, but in the unmediated and direct relationship between the people and its revolutionary core.¹⁵ Accordingly, "*Ley Fundamental* contained provisions about the executive, administrative, and judicial organs of the new state, but had not created a national parliament. The 1960s saw the making democratic choices through plebiscitarian meetings, where vote was expressed by acclamation."¹⁶

After 1976, the Cuban state was organized around a Constitution last amended in 2002 (effective 2003).¹⁷ It was a constitution drafted in the fashion of the Soviet constitutions of the post-Stalin era. That Constitution reflected not merely the organization of a state along traditional European Marxist-Leninist lines; it also framed the fundamental constitutional principles of Leninism that set a vanguard or revolutionary party at the apex of the political system, relegating the administration of the state to a bureaucratic apparatus within which organs of popular engagement could operate under the leadership and guidance of the vanguard party.¹⁸

But much has changed in the period since the 2002 constitutional amendment. Most well-known of these changes was the retirement and then death of Fidel Castro Ruz.¹⁹ Raúl Castro replaced his brother Fidel Castro, and thereafter Miguel Díaz-Canel Bermúdez replaced Raúl Castro, who in 2018 assumed the duties of the presidency.²⁰ Less well known have been the great

¹³ See Larry Catá Backer, *Part 9: The Referendum in the Shadow of Cuban Socialist Democracy 1.0 (Caribbean Marxism's Socialist Democracy Series, Considering the Cuban Constitutional Project, From Communist Party to Popular Plebiscite)* (Mar. 17, 2019, 10:28 PM), <http://lbackerblog.blogspot.com/2019/03/part-9-referendum-in-shadow-of-cuban.html>. *Ley Fundamental* meaning "Basic Law."

¹⁴ *See id.*

¹⁵ *See id.*

¹⁶ *Id.*

¹⁷ *See* CUBA CONSTITUTION OF 1976 (REV. 2002) Feb.15, 1976, pmb1, ch. XV art. 137.

¹⁸ *Id.*

¹⁹ *Fidel Castro, Cuba's Leader of Revolution, Dies at 90* BBC NEWS (26 Nov. 2016) <https://www.bbc.com/news/world-latin-america-38114953> ("Although the announcement of Fidel Castro's death caught many Cubans unawares, it can't be said that they weren't partly expecting it. In a sense, they have been preparing for this moment, a post-Fidel Cuba, for several years now as he retired from public life and largely disappeared from view.")

²⁰ Larry Catá Backer, *Transitions to Entertain and Distract the West: A Harder Review at a New Era that Changes little as Raúl Castro Remains First Secretary of the Cuban Communist Party and Diaz Canel Assumes the Presidency Under the Leadership of the PCC, L. AT END OF DAY* (Apr. 19, 2018), <http://lbackerblog.blogspot.com/2018/04/transitions-to-entertain-and-distract.html> [hereinafter *Transitions to Entertain and Distract the West*]. Though Raul Castro retained his position as first secretary of the Cuban Communist Party. *Id.*

ideological changes that have been developing over the course of the last decade. These have been driven by the PCC and its efforts to reform the political and economic principles under which the state is organized and operated.

These changes were memorialized in three key documents, the products of the sixth and seventh PCC Congresses. The first document was the *Lineamientos de la Política Económica y Social del Partido y la Revolución* (“*Lineamientos*”).²¹ The *Lineamientos* consist of 313 sections, as approved by the sixth PCC Congress.²² Each provides suggestions for action that affects nearly every aspect of Cuban economic life, with consequential effects on social, cultural, educational and other sectors of activity that had been under the direction of the State.²³ The second and third documents were products of the seventh PCC Congress.²⁴ The second document was the *Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista* (“*Conceptualización*”).²⁵ The *Conceptualización* serves to answer the question of what sort of theoretical model will guide the development of socialism in Cuba.²⁶ The third document was the

Plan nacional de desarrollo económico y social hasta 2030: Propuesta de visión de la nación, ejes y sectores estratégicos [PNDES] in which the PCC posited that development can be better managed by rejecting the central role of markets, and substituting state planning in its place, taking an all around view of economic planning

²¹ See generally Partido Comunista de Cuba, *Lineamientos de la Política Económica y Social del Partido y la Revolución para el Periodo 2016–2021* [Guidelines for the Political Economy and Social Policy of the Party and the Revolution for the Years 2016–2021] (July 2017), <http://www.granma.cu/file/pdf/gaceta/Lineamientos%202016-2021%20Versi%C3%B3n%20Final.pdf>.

²² VI Congreso del Partido Comunista de Cuba, *Lineamientos de la Política Económica y Social del Partido y la Revolución* [Guidelines for the Political Economy and Social Policy of the Party and the Revolution] at 38 (Apr. 18, 2001).

²³ See, e.g., Larry Catá Backer, *Cuba's 6th Party Congress and the Lineamientos (Guidelines) For Structural Change in Cuba*, L. AT END OF DAY (May 17, 2011), <http://lcbackerblog.blogspot.com/2011/05/cubas-6th-party-congress-and.html>.

²⁴ See *Transitions to Entertain and Distract the West*, *supra* note 20.

²⁵ Larry Catá Backer, *Reconceiving the Government of Western Marxist Leninist States—“Comment to the ‘Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista.’”* L. AT END OF DAY (July 30, 2016), <http://lcbackerblog.blogspot.com/2016/07/larry-cata-backer-comment-to.html>; Flora Sapio, *Comment to the Cuban “Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista,”* L. AT END OF DAY (June 2, 2016), <http://lcbackerblog.blogspot.com/2016/06/flora-spaio-comment-to.html>.

²⁶ See Larry Catá Backer, *Central Planning Versus Market Marxism: Their Differences and Consequences for the International Ordering of State, Law, Politics and Economy*, 32 CONN. J. INT'L L. 1, 9 (2017) (“The *Conceptualización* is of particular interest for its potential divergence from the construction of Chinese post-Soviet Socialist Market theory within the context of socialist modernization.”).

as inextricably bound up in social, political and cultural progress of a nation.²⁷

The three documents framed substantial changes to the conceptualization and approaches to the operationalization of the Cuban political economy. The principal changes included a limited opening for the holding and sale of private property, the development of a limited private commercial sector (heavily managed by the state), and the possibility of aggregations of labor through cooperatives for approved economic activity.²⁸ These changes have been implemented through a series of laws, regulations, and decisions under the direction of the PCC. The changes were at the margins—they reaffirmed the central role of the vanguard party, central planning, and the state sector as the primary engine of economic activity at home and abroad, and the rejection of market mechanisms for economic planning.²⁹

Following these fundamental changes in the political line of the PCC, it became necessary to consider the extent to which the administrative constitution of the state also required amendment. Such amendment would strive to better align the organization of the state apparatus and its administration of the state, to the evolving political and economic line of the PCC, and to the statutes and regulations already adopted to implement them since 2011. In 2013, the Political Office of the PCC created a Commission for constitutional revision.³⁰ Chaired by the newly elected First Secretary Raúl Castro, the Commission approved the legislative basis of constitutional reform on June 29, 2014.³¹ Four years later and after the Political Bureau's approval, the PCC presented a guideline document for consideration by the National Assembly.³² Based on those directives, on June

²⁷ Larry Catá Backer, *The Algorithms of Ideology in Economic Planning* (Penn State Law Paper No. 17-2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3005613 [hereinafter *Algorithms of Ideology in Economic Planning*]. The term “all around” is likely jarring to native English speakers. The preferred term would be “comprehensive.” But we use the term deliberately precisely because despite the difference in usage, Communist Party theorists and government institutions in China have developed a preference for the term “all around,” and it has become something of a term of art to refer to a set of specific Leninist principles embedded and developed over time in the Chinese Communist Party Basic Line. See Larry Catá Backer, *Chinese Constitutionalism in the “New Era:” The Constitution in Emerging Idea and Practice*, 33 CONN. J. INT’L L. 163 (2018).

²⁸ *Algorithms of Ideology in Economic Planning*, *supra* note 27.

²⁹ *Algorithms of Ideology in Economic Planning*, *supra* note 27.

³⁰ *Anteproyecto de Constitución: Visión Hacia el Presente y el Futuro de la Patria*, GRANMA (July 13, 2018), <http://www.granma.cu/cuba/2018-07-13/vision-hacia-el-presente-y-el-futuro-de-la-patria-13-07-2018-20-07-04>.

³¹ The Commission included the President of the State Council Miguel Díaz-Canel Bermúdez and the Second Secretary of the PCC José Ramón Machado Ventura, among others. *Id.*

³² See Oscar Figueredo Reinaldo *et. al.*, *Minuto a Minuto: Proyecto de Constitución a Debate en la Asamblea Nacional, Segunda Jornada*, GRANMA (July 22, 2018), <http://www.cubadebate.cu/temas/politica-temas/2018/07/22/minuto-a-minuto-asamblea-nacional-continua-debate-sobre-proyecto-de-constitucion-de-la>

2, 2018 the National Assembly created another Commission that prepared the draft Constitution.³³ By the end of July, the Draft was distributed widely for popular consultation.³⁴ Consultation occurred from August 13 to November 15, 2018.³⁵ Meetings were organized all over Cuba at which small groups were assembled to give their opinion of the draft constitution.³⁶ These were then summarized and delivered to the National Assembly.³⁷ Additionally, there was intense debate in social media and among groups with strong interests in various provisions of the constitution, not least of which was debate about the constitutional protection of gay marriage.³⁸ The National Assembly met again to consider the popular consultation over a two day meeting held July 21–22, 2019.³⁹ The draft constitution was presented for approval by the National Assembly on December 22, 2018.⁴⁰ On February 24, 2019 a popular referendum was held on the Constitution, where citizens voted to ratify or reject the document.⁴¹ Following a largely foreseeable vote in favor of the Constitution, the document was promulgated by the National Assembly on April 10, 2019 and went into effect on the 150th anniversary of the Camagüey Constitution.⁴²

republica-de-cuba/#.XNZZZ44zbIU.

³³ *Anteproyecto de Constitución*, *supra* note 30.

³⁴ *A la Venta Tabloide con el Proyecto de Constitución de la República de Cuba*, CUBA DEBATE (July 30, 2018), <http://www.cubadebate.cu/noticias/2018/07/30/a-la-venta-tabloide-con-el-proyecto-de-constitucion-de-la-republica-de-cuba/#.XXrhFShKg2w>.

³⁵ Dianet Doimeadios Guerrero & Ismael Francisco, *Proyecto de Constitución a la Consulta Popular en Cuba: “Hay que Prepararse,”* CUBA DEBATE (Aug. 2, 2018), <http://www.cubadebate.cu/noticias/2018/08/02/proyecto-de-constitucion-a-consulta-popular-hay-que-prepararse/#.XNQW14zbIU>.

³⁶ See Charlotte Mitchell, *A New Dawn for Cuba? The Draft Constitution Explained*, ALJAZEERA (Nov. 16, 2018), <https://www.aljazeera.com/news/2018/11/dawn-cuba-draft-constitution-explained-18111192818890.html>.

³⁷ *Id.*

³⁸ *Socialist Cuba Decides: Cubans Vote in Full Force to Approve the New Constitution*, COUNCIL ON HEMISPHERE AFF. (Apr. 11, 2019), <http://www.coha.org/socialist-cuba-decides-cubans-vote-in-full-force-to-approve-the-new-constitution/>.

³⁹ See *Transitions to Entertain and Distract the West*, *supra* note 20.

⁴⁰ Yeny García, *La Nueva Constitución Cubana Mantiene el Partido Comunista como “Fuerza Única y Superior,”* EL PERIODICO (Dec. 23, 2018), <https://www.elperiodico.com/es/internacional/20181223/cuba-aprueba-el-texto-final-de-su-nueva-constitucion-7217832>.

⁴¹ The question printed on the ballot was “Do you ratify the new Constitution of the Republic?” (*¿Ratifica usted la nueva Constitución de la República?*) Voters then had a choice to write “Yes” or “No” in relevant spaces on the ballot. Vivian Bustamante Molina, *El Referendo Acentúa la Participación Ciudadana en la Nueva Constitución*, GRANMA (Jan. 8, 2019), <http://www.granma.cu/cuba/2019-01-08/el-referendo-acentua-la-participacion-ciudadana-en-la-nueva-constitucion-08-01-2019-22-01-03>.

⁴² Camagüey is one of the earliest Spanish settlements in Cuba, so named after a local Taino chief, and the city where Ignacio Agramonte drafted the 1869 Constitution of Cuba, after the Ten Years’ War against Spain. *Parlamento Cubano Proclamará Nueva Constitución*, AGENCIA PRENSA LATINA (Apr. 9, 2019), <http://www.escambray.cu/2019/parlamento-cubano-proclamara-nueva-constitucion/>.

Most Western coverage has treated these changes as important, expecting they would produce innovation in the political economy of Cuba.⁴³ However, in this case Constitutional changes merely memorialize the innovations that were first developed by the PCC and then implemented through quite complex sets of legislative initiatives. Even so, the reactions and expectation conveyed by Western coverage were predictable. Thus, for example, the Western press has emphasized the enshrinement of the recognition of free markets in the Constitution. It tended to read change from its own perspective, and to project its own desires and hopes into media coverage of the Cuban Constitution:

Cuba's current Soviet-era constitution only recognizes state, cooperative, farmer, personal and joint venture property.... Ruling Communist Party newspaper Granma published a summary of the new constitution on Saturday, saying a draft it had seen included 224 articles, up from 137 previously. Details were not immediately available, and Reuters did not see the draft. But Granma said it enshrined recognition of both the free market and private property in Cuba's new Magna Carta.⁴⁴

To the extent it implies any embrace of Western-style free markets, such opinions may be misleading.⁴⁵ Indeed, Cuba has made it clear that it continues to reject notions of Western-style markets in favor of managed private sector activity that functions as a complement and gap filler for the state-run planned economy.⁴⁶

B. The Problem—Developing a Possibility of Popular Participation in Illiberal Constitutional States

The project of Cuban constitutional reform, however, is not merely about alignments of normative values and policies between the government and the vanguard PCC. The revised constitution, and the three critical documents that have reframed the normative structures of the Cuban political-economic system—the *Lineamientos*, *Conceptualización*, and *PNDES*—on which the Constitution is based, have also pointed to substantial development of Cuban

⁴³ See, e.g., Geoff Thale & Teresa Garcia Castro, *Cuba's New Constitution Explained*, WOLA (Feb 29, 2019), <https://www.wola.org/analysis/cubas-new-constitution-explained/>.

⁴⁴ Nelson Acosta & Sarah Marsh, *Communist-run Cuba to Recognize Private Property in New Constitution*, REUTERS (June 15, 2018), <https://www.reuters.com/article/us-cuba-politics/communist-run-cuba-to-recognize-private-property-in-new-constitution-idUSKB1K4108>.

⁴⁵ CUBA'S CARIBBEAN MARXISM, *supra* note 3, at Chs. 5, 6.

⁴⁶ *Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista* (2017), <http://www.granma.cu/file/pdf/gaceta/Conceptualizaci%C3%B3n%20del%20modelo%20economico%20social%20Version%20Final.pdf>.

practices of popular engagement. That is, the three documents have had an effect on the practice of governance as much as they have had an effect on the normative content of government.

Popular participation and representation are the great antipodes of contemporary democratic theory.⁴⁷ The former embodies the principle that political power resides in the individual. The latter indicates that in the exercise of political authority, such power must be delegated and exercised in a fiduciary capacity for the community of individuals. Yet representative delegation dilutes popular authority and requires regimes of accountability beyond elections. Still, if unconstrained, popular participation produces majoritarian tyranny.

In the construction of mediating official bodies—mostly governments and vanguard institutions—political communities have drawn on a variety of theories that have sought to reconcile these core principles in the construction of government that is accepted as legitimate; and, thus whose authority over the polity may be asserted even without the consent of every individual.

Liberal democracies have moved from the concept of the embodiment of political self-constitution as incarnated in the body of a single, and often personal, authority—the Greek *μόνος ἀρχή*⁴⁸—to its incarnation within an object of the people—*res publica*.⁴⁹ But rather than remaining an object owned by the people and merely administered by their chosen representatives, political power has been at times concretely situated within groups or organizations portraying themselves not as fiduciaries of the electorate, but as their guides.⁵⁰ These organizations and groups display broad analogies across political systems and forms of government. Most important among these analogies and repeated patterns are principles designed to limit admittance in these “guiding”—or in Leninist terms, “vanguard”—groups to a small sub-set of the political society—and sometimes to limit access to the political society itself to such a small sub-

⁴⁷ See STEPHEN TIERNEY, *CONSTITUTIONAL REFERENDUMS: THE THEORY AND PRACTICE OF REPUBLICAN DELIBERATION* (2012) (providing a classical account of the challenges popular participation poses to democratic theory); PARTICIPATORY CONSTITUTIONAL CHANGE: THE PEOPLE AS AMENDERS OF THE CONSTITUTION (Xenophon Contiades & Alkmene Fotiadou eds., 2017) (discussing the role popular choice plays in constitutional amendment of direct democracy). Larry Catá Backer, *Reifying Law-Government, Law and the Rule of Law in Governance Systems*, 26 PENN ST. INT'L L. REV. 521, 560–61 (2007).

⁴⁸ See generally RICHARD TAMES, *MONARCHY* (2008) (discussing the legal and political dimensions of the concept of sovereignty and its process of derivation); JAMES A. CORIDEN, *AN INTRODUCTION TO CANON LAW* (2004) (discussing the specifically theological dimensions of this concept).

⁴⁹ See generally LOUISE HODGSON, *RES PUBLICA AND THE ROMAN REPUBLIC: WITHOUT BODY OR FORM* (2016) (discussing the generally contested nature of this concept).

⁵⁰ See generally David I. Ponet & Ethan J. Leib, *Fiduciary Law's Lessons for Deliberative Democracy*, 91 B.U. L. REV. 1249 (2011).

set.⁵¹ However constituted, those eligible are understood to be a political society's "best-born" persons—*ἄριστος κρατία*.⁵² The definition and characteristics of being "best-born" have undergone tremendous transformation since the time of the Roman Republic.⁵³ Transformation has been driven by changes in ideologies prevailing at a given time in history. These ideologies have successively identified census, wealth, participation in armed revolutions, technical expertise, popular choice, or other attributes as entitling some individuals to ruling over others. Today, powerful expressions of this logic can be found in liberal republicanism, Marxist-Leninist vanguardism, and transnational multilateralism. This logic is in turn alien from and incompatible with the core premises of democratic states, and Marxist-Leninist systems, as well as with their expression.

Global concern over the shape and direction of democratic theory, and its expression in states has intensified in recent years.⁵⁴ Liberal democratic states, once comfortably secure in the expression of an orthodox view of what democracy meant and how it was expressed, have had those beliefs challenged by actions that appear to contradict the core premises of democratic states. Left-wing and right-wing populism, foreign intervention, and the increasing willingness of political actors to test the frontiers of structures and institutions of governments have all appeared to pose significant threats to the integrity of democratic theory and practice. This has caused anxiety throughout the democratic world—and certainly among the *intelligentsia* in their self-assumed role as guardians of theory and monitors of the legitimacy of practice.⁵⁵

In its most spectacular forms, this anxiety has produced great contests over the legitimacy of democratic practice—mostly in smaller and more fragile states. While Venezuela ended 2018 and started 2019 as the most extreme expression of that anxiety in action.⁵⁶ Many in virtually every other state have become

⁵¹ See Andrew Hacker, *Liberal Democracy and Social Control*, 51 AM. POL. SCI. REV. 1009, 1010 (1957).

⁵² See Antony Black, *Communal Democracy and its History*, 45 POL. STUD. 5, 15 (1997).

⁵³ See generally M. N. S. SELLERS, REPUBLICAN LEGAL THEORY: THE HISTORY, CONSTITUTION AND PURPOSES OF LAW IN A FREE STATE (2003) (discussing the transformation of the idea of republic, and generally republicanism in the modern period); RICHARD O. BROOKS, CICERO AND MODERN LAW (2017) (studying the impact of conceptions of Republic formulated in the classical world on early modern and modern thinkers).

⁵⁴ Nathaniel Persily, *The 2016 US Election: Can Democracy Survive the Internet?*, 28 J. DEMOCRACY 63 (2017); see VICTOR SEIDLER, MAKING SENSE OF BREXIT: DEMOCRACY, EUROPE AND UNCERTAIN FUTURES (2018) (discussing the United Kingdom).

⁵⁵ Lilith Mahmud, *We Have Never Been Liberal: Occidental Myths and the Impending Fascist Apocalypse*, SOC'Y FOR CULTURAL ANTHROPOLOGY (Oct. 27, 2016), <https://culanth.org/fieldsights/we-have-never-been-liberal-occidental-myths-and-the-impending-fascist-apocalypse>.

⁵⁶ See Tom Phillips, *Venezuela elections: Maduro Wins Second Term*, GUARDIAN (May 21, 2018, 6:25 PM), <https://www.theguardian.com/world/2018/may/21/venezuela-elections-nicolas-maduro-wins-second-term>.

concerned about the state of democratic theory and practice.⁵⁷ In these cases, foreign interventions and internal instability appear to remind us all of the dangers of failing to meet the challenges to stabilizing and legitimating the core of democratic theory and practice.

Parallel to this anxiety—and given the rift between the theory and practice of liberal democracy—developments have occurred in illiberal regimes that deserve sustained attention.⁵⁸ The sometimes-expressed conceit of contemporary liberal democratic states that they represent the vanguard and defenders of orthodox and therefore legitimate democratic theory and its expression.⁵⁹ However, the last several years have seen a more vigorous and self-conscious development of democratic theory and its expression in “illiberal” states, and primarily among certain states organized around the principles of Marxism and Leninism.⁶⁰ States premised on these principles are organized on the basis of notions of democracy that are dissimilar to those held in liberal democratic nations. These notions were tightly confined within the logic of their own ideological foundations, and yet they allowed for some forms of popular engagement—rather than a meaningful participation—in political processes. These forms of engagement continue to exist in Cuba, but also in the People’s Republic of China and Vietnam.⁶¹ In spite of differences between those contexts and Western liberal democracies, Marxist-Leninist states have also

term; *see also* Doug Stanglin, *U.S. recognizes Venezuela Opposition Leader Juan Guaidó as President; Russia Backs Maduro*, USA TODAY (Jan. 23, 2019), <https://eu.usatoday.com/story/news/world/2019/01/23/venezuela-juan-guaido-declares-himself-president-amid-protests/2658642002/> (chronicling allegations of electoral fraud against Nicolás Maduro, followed by the self-proclamation of opposition leader Juan Guaidó as “interim president,” in the absence of popular consent expressed through fair elections).

⁵⁷ *See, e.g.*, Wolfgang Merkel, *Is There a Crisis of Democracy?*, 1 DEMOCRACY THEORY 10–11 (2014).

⁵⁸ Larry Catá Backer, *Introduction to Series: Caribbean Marxism's Socialist Democracy, Considering the Cuban Constitutional Project, From Communist Party to Popular Plebiscite*, L. AT END OF DAY (Feb. 1, 2019), <https://lcbackerblog.blogspot.com/2019/02/introduction-to-series-caribbean.html>.

⁵⁹ *Id.*

⁶⁰ As a self-contained system of thought, Marxism is conceptually distinct from Leninism. In the practice of governance of Cuba and the People’s Republic of China, these principles are still weaved together as an inseparable whole. This is, however, a choice influenced by these countries’ once passive reception of the ideological orthodoxy created in the former Soviet Union. Marxism and Leninism can be separated and applied independently to various spheres of human and organizational activity. In fact, Marxism is a political philosophy premised on an autonomous theory of history, and a philosophical anthropology. While Marxism devised a program for economic and political change, Marx and Engels did not theorize or create norms or guidelines allowing for the practical application of their worldview. This task befell Vladimir Lenin, who conceived of the specific principles and forms political action premised on the philosophy of Marx should take in practice. *See generally* Karl Marx, *CAPITAL* (1993) (discussing Marxism); VLADIMIR I. LENIN, *WHAT IS TO BE DONE? BURNING QUESTIONS OF OUR MOVEMENT* (1902) (discussing Leninism); VLADIMIR I. LENIN, *THE STATE AND THE REVOLUTION* (1917) (discussing Leninism as well).

⁶¹ *See* John Batchell, *30 Years After the Demise of Socialism and its Lessons for Our Times*, COMMUNIST PARTY USA (Apr. 24, 2019), <http://www.cpusa.org/article/30-years-after-the-demise-of-socialism-and-its-lessons-for-our-times/>.

been confronted with the challenges of democratic expression.⁶² The single biggest challenge, for Marxist-Leninist systems, is devising forms of democratic expression that go beyond the mere formalities of popular engagement, and allow the people to act as the true master of their country.⁶³ This challenge is at the same time theoretical and empirical. It is theoretical, in that it involves purging Leninist theory of all of its components that, once translated into practice, give life to authoritarianism, vanguardism, and bureaucratism.⁶⁴ It is empirical, because it requires further development of existing mechanisms of popular participation.

Both the challenges of developing a sound democratic theory compatible with the core ordering premises of a Marxist-Leninist state, and the willingness of the vanguard party to transpose these premises into viable practices are nicely illustrated in the multi-year efforts of the Cuban state to both retain its fundamental organization and develop an organization that provides a more open space for direct intervention of the collective in the management of the state by the PCC. To this end, Cuba has embarked on the multi-year project described in Section A, which has culminated in the drafting of a new state constitution.⁶⁵ Cuba's project was significantly broader than what most Western commentaries suggested.

Beyond a limited economic liberalization, attempts at systemic change in Cuba started with the reform at the Party level of the political and economic model of state organization, the redrawing of the economic plan for the nation, and the embedding of these core principles into the operative documents of the administrative organization of the state. Within this broader context, the PCC also sought to develop mechanisms for popular participation in both the political work of the Party, as well as in the popular approval of governmental choices.⁶⁶ These latter mechanisms combine engagement and affirmation. The mechanisms created to allow the Cuban population to approve of government's choices consist of: (a) participating in defining the content of important

⁶² See Juan Conatz, *Democratic Centralism in Practice and Idea: A Critical Evaluation*, LIBCOM (Mar. 30, 2013, 7:29 PM), <https://libcom.org/library/democratic-centralism-practice-idea-critical-evaluation>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See generally Charlotte Mitchell, *A New Dawn for Cuba? The Draft Constitution Explained*, AL-JAZEERA (Nov. 16, 2018), <https://www.aljazeera.com/news/2018/11/dawn-cuba-draft-constitution-explained-181111192818890.html>.

⁶⁶ Julio César Guanche, *Citizen Participation in the Cuban State*, 2014 SEMINARIO EN LATINOAMÉRICA DE TEORÍA CONSTITUCIONAL Y POLÍTICA, 1, 9–10.

document of the Cuban Communist Party and the Cuban state; and (b) plebiscites.⁶⁷

C. *From Empirical Foundation to Normative Analytics—Gauging Popular Participation*

This Article seeks to consider the issues of democratic self-constitution in illiberal states. To that end, it focuses on the concrete modalities of the process of constitutional revision in Cuba, and popular engagement in that process, both official and unofficial. As described more in Part II *infra*,⁶⁸ for the last several years, Cuba has been in the midst of a quite-public national effort at reform. The revision of Cuba’s core political and economic principles has occurred under the leadership of its PCC.⁶⁹ Yet the PCC and the state apparatus attempted to invoke the core mechanics of popular participation even as they sought to tightly manage that participation.⁷⁰ Both the contours of that management and its reception in the West are suggested by Dimas Castellano. Writing for the Florida-based NGO CubaNet,⁷¹ Castellano provides an excellent illustration of the Western perspective on constitutional revision and the mechanisms used to manage popular participation.⁷² Noting the growing gap between the fundamental freedoms granted by the 1976 Constitution and the realities of popular participation,⁷³ Castellano then quotes Granma, the official organ of the PCC:

⁶⁷ A generally agreed-upon definition of plebiscite is absent from the literature on constitutional law. The term “plebiscite” has often been used to describe various forms of popular consultation in which people are asked to express their vote on a specific policy, or on an elected representative. See Francesco Biagi, *Plebiscite: An Old But Still Fashionable Instrument*, 2 U. ILL. L. REV. 713 (2017); Francesco Biagi, *Plebiscite*, OXFORD CONSTITUTIONAL L.: MAX PLANCK ENCYCLOPEDIA OF COMPARATIVE CONSTITUTIONAL L. (Jan. 2017) https://oxcon.oup.com/view/10.1093/law-mpeccol/law-mpeccol-e414?rskey=yYU0m1&result=1&prd=MP_ECCOL.

⁶⁸ See Part II *infra*, text and notes.

⁶⁹ Jesús Pastor García Brigos, *People's Power in the Organization of the Cuban Socialist State*, 15 SOCIALISM & DEMOCRACY 113 (2001).

⁷⁰ *Id.*

⁷¹ CubaNet describes itself as a “no-profit digital press media devoted to the promotion of alternative press in Cuba, and to information about the reality of the Island” [*Cubonet es un medio de prensa digital sin fines de lucro, dedicado a promover la prensa alternativa en Cuba e informar sobre la realidad de la isla*]. See SOBRE CUBANET, <https://www.cubonet.org/sobre-cubonet> (last visited Sept. 14, 2019).

⁷² Dimas Castellano, *Cuba's Constitution of 1976: An Historic Setback*, TRANSLATING CUBA (Apr. 11, 2016), <https://translatingcuba.com/the-constitution-of-1976-an-historic-setback-dimas-castellano/>.

⁷³ “The 1976 constitution recognized rights and freedoms such as equality under the law, suffrage for both sexes, freedom of speech, of the press, of association and the right to protest. Where it differed from the constitutions of 1901 and 1940 was that these rights were subordinate to Article 5, which recognized the communist party as the dominant driving force of the state and society, whose goal was to build socialism and advance towards communism.” *Id.*

By 1975, a time when country was undergoing profound transformations, the constitution of 1940 was no longer applicable to that moment in history. A new Law of Laws was needed for this new stage of the revolution. A group of jurists, appointed by the political and mass movement organizations, produced a draft constitution. In every school, workplace, military unit, city block, farm and rural village, people discussed the document and made corrections and additions.⁷⁴

Even this very brief excerpt illustrates how the Cuban experiment in constitutional reformation presents some unique elements. It may also point to the development of a set of collectivist premises that the Cuban political order might use to structure democratic mechanisms compatible with the logic of a Marxist-Leninist regime. These mechanisms, in turn, might have application in other in Party-State systems.

The well-orchestrated and multi-year process that led to the reform of the objectives of the Cuban Communist Party in 2011, to the development of the reconstituted PCC political and economic model in 2016, and finally to the reform of the state constitution to reflect this new model and the emerging historical stage of Cuban development in 2018-2019. This represents an important sequencing of political development. This also demonstrates an equally important development of mechanisms for popular consultation both in the context of the PCC's work, and in the work of developing and approving the state constitution.

But as Castellano points out, the 2019 popular plebiscite on the Constitution was not the first time that the Cuban Party-State sought to invoke mechanisms of popular engagement in major formal and structural reform efforts.⁷⁵ And, indeed, what may emerge with respect to the study of the 2011–2019 process that eventually produced the reform of the Cuban constitution, is that what appears most interesting about the current process of reform may *represent more an evolutionary process from a Cuban socialist democracy 1.0 to its 2.0 version*. For Cuba, the development of a viable socialist democracy is evidently essential if it is to survive the passing of its revolutionary generation. And for that reason alone, Cuba provides a compelling laboratory for next generation democratic theory built on non-Western liberal assumptions.

Popular participation in the 2019 Cuban constitutional reform efforts took three forms. These three forms evidenced the emerging forms of endogenous

⁷⁴ *Id.*

⁷⁵ *See id.*

democracy in the form of popular engagement in the drafting and review of proposed legislative action.⁷⁶ This consultative element of constitutional reform was then central to the discussion and subsequent plebiscite which tended to receive the greatest attention; though it should be remembered that the plebiscite itself was only the end of a long process of consultation.⁷⁷ Two of the forms of popular participation were formal and Party-State driven.⁷⁸ The first consisted of a formal system to deliver comments and reactions to the draft of the revised constitution circulated to the general population after review and revision by PCC and State (*Asamblea Nacional*) organs.⁷⁹ The second consisted of a popular plebiscite on the final draft of the revised constitution amended in light of Party, State, and popular commentary.⁸⁰ These modalities of popular participation are well known and—at least ideologically—well understood.⁸¹ The third form was both informal and popularly driven.⁸² Perhaps the most important element of popular participation in the 2019 Cuban constitutional reform debate, was that vigorous popular debates about Cuban constitutional reform that occurred outside the structures of the Party and State organs. These debates took place in cyber space and among an active and politically engaged segment of the population, one with strong connections to the Cuban diaspora community.⁸³ More importantly, popular debates represented an engagement that took place within the established structures of Party-State organs of mass communication—their online news and information portals, as well as tolerated mass communication sites, notably Facebook.⁸⁴ There were little efforts either to shut these conversations down or to develop systems of mass reprisal, though the conversations were likely heavily monitored.⁸⁵ But could popular debates also have influenced the tone and character of the official debate? This Article

⁷⁶ See, e.g., Larry Catá Backer & Dai Miaoqiang, *Socialist Constitutional Democracy in the Age of Accountability* (问责时代的社会主义宪制民主) 1, 5 (2018), <https://ssrn.com/abstract=3271731>; (discussing China's endogenous democracy); see also Larry Catá Backer, *Crafting a Theory of Socialist Democracy for China in the 21st Century: Considering Hu Angang's Theory of Collective Presidency in the Context of the Emerging Chinese Constitutional State*, 16 *ASIAN-PAC. L. & POL'Y J.* 29, 70 (2014).

⁷⁷ Guanche, *supra* note 66, at 9–10.

⁷⁸ *Id.*

⁷⁹ See Elena Nápoles Rodríguez, *Participation and Decision Making in Local Spaces in Cuba: Notes for a Debate on the Challenges Facing Popular Power After 30 Years*, 36, *LATIN AMERICAN PERSPECTIVES* 104, 106–08 (2009); Brigos, *supra* note 69, at 116 (describing this formal system and its relevance to the governance of Cuba).

⁸⁰ See Darren Hawkins, *Democratization Theory and Nontransitions: Insights from Cuba*, *COMPARATIVE POLITICS* 441, 454 (2001) (discussing the existence of popular participation in the absence of political transition).

⁸¹ *Id.*

⁸² See Rodríguez, *supra* note 79, at 106–08.

⁸³ Yoani Sanchez, *The Revolution Doesn't Want to Be Tweeted*, *N.Y. TIMES* (Jan. 24, 2019), <https://www.nytimes.com/2019/01/24/opinion/cuba-censorship-social-media.html>.

⁸⁴ *Id.*

⁸⁵ *Id.*

suggests that it may be possible to begin to understand the form, practice, character, and influence of these new and emerging modalities of popular participation through a close empirical study. In the process, this Article develops the contours of a new approach to endogenous democratic practice in illiberal states and suggests the character and effects of emerging structures of popular conversation with leadership groups in states that are not organized along the lines of pure liberal democracy.

Part I provides a brief conceptual and historical context. Both contexts are necessary for several reasons. First, it is difficult to understand the contours of popular participation as a formal tool of Cuban Marxist-Leninist political organization from within the perspectives of Western liberal democracy. Understanding the premises within which the principles of endogenous democracy are framed and implemented—however badly—is necessary to be able to judge the system on its own terms.⁸⁶ The reader, of course, is then quite free to judge the entire enterprise itself from the comfort of any ideological system that gives her solace. But the provision of such solace is not the intent of this section, nor of this study. Second, Caribbean Marxist-Leninist theory, is quite distinct from either its European or Chinese variants.⁸⁷ It is necessary to get a feel for those differences in order to understand the way that popular participation—formal or informal—may be incorporated within Marxist-Leninist theory. Third, the implementation of evolving Cuban Caribbean Marxist-Leninism is itself both dynamic and non-linear.⁸⁸ The convergences and divergences of practices, and especially the quiet self-conscious efforts to distinguish Cuban political organization from either European liberal democracy or variations of Marxist-Leninism elsewhere is important. And fourth, the primal importance of the United States as the conceptual *bête noir* of Cuban Marxist-Leninism ought not to be underestimated and must be appreciated to understand both the forms of formal engagement and the character of popular participation arising in the margins.⁸⁹

⁸⁶ See Andrew P. Norman, *Telling it Like it Was: Historical Narratives on Their Own Terms*, 30 HISTORY & THEORY 119, 133 (1991); see generally Benjamin A. Elman, ON THEIR OWN TERMS (2009).

⁸⁷ CUBA'S CARIBBEAN MARXISM, *supra* note 3.

⁸⁸ See, e.g. Gunther Teubner, *Substantive and Reflexive Elements in Modern Law*, 17 L. & SOC'Y REV. 239, 245–46 (1982) (discussing views about non-linearity and complexity).

⁸⁹ For a conventional and enduring portrait of the United States by official propaganda in Cuba, see, for example, the essays of Fidel Castro in Fidel Castro Ruz, *Why Washington Fears Cuba's Example*, in FIDEL CASTRO SPEECHES 1984–85 199–205 (Pathfinder Press, 1985); FIDEL CASTRO RUZ, DE SEATTLE AL 11 DE SEPTIEMBRE (Txalaparta Press, 2002); SHELDON B. LISS, FIDEL! CASTRO'S POLITICAL AND SOCIAL THOUGHT 97–110 (Westview Press, 1994); see also THE DELEGATION, VIVA CUBA: DOWN WITH U.S. IMPERIALISM (1974).

Following the conceptual context, the heart of Part II considers the almost three quarters of a century drive to develop a mechanism for popular participation first under the Cuban revolutionary government, and then under the traditional Marxist-Leninist framework adopted after 1975. The Section then examines the normative changes undertaken by the PCC starting form shortly after Raúl Castro assumed authority from his brother Fidel in 2008. It describes the move from what the article terms “Cuban Socialist Democracy 1.0” to its current 2.0 version.

Part II introduces the empirical study and its methodology. It moves from the examination of the contours of the normative structures of the Cuban system to an empirical analysis of the expression of normative changes on that ground. This examination serves as the heart of this Article. We use data from government web sites, official reports, and social media sites to examine the contours of participation, its constitution, and its limitations. We apply qualitative and quantitative measures to four distinct datasets, seeking to better understand the changing character of popular participation in representative institutions. From here, we develop a clearer understanding of the nature of popular participation in Cuba. With this clearer understanding may come a better comprehension of the changing character of popular participation in structures of political representation, its consequences both for the development of Marxist-Leninist theory by Party-State systems, and for democratic theory as such.

Part III circles back to theory. The contours revealed in Part III of our study invite a deeper analysis of the actual practices of what may amount to a 2.0 version of the Cuban Marxist-Leninist model. What makes this process of transformation particularly interesting is the way in which the *process of popular participation used multiple spaces*. In particular, the emergence of social media platforms as novel “constitutive spaces” poses a conundrum from theories of endogenous democracy in non-liberal systems. But it poses novel challenges also to constitutional theory. Part V then concludes, considering consequences and applications both within Cuba and beyond.

The data suggests that the emergence of popular participation in Cuba has not quite gone according to plan. It operates on two tracks, though each appears to constitute a part of a working whole.⁹⁰ On the one hand, the state has been developing a model of endogenous democracy with respect to which popular participation is critical in two respects.⁹¹ The first focuses on a complex

⁹⁰ Backer & Miaoqiang, *supra* note 76, at 3.

⁹¹ *See id.* at 3–4. (considering the relationship between the model of socialist endogenous democracy

conversation between the PCC, the institutional representatives of popular power, and the people themselves.⁹² This conversation is meant to be guided by the PCC and articulated by the people through its institutional voice, also well managed by the PCC. But that conversation must take into account the opinions of the masses through a carefully curated system of popular consultations; the relevance and scope of this conversation are vigilantly controlled by those who are responsible for these popular engagements. The second focuses on the expression of popular assent to the actions undertaken by the PCC and the state apparatus through popular referendum.⁹³ This process is also carefully managed both to ensure affirmation and to harvest data about the quality of support. On the other hand, the process of popular engagement and popular referendum has, in the age of internet communication, also given rise to a robust peripheral conversation that is less well-managed but all the more important for that. This conversation may occur at the margins, but it is undertaken in the shadow of the PCC and the state—occupying spaces within official websites and on social media sites that are effectively operating in plain sight. These communities of engagement and campaigning for or against the position of the PCC and the state appeared to play an important role in the process of popular engagement throughout the process of constitutional reform. And their toleration by the state throughout the process suggests the development of a more open textured approach to popular conversation than one might have posited, given the traditional ideological constraints on such activity within a Marxist-Leninist State. These results suggest the development of the possibility of democratic engagement radically different from that structured for liberal democratic states, but with possibilities well worth further study.

I. A CRITICAL HISTORY OF POPULAR PARTICIPATION IN POST- REVOLUTIONARY CUBA 1959 THROUGH THE PRESENT

A. *The Disappearance of Analytical Objects*

Embarking upon analyses of popular participation mechanisms in a political system other than the one where analysts belong is an endeavor fraught with theoretical difficulties. How can popular engagement possibly be modeled or conceptualized, in systems where a Marxist-Leninist party centralizes power and governance functions within itself? How can voting be understood as a genuine manifestation of the will of the people, especially where all political power is

being developed in Cuba and that emerging in China).

⁹² *Id.*

⁹³ *Id.*

concentrated within the hands of a restricted elite? The difficulties—and the ideological antipodes—summarized by these stereotyped questions stem from the normativity of existing theories of constitutionalism. Beyond the labels used for their classification, modern theories of constitutionalism⁹⁴ express rival systems of political morality. Each one of these competing systems of morality prescribes the reasons that justify and legitimize all forms of political behavior. The normativity of theories of constitutionalism is not limited to those actions which lead to the birth of governance institutions, or to the creation of governance processes. Normativity also involves reactive attitudes towards rival systems of political morality, that justify the existence of diverse constitutional arrangements; and the very words used to convey the concepts, institutions, policies, processes and practices as they exist within these other systems of political morality.⁹⁵

⁹⁴ By those, we refer to systems of concepts, ideas, values and beliefs generating meta-norms that: (a) have the goal to provide legitimacy to the ordering of a governance entity (nation-state, supranational or transnational entity), crystallize and preserve such an ordering; (b) set normative boundaries to the power of organs and agents of such an entity; (c) define the normative contours of the relationship between the governance entity, its agents, and the objects of its governance functions; (d) are represented as universally desirable by the governance entity adopting them; and (e) can be projected beyond the borders of a governance entity, contributing to a varying extent in the attempt at constructing a universal system of meta-norms. *See generally* Larry Catá Backer, *Theocratic Constitutionalism: An Introduction to a New Global Legal Ordering*, 16 *IND. J. GLOBAL LEGAL STUD.* 85 (2009) (discussing the authors' view of theories of constitutionalism); Backer, *supra* note 5 (discussing earlier writings in the authors' theorization of constitutionalism). Theories of constitutions can be classified under the labels of political, legal, transnational, theocratic, traditional-nationalist, Marxist-Leninist, and populist constitutionalism. More or less extensive bodies of literature exist on each one of these competing theories, reflecting the intensity of debate, and the scholarly interest attracted by each one of these systems of ideas. *See* RICHARD BELLAMY, *POLITICAL CONSTITUTIONALISM*, 5 (2007); *see also* Alec Walen, *Judicial Review in Review: A Four-Part Defense of Legal Constitutionalism*, 7 *INT'L J. CONST. L.* 329, 329–32 (2009); Tom Hickman, *In Defence of the Legal Constitution*, 55 *UNIV. TORONTO L. J.* 981, 986 (2005); *see generally* ADAM TOMKINS, *OUR REPUBLICAN CONSTITUTION* (2005) (discussing theories of constitutionalism); JEREMY WALDRON, *LAW AND DISAGREEMENT* (1999) (same); MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* (1999) (same); *TOWARDS WORLD CONSTITUTIONALISM: ISSUES IN THE LEGAL ORDERING OF THE WORLD COMMUNITY* (Ronald St. John Macdonald & Douglas M. Johnston eds., 2005) (discussing the debate about the desirability of theories of political constitutionalism versus theories of legal constitutionalism); Anne Peters, *Global Constitutionalism in a Nutshell*, in *WELTINNENRECHT: LIBER AMICORUM JOST DELBRÜCK* (Klaus Dicke et al. eds., 2005) (discussing transnational constitutionalism); Paul Blokker et al., *Introduction: Populist Constitutionalism: Varieties, Complexities, and Contradictions* 20 *GER. L. J.* 291 (2019) (discussing populist constitutionalism); Paul Blokker, *Populist Constitutionalism in ROUTLEDGE HANDBOOK OF GLOBAL POPULISM* (Carlos de la Torre ed., 2018) (same).

⁹⁵ While Peter Strawson conceived of reactive attitudes as limited to the moral response of an individual towards the behavior of other individuals, we extend his ideas to encompass the moral response of an individual to a system of morality other than the system of values, concepts and ideas embodied in constitutions. For the purpose of our analysis of the Cuban constitution, consider the following excerpt from the essay *Freedom and Resentment*: “I have mentioned punishing and moral condemnation and approval ... But it is not of these practices and attitudes that I propose, at first, to speak. These practices or attitudes permit, where they do not imply, a certain detachment from the actions or agents which are their objects. I want to speak, at least at first, of something else: of the non-detached attitudes and reactions of people directly involved in transactions with each other; of the attitudes and reactions of offended parties and beneficiaries; of such things as gratitude,

Moral judgment is an essential part of human reason and, as such, it is unavoidable. Reactive attitudes to the political philosophy of Karl Marx, the organizational methodologies devised by Vladimir Lenin, or the ideas of Fidel Castro do not pose difficulties to analyzing constitution-making in Marxist-Leninist systems. Reactive attitudes pose an obstacle to intellectual inquiry when they target the language used to discuss illiberal political systems. The political systems of Cuba, China, Vietnam, and North Korea were established in an attempt to realize the vision held by local anti-establishment parties and movements.⁹⁶ In various ways and at different stages, Caribbean, Asian, and African revolutions benefitted from support by Moscow.⁹⁷ Local revolutionary movements held an autonomous vision of political and social development.⁹⁸ Yet, at a time when the globe was divided into two competing ideological camps, local revolutionary elites chose to articulate their vision through the vocabulary of Marxism-Leninism. Such a vocabulary was not entirely constructed by local revolutionary elites. It was rather imported from Moscow, laden with the doctrines and interpretations *en vogue* between 1924 and 1953—those of Joseph Stalin.⁹⁹ Cuba, China, Vietnam, and other countries of the former Communist Bloc often found themselves at odds with each other and with the Soviet Union.¹⁰⁰ Their respective goals and ambitions, however, could only be articulated through a limited vocabulary, conveyed by giving new meanings to existing words.¹⁰¹ In Cuba, the result was the creation of a “newspeak.”¹⁰² Once familiar words were injected with meanings derived from *both* the ideas held by Fidel Castro and the lingo received from the Soviet Union.¹⁰³ The injection of new meanings into old words occurred mostly in the *lexica* of political

resentment, forgiveness, love, and hurt feelings What I have to say consists largely of commonplaces. So my language, like that of commonplaces generally, will be quite unscientific and imprecise. The central commonplace that I want to insist on is the very great importance that we attach to the attitudes and intentions towards us of other human beings, and the great extent to which our personal feelings and reactions depend upon, or involve, our beliefs about these attitudes and intentions.” Peter Frederick Strawson, *Freedom and Resentment*, in *FREEDOM AND RESENTMENT AND OTHER ESSAYS* 4–5 (2008).

⁹⁶ Marifeli Perez-Stable, *Caught in a Contradiction: Cuban Socialism Between Mobilization and Normalization*, 32 *COMP. POL.* 63, 63 (Oct. 1999).

⁹⁷ SOVIET POLICIES AND ACTIVITIES IN LATIN AMERICA AND THE CARIBBEAN, 1, 5 (1982), available at <https://www.cia.gov/library/readingroom/docs/19820625.pdf>.

⁹⁸ *Id.*

⁹⁹ *Communism: Karl Marx to Joseph Stalin*, CTR. FOR EUROPEAN STUDIES A JEAN MONNET CTR. OF EXCELLENCE, <https://europe.unc.edu/iron-curtain/history/communism-karl-marx-to-joseph-stalin/> (last visited Sept. 18, 2019).

¹⁰⁰ *Sino-Soviet Struggle in Cuba and the Latin American Communist Movement*, 1, 69–70, (1963), available at <https://www.cia.gov/library/readingroom/docs/esau-22.pdf> [hereinafter *Sino-Soviet Struggle*].

¹⁰¹ Charles Baroch, *Soviet Style Detente: A Continuing U.S. Dilemma*, 66 *THE HERITAGE FOUNDATION* 1, 12–13 (Oct. 12, 1978), http://s3.amazonaws.com/thf_media/1978/pdf/bg66.pdf.

¹⁰² *Id.*

¹⁰³ *Sino-Soviet Struggle*, *supra* note 100.

processes. Where language straightforwardly expresses ideological function, analysts educated in liberal systems find themselves at ease. For instance, in encountering the *Asamblea Nacional del Poder Popular*, it can immediately be hypothesized how this organization may be unlike the U.S. Congress, the Parliament of the United Kingdom, or the German *Bundestag*. The use of the words “*Asamblea Nacional del Poder Popular*” does not provoke intellectual controversy. The referent of these words is univocal, and absent from the constitutional system that fully reflects the analyst’s individual morality. Therefore, the *Asamblea Nacional del Poder Popular* can be talked about and written about without provoking reactive attitudes of disapprobation and indignation.¹⁰⁴ More directly, the words mask the possibility of multiple perspectives for understanding its meaning and the sources of its legitimacy depending on the basic political line with which analysis is undertaken; the liberal democrat will read into those words sets of concepts and expectations considerably different from those read into the same words by a high-ranking member of the Chinese Communist Party.

Difficulties emerge when the words used to designate specific policy or decision-making processes in Marxist-Leninist systems are the same as those used in liberal-democratic systems. Those words are referendum (*referendo*), voting (*votar*), elections (*elecciones*), popular consultation (*consulta popular*).¹⁰⁵ These words are not specific to any system of ideology, yet they have multiple denotations and contrasting connotations. The act of voting in a constitutional referendum involves signaling one’s agreement—or disagreement—to a constitution someone else wrote. Whether the act is performed in Cuba, in France to express one’s opinion on the European Constitution,¹⁰⁶ or in Gabon to signal one’s will on the Constitution of France,¹⁰⁷ the connotation of referendum does not change. In discussing constitutional reform in Marxist-Leninist, liberal-democratic and colonial contexts, the analyst

¹⁰⁴ See, e.g., Juliet Lapidus, *The Undemocratic People’s Republic of Korea: Why Do the Most Totalitarian Countries Always Have the Most Democratic-sounding Names?*, SLATE (Apr. 1, 2009), <https://slate.com/news-and-politics/2009/04/why-do-the-least-democratic-countries-always-have-the-most-democratic-sounding-names.html>.

¹⁰⁵ See generally Richard F. Staar, *Elections in Communist Poland*, 2 MIDWEST J. POL. SCI., 200, 200 (May 1958).

¹⁰⁶ See generally EMILIANO GROSSMAN, *FRANCE AND THE EUROPEAN UNION: AFTER THE REFERENDUM ON THE EUROPEAN CONSTITUTION* (2019) (discussing the referendum vote of May 29, 2005 on the constitution of the European Union and the surrounding controversy).

¹⁰⁷ In Gabon a referendum was held on September 28, 1958, to allow Gabonese citizens to decide whether they accepted the French Constitution, thus maintaining their status as members of the French Community, formerly the French Union and an organization that succeeded the French colonial empire at the end of World War II, or they opted for a full national independence. See Helga Fleischhacker, *Gabon*, in *ELECTIONS IN AFRICA: A DATA HANDBOOK* 1, 398 (Dieter Nohlen et al. eds., 1999) for data on the referendum.

is bound to use the words “constitutional referendum,” because no other words are available to us to denote these very acts. Referendum, however, is not just a term.¹⁰⁸ Referendums are also abstract objects in competing constitutional theories. Hence, the word “referendum” carries clashing connotations. Under liberal-democratic constitutional theories, the act of voting in a referendum exists as a meaningful possibility only in those systems where (1) free, universal, multi-party elections exist; (2) the government plays a minimum role in direct economic regulation; (3) a consensus exists about the univocal causality between the enjoyment of civil and political rights; and (4) the enjoyment of any other categories of rights, notwithstanding their inseparability, interdependence and interconnectedness. At a minimum, the phrase “constitutional referendum” attracts these connotations. Where the prevailing system of political morality does not admit of multi-party electoral competition, free markets, and the existence of specific dyadic relations within the tightly connected web of human rights concepts,¹⁰⁹ constitutional referendums are not foreseen as a meaningful possibility. At least, they are a possibility that is not foreseen by liberal-democratic theories of constitutionalism or by various strands of post-Socialist constitutional theories.¹¹⁰

¹⁰⁸ The authors prefer using the plural “referendums,” rather than “referenda,” because the former plural has entered common usage in the academic literature. *Referendum* is a Latin gerund, designating the act of referring or a thing to be referred. Latin gerunds have no plural as such. If pluralized as *referenda*, referendum would mean “more than one act of referring,” or “more than one thing to be referred.” See Nicholas Bagnall, *Words: Referendums*, INDEPENDENT (Oct. 18, 1998), <https://www.independent.co.uk/arts-entertainment/words-referendums-1179094.html>. A natural corollary of the authors’ conceptualization of constitutionalism is that a domestic referendum is never limited to the narrower aspect of referring a decision to popular vote. As one of the key legitimating mechanisms of most constitutional systems, a referendum addresses at the same time citizens, but also competing actors and entities external to the constitutional system.

¹⁰⁹ Human rights are perceived as being indivisible, interdependent, and interrelated. See Press Release, Human Rights are Universal, Indivisible, Interdependent, Secretary-General Stresses in Video Message to International Journalists’ Round Table, U.N. Press Release HR/4344, PI/1045 (Dec. 8, 1997) (“Opening the two-day journalists’ round table, the Secretary-General said it was the universality of human rights that gave them their strength. ‘It endows them with the power to cross any border, climb any wall, defy any force,’ he said. The struggle for universal human rights had always been the struggle against all forms of tyranny and injustice such as slavery, colonialism and apartheid. Human rights were universal, indivisible and interdependent and they were ‘what makes us human.’”). Therefore, by establishing a direct causal relationship between the enjoyment of a distinct right, and the enjoyment of any other distinct right would defeat the very nature of human rights. While the notion of human rights as a tightly interwoven, inseparable network has been sometimes portrayed as belonging to the realm of rhetoric as much as to the sphere of ethics, this notion is nonetheless one of the cornerstones of most variants of constitutionalism. See DANIEL J. WHELAN, *INDIVISIBLE HUMAN RIGHTS: A HISTORY* 1–2 (2011) (detailing an account of the rhetoric of the indivisibility of human rights).

¹¹⁰ Given their function, theories of constitutionalism are often constructed inductively. As a result, where a national constitution does not envisage the referendum among the possible forms of popular participation, this mechanism cannot be taken into account by theory without introducing an element of incoherence. See *Constitutionalism* in STAN. ENCYC. PHIL. (Dec. 20, 2017), <https://plato.stanford.edu/entries/constitutionalism/> (last visited Sept. 18, 2019).

Outside of the realm of constitutional *theories*, a constitutional referendum took place in Cuba twice—in 1976 and in 2018.¹¹¹ Could the referendum have been a meaningful event, at least to those who organized it? Here lies the greatest difficulty for those who analyze Marxist-Leninist systems. Our system of political morality may not envisage the Cuban constitutional referendum as a possibility. That a constitutional referendum was held in Cuba, however, should not be taken as signaling a flaw in any of the existing constitutional theories. Unlike the grounding of theories in the fields of Physics, Astronomy, or Medicine, theories of constitutional systems need not be experimentally falsifiable. They only need to provide a logically sound justification for the local, and possibly also universal, desirability of a specific vision of political morality. The approach is not the “scientific method” so much as the processes of logical deduction, a moral rather than a “factual” reasoning.

That a constitutional referendum took place in Cuba should therefore not be a point of concern for theories of liberal-democratic constitutionalism. The significance of this event may be more relevant to the development of post-Socialist theories of constitutionalism. But when the normative elements of constitutional theory are allowed to overflow on human language, the words and notions used to refer to the popular vote on the Cuban Constitution cease to be mediums to describe facts, convey research hypotheses, and results. Language is captured in the clash among competing systems of political morality. Such a capturing involves each and every one of the descriptive possibilities of language, and it extends to research methods and to data. Analyses of the constitutional referendum in Cuba become impossible. Under certain post-Socialist theories of constitutions, the referendum does not exist tout court as an analytical object. But the referendum disappears from the ontology of liberal-democratic constitutional theory whenever it is held in a country premised on a rival system of political morality.

B. Analyses of the “Theoretically Impossible”

Is it logically possible to conceive of, and hence talk about, an entity that does not appear in the ontology of post-Socialist or liberal-democratic constitutional theory? Under liberal-democratic theories of constitutions, the problem is merely one of maintaining a strict logical coherence with the premises of theory. If liberal-democratic theories of constitutions wanted to maintain their own internal coherence, discussions of the Cuban constitutional

¹¹¹ Carmen Sesin & Orlando Matos, *Cubans Vote on a Constitutional Referendum Which May Reveal Growing Discontent*, NBC NEWS (Feb. 24, 2019, 5:17 AM), <https://www.nbcnews.com/news/latino/cubans-vote-constitutional-referendum-which-may-reveal-growing-discontent-n974786>.

referendum ought not to take place, because of the simple reason an illiberal constitutional referendum exists outside of the conceptualizations, however vague, of liberal-democratic constitutionalism. Under post-Socialist theories of constitutionalism, any discussion of a constitutional referendum would pose much thornier problems. These problems would be fully intelligible only within a post-Socialist school of constitutionalism, if such a school ever existed and it identified itself as such.¹¹² Under both possibilities, one real, one hypothetical-conditional, silence would be the easiest path to tread.

If an illiberal constitutional referendum acquires no meaning under liberal-democratic theories of constitutionalism, plebiscites, and constitutional referendums do not exist among the tightly managed, institutionalized modes of popular participation available in China, Vietnam, and North Korea.¹¹³ If an entity does not exist within a constitutional system, then its analysis as opposed to the construction of arguments advocating for its *ex abrupto* introduction within that system is not possible. But that has not always been the case. Institutions of direct democracy existed in the Soviet Union, but they were only invoked in 1991.¹¹⁴ Referendums were also organized in the Yugoslavian territories in the early 1990s to comply with demands posed by the EEC Arbitration Commission of the Conference on Yugoslavia (the Badinter Commission) on the recognition of new states.¹¹⁵ In 1945, the Chinese Communist Party pledged its continued recognition of the People's Republic of Mongolia contingent on Mongolian citizens supporting national independence through a referendum.¹¹⁶ These referendums were held in governance systems that no longer exist or took place in the absence of any established political authority.

¹¹² See generally Aleksandra Galasinska & Dariusz Galasinski, *Living Between History and the Present*, in *THE POST-COMMUNIST CONDITION: PUBLIC AND PRIVATE DISCOURSES OF TRANSFORMATION* 4–5 (2010).

¹¹³ RAYMOND D. GASTIL, *FREEDOM IN THE WORLD: POLITICAL RIGHTS AND CIVIL LIBERTIES 1979*, at 32, 44, 221–22, 305–06 (1979). See generally KYUNG-AE PARK & SCOTT SNYDER, *NORTH KOREA IN TRANSITION: POLITICS, ECONOMY, AND SOCIETY* 6–13 (2012).

¹¹⁴ See generally Stephen White & Ronald J. Hill, *Russia, the Former Soviet Union and Eastern Europe: The Referendum as a Flexible Political Instrument*, in *THE REFERENDUM EXPERIENCE IN EUROPE* 153, 153 (Michael Gallagher & Pier Vincenzo Uleri eds., 1996) (describing the 1991 Soviet Union referendum and more generally referendums in Eastern European countries).

¹¹⁵ See generally Alain Pellet, *The Opinions of the Badinter Arbitration Committee. A Second Breath for the Self-Determination of Peoples*, 3 *EUR. J. INT'L L.* 178, 178 (1992); Peter Radan, *Post-Secession International Borders: A Critical Analysis of the Opinions of Badinter*, 50 *MELB. L. REV.* 50, 52 (2000) (summarizing the opinions of the Badinter Commission).

¹¹⁶ See generally DIETER HEINZIG, *THE SOVIET UNION AND COMMUNIST CHINA 1945–1959: THE ARDUOUS ROAD TO THE ALLIANCE* 361 (2015).

The Cuban case is different. In Cuba, mechanisms of direct democracy were invoked a total of four times since 1959.¹¹⁷ Two plebiscites were held in 1960 and 1962.¹¹⁸ At those meetings, Cuban persons constituted themselves in a National General Assembly of the People voting on a response to the Declaration of San José¹¹⁹ and the exclusion of Cuba from the Organization of American States (OAS).¹²⁰ Popular referendums were held in 1976 and 2018 to approve the text of the Constitution of the Republic of Cuba.¹²¹ The 1976 constitutional referendum attracted the publication of a special issue of the *Revista Cubana de Derecho* (Cuban Journal of Law).¹²² Popular engagement, however, wasn't treated as an object of analysis *per se*. Academics based in reforming Marxist-Leninist systems have not produced analyses of the 1976 or the 2018 referendum. Authors based in liberal-democratic systems have instead chosen to analyze the plebiscites and the constitutional referendums that took place in Cuba.¹²³ Existing analyses have tried to grapple with a possibility that, under liberal-democratic theories, is logically and conceptually impossible. If the premises of one's theory of choice do not admit the existence of an empirical entity, then moving either to the realm of meta-theory or to the domain of empiricism would be methodologically wiser choices. If we try to conceptualize something that does not exist under a given theory, the result is often confusion augmented by efforts to ignore the thing that cannot exist. Those entities that exist both as a theoretical possibility and as an empirical phenomenon in different constitutional systems, once encountered by the analyst, induce reactive attitudes of denial, rejection, and derision. These reactions, however,

¹¹⁷ See discussion *infra*.

¹¹⁸ See OAS General Secretariat, 8th mtg., *Consultation of Ministers of Foreign Affairs Serving as an Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance*, OAS Doc. OEA/Ser.C/II.8 (Jan. 31, 1962) [hereinafter 8th mtg. of Consultation]. See generally OAS General Secretariat, 7th mtg., *Consultation of Ministers of Foreign Affairs*, OAS Doc. OEA/Ser.C/II (Aug. 29, 1960) [hereinafter 7th mtg. of Consultation].

¹¹⁹ See 7th mtg. of Consultation, *supra* note 118. The Declaration of San José was adopted on August 28, 1960 by representatives of the government's members of the Organization of American States, to "condemn[s] ... the intervention of the threat of intervention, even when conditional, by an extracontinental power in the affairs of the American republics." *Id.*

¹²⁰ See 8th mtg. of Consultation, *supra* note 118 (specifically Resolution VI Exclusion of the Present Government of Cuba from Participation in the Inter-American System).

¹²¹ From its promulgation in 1976 until its 2018 revision, the Cuban Constitution was amended three times: 1978, 1992, and 2002. These amendments were not approved by popular vote, as they did not involve provisions directly relevant to the rights of Cuban citizens. See generally JORGE I. DOMINGUEZ, A CONSTITUTION FOR CUBA'S POLITICAL TRANSITION: THE UTILITY OF RETAINING (AND AMENDING) THE 1992 CONSTITUTION at i–iii (2003).

¹²² See generally 5 REVISTA CUBANA DE DERECHO (1976) (explaining early commentaries of the 1976 Constitution, offered from a Caribbean-Marxist perspective).

¹²³ See generally Julio Heredia Perez, *La Integración Económica y el Derecho*, in 5 REVISTA CUBANA DE DERECHO 99, 104–13 (1979).

are not based on the premises of theory. That connection between reaction and theory is difficult because, as we have seen, no theory can ever justify a reaction of any kind with respect to an entity which does not exist that theory's very ontology; that is since such theories do not permit the conceptualization of democratic activity outside of its parameters, it is impossible to conceive of a state of being in which such characteristics can exist whose structures do not precisely conform to the premises of the theory. In this case, if democratic theory requires organization as a Western-style liberal democracy, then it is impossible to speak of democracy beyond organizations structured like Western liberal democracies.¹²⁴ Reactive attitudes are justified with *empirically based arguments*.¹²⁵ Yet, the ontology of liberal-democratic theory is unable to account for the empirical existence of forms of democracy within illiberal systems.¹²⁶ To construct an argument using an empirical fact that ought not to exist, one would first have to adjust theories and its premises.¹²⁷ But, if the premises that a constitutionalism theory rests upon are morally desirable and the best possible ones, they cannot be revised.

Squarely facing these impossibilities, analyses of mechanisms of popular participation in Cuba have abandoned the more treacherous ground of logic, holding on to the safer terrains of political ethics and morality.¹²⁸ As a consequence, most of the existing approaches and frameworks to Cuban modes of direct democracy have taken what these approaches and frameworks cannot logically conceive of as their point of departure to discussion questions related to *systemic transition*.¹²⁹

To be fair, a partial exception to this more-or-less general rule has been given by Cuban author René Gómez Manzano. An open advocate of forms of representative democracy,¹³⁰ Manzano nonetheless accepts constitutional

¹²⁴ This is most notable in Western reactions to what they call authoritarian constitutionalism. See, e.g., Mark Tushnet, *Authoritarian Constitutionalism*, 100 CORNELL L. REV. 391 (2015). It is particularly visible in the context of Western encounters with Chinese constitutionalism. See, e.g., Larry Catá Backer, *Party, People, Government, and State: On Constitutional Values and the Legitimacy of the Chinese State-Party Rule of Law System*, 30 B.U. INT'L L. J. 331–408 (2012).

¹²⁵ See Leo Groarke, *Skepticism About Moral Responsibility*, in STAN. ENCYC. PHIL. (Edward N. Zalta ed., 1999).

¹²⁶ See generally Fareed Zakaria, *The Rise of Illiberal Democracy*, FOREIGN AFF., (Nov.–Dec. 1997), at 22.

¹²⁷ See Groarke, *supra* note 125, at 11.

¹²⁸ See generally Rafael Hernandez et al., *Political Culture and Popular Participation in Cuba*, 18 LATIN AM. PERSP. 38, 45–47 (1991).

¹²⁹ See generally Andreas Pickel, *Is Cuba Different? Regime Stability, Social Change, and the Problem of Reform Strategy*, 31 COMMUNIST & POST-COMMUNIST STUD. 75, 79–80 (1998).

¹³⁰ See generally René Gómez Manzano, *Constitución y Cambio Democrático en Cuba*, in 7 CUBA IN TRANSITION: PAPERS & PROCEEDINGS OF THE SEVENTH ANNUAL MEETING 395 (1997) (discussing Manzano's

referendums in Cuba as possible objects of analysis. But, in our view, his embrace of liberal-democratic theory appears to focus, without fault, on the performance of constitutional rituals, like voting and forms of engagement, and on that basis might miss a deeper insight. On its surface, Manzano's critique of the 1976 Constitutional referendum is grounded on notions of citizens' direct involvement in the study of the Cuban Constitution.¹³¹ Manzano complains that in 1976, Cuban citizens could engage in the performance of engagement, but only as long as they kept to script—and that script, according to him, did not permit criticism of “key aspects of the text.”¹³² The reason was straightforward; the popular assemblies that these engagement took part in were “headed by [Communist] militants and watched by the inevitable political police agents.”¹³³ Then, the length of the document submitted to popular consultation “made a deep and systematic analysis virtually impossible.”¹³⁴ Manzano then engages in a weak criticism of the PCC.¹³⁵ But he admits the constitutional referendum as an entity that deserves a discussion on theoretical grounds.¹³⁶ Here, Manzano parts ways with the notion that representative democracy is inherently superior to direct democracy in that it can minimize the risk of majoritarian tyranny. This notion is one of the cores of liberal-democratic theories, one also held by the Founding Fathers.¹³⁷ Therefore, Manzano's criticism is far more distant from American conceptions of liberal democracy than it appears through a superficial reading of his work. In Manzano's conception of politics, a public rally occurring spontaneously to draft a new constitution short and simple enough to be readable and accessible to truly everyone would be morally legitimate. An institutionalized mode of political participation, whether organized by the PCC, any other political party in Cuba, or any other political system, would be illegitimate. In any of these cases, the length and conceptual complexity of the constitutional text would always make a deep and systematic analysis by all citizens impossible. For instance, as citizens voted on Great Britain's exit from the European Union, many were likely unaware of the content of Article 50 of the Treaty on the European Union.¹³⁸ Similar indirect calls for forms of “ultra-

views on democracy).

¹³¹ *See id.* at 398–99.

¹³² *See id.* at 399.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *See id.* at 398–99.

¹³⁶ *Id.*

¹³⁷ *See generally* THE FEDERALIST NOS. 10, 51 (James Madison); CHARLES A. BEARD, AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES 1–18 (Gary Edwards ed., 2001); CHARLES A. BEARD, ECONOMIC ORIGINS OF JEFFERSONIAN DEMOCRACY 1–33 (1915) (summarizing classical, early historiographies of the Constitution of the United States).

¹³⁸ *See* Otto English, *The British Public Still Have No Idea What They Voted for With Brexit – It's Not*

democracy” freely organized in the absence of any center are, however, very rare in the literature on the Cuban constitution.

Questions related to systemic transition have instead been discussed at some length. The discussion involved a debate limited to the individuation of the specific modes of a possible political transformation in Cuba and conducted within the parameters of liberal-democratic theories of constitutionalism.¹³⁹ The mechanisms that yield legitimacy to Socialist elites can and do indeed change over time. Therefore, the questions asked concerned the sources of political legitimacy and de-legitimation¹⁴⁰ and their respective connection to different potential paths of change. Here, we find a cleavage that is somewhat typical of all analyses of Marxist-Leninist systems and involves debate between proponents of endogenous paths to change, as opposed to those who believe that political transition can be caused by changes occurring outside the Cuban system.¹⁴¹ Within both camps, views differ as to the greater likelihood of a change caused by groups and dynamics active at the grass-roots, whether based inside of Cuba or outside of the Island,¹⁴² versus a systemic transformation

Elitist to Admit it, THE INDEPENDENT (Jan. 22, 2019), <https://www.independent.co.uk/voices/brexit-theresa-may-leave-voters-remain-eu-referendum-campaign-deal-a8740526.html> (discussing the general lack of information about Article 50); Matthew Rosenberg, et al., *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (providing an early press reporting on the scandal). Prior to the referendum vote of June 23, 2016 on the withdrawal of the U.K. from the European Union, no public measures were taken to make the British public aware of the substantive content of Article 50 of the Treaty on the European Union. The 2016 vote became an object of controversy when, in March 2018, it emerged how the now by-gone British political consulting firm Cambridge Analytica Ltd had harvested the personal data of millions of Facebook users without their consent and used such data in an attempt to influence the June 23 vote.

¹³⁹ Jonathan Benjamin-Alvarado & Gregory A. Petrow, *Stability, Transition, and Regime Approval in Post-Fidel Cuba*, 127 POL. SCI. QUARTERLY 73, 73 (2013). See generally JAN NEMEC, GOOD GUYS, BAD GUYS: COMPARING ATTITUDES TOWARDS CASTRO'S CUBA, CRUCIAL PROBLEMS OF INTERNATIONAL RELATIONS THROUGH THE EYES OF YOUNG SCHOLARS (Jan Martin Rolenc ed., 2007).

¹⁴⁰ See generally JORGE I. DOMÍNGUEZ, CUBA: ORDER AND REVOLUTION (1978) (mentioning such variables as growth and redistribution of wealth, charismatic legitimation, policies of racial inclusion among the variables likely to affect legitimation or the lack thereof); Carlos Gershman & Orlando Gutierrez, *Ferment in Civil Society*, 20 J. DEMOCRACY 36, 38–39 (2009) (citing fourteen different factors likely to sort different impacts on stability).

¹⁴¹ A classic trajectory of change has been the one postulating that the collapse of the USSR would sort a chain effect on all Marxist-Leninist systems, given their economic dependence from Moscow. While generally true, this path of change has not manifested in the case of Cuba. See Carlos Alberto Montaner, *Third World Communism in Crisis: Castro's Last Stand*, 20 J. DEMOCRACY 71, 74–75 (1990). Alternatively, existing models of endogenous change postulate the existence of factors similar to those involved in the birth of the *Solidarność* (Solidarity) movement in Poland. See generally Gershman & Gutierrez, *supra* note 140.

¹⁴² Such as those initiatives that have periodically emerged to propose alternative projects of a constitution. One of them was the Varela Project, launched by opposition figure Oswaldo Payá in 2003, and then followed in 2014 by a similar movement, organized by Manuel Cuesta Morúa, the leader of the dissident movement Progressive Arch. On these bottom-up initiatives, see Theresa Bond, *The Crackdown in Cuba*, FOREIGN AFF., (Sept.–Oct. 2003), at 118; Nora Gámez Torres, *New Movement Tackles Constitutional Changes in Cuba*, CUBA

triggered by top-down processes. Aside from these debates, scholarship has seen constitutional reform as a vehicle¹⁴³ to sow the seeds in Cuba of all those elements normally associated with political legitimacy in liberal-democratic systems. These elements include, but are not limited to, a greater economic liberalization, a stronger protection of private property,¹⁴⁴ a renewed emphasis on civil and political rights,¹⁴⁵ and mechanisms of judicial review.¹⁴⁶ The postulate of these analyses is straightforward. Exogenous or endogenous factors active from the bottom-up or top-down, or a combination thereof, may induce Cuban citizens to gradually or suddenly reject the current governance model on grounds of its failures and ineffectiveness. Alternatively, any of these factors may compel the current leadership to embrace deeper and more substantial reforms. In an attempt to maintain legitimacy, socialist elites may then find themselves transformed into elites supportive of economic liberalization, a process that may gradually lead to political democratization.

C. *The Theoretical Merits of Liberal-Democratic Approaches*

So long as no theory or scenario-projection framework could predict the collapse of the Soviet Union, nor of China's rise to a position of global clout, it is difficult to say whether any of the scenarios projected for Cuba will actually manifest. The merits of liberal-democratic approaches to Cuban constitutionalism, however, go beyond the mere ability to yield predictions. These approaches have proved how: (a) political legitimacy is not a fixed notion, but one pliable to change over time; and (b) political legitimacy is furthermore relational.

In the realm of moral imperatives, notions of political legitimacy are unchanging, because they are premised on rationality as a defining feature of human beings. Through their "epistemology of unknowability," however

DEMOCRACIA Y VIDA (June 3, 2014), <http://www.cubademocraciayvida.org/web/print.asp?artID=25080>.

¹⁴³ On what might be defined as "utilitarian" views of constitutions and constitutional reform in Cuba, see Michael B. Wise, *Cuban Constitutionalism: Will There Be Changes?*, 51 DUQ. L. REV. 467, 468–69 (2013). See also DOMÍNGUEZ, *supra* note 140.

¹⁴⁴ See Oscar M. Garibaldi & John D. Kirby, *Property Rights in the Post-Castro Cuban Constitution*, 3 U. MIAMI INT'L & COMP. L. REV. 225 (2015); Nicolás J. Gutiérrez Jr., *The De-Constitutionalization of Property Rights: Castro's Systematic Assault on Private Ownership in Cuba*, 5 U. MIAMI Y.B. INT'L L. 51, 53 (1996–1997).

¹⁴⁵ See generally ALLAN R. BREWER-CARÍAS, *CONSTITUTIONAL PROTECTION OF HUMAN RIGHTS IN LATIN AMERICA: A COMPARATIVE STUDY OF AMPARO PROCEEDINGS* (2009); DAMIAN J. FERNANDEZ, *DEMOCRACY AND HUMAN RIGHTS IN THE CARIBBEAN* 97 (Griffith L. Ivelaw & Betty N. Sedoc-Dahlberg eds., 1997); Julio César Guanche & Julio Antonio Fernández Estrada, *Rights and Guarantees in Cuba: Background and a Proposal*, 2013 SEMINARIO EN LATINOAMÉRICA DE TEORÍA CONSTITUCIONAL Y POLÍTICA 1, 3.

¹⁴⁶ Michael B. Wise, *Cuba and Judicial Review*, 7 SW. J. L. & TRADE AM. 247, 261–62 (2000).

indirect and implicit, liberal-democratic approaches have proved how the concept of political legitimacy is susceptible to change, evolution, and transformation. In Cuba, such a change in political legitimacy has occurred three times since the late nineteenth century. The signposts of change have been the 1901 Constitution, modelled after the principles of the U.S. political system; the liberal constitutions of the 1930s and 1940s;¹⁴⁷ and finally the Socialist *Ley Fundamental* of 1959.¹⁴⁸ The succession in Cuba of diverse systems of political socialization in little less than a century further illustrates how legitimacy may change in widely diverging, unpredictable directions.

The acceptance of a governing authority or regime as legitimate is never an act taking place self-referentially. The authority of the Cuban government, whether understood in its more limited and formal legal dimension or in its broader dimension of moral authority, cannot exist without an act of recognition or acceptance.¹⁴⁹ The act of acceptance is relational because it always involves a manifestation of will by those who are either directly subjected to the governing authority or indirectly affected by the existence of such an authority.¹⁵⁰ The legitimacy of the Cuban government can be acknowledged by multiple and diverse actors. Some of them exist outside of Cuba. These actors are foreign governments, societal actors, and non-governmental organizations.¹⁵¹ Other actors, of course, exist inside Cuba. Persons living on the Island, officials of the PCC, and civil servants compose this latter group. Each one of these actors and groups may hold a different conception of political legitimacy.¹⁵² Changes in the political legitimacy of the Government of Cuba

¹⁴⁷ Liberal constitutions were promulgated in Cuba in 1933, 1934, 1935, and 1940. See, e.g., Jonathan Wachs, *Reviving the 1940 Cuban Constitution: Arguments for Social and Economic Rights in a Post-Castro Government*, 10 AM. U.J. INT'L L. REV. 525, 543–44, 546–47 (1994) (evaluating the respective merits of the 1940 and 1976 constitutions); see also TIMOTHY HYDE, CONSTITUTIONAL MODERNISM: ARCHITECTURE AND CIVIL SOCIETY IN CUBA, 1933–1959, at 28–31 (2013) (providing an overview of the constitutions promulgated in 1933 and their meaning to the governance of Cuba); Rebeca Sánchez-Roig, *Cuban Constitutionalism and Rights: An Overview of the Constitutions of 1901 and 1940*, 6 ASSOC. STUDY CUBAN ECON. 390, 393, 395 (1996). (comparing the substantive rights enshrined in the 1901 and 1940 Constitutions).

¹⁴⁸ See Max Azicri, *Change and Institutionalization in the Revolutionary Process: The Cuban Legal System in the 1970s*, 6 REV. SOCIALIST L. 164, 167 (1980) (analyzing the 1959 constitution and the amendments it underwent in the first years of the Castro regime).

¹⁴⁹ See Muthiah Alagappa, *Introduction*, in POLITICAL LEGITIMACY IN SOUTHEAST ASIA: THE QUEST FOR MORAL AUTHORITY 1, 3–7 (Muthiah Alagappa, ed., Stanford Univ. Press, 1995).

¹⁵⁰ See, e.g., Larry Catá Backer, *Reifying Law—Government, Law and the Rule of Law in Governance Systems*, 26 PENN ST. INT'L L. REV. 521 (2008).

¹⁵¹ Cuba's current government is recognized by many states within the U.N. system. State recognition is an important element of legitimacy, at least from the perspective of the community of states. See, e.g., Philip Marshal Brown, *The Legal Effects of Recognition*, 44 AM. J. INT'L L. 617–40 (1950); Kalypso Nicolaidis & Gregory Shaffer, *Transnational Mutual Recognition Regimes: Governance Without Global Government*, 68 LAW & CONTEMP. PROBS. 263–317 (2005).

¹⁵² See, e.g., María Cristina García, *Hardliners v. "Dialogueros": Cuban Exile Political Groups and*

are born from the interplay among all these groups and their members.¹⁵³ Notions of who has the right to rule and why as well as who should be accepted as a legitimate ruler are malleable. They are based on a set of complex dyadic relationships.¹⁵⁴

The concept of “socialist democracy,” the twisted paths leading to changes in political legitimacy, and all the sets of dyadic relationships that can sustain a political regime or contribute to its downfall are difficult to model. Our sense is that quantitative empirical analyses of the notion of socialist democracy and of the mechanisms used to put this notion into practice can instead illuminate broader developmental trends axiomatic forms of modeling would obscure. Indeed, beyond its capacity to broaden knowledge, forms of modeling based on broad and general assumptions about political systems made *a priori* have their own beauty.¹⁵⁵ Their beauty rests upon the elegance and simplicity of axiomatic modes of reasoning. These modes of reasoning can, sometimes, bring implicit assumptions about their subjects, including those of scalability—either of their premises or of their findings.¹⁵⁶ When abstraction meets the protean contexts of reforming Marxist-Leninist systems, the transplant of legal or political institutions can often yield unpredictable results.¹⁵⁷ Quantitative empirical analyses are not a *panacea* either. If deriving axioms across ill-formed ontologies of Marxist-Leninist systems is theoretically risky, the very design of

United States–Cuba Policy, 1998 J. AM. ETHNIC HIST. 3.

¹⁵³ Cf., Daron Acemoglu, James A. Robinson, *A Theory of Political Transitions*, 91 AM. ECON. REV. 938–63 (2001).

¹⁵⁴ The authors adopt a conceptualization of complexity as referred to the behavior displayed by any system where multiple components exist which interact in multiple ways, giving life to a form of ordering that is greater than the mere sum of a system’s components and their interaction. But, differently from the concept of complexity as applied in computer science and in biology, we allow for the existence of a higher normative system attempting to determine the form and outcomes of interaction and behaviors taking place outside of or against the norms posed by such a system. See also STEVEN JOHNSON, EMERGENCE: THE CONNECTED LIVES OF ANTS, BRAINS, CITIES, AND SOFTWARE 18–21 (2001) (discussing a popular, interdisciplinary account of the concept and its fields of application); GUNTHER TEUBNER, RECHT ALS AUTOPOIETISCHES SYSTEM 26 (1989) (discussing the classical use of notions of complexity in legal theorization); see generally GREGOIRE NICOLIS & ILYA PRIGOGINE, EXPLORING COMPLEXITY 6 (1989).

¹⁵⁵ See, e.g., Joshua M. Epstein, *Why Model?*, 11 J. ARTIFICIAL SOCIETIES & SOC. SIMULATION (2008) (discussing misconceptions about modeling).

¹⁵⁶ See, e.g., JOHN PHEBY, METHODOLOGY AND ECONOMICS: A CRITICAL INTRODUCTION (Routledge, 1988). The issues are nicely discussed in a related context in Malte Faber et al., Commentary, *Homo Oeconomicus and Homo Politicus in Ecological Economics*, 40 ECOLOGICAL ECON. 323–33 (2002).

¹⁵⁷ On this view of the effects of legal transplant, see generally ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW (1974); Rodolfo Sacco, *Diversity and Uniformity in the Law*, 49 AM. J. COMP. L. 171, 180–81 (2001) (supporting and developing the thesis of the utter unpredictability of legal transplants); Alan Watson, *From Legal Transplants to Legal Formants*, 43 AM. J. COMP. L. 469, 474–75 (1995) (approaching the issue of systemic change from a perspective internal to the systems witnessing the transplant of legal, social, or political institutions).

empirical analyses is not immune from such risks either. This risk can be minimized by individuating the locus of democracy in Cuba, what counts as a form of popular participation in the eyes of Cuba's governance institutions, and the persons who live on the island. Next is the question of whether forms of popular participation have evolved over time and how. This Article now turns to these questions.

D. Where Does Democracy Happen?

In its early days, the Cuban revolutionary government did not see the locus of democracy in the revolutionary movements that had contributed to overthrowing the Batista government, or in parliamentary institutions. In the eyes of Fidel Castro and the *barbudos*, democracy was a *praxis*: an abstract value to be enacted or realized by establishing a direct and unmediated relationship between the rebel forces of the Cuban revolution and persons who lived in Cuba. Two events are crucial to understand this early conception of democracy: the Havana mass rallies of September 2, 1960, and February 4, 1962.

Both meetings saw the convening of more than one million persons to form a National General Assembly of the people.¹⁵⁸ The two Havana meetings should not be considered as being mere propaganda events. In the eyes of the revolutionary government, and in the eyes of those who attended the meeting, Cuba had given life to a forum where the people could express their will and adopt decisions that in representative democracies are a prerogative of national parliaments.¹⁵⁹ The Cuban Revolution had rejected notions of political representation by candidates from competing parties chosen through the casting of ballots.¹⁶⁰ Such a rejection was based on the vulnerability of electoral processes to exogenous and endogenous interference.¹⁶¹ Electoral fraud,

¹⁵⁸ Fidel Castro, *The Declaration of Havana (Sept. 2, 1960)*, in MARC BECKER, TWENTIETH-CENTURY LATIN AMERICAN REVOLUTIONS 113–15 (2017).

¹⁵⁹ Fidel Castro Ruz, First Minister of the Revolutionary Gov't, Address at the Magnum Popular Assembly Celebrated by the Cuba People (Sept. 2, 1960) transcript available at <http://www.cuba.cu/gobierno/discursos/1960/esp/f020960e.html>.

¹⁶⁰ *See id.* The rationale behind the rejection of representative democracy and the attempt to create a form of direct democracy ideally not vulnerable to interference was articulated by Fidel Castro as follows:

The National General Assembly of the People of Cuba expresses its conviction that democracy cannot consist only in a vote, which is almost always fictitious and manipulated by big land holders and professional politicians, but in the right of the citizens to decide, as this assembly of the people is now deciding, its own destiny. Moreover, democracy will only exist in Latin America when its people are really free to choose, when the humble people are not reduced—by hunger, social inequality, illiteracy, and the juridical systems—to the most degrading impotence.

Castro, *supra* note 158.

¹⁶¹ Castro Ruz, *supra* note 159.

intervention by agents of foreign governments and by economic lobbies, the adverse impacts of socioeconomic malaise on popular awareness of and engagement in governance were seen as factors impeding the formation and manifestation of a truly free will.¹⁶² To these perceived ills, the revolutionary government found the antidote of collective decision-making through acclamation.¹⁶³

Seen from this perspective, the two Havana meetings were constitutive events because they involved the making of decisions and choices on some of the fundamental rights articulated in the *Ley Fundamental*, and on matters which in representative democracies are normally debated and decided by constituent assemblies or elected parliamentary officials. The *Ley Fundamental* had recognized how all Cuban citizens enjoyed a formal right to “universal, egalitarian and secret suffrage.”¹⁶⁴ The First Havana Meeting and the declaration issued immediately after the rally¹⁶⁵ crystallized the procedural and substantive aspect of the right to universal suffrage into decision taken at mass rallies, collectively, and by acclamation.¹⁶⁶ Coherent with the choices made during the First Havana Meeting, two years later, on February 4, 1962, a one-million person National General Assembly was again convened to decide on Cuba’s sovereign authority, the principles of domestic governance, its relationships with neighboring states. Subsequently, it adopted the Second Declaration of Havana by acclamation.

Aside from the specific decisions that Fidel Castro presented at both meetings, the two sessions of the National General Assembly were important for two reasons. First, they produced an ideological context in which popular affirmation played a fundamental role in legitimating the authority of the revolutionary core. Second, they had developed a first nucleus of principles of “socialist democracy” in a Caribbean context. The Castro-led government had acquired popular legitimacy through victory in an armed conflict joined only by a minority of Cubans. Given this circumstance, the military victory had to be sanctioned by a meeting significant enough to allow those in attendance to either approve of the revolutionary government or to undo it through an act of mass rebellion.¹⁶⁷ By obtaining affirmations of approval at the two Havana rallies, the armed nucleus of the Cuban Revolution posited itself not only as the political

¹⁶² Castro, *supra* note 158.

¹⁶³ Castro Ruz, *supra* note 159.

¹⁶⁴ Ley Fundamental de 1959, Art. 97 (DOF 7/2/1959).

¹⁶⁵ Cf. MARC BECKER, TWENTIETH-CENTURY LATIN AMERICAN REVOLUTIONS 24.

¹⁶⁶ Castro, *supra* note 158, at 113.

¹⁶⁷ Castro Ruz, *supra* note 159.

representative of the people, but also as its legitimate representative.¹⁶⁸ Some may disagree that the plebiscitarian vote expressed at mass rallies did not really meet the formal requirement of secrecy established by the *Ley Fundamental*. However, identifying each one of the more than one million persons assembled on a public square was not possible in the 1960s, a time when drone and surveillance technologies did not exist. The early nucleus of principles of socialist democracy was expressed through the *praxis* of mass rallies, rather than through the theorizing that can sometimes be found in other Marxist-Leninist regimes.¹⁶⁹ Those principles included political citizenship, notions of vanguardism,¹⁷⁰ modes of making collective decisions, the PCC responsibility towards the people, and transnationalism.¹⁷¹ We will not attempt to provide any definition of the substantive content, or even the procedural aspects of each one of these principles of governance. Their articulation through *praxis*, rather than through language makes most definitions unable to capture the original intent behind the factual expression of those principles, as well as the meaning those principles may have held in the 1960s.¹⁷² For the goals of this Article, it is sufficient to describe the results of early revolutionary *praxis*.¹⁷³

First, the *demos* that was constituted through attendance at mass rallies was not defined according to the tenets of “pure” Marxist-Leninist theory as such a theory existed in the early 1960s in the USSR and in the People’s Republic of China.¹⁷⁴ Political citizenship was not based on notions of “class.” It was rather conceived of in a more romantic, “social-humanist” fashion, as belonging to all

¹⁶⁸ *Id.*

¹⁶⁹ An obvious term of comparison would be the People’s Republic of China, where since the earliest days of the Chinese Revolution governance institutions and practices were adopted only following their theorization by the leadership of the Chinese Communist Party. See Barry Naughton, *Leadership Transition and the “Top-Level Design” of Economic Reform*, 37 CHINA LEADERSHIP MONITOR 1, 2 (2012) (detailing a more complete illustration of so-called “top-level design” and its relevance to governance in the People’s Republic of China).

¹⁷⁰ Under the conception held by Ernesto “Che” Guevara, vanguardism was a feature of a minority of the members of the working class, who were endowed with an understanding of political needs and values higher than the majority of citizens. See Vladimir Ilic Lenin, *What Is to Be Done? Burning Questions of Our Movement*, in LENIN’S COLLECTED WORKS 347 (1961) (featuring Soviet notions of vanguardism). Cuban notions of vanguardism may differ in that they are not informed by the prior, systematic theorizations observable in the former Soviet Union and in the People’s Republic of China. See Gabriel M. Telleria, *Vanguardism and the Vanguardist Organization: A Study of the Sandinista National Liberation Front and Its Rise to Power*, 8 LATIN AM. POL’Y 27, 27 (2017) (discussing Guevara’s notion of vanguardism and its impact in Latin America).

¹⁷¹ See, e.g., Brantly Womack, *The Party and the People: Revolutionary and Postrevolutionary Politics in China and Vietnam*, 39 WORLD POL. 479–507 (1987). It might be understood, for example, in the Chinese Leninist concept of the “mass line.”

¹⁷² See Marc Blecher, *Consensual Politics in Rural Chinese Communities: The Mass Line in Theory and Practice*, 5 MODERN CHINA 105 (1979).

¹⁷³ See, e.g., Peter McLaren et al., *The Specters of Gramsci: Revolutionary Praxis and the Committed Intellectual*, 33 J. THOUGHT 9 (1998).

¹⁷⁴ See generally LESZEK KOLALOWSKI, MAIN CURRENTS OF MARXISM (1978).

those who were willing *in the abstract* to overcome those factors leading to economic and social subordination, who wished to achieve self-determination for themselves and for others, and who supported the endeavors and the choices made by those who had led the armed revolution.¹⁷⁵

Second, mass rallies acquired their meaning only if they were organized by the more active players in the Cuban Revolution. During the Havana meetings, Fidel Castro, who was then the Prime Minister of Cuba, read out both the First and Second Havana Declaration before the people in assembly and explained the rationale behind those documents.¹⁷⁶ In so doing, Fidel reported the activities and choices made by the revolutionary government to the assembly of the Cuban people.¹⁷⁷ In liberal-democratic systems, national governments are accountable to parliaments and subject to their oversight.¹⁷⁸ The Cuban Revolution had replaced this form of accountability with a mechanism whereby the leader of the revolutionary forces presented himself before the people, promised to act on its behalf, and promised to guide the people towards the path of development agreed upon.¹⁷⁹ To the people, the mass rallies provided a venue to express agreements, while to the revolutionary leadership the same rallies offered an opportunity to account for their work.

Third, political citizenship was detached from any form of legal citizenship. Political citizenship could be acquired by simply belonging to any of the social groups exposed to the negative externalities of regional economic and social development policies and by participation in mass rallies.¹⁸⁰ This notion of political citizenship cut across the lines of national borders and ideologies and could include persons born in other Latin American states, American citizens, and persons who lived in other continents.¹⁸¹ If political citizenship was earned by virtue of participating in mass rallies, then the rallies could not be spontaneous by definition. Those unwilling to participate in the Revolution could simply choose to not attend the rallies. More important for the revolutionary government was avoiding the pollution of the manifestations of

¹⁷⁵ See Castro, *supra* note 158.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Thomas O. Sargentich, *The Presidential and Parliamentary Models of National Government*, 8 AM. U. INT'L L. 579, 580 (1993).

¹⁷⁹ Castro, *supra* note 158.

¹⁸⁰ That was the essence of the performance that was the Second Havana Declaration. See THE FIRST AND SECOND DECLARATIONS OF HAVANA (New York: Pathfinder Press, 2007).

¹⁸¹ This insight, of course, comes naturally from a reading of the transcript of the events but also parallels developments elsewhere at the time and thereafter. See APRIL CARTER, *THE POLITICAL THEORY OF GLOBAL CITIZENSHIP* (Routledge 2001).

direct democracy by those interests and forces who could manipulate conventional electoral processes.

Fourth, the ideal extension of political citizenship to all those who wished to create a different form of governance gave a transnational vocation to Cuba's socialist democracy since the very early days of the revolution.¹⁸² The mass plebiscites held on the then Civic Square were meant to provide a model to be followed by other Latin-American states, and more generally speaking, by the economically and socially disempowered. This model would be soon embraced by neighboring states.¹⁸³

E. Socialist Democracy 1.0

From the late 1960s, the search for a form of collective decision-making alternative to multiparty elections bifurcated along two different paths. The format of plebiscitarian meetings was maintained but limited to the grassroots-level and adopted on a much smaller scale. Assemblies were held in neighborhoods or by convening groups defined along the lines of class, gender, and age.¹⁸⁴ At the national level, political and legal cooperation with the Soviet Union led to the creation of an institutionalized parliament in the form of the *Asamblea Nacional del Poder Popular* (ANPP).¹⁸⁵ Such a decision stemmed not from an unwilling retention of models inspired by liberal democratic

¹⁸² *Id.* It is sufficient, perhaps, to recall how the Cuban Revolution would have perhaps not been possible without the contribution of Ernesto Guevara, who held Argentinian citizenship. *Id.*

¹⁸³ The Cuban Revolution in general, and more specifically the Second Declaration of Havana, were adopted by Uruguay's Eastern Revolutionary Movement (*Movimiento Revolucionario Oriental*, MRO) as their ideological basis. See EDUARDO REY TRISTAN, *LA IZQUIERDA REVOLUCIONARIA URUGUAYA: 1955–1973*, at 288 (2005).

¹⁸⁴ As described by historian Rafael Rojas:

El tránsito acelerado de una breve experiencia de democracia directa a una primera institucionalización de tipo comunista, en la isla, se dio acompañado de la creación de un conjunto de organizaciones de masas – comités vecinales, asociaciones campesinas, juveniles y femeninas, sindicatos ...-, que vertebró estatalmente la sociedad civil cubana. Dicha institucionalidad fue todavía precaria durante los años 60 y se vio constantemente emplazada por los giros de la cambiante política económica del gobierno revolucionario en aquella década. [The accelerated transition from a short experience of direct democracy to a first institutionalization of the Communist type, on the Island, was accompanied by the creation of a set of mass organizations, neighborhood committees, peasant, youth and women's associations, trade unions ...-, which structured by the Cuban civil society in a statist [direction]. This institutionalization was still precarious during the 1960s and was constantly supplanted by the twists of the changing economic policy of the revolutionary government in that decade.]

Rafael Rojas, *La Soledad Constitucional del Socialismo Cubano*, 218 *CLAVES DE RAZÓN PRÁCTICA* 44, 50 (2011).

¹⁸⁵ Peter Roman, *Electing Cuba's National Assembly Deputies: Proposals, Selections, Nominations, and Campaigns*, 82 *EUROPEAN REV. LATIN AM. & CARIBBEAN STUD.*, 68, 69 (2007).

constitutional theory, but by the difficulties in representation caused by mass rallies. If Fidel was searching for forms of “pure”—or “pasteurized” in his words—democracy, it soon became clear that mass rallies had limitations not compatible with the embryonic principles of Cuban socialist democracy.¹⁸⁶ The constitutive and non-constitutive mass rallies held until the 1970s could include fellow Latin Americans in the *demos*, bestowing Cuban political citizenship on persons of non-Cuban nationality. But Cubans who lived in the eastern provinces of the island were routinely excluded from mass events taking place in Havana. Their absence was due not to a rejection of their role within socialist democracy, but to their mere inability to travel to Havana.¹⁸⁷ Thus, they found themselves in a position analogous to those who, in liberal democracies, could not exert their right to vote due to illiteracy, poverty, or other socio-economic hurdles.¹⁸⁸ Institutionalization was meant to make the workings of the Cuban administrative machinery more manageable, efficient, regular, and predictable.

Some measure of efficiency, regularity and predictability were achieved by adopting governance structures tailored after the Soviet Union.¹⁸⁹ A decisive role in this sense was played by the merger of Castro’s July 26 movement with the Popular Socialist Party and the Revolutionary Directorate, and the pouring of these Caribbean identities in the vessel of the PCC.¹⁹⁰ Thus, the Soviet model made its ingress to Cuba. This model, however, had to take its roots on the ground set by Cuban revolutionaries. Cuba may have adopted elements of Soviet governance and ideology, such as notions of class and guidance by a group or a leader that personified the Revolution.¹⁹¹ But the Soviet model was unable to fulfill Castro’s aspiration for a “pure” democracy because of the simple reason that mass affirmation events were not an established component of governance institutions within the Soviet Bloc.¹⁹² Cuba was the only country within the Socialist camp where mass affirmation events with a constitutive character were

¹⁸⁶ Castro, *supra* note 158.

¹⁸⁷ On transportation infrastructure see, e.g., Sergio Alfonso, Jr., and Carlos A. Penin, *Transportation Infrastructure in a Free Cuba: How To Meet Demands In A Challenging Economic Environment*, 19 CUBA IN TRANSITION: PROCEEDINGS OF THE ASSOCIATION FOR THE STUDY OF THE CUBAN ECONOMY 487–92 (2009).

¹⁸⁸ See, e.g., Steven Mintz, *Winning the Vote: The History of Voting Rights*, GILDER LEHRMAN INST. AM. HIST. (2014) http://inside.sfuhs.org/dept/history/US_History_reader/Chapter2/Winning%20the%20VoteA%20History%20of%20Voting%20Rights%20Gilder%20Lehrman%20Institute%20of%20American%20History.pdf.

¹⁸⁹ ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* (1974).

¹⁹⁰ *Communist Party of Cuba*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Communist-Party-of-Cuba> (last visited Sept. 28, 2019).

¹⁹¹ See generally LESZEK KOLAKOWSKI, *MAIN CURRENTS OF MARXISM* (1978) (discussing this feature of illiberal political systems and the notion of the personification of a system which irresistibly sought to be personalized).

¹⁹² See generally *id.*

held.¹⁹³ Beneath the words used to profess faith in the Soviet model of state governance,¹⁹⁴ the revolutionary practices Cuba had created before its alliance with Moscow remained alive. They were invoked to approve the resolutions of the First Congress of the PCC, and the creation of the ANPP.¹⁹⁵ The adoption of an enduring parliamentary institution took place through an overhaul of the 1959 *Ley Fundamental* and promulgation of a new Constitution in 1976.¹⁹⁶ Coherent with Cuban visions of socialist democracy, the 1976 Constitution could only come to life through an act of sovereign approval by the people.¹⁹⁷ This time though, sovereign approval found its expression in popular consultation (*consulta popular*)¹⁹⁸ and the referendum (*referendo*)¹⁹⁹ rather than in mass rallies. This solution preserved the truly essential features of earlier forms of exogenous socialist democracy. These were popular participation and leadership responsibility towards the people.

Work on the draft of the new constitution had begun in earnest in 1969. The draft was compiled by a Commission for Juridical Studies (*Comisión de Estudios Jurídicos*), itself an organization under the Central Committee of the PCC.²⁰⁰ The result was a constitution obviously inspired to the Soviet model, but

¹⁹³ No other country adhering to the Soviet Bloc organized a popular referendum between the end of World War II and the fall of the Soviet Union. The only exception was the 1968 constitutional referendum held in the German Democratic Republic (GDR). Despite its formal similarities with the Cuban referendum of 1976, this referendum did not play the same role in the construction of notions of socialist democracy. By 1968, the GDR had already fully articulated local conceptions of socialist democracy. See Michael Bothe, *The 1968 Constitution of East German: A Codification of Marxist-Leninist Ideas on State and Government*, 17 AM. J. COMP. L. 268, 269 (1969).

¹⁹⁴ See Fidel Castro Ruz, *Discurso Pronunciado por Fidel Castro Ruz, Presidente de la República de Cuba, en la Sesión Solemne del Constitución de la Asamblea Nacional del Poder Popular, Celebrada en el Teatro "Carlos Marx" el 2 de Diciembre de 1976, "Año del XX Aniversario del Granma"* (Dec. 2, 1976), <http://www.cuba.cu/gobierno/discursos/1976/esp/f021276e.html> (containing abundant direct references to the Soviet version of Socialist ideology with the name of Karl Marx mentioned seven times, Lenin four times, and the Soviet Union characterized as the head of world progressist forces. Such references to Soviet ideology were absent from both the First and the Second Havana declarations, where Castro instead mounted a vigorous defense of the Cuban nature of the revolution).

¹⁹⁵ As in the closing of the First Congress of the PCC. See Fidel Castro Ruz, *Discurso Pronunciado por el Comandante en Jefe Fidel Castro Ruz, Primer Secretario del Comité Central del Partido Comunista de Cuba y Primer Ministro del Gobierno Revolucionario, en el Acto de Masas con Motivo de la Clausura del Primer Congreso del Partido Comunista de Cuba. Plaza de la Revolución, 22 de Diciembre de 1975* (Dec. 22, 1975), <http://www.granma.cu/file/pdf/PCC/1congreso/DISCURSO-DE-FIDEL-EN-LA-CLAUSURA-DEL-PRIMER-CONGRESO-DEL-PARTIDO-COMUNISTA-DE-CUBA-CELEBRADO-EN-LA-PLAZA-DE-LA-REV.pdf>.

¹⁹⁶ Max Azicri, *Change and Institutionalization in the Revolutionary Process: The Cuban Legal System in the 1970s*, 6 REV. SOCIALIST L. 164 (1980).

¹⁹⁷ Castro Ruz, *supra* note 195.

¹⁹⁸ Constitución Política de 1940, Art. 98 (DOF 1/7/1940).

¹⁹⁹ Ley Fundamental de 1959, Art. 97, 98 (DOF 7/2/1959).

²⁰⁰ See MAJORIE S. ZATZ, PRODUCING LEGALITY: LAW AND SOCIALISM IN CUBA 72 (1994) (discussing the

with elements unique to Cuban Caribbean Marxism.²⁰¹ Popular participation was ensured by submitting the Draft Constitution to popular consultation. The draft was published on *Granma*, the official press organ of the PCC, to provide an opportunity to participate in the consultation to all those who lived in Cuba.²⁰² The soliciting of popular comments on the Draft Constitution took place simultaneous to the holding of the First Congress of the PCC, which was held in Havana in the spring of 1975.²⁰³

Following the popular consultation, the PCC took the initiative to convene a referendum. The resolution to hold a referendum vote on February 15, 1976, was issued by the Central Committee of the PCC.²⁰⁴ The Central Committee continued to be instrumental in guiding the revisions of the text and in giving the approval necessary to move the project forward.

[It gave] its approval to the improved text of the Draft Constitution and recommends that it be officially published as the Constitution Project of the Republic and submitted by referendum to the universal, free and secret vote of citizens, together with the Constitutional Transit Bill;

drafting history of the 1976 Constitution). A detailed examination of this document is available in JORGE I. DOMÍNGUEZ, CUBA: ORDER AND REVOLUTION 726–31 (1978).

²⁰¹ John Ermer, *Why President Trump's Hard-line Approach to Cuba Is a Mistake*, WASH. POST (Apr. 17, 2019), <https://www.washingtonpost.com/outlook/2019/04/17/why-president-trumps-hard-line-approach-cuba-is-mistake/>.

²⁰² Julienne E. Grant et al., *Guide to Cuban Law and Legal Research*, 45 INT'L J. LEGAL INFO. 76, 91 (2017).

²⁰³ During the Congress, Fidel Castro observed:

Por lo pronto, ya estamos discutiendo con todo el pueblo la Constitución de la República. La Constitución de la República nos llevó casi 40 horas de análisis y de discusión en la Comisión Preparatoria. Ahora la está discutiendo todo el pueblo. Después tendremos de nuevo que analizarla, tomando en cuenta las opiniones y los criterios que se han vertido. Y vemos con qué interés el pueblo ha tomado la discusión de la Constitución. [For now, we are already discussing with all the people the Constitution of the Republic. The Constitution of the Republic took us almost 40 hours of analysis and of discussion in the Preparatory Commission. Now we are discussing it with all the people. Then we will have to analyze it again, taking into account the opinions and the criteria that have been expressed. And we see with what interest the people will take the discussion of the Constitution.]

Discurso Pronunciado por el Comandante en Jefe Fidel Castro Ruz, Primer Secretario del Comité Central del Partido Comunista de Cuba y Primer Ministro del Gobierno Revolucionario, en el Acto en que Le Fueran Entregados los Compromisos del Pueblo en Saludo al Primer Congreso del Partido por Parte de los Dirigentes de las Organizaciones de Masas, en el Palacio de la Revolución, el 29 de Mayo de 1975, DEPARTAMENTO DE VERSIONES TAQUIGRAFICAS DEL GOBIERNO REVOLUCIONARIO, <http://www.granma.cu/file/pdf/PCC/1congreso/DISCURSO-DE-FIDEL-EN-EL-ACTO-EN-QUE-LE-FUERAN-ENTREGADOS-LOS-COMPROMISOS-DEL-PUEBLO-EN-SALUDO-AL-PRIMER-CONGRESO-DEL-PARTIDO.pdf> (last visited Sept. 28, 2019). Data about the comments and discussions on the Draft Constitution of 1976 is not available.

²⁰⁴ *I Congreso del PCC: Tesis y Resoluciones*, GRANMA (Dec. 26, 1975), <http://www.granma.cu/file/pdf/PCC/1congreso/Tesis%20y%20Resoluciones/I-Congreso-PCC.-Tesis-y-Resoluciones-sobre-la-Constituci%C3%B3n-y-Ley-de-tr%C3%A1nsito-constitucional.pdf>.

that the referendum be organized so that all citizens with the right to vote have the opportunity to vote in it, for which polling places must be established with reference not only to domicile, but also to where the voters are located.²⁰⁵

The referendum provided a channel alternative to mass rallies, through which the leadership attempted to fulfill its responsibility towards the people, enabling everyone to express their vote on the Draft Constitution. As it could be expected, popular choice was strongly in favor of the new constitution. On February 15, 1976, approximately 5,602,973 Cuban citizens went to the polls.²⁰⁶ The voter turnout was 98%.²⁰⁷ Of the 5,523,604 valid votes, 99.02% were in favor of the Socialist constitution,²⁰⁸ and only 54,070 votes were against it.²⁰⁹ 44,221 ballots were blank, and 31,148 were annulled. The constitution went into effect on February 24, 1976.²¹⁰

The Constitution of 1976 crystallized the basic principles of Caribbean Socialist Democracy. Aside from the elements of obvious Soviet derivation,²¹¹ popular power was conceived “as an organizational structure of the State.”²¹² This conception of popular power was enshrined throughout the Preamble,²¹³ and yet it did not result in the complete absorption of popular power within the structure of the ANPP.²¹⁴ The logic behind the Leninist model was geared towards a clockwork regularity and predictability of governance processes, so the channels through which popular will could be expressed were indeed institutionalized and regularized.²¹⁵ But these channels were not limited to

²⁰⁵ See *Tesis y Resoluciones Sobre la Constitución y Ley de Tránsito Constitucional*, GRANMA, <http://www.granma.cu/file/pdf/PCC/1congreso/Tesis%20y%20Resoluciones/I-Congreso-PCC.-Tesis-y-Resoluciones-sobre-la-Constituci%C3%B3n-y-Ley-de-tr%C3%A1nsito-constitucional.pdf> (last visited Sept. 28, 2019).

²⁰⁶ *Kuba, 15. Februar 1976: Verfassung*, DATABASE & SEARCH ENGINE FOR DIRECT DEMOCRACY, <https://www.sudd.ch/event.php?lang=en&id=cu011976> (last modified Jan. 2, 2019).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Constitution of the Republic of Cuba, 1976* (as Amended in 2002), CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Cuba_2019.pdf?lang=en (last visited Sept. 9, 2019).

²¹¹ These were leadership of the PCC, socialism, and democratic centralism. On these notions, but particularly democratic centralism and its relation to other components of Marxist-Leninist theory, see MICHAEL WALLER, *DEMOCRATIC CENTRALISM: AN HISTORICAL COMMENTARY* (1981).

²¹² See (Teodoro) Yan Guzman Hernández, *Los Mecanismos de Democracia Directa en Cuba: Diseño Normativo y Práctica* 25, PERFILES LATINOAMERICANOS 103, 104 (2017) (discussing this conception, that is unique to the Cuban governance system).

²¹³ *Constitution of the Republic of Cuba, 1976*, *supra* note 210.

²¹⁴ See *Constitution of the Republic of Cuba, 1992*, UNPAN, <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan040545.pdf> (last visited Sep. 18, 2019).

²¹⁵ See Max Azicri, *The Institutionalization of the Cuban State: A Political Perspective*, 22 J. INTERAM. STUD. & WORLD AFF. 315, 322 (1980).

indirect political participation through the ANPP.²¹⁶ They also included the more flexible institutions of popular consultation and referendums.²¹⁷ Together, these two mechanisms allowed for a direct mobilization of the working masses. Herein lies one of the elements unique to Cuban Caribbean Marxism. Fidel had placed direct popular mobilization on par with the administrative apparatus of the state and with mass organizations.²¹⁸ The state and mass organizations have the broader function to allow the PCC to exert its leadership role.²¹⁹ Popular affirmation is an autonomous governance mechanism, but one sharing these very same goals. If popular affirmation is to effectively play its role, then existing channels available for its expression are more important than its form.

Under the 1976 Constitution and the *Reglamentos de la Asamblea Nacional del Poder Popular de la República de Cuba* the *consulta popular* and the *referendo* are two entirely distinct legal and political concepts.²²⁰ Both of them are equally essential parts of popular affirmation. Revolutionary practice triggered popular affirmation to choose principles of domestic governance, approve of candidates to the ANPP, and make promulgation of the 1976 Constitution possible.²²¹ Each one of these choices involved a remaking of Cuba's mode of social and economic development, and reshaped the existence of every Cuban citizen. By now, it is clear that popular affirmation is one of the core principles of Cuban Caribbean Marxism, required at every crucial juncture of Cuba's path of development. Less clear is what the "features"—so to speak—of popular affirmation in a Socialist system are. Given their public and widely publicized nature, the *consulta* and the *referendo* are the equivalent of plebiscitarian meetings held in the 1960s. These two institutions, however, stand in a distinctive relation to each other, and to other institutions of Cuban Socialist democracy.

The referendum and popular consultation are inter-dependent. A referendum vote taken in the absence of any prior awareness about the content of the 1976 Constitution, and at least an attempt to understand the meaning of this document, would have not been a choice made in a truly Socialist-democratic sense. Lack of information or awareness about the Constitution would have made of the

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ See generally Richard R. Fagen, *Mass Mobilization in Cuba: The Symbolism of Struggle*, 20 J. INT'L AFF. 254 (1966); Nelson Amaro, *Decentralization, Local Government, and Participation in Cuba*, in CUBAN COMMUNISM 30, 37 (Irving Louis Horowitz & Jaime Suchlicki eds., 9th ed. 1998).

²¹⁹ Cf., Edward Gonzalez, *Castro and Cuba's New Orthodoxy*, 25 PROBS. COMMUNISM 1 (1976).

²²⁰ See *Reglamentos de la Asamblea Nacional del Poder Popular de la República de Cuba*, GRANMA (Mar. 11, 2014), <http://www.granma.cu/granmad/secciones/elecciones/110.html>.

²²¹ Edward Gonzalez, *Castro and Cuba's New Orthodoxy*, 25 PROBS. COMMUNISM 1 (1976).

referendo little more than an exercise in the random expression of mutable sentiment—depriving the people of its sovereign prerogatives. Conversely, a *consulta popular* on the trajectory of national development not followed by a *referendo* would have deprived the people of the opportunity to again affirm, before Cuba and global society, their individual and collective choices.

Popular affirmation could be regulated through the Constitution and the *Reglamentos*, but it could not be transferred or delegated to chosen representatives.²²² This is the reason why public consultation and the referendum continued to exist even after the establishment of the ANPP. Popular affirmation was necessary to support the Party in its leadership role. Therefore, it had to occupy a locus that was external in part to formal governance structure. So, as the PCC existed extraneous to institutions of the State, popular affirmation had to remain rooted in the entire body of the Cuban people. Any form of delegation of this crucial power of the people would have induced a shrinkage in the support base of the revolutionary vanguard. An illustration of the possible consequences of delegating the power of popular affirmation is provided by the People's Republic of China. In the early 1950s, China had detached popular affirmation from the body of society, to firmly encase this power within its national parliament.²²³ As a result, no channel exogenous to State structures existed, that allowed a direct communication between the revolutionary vanguard and the people. Leading up to the Cultural Revolution, the need for popular support to a radical program of institutional reform led to the birth of the Chinese Red Guards. The Red Guards, then, became most useful as an element exogenous to state structures; and because the Red Guards were exogenous, they became that much easier to mobilize.²²⁴

The fact that the locus of popular affirmation coincides with the entire body of the Revolution, rather than with a clearly identifiable bureaucracy matters little to the internal coherence of a model of socialist democracy. The defining characteristics of a socialist democracy lie not in the placing of some governance components outside or inside of bureaucratic apparatus and institutions, but in the function those governance components fulfill. The working masses play a more important role than the existence of a neat organizational form or layout in supporting the leadership of the Party. The working masses fulfilled this role by

²²² *Constitution of the Republic of Cuba, 1976, supra note 210.*

²²³ See Li Hua-yu, *The Political Stalinization of China: The Establishment of One-party Constitutionalism, 1948–1954*, 3 J. COLD WAR STUD. 28 (2001) (describing this process); Chang Yu-Nan, *The Chinese Communist State System Under the Constitution of 1954*, 18 J. POL. 520 (1956).

²²⁴ RODERICK MACFARQUHAR *THE ORIGINS OF THE CULTURAL REVOLUTION*, VOLS. 1–3 (1974) (illustrating this process); YANG GOUBIN, *THE RED GUARD GENERATION AND POLITICAL ACTIVISM IN CHINA* (2016) (discussing the Red Guards and their role in mass assemblies and armed clashes).

contributing to decision-making on the fundamental principles and mechanisms of the social, political, and economic governance of Cuba. The objection that the working masses lack the technical expertise and knowledge needed to participate in governance processes is, from a truly socialist perspective, untenable. From that perspective, the voicing of any similar objection would signal detaching oneself from the masses and embracing “bourgeois” privilege in access to knowledge and education. From here to substituting the will of individual party officials with the will of the people, there is but a very short step. One of the political responsibilities of PCC members is not only gathering and processing opinions expressed by the people, but most importantly transposing valuable ideas expressed through ordinary language into the technical vocabulary of governance.²²⁵ With these premises, popular affirmation immediately appears as a thorny institution of socialist democracy, one exposed not so much to the risk of being read or interpreted outside of the premises of the Cuban system. Rather, this mechanism can either enable the Communist Party to fulfill its leadership role and orientate the island towards the direction chosen by its people or have the entirely opposite effect.

In summary, born during the early days of the Cuban revolution, popular consultation and the referendum ceased to play a significant role in the governance of Cuba by 1975. In the four decades that separated the promulgation of the 1976 Constitution from the 6th Congress of the PPC, the potential of popular consultation remained latent. To witness the further development of this mechanism, it would have been necessary to wait until 2011, when the making of decisive choices on Cuba’s developmental trajectory became once more necessary.

F. Socialist Consultative Democracy 2.0

This Section will discuss the short span between the 2011 and 2019 constitutional referenda in which popular affirmation was invoked a total of three times. This revamping of popular affirmation closely mirrored the phases of the reform process launched by the 6th Congress and continued by the 7th Congress of the PCC.

In April 2011, the 6th Congress released the *Lineamientos*.²²⁶ The document outlined Cuba’s developmental strategy for the years 2016–2021, and contained

²²⁵ See, e.g., Larry Catá Backer, “Order, Discipline, and Exigency”: Cuba’s VI Party Congress, the *Lineamientos* (Guidelines) and Structural Change in Education, Sport and Culture?, 21 CUBA IN TRANSITION 148 (2011).

²²⁶ *Resolución sobre los Lineamientos de la Política Económica y Social del Partido y la Revolución*,

a list of 274 measures meant to overhaul the governance of Cuba.²²⁷ Based on a modified version of the *Lineamientos*, in July 2017 the 7th Congress of the PCC approved the *Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista*, and the *Plan de Desarrollo Económico y Social hasta 2030: Visión de la Nación, Ejes y Sectores Estratégicos* (“*Plan 2030*”).²²⁸ The *Conceptualización* outlined the principles underpinning the Cuban economic model and provided a blueprint for its gradual transformation.²²⁹ The *Plan 2030* was a tool to guide medium-term economic and social development in Cuba.²³⁰ These reform blueprints provided the very content of the 2019 constitutional revision. We performed a close textual comparison between the 1975 Constitution, the Project Constitution, the *Conceptualización*, the *Lineamientos*, *Plan 2030*, and the 2019 Constitution. Of the 224 articles in the Project Constitution, 175 are based on the principles and the policy priorities set by the *Conceptualización*, the *Lineamientos*, and *Plan 2030*.²³¹ Each one of the reform packages proposed between 2011 and 2018 saw inputs by the masses prior to their adoption by the PCC and the ANPP. The process concluded with the constitutional referendum of 2019. This frequency, breadth and depth of popular engagement in re-making Cuba’s mode of social and economic development is historically unprecedented. Apart from the specifics of social and economic reform, this entire process speaks to the gradual evolution of Cuba’s socialist consultative democracy and its reliance on an autonomous and sustainable version of the “mass line.”

Consultations held on the *Lineamientos*, the *Conceptualización*, and *Plan 2030* involved only persons drawn from the ranks of PCC militants, the Young Communist League, mass organizations, and chosen sectors of the Cuban people, rather than the entire body of the Revolution. Assemblies organized by

CUBADEBATE (Apr. 18, 2011), <http://www.cubadebate.cu/especiales/2011/04/18/resolucion-sobre-los-lineamientos-de-la-politica-economica-y-social-del-partido-y-la-revolucion/#.XXQ1yihKg2w>.

²²⁷ *Lineamientos de la Política Económica y Social del Partido y la Revolución para el Período 2016–2021*, GRANMA (July 2017), <http://www.granma.cu/file/pdf/gaceta/Lineamientos%202016-2021%20Versi%C3%B3n%20Final.pdf>.

²²⁸ *Documentos del 7mo. Congreso del Partido Aprobados por el III Pleno del Comité Central del PCC*, GRANMA (July 2017), <http://www.granma.cu/file/pdf/gaceta/%C3%BAltimo%20PDF%2032.pdf>.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ The amendment of 134 articles following the popular consultation of 2018 involved a more logical organization of many of the former provisions, as well as the rewording of some of the articles that provoked the polarization among the public. These changes may have been quantitatively substantial, but they did not affect the semantic connection between the 2019 Constitution and the documents listed above. In some cases, textual derivation of constitutional provisions from the three reform blueprints was direct. In other cases, constitutional provisions resulted from a merging of the content of reform blueprints or specified in greater detail their broader priorities. Language employed in the 2019 Constitution preserves strong semantic connections with the *Conceptualización*, the *Lineamientos*, and *Plan 2030*.

base-level party committees, labor organizations, and the Committees for the Defense of the Revolution discussed the *Lineamientos* in 2011.²³² A total of 163,000 popular assemblies were held, involving 8.9 million persons.²³³ The consultation led to re-drafting 68% of the *Lineamientos* and the addition of twenty reform measures not present in the first version with 291 paragraphs.²³⁴ The most debated measures were those related to the elimination of rationing cards, pricing policies, transportation, educational and health services, and reform of the monetary system.²³⁵ A further round of consultation on a modified version of the *Lineamientos*, the *Conceptualización*, and *Plan 2030* was held from June 16 to September 20, 2016.²³⁶ A total of 47,470 meetings, were convened, which saw the participation of 1,600,000 persons.²³⁷ Of these, 91% of the meetings were held at grass-roots units, involving participants drawn from the ranks of PCC militants, the Young Communist League, mass organizations, and delegates of the Cuban people.²³⁸ There were 203,015 proposals to modify either of the three documents.²³⁹ Of these, 203,015 proposals were accepted and processed by the *Centro de Estudios Sociopolíticos y de Opinión*.²⁴⁰

As valuable as these consultations may have been, they cannot be considered a “pure” form of popular affirmation, because they did not involve all Cubans, but only what can broadly be conceptualized as their “vanguard.” By contrast, the consultation on the Draft Constitution in 2018 and the 2019 referendum were truly universal. As observed from the point of view of the Cuban government,

²³² Gretta E. Clemente, *Destaca Raúl Valía de Consulta Popular sobre los Lineamientos*, RADIO CADENA AGRAMONTE (Apr. 16, 2011), <http://www.cadenagramonte.cu/articulos/ver/14119:destaca-raul-valia-de-consulta-popular-sobre-los-lineamientos>.

²³³ Luis S. Salazar & Mariana O. Breña, *Updating Cuban Socialism: A Utopian Critique*, 41 LATIN AM. PERSP. 13, 17 (2014).

²³⁴ *Los Lineamientos Económicos y Sociales del Partido y la Revolución Son Expresión de la Voluntad del Pueblo*, JUVENTUD REBELDE (Apr. 16, 2011), <http://www.juventudrebelde.cu/cuba/2011-04-16/los-lineamientos-economicos-y-sociales-del-partido-y-la-revolucion-son-expresion-de-la-voluntad-del-pueblo>.

Additional data and information about the 2011 popular consultation has been provided by *Descargue en Cubadebate los Lineamientos de la Política Económica y Social del VI Congreso del PCC*, CUBADEBATE (May 9, 2011), <http://www.cubadebate.cu/noticias/2011/05/09/descargue-en-cubadebate-los-lineamientos-de-la-politica-economica-y-social-pdf/#.XPIqR4gzbIV>.

²³⁵ Clemente, *supra* note 232. Figures for those who abstained from popular assemblies after being invited or solicited to attend, or else joined without bringing a meaningful contribution to the discussion are not known.

²³⁶ *Comienza Consulta Popular sobre el Modelo Cubano de Desarrollo*, IPS CUBA (June 16, 2016), <http://www.ipscuba.net/politica/comienza-consulta-popular-sobre-el-modelo-cubano-de-desarrollo/>.

²³⁷ *Raúl Castro a Sesión Extraordinaria del Parlamento*, VANGUARDIA (May 31, 2017), <http://www.vanguardia.cu/de-cuba/9153-raul-castro-a-sesion-extraordinaria-del-parlamento>.

²³⁸ Oscar S. Serra, *Ruta Democrática y Participativa*, ASAMBLEA NACIONAL (May 30, 2017), <http://www.parlamentocubano.gob.cu/index.php/ruta-democratica-y-participativa/>.

²³⁹ *Id.*

²⁴⁰ *Id.* Nothing is known, however, about those proposals that were not accepted, their content, or the reasons why those proposals were made.

the choice to opt for a gradual extension of mobilization from a selected number of participants to the entire body of the Revolution is understandable. In the Fidel Castro era popular affirmation had been rarely but decisively invoked, especially in the fifteen years before the reorganization of the state along formally Russian Marxist-Leninist lines. While there is no doubt that, under the logic of the Cuban regime, popular affirmation is a legitimate governance institution, the rules and responsibilities this process involves were never clearly or exhaustively articulated. Even though the elaboration of autonomous forms of socialist democracy is still an ongoing process, it is already possible to identify three differences in content and format between the plebiscitarian meetings of the 1960s, and the popular affirmation events held since 2011. Together, these differences sketch out the defining traits of Caribbean consultative democracy.

1. *Diffused, “Rhizomatic” Decision-Making.* Popular affirmation does not simply involve the making of a binary choice for or against the developmental line enshrined in Constitution or in any other document. That popular affirmation comes at the end of a long and complex process of formalized engagement that involves reading, understanding, and adding to an objectively lengthy and complex documents. Popular consultation produces an informed popular discussion of governance reforms. The format adopted involves the publication of draft documents, and their distribution in both printed and electronic versions. The next step is the convening of meetings held at grassroots levels—in schools, hospitals, factories, neighborhoods.²⁴¹ At meetings, the content of documents is explained to those in attendance, and a discussion then ensues. During the discussion participants can suggest modification to documents, express their doubts, or raise questions about them.²⁴² The comments, and the general content of discussions are then summarized by conveners of the meetings, and transmitted to the bureaucracies responsible for their selection, collection, and analysis.²⁴³ Once processed, data is then presented to the Central Committee of the PCC, or to the ANPP.²⁴⁴ Based on information provided by the public consultation, documents are then revised and submitted to formal approval by the PCC or the ANPP. Compared to the two rounds of

²⁴¹ *Popular Consultation on Draft Constitution Concludes in Cuba*, RADIO CADENA AGRAMONTE (Sept. 8, 2019), <http://www.cadenagramonte.cu/english/show/articles/28689:popular-consultation-on-draft-constitution-concludes-in-cuba>.

²⁴² *Id.*

²⁴³ *See A Text Enriched by the Contributions of the Cuban People*, GRANMA (Jan. 3, 2019), <http://en.granma.cu/cuba/2019-01-03/a-text-enriched-by-the-contributions-of-the-cuban-people> [hereinafter *A Text Enriched*].

²⁴⁴ Sarah Marsh & Nelson Acosta, *Cuban Lawmakers Approve New Constitution Which Heads to Referendum*, REUTERS (Dec. 22, 2018), <https://www.reuters.com/article/us-cuba-constitution/cuban-parliament-green-lights-new-constitution-heads-to-referendum-idUSKCN10LOOF>.

consultation on the *Lineamientos*, the *Conceptualización*, and *Plan 2030*, popular consultation on the 2019 Constitution involved the additional channel of the Internet. The Internet played a role both as a formal and an informal channel of consultation. Cuban citizens residing abroad could consult the Draft Constitution online and send their comments through a dedicated internet platform of the Ministry of Foreign Affairs.²⁴⁵ They could then vote at Cuban embassies or consulates.²⁴⁶ In addition to the formal channels of participation provided by consultation meetings and the Ministry of Foreign Affairs, at the very beginning of popular consultation on the Constitution, the Internet became populated with unofficial discussion venues, provided both by government websites and independent groups. These informal venues are more completely described in Part III of this Article. Contributing, to any extent, to the making of the Constitution or any other document meant accepting the responsibility to make choices that would impact on one's life, on the lives of others, and on the relation between Cuba and other countries. Acceptance of this civic responsibility by citizens, in turn, enabled the PCC to fulfill its leadership role, and orientate the Island towards the direction chosen by its people. Abstaining from a discussion of the Constitution, or the making of cosmetic or complacent comments on the *Lineamientos*, the *Conceptualización*, and *Plan 2030* would have been tantamount to rejecting one's responsibilities and role in Cuban Socialist democracy. The raising of sharply critical opinions, within the limits of discourse set in Cuba, instead signaled one's deep engagement with the process. The existence of different opinions about the specific *methods* to achieve goals shared by all parts of the Revolution is much different from disorder, opposition, subversion, or a failure of popular affirmation.

2. *Fidelity of a Marxist-Leninist Party to the People.* Equally important for an effective functioning of popular affirmation is the Communist Party cadres' acceptance of their political responsibilities. The Draft Constitution was discussed at meetings held at the grassroots level—in schools, hospitals, factories, neighborhoods.²⁴⁷ During the discussion participants suggested

²⁴⁵ Marc Frank, *Cuba Opens Discussion of Constitution Overhaul to Citizens Abroad*, REUTERS (Aug. 3, 2018), <https://www.reuters.com/article/us-cuba-constitution/cuba-opens-discussion-of-constitution-overhaul-to-citizens-abroad-idUSKBN1KO2MI>; Juan J. Castellano, *Cubans Living Abroad to Participate in New Constitution Debate*, RADIO HAVANA CUBA (Aug. 4, 2018), <http://www.radiohc.cu/en/noticias/nacionales/168306-cubans-living-abroad-to-participate-in-new-constitution-debate>.

²⁴⁶ "Cuban embassies around the world opened their votes on Feb. 15 to decide on the island's new constitution. Voting stations were open in Cuban consular offices in 130 countries until Feb. 17 in a process that was declared to be successful by the Special Electoral Commission of the Foreign Ministry." *86% Votes for New Constitution in Cuba*, TELESUR (Feb. 25, 2019), <https://www.telesurenglish.net/news/86-Votes-For-New-Constitution-in-Cuba--20190225-0014.html>.

²⁴⁷ Frank, *supra* note 245.

modifications to constitutional provisions, expressed their doubts, or raised questions.²⁴⁸ The political responsibility of cadres, then, involves an appreciation of disagreement, and a faithful collection and transmission of all the inputs provided by the people.²⁴⁹ Disagreement is to be understood as the existence of a variety of opinions on the specific content of reform blueprints.²⁵⁰ Disagreement is not synonymous with opposition, subversion, disorder or as a failure of popular affirmation.²⁵¹ Concerning the conveyance of data and opinions, the duty for cadres is avoiding the corruption of data.²⁵² But also, the suppression of suggestions and opinions that do not conform to their own individual vision for Cuba's development, or to the aspiration of narrower cliques. Here, the temptation to avoid these potential problems by the introduction of algorithmic decision-making can be strong. But advanced technologies, when used for goals that deviate from the ethical and professional responsibilities of cadres, can easily amplify the effects of the reporting of false data. Such was the experience of China in the run-up to 1959. Corruption of data on agricultural production indeed benefitted those who secured their own career by reporting false data.²⁵³ Yet, the consequence of the systematic, wide-spread exploitation of data for one's personal gain resulted in a famine that claimed millions of lives.²⁵⁴

3. *Voting as a non-binary mechanism.* Third, and finally, is the role voting plays in a socialist democracy. A vote on the Constitution does not have the goal to approve or deny this specific document, because of the simple reason the Constitution is conceived as the product of a collective effort.²⁵⁵ An individual

²⁴⁸ See, Mimi Whitefield, *Cuba Asked for Public Feedback on a New Constitution; Now it is Deciding Which Suggestions to Include*, MIAMI HERALD (Dec. 3, 2018), <https://www.miamiherald.com/news/nation-world/world/americas/cuba/article221917690.html>.

²⁴⁹ Guerrero & Francisco, *supra* note 35.

²⁵⁰ *Id.*

²⁵¹ Attempts at denying the ideological premises of Cuban Socialist democracy have occurred through a rejection or avoidance of the principles and procedures of socialist legality, and by promoting ideas belonging to liberal-democratic systems, such as freedom of expression, of the press, and other fundamental freedoms. See Taylor C. Boas, *The Internet and US Policy Toward Cuba*, 23 WASH. Q. 57 (2000) (explaining the impact of modern IT technology on Cuba and its relation to the United States); Brice M. Clagett, *Title III of the Helms-Burton Act Is Consistent with International Law*, 90 AM. J. INT'L L. 434 (1996) (conceiving the international legal order as a force with the ability to promote global democracy).

²⁵² Guerrero & Francisco, *supra* note 35.

²⁵³ See James Kai-sing Kung & Justin Yifu Lin, *The Causes of China's Great Leap Famine, 1959–1961*, 52 ECON. DEV. & CULTURAL CHANGE 51–73 (2003).

²⁵⁴ See DAVID M. BACHMAN, BUREAUCRACY, ECONOMY, AND LEADERSHIP IN CHINA: THE INSTITUTIONAL ORIGINS OF THE GREAT LEAP FORWARD (2006) (discussing forced industrialization through the Great Leap Forward); Yao Shujie, *A Note on the Causal Factors of China's Famine in 1959–1961*, 107 J. OF POL. ECON. 1365, 1366 (1999).

²⁵⁵ Guerrero & Francisco, *supra* note 35.

can always reconsider the position she expressed during the public consultation, but a vote on the Constitution testifies to a belief in the correct process of aggregation, transmission, and elaboration of the individual and collective views expressed during the *consulta popular*. Also, it once more affirms the collective choices for a given mode of development. In this sense, a vote of “no” to the Constitution would be a ballot one would cast against individual choices, and the choices made by other persons. In liberal democratic states—and apparently also by those within Marxist-Leninist States engaged in counting ballots—the focus of the counting of votes is on the “winner.” But that approach is based on the essence of factional voting in liberal democracies. There, the object is to mobilize the masses for the purpose of approving the political objectives—usually quite precise and short term—of one of the political factions through the deployment of the mechanisms of mass persuasion undertaken through political campaigns. The object, understood from the beginning, is to garner a majority. The majority vote itself then effectively eviscerates votes in opposition so that the results are effectively treated as a unanimous result. That characterization, of course, would horrify the proponents of majority voting regimes, but the functional effect is unavoidable. What is left to the minority is to bide their time, seek to wreck the work of the majority through interventions in the governmental apparatus—within the cultural boundaries of a “loyal opposition” principle, the parameters of which are now rapidly changing—and then seek either another vote or produce a different result at the time the voting cycle produces a periodic voting event.

These defining traits of Socialist Consultative Democracy in Cuba ought not be considered as the relics of an ideologically by-gone era. Under the premises and logic of Marxist-Leninist systems, each one of the features we have described can be a potent force for “ideological innovation.”²⁵⁶ Popular affirmation bestows a renewed responsibility for the PCC to posit itself as the vanguard of a more articulated, complex system of popular engagement. For Cuban socialist democracy, the conventional criticism of popular consultations grounded on the people’s lack of technical expertise in governance processes ought to matter little.²⁵⁷ The responsibility of the PCC touches also on the extent to which the state ought to treat annulled or blank ballots, plus the total number of those who failed to vote in its calculations relating to affirmation. The treatment of annulled or blank ballots relates to the question of the way in which

²⁵⁶ See Heike Holbig, *Ideological Reform and Political Legitimacy in China: Challenges in the Post-Jiang Era*, in *REGIME LEGITIMACY IN CONTEMPORARY CHINA: INSTITUTIONAL CHANGE AND STABILITY* (Thomas Heberer & Gunter Schubert eds., 2008) at 27 (describing a similar dynamic). Ideological innovation refers to a process of reinterpretation and modernization of Marxism-Leninism.

²⁵⁷ *A Text Enriched*, *supra* note 243.

the vanguard ought to understand the extent of the affirmation. The PCC's obligation, as the vanguard of a system of popular engagement, to ensure a process in which all Cuban citizens take part is jeopardized by the failure or outright refusal to vote. In Marxist-Leninist systems the obligation of the vanguard is centered on its political work. From this perspective, what is critical to that political work is not the affirmative votes but the total number of "no" votes, blank votes, and unsubmitted votes. For the vanguard party concerned with its fidelity to its own model, these votes point to its own failures to appropriately engage and build consensus around the guidance of its leadership. It is the appropriate exercise of that leadership that ought to be a central concern.

As such, limited to the 2019 constitutional referendum, the most important portion of the vote was not the 6.8 million votes cast to affirm, but rather the 857,000 people who failed to vote, the 706,000 "no" votes, and the roughly 330,000 blank and annulled votes.²⁵⁸ Having given the masses the authority to approve or not approve the final outcome of a consultation they took part in, it is incumbent on the vanguard to understand how the people failed to be convinced of the value of the object of the plebiscite. In the context of the 2019 Cuban Constitution, that becomes a very difficult task. The difficulty lies not only in the complexity of the instrument that the vanguard chose to put before the people. Which encompasses a document with hundreds of complex provisions, the consequences of which are to institutionalize the grand political and economic model of the PCC, is hardly an easy matter to understand. And yet when the PCC took on itself the task to circulate the entirety of its reconceptualized political and economic model and to transpose its principles in the Constitution, it sought to achieve two broader goals. The first goal was to engage the population in the complex work of political and economic model making and reform. But the second, and more important goal, was the reconstruction of a model for socialist democracy that relied, as its central element, on a workable political model of the Chinese "mass line."²⁵⁹

These political tasks would have to be judged not by the extent of popular affirmation, but to the extent of the failure of such affirmation. Recall again that

²⁵⁸ Frank & Acosta, *supra* note 10; Dianet Domeadios et al., *Cuba Ratifica la Nueva Constitución con el 86.85% de los Votos Emitidos, Según Datos Preliminares*, CUBADEBATE (Feb. 25, 2019), <http://www.cubadebate.cu/noticias/2019/02/25/cuba-constitucion-referendo-resultados/#.XPI0f4gzbIU>. Figures provided by these sources are consistent with those provided by Cuban sources.

²⁵⁹ See generally BENJAMIN ISADORE SCHARTZ, CHINESE COMMUNISM AND THE RISE OF MAO 4 (1951) (detailing a classical examination of the mass line); JOHN WILSON LEWIS, LEADERSHIP IN COMMUNIST CHINA (1978) (same). The mass line involves a continuous feedback between the citizens of a Marxist-Leninist country and their political leadership. Such a feedback can be provided through various channels, such as popular consultations and constitutional referendums.

the object of the plebiscite was not to secure a majority vote—the liberal democratic model—but to gauge the extent that the PCC was able to effectively lead the population as well as the correct choices that the PCC made in that task. One can gauge that only by a deep analysis of those who failed to affirm.

How does one engage in this sort of Marxist-Leninist political work? The first task appears obvious—to determine the reasons for rejection, failures to vote and the like. To that end it will be necessary to dissect the nature of the popular response to the Constitutional project.²⁶⁰ The second task is the harder one—to consider carefully the extent that those responses require either further engagement or a rethinking of the vanguard’s interpretation of its normative structures in the service of a particular form of implementation. This, of course, serves as the essence of the vanguard’s political work. And it ought to be the primary responsibility of its hierarchy—starting with the First Secretary and the Politburo that he heads.

How does one undertake that responsibility? The answer here is also straightforward. One engages closely with the discussions held by the people both in official and in unofficial forums. The Cuban vanguard was particularly tolerant of discussion, though not without limits and peculiarities. It also sought to manage that discussion in the construction of its complex and elaborate system of official engagement, which it oversaw and whose results were summarized—without any check on corruption or incompetence or venality—and delivered to officials to consider in finalizing the Draft Constitution then offered for affirmation. Having discussed these points, we now turn to the empirical part of this study.

II. THE FRAMEWORK FOR EXAMINING POPULAR PARTICIPATION: METHODS AND SOURCES

Given the challenges of the Cuban political system and the dynamic changes that have been occurring and have been largely ignored outside of Cuba, the development of an effective means of gauging popular participation can be challenging. In particular, that challenge involved avoiding two large traps. The first is to limit the study largely to participation as elaborated in the official state sector.²⁶¹ This approach would largely ignore any societal participation other

²⁶⁰ Frank, *supra* note 245. This provides an indirect response to the project of reconceptualizing the political and economic model from 2016 to the present. As explained *supra*, the 2019 Constitution of Cuba entirely derives from the *Conceptualización*, the *Lineamientos*, and *Plan 2030*.

²⁶¹ This perspective would be valuable in that it would provide insights on the official position of a Marxist-Leninist system on its own constitution. Yet, it would obscure the broader dynamics that involve the

than that which was organized and managed by the state and would largely conform to the internal ideological models of Caribbean Marxism. The second is to dismiss informal participation as largely irrelevant or corrupted.²⁶² This would dismiss any societal participation based on premises of liberal democracy that assumes that such participation has no meaning other than as acts of resistance rather than of engagement.

This section is divided into two parts. The first considers the methodological issues. The second describes the study in more detail, focusing on the chosen data sets and their relevance.

A. Methodology

On July 30, 2018, the Project of Constitution of the Republic of Cuba (*Proyecto de Constitución de la República de Cuba*) was published online on the websites of *Granma*,²⁶³ the official press organ of the Central Committee of the Communist Party of Cuba, on various websites and on *CubaDebate*.²⁶⁴ The print version of the Project was put on sale on July 31, 2018 at the price of 1 Cuban Peso.²⁶⁵ More than 1,000,000 copies of the Project were sold by August 12.²⁶⁶ Figures about downloads of digital copies of the Project are not available. The popular debate on the Draft Constitution involved Cuban citizens living on the island, as well as those residing abroad.²⁶⁷ Residents of Cuba had the opportunity to present their views on the Draft Constitution at popular meetings held at workplaces, educational institutions, medical missions abroad, and

effort to reform the governmental institutions of a Marxist-Leninist regime. As illustrated by literature on now defunct Marxist-Leninist systems, these dynamics can be of crucial regional and global importance. See, e.g., ANDERS ASLUND & MARTHA BRILL OLCOTT, *RUSSIA AFTER COMMUNISM* (2013); Krzysztof Jasiewicz, *Knocking on Europe's Door: Voting Behavior in the EU Accession Referendum in Poland*, 51 *PROBS. OF POST-COMMUNISM* 1, 8–9 (2004) (discussing socialization within an authoritarian political system may impact subsequent voting behavior).

²⁶² See generally BRUNO GRANCELLE, *SOCIAL CHANGE AND MODERNIZATION: LESSONS FROM EASTERN EUROPE* (2011); Gabriel A. Almond, *Communism and Political Culture Theory*, 15 *COMP. POL.* 127, 133 (1983). In approaching a Marxist-Leninist system, the temptation to dismiss social participation as irrelevant is strong. Yet, the existing literature has proved how official attempts to engage citizens in popular participation often have a paradoxical nature and can be conducive to outcomes not originally foreseen.

²⁶³ Grupo Empresarial de Correos de Cuba, *Descargue aquí el Tabloide con el Proyecto de Constitución de la República de Cuba*, GRANMA (Jul. 30, 2018), <http://www.granma.cu/cuba/2018-08-02/a-la-venta-tabloide-con-el-proyecto-de-constitucion-de-la-republica-de-cuba-30-07-2018-18-07-43>.

²⁶⁴ See PARLAMENTO CUBANO, *PROYECTO DE CONSTITUCIÓN DE LA REPÚBLICA DE CUBA* (2018); REDACCIÓN CUBAHORA, *PROYECTO DE CONSTITUCIÓN DE LA REPÚBLICA DE CUBA*, (2018).

²⁶⁵ *Id.*

²⁶⁶ *Vendidos Más de un Millón de Tabloides con Proyecto Constitucionalista Cubano*, RADIO CUBANA (Aug. 12, 2018), <http://www.radiocubana.cu/noticias-de-la-radio-cubana/243-noticias-reforma-constitucional/23129-vendidos-mas-de-un-millon-de-tabloides-con-proyecto-constitucionalista-cubano>.

²⁶⁷ Frank, *supra* note 245.

neighborhoods.²⁶⁸ In four months, 133,681 popular meetings were held, involving 8,945,521 persons (77.89% of the Cuban population).²⁶⁹ Cuban citizens residing abroad and the Cuban diaspora could participate to the debate by sending their comments through an online platform hosted by the Ministry of Foreign Affairs.²⁷⁰ By the end of the popular consultation, the Ministry had received a total of 2,125 proposals.²⁷¹ Descriptive statistics on the nature and content of the popular consultations were published by the official Cuban media.²⁷²

Only data scientists of the Cuban government have access to comments received during the popular consultation is available. The unavailability of comments poses a definite limitation to any academic analysis of the popular consultation, the pivotal element in Cuba's constitutional revision. Debate on the Draft Constitution, however, also took place unofficially, on digital platforms accessible to the residents of Cuba and to the Cuban diaspora.²⁷³ The unofficial debate allows to partially mitigate this limitation.

Even so, the data our team mined on global and Cuban internet platforms presents four constraints typical of all data harvested from the internet and from social media besides a constraint contextual to Cuba.

Big data is an evolving concept. There is still no agreed-upon definition of the lower and upper limits of data points a dataset should have to fit the concept of "big data."²⁷⁴ While there exists a clear trend towards the construction of large datasets, there is no directly proportional or causal relation between the number of data points harvested and their reliability in explaining or predicting political or social dynamics.²⁷⁵ More important than the number of data points are the

²⁶⁸ *Id.*

²⁶⁹ *Analiza Pleno del Comité Central del Partido Proyecto de Constitución de la República de Cuba*, GRANMA (Dec. 12, 2018), <http://www.granma.cu/cuba/2018-12-12/analiza-pleno-del-comite-central-del-partido-proyecto-de-constitucion-de-la-republica-de-cuba-12-12-2018-21-12-18> [hereinafter *Analiza Pleno*]; see also THE WORLD BANK, CUBA, <https://data.worldbank.org/country/cuba> (containing figures for the Cuban population used in the present study).

²⁷⁰ *A Text Enriched*, *supra* note 243.

²⁷¹ *Id.*

²⁷² *Analiza Pleno*, *supra* note 269.

²⁷³ *A Text Enriched*, *supra* note 243.

²⁷⁴ See Meng Xiaofeng & Chi Xiang, *Big Data Management: Concepts, Techniques and Challenges*, 50 J. COMPUTER RES. DEV. 146, 149 (2013) (discussing the problem of providing a precise definition of big data); Elena Geanina Ularu et al., *Perspectives on Big Data and Big Data Analytics*, 3 DATABASE SYS. J. 3 (2012); Avita Katal et al., *Big Data: Issues, Challenges, Tools and Good Practices*, SIXTH INT'L CONF. CONTEMP. COMPUTING 404 (IC3 2013).

²⁷⁵ See, e.g., Eszter Hargittai, *Is Bigger Always Better? Potential Biases of Big Data Derived From Social Network Sites*, 659 ANNALS AM. ACAD. POL. SOC. SCIENCE 63 (2015).

assumptions that lead researchers to focus on certain types of data to the neglect of others.²⁷⁶ These assumptions are seldom neutral. They often reflect cognitive biases that are hard to minimize.²⁷⁷ In constructing datasets about the constitutional reform in Cuba, for instance, researchers may choose to exclude from the dataset all discussions not directly relevant to the addition, amendment, or deletion of articles in the Project of the Constitution. Yet, public discussions not touching upon the substantive content of constitutional provisions offer equally important insights about Cuban society and politics.

Decision-making processes as *referenda* and elections may see a varying voter turnout. Voter turnout depends on factors amply explored by the literature on voting behavior in liberal democracies, in Marxist-Leninist systems, and in “weak” democracies.²⁷⁸ The percentage of active adult users of social media may be lower than the number of those who enjoy the right to vote. Sampling internet platforms does not give all voters an opportunity—equal or otherwise—to be selected for inclusion in samples. To account for this gap, the population targeted by research may be defined as composed only by those voters who are at the same time users of one or more social media platforms. This choice of sampling is unable to overcome a further limitation of internet data.

Public internet discussions contain machine—or user—generated biases. Social media bots and internet influencers can be detected and form objects of analysis—the computer and data science literatures are rife with such studies.²⁷⁹ Some user-generated biases can be hypothesized, and to a certain extent proved, through a careful, manual examination of the social media profiles of those who joined public debates, provided they have not set strict privacy settings. But the motivations behind statements published on the internet, and their correlation

²⁷⁶ *Id.*

²⁷⁷ *Id.* As for instance the assumption that more datapoints are qualitatively better than fewer datapoints. This assumption has been amply disproved. *Id.*

²⁷⁸ See, e.g., David Dreyer Lassen, *The Effect of Information on Voter Turnout: Evidence from a Natural Experiment*, 49 AM. J. POL. SCIENCE 103 (2005); VERNON BOGDANOR & HENRY E. BRADY, REFERENDUMS AROUND THE WORLD: THE GROWING USE OF DIRECT DEMOCRACY (1994); Lawrence Leduc, *Opinion Change and Voting Behaviour in Referendums*, 41 EUR. J. POL. RES. 711 (2002); Michael Bratton et al., *Voting Intentions in Africa: Ethnic, Economic or Partisan?*, 50 COMMONWEALTH & COMP. POL. 27 (2012) (discussing referendums in weak democracies); Ralph S. Clem & Peter R. Craumer, *Urban-Rural Voting Differences in Russian Elections, 1995-1996: A Rayon Level Analysis*, 38 POST-SOVIET GEO. ECON. 379 (1997) (discussing the referendum in the former Soviet Union).

²⁷⁹ See, e.g., Danah Boyd & Kate Crawford, *Critical Questions for Big Data: Provocations for a Cultural, Technological, and Scholarly Phenomenon*, 15 INFO., COMM. & SOC. 662 (2012) (examining the most pressing problems inherent in big data); Tim Harford, *Big Data: A Big Mistake?* 11 SIGNIFICANCE 14, 15 (2014); John PA Ioannidis, *Informed Consent, Big Data, and the Oxymoron of Research That is Not Research*, 4 AM. J. BIOETHICS 39, 40–41 (2013); Rob Kitchin, *Big Data, New Epistemologies and Paradigm Shifts*, 1 BIG DATA & SOC. 1 (2014).

with the real opinions and voting behaviors of users, are often beyond proof.²⁸⁰ The decision to publicly state any given position in a highly polarized debate, or to refrain from participating in such a debate, may be made following any number of diverse considerations. In public debates, voters may adopt a political position opposite to the one they will express through their ballots. Inflammatory, offensive, sarcastic, or irrelevant content may be posted with the sole goal to draw amusement from the reactions it will provoke. All of these factors exist beyond the knowledge of researchers and the analytical or learning ability of algorithms.

Content posted on websites controlled by private corporations, government bodies, and on large social media platforms is always moderated.²⁸¹ Moderation adds an element of subjectivity to any dataset. Moderation tends to exclude those views considered unacceptable according to the guidelines set by website owners or defined by social media corporations.²⁸² Instructions followed by the moderators of Cuban official websites are confidential. So are Twitter and Facebook moderation guidelines.²⁸³ While it is not known how moderation takes place on websites controlled by the Cuban government, content moderation on Facebook and Twitter relies on a combination of reporting by users, unskilled work by *outsourced contractors*, and algorithmic learning.²⁸⁴ This combination has been known to operate somewhat arbitrarily, generating false positives.²⁸⁵

The involvement of 77.89% of Cuban residents in popular consultation, sales figures for the Project, and for the version of the Draft Constitution revised after the popular consultation, signal the existence of mechanisms enabling a very high degree of engagement in the referendum process. Online engagement in popular consultation, however, was significantly lower. The internet is accessible to only 43% of Cuban residents.²⁸⁶ The largest majority of those who

²⁸⁰ Hargittai, *supra* note 275.

²⁸¹ See, e.g., Kelly Fiveash, *Facebook Content Moderation Guidelines Leaked*, ARS TECHNICA (May 22, 2017), <https://arstechnica.com/information-technology/2017/05/facebook-moderator-guidelines-leaked-tory-internet-regulation/> (discussing the leakage of Facebook's secret moderation guidelines).

²⁸² *Id.*

²⁸³ See Casey Newton, *The Trauma Floor: The Secret Lives of Facebook Moderators in America*, VERGE (Feb. 25, 2018), <https://www.theverge.com/2019/2/25/18229714/cognizant-facebook-content-moderator-interviews-trauma-working-conditions-arizona> (discussing the leakage of Facebook's secret moderation guidelines); Fiveash, *supra* note 281.

²⁸⁴ Facebook, *Community Standards*, available <https://www.facebook.com/communitystandards/introduction/> (last visited Nov. 19, 2019). For public unease, see, e.g., Julia Carrie Wong & Olivia Solon, *Facebook Releases Content Moderation Guidelines-Rules Long Kept Secret*, THE GUARDIAN (24 April 2018) <https://www.theguardian.com/technology/2018/apr/24/facebook-releases-content-moderation-guidelines-secret-rules>.

²⁸⁵ See Fiveash, *supra* note 281.

²⁸⁶ Freedom House, FREEDOM ON THE NET 2018, CUBA, <https://freedomhouse.org/report/freedom->

can go online access the internet through less than 1,000 paid Wi-Fi hotspots.²⁸⁷ These hotspots are situated in major cities and tourist sites.²⁸⁸ The cost of \$2 (USD) per hour of connection weighs significantly on the average salary, whether the official figure of \$25, or any of the higher unofficial figures, are accepted.²⁸⁹ On a population of approximately 11,500,000 people, only approximately 33,536 fixed broadband connections exist, as reported by the CIA.²⁹⁰ It can be speculated that a significant part of these stable, faster internet connections is used by government organs, educational institutions, state-owned enterprises, tourist establishments, foreign investors, and by the more affluent residents.

If in-person engagement in popular consultation included all sectors of Cuban society, on-line engagement seems to have been limited to four categories: (a) human influencers; (b) persons relatively more affluent than the average residents of Cuba, or who can otherwise enjoy access to stable and relatively fast internet connections; (c) persons of Cuban descent living outside of the Island; and (d) members of organizations advocating for or against the constitutional reform.

The first category included all those persons whose statements would result in foreseeable effects on the tone and direction of the popular debate. Examples of human influencers include, Mariela Castro Espín, daughter of Raúl Castro and President of CENESEX, and the Secretary of the State Council Homero Acosta.²⁹¹ Made in their capacity as holders of government posts, their statements on the Constitution sometimes provoked strong reactions in the unofficial debate. The group of human influencers also includes, anonymous internet users with a significantly high degree of involvement in the debate, who drove popular discussions towards specific directions. The presence of social media or internet bots in unofficial debate was hypothesized, but not detected in the data sampled.²⁹²

net/2018/cuba.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ Mimi Whitefield, *Study: Cubans Don't Make Much, But It's More Than State Salaries Indicate*, MIAMI HERALD (Jul. 12, 2016), <https://www.miamiherald.com/news/nation-world/world/americas/cuba/article-89133407.html>; *but see Trading Economics*, CUBA AVERAGE MONTHLY SALARY, <https://tradingeconomics.com/cuba/wages> (last visited Nov. 2, 2019).

²⁹⁰ See Freedom House, *supra* note 286; *The World Factbook, Cuba*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/cu.html> (last visited Jan. 24, 2020).

²⁹¹ Mariela Castro Espin (@CastroEspinM), TWITTER (Dec. 18, 2018, 8:10 PM), <https://twitter.com/CastroEspinM/status/1075242062931521536>.

²⁹² The authors adopted a proprietary methodology to detect the presence of social media bots or internet bots in the sample of data we gathered. The tests performed, however, all yielded negative results.

In an attempt to provide a robust data ecology on the unofficial debate, our team decided to harvest data produced by members of each category, constructing datasets from four different cores. These cores include: (a) summary transcriptions of two parliamentary sessions on the Project Constitution and popular reactions to the Project Constitution expressed on official websites; (b) government-backed websites; (c) an independent platform hosted by Cuban academics; and (d) a public discussion group hosted by Facebook, a private multinational corporation with no formal restrictions on the rights of administration and moderation.

Given the nature of these four venues, each dataset is fundamentally different in structure. The datasets bridge the divide across different platforms, as well as between Cuban residents and the diaspora. These venues allow us to vividly detail differences in unofficial debate held within and across Cuba's geographical and digital borders, accounting for the alignment, or lack thereof, between positions expressed by influencers, Cuban residents, the diaspora, and advocacy groups.

Debate on the Project of Constitution was sparked by a Plenary Session of the Ninth National Assembly of People's Power, Cuba's supreme organ of legislative power.²⁹³ The session took place on July 21 and 22, 2018, discussing and approving the Project that would be submitted to popular consultation.²⁹⁴ The Cuban government provided a summary transcription of the sessions, detailing the actions taken in real time in Cuba's Parliament.²⁹⁵ From these transcriptions, a database of individual statements about the Project Constitution was constructed.²⁹⁶ Summary transcriptions are subject to changes and omissions similar to those taking place in the production of "verbatim" reports on parliamentary debates in liberal democracies.²⁹⁷ Changes occurring during

²⁹³ Lisandra Fariñas Acosta & Yudy Castro Morales, *The Demands of the People Guide Government Work*, GRANMA (Jul. 16, 2019), <http://en.granma.cu/cuba/2019-07-16/the-demands-of-the-people-guide-government-work>.

²⁹⁴ Consejo de Estado, *Intervención de Homero Acosta en la Asamblea Nacional, Sobre los Principales Cambios de la Constitución a Partir de la Consulta Popular*, GRANMA (Dec. 22, 2018), <http://www.granma.cu/cuba/2018-12-22/un-texto-enriquecido-con-el-aporte-del-pueblo-22-12-2018-01-12-24>; Agencia Prensa Latina, *Cuba Prepara Proceso de Consulta del Proyecto de Constitución*, ESCAMBRAY (Jul. 31, 2018), <http://www.escambray.cu/2018/cuba-prepara-proceso-de-consulta-del-proyecto-de-constitucion/>. The Plenary Session was preceded by a meeting held on July 19, where three work groups (*grupos de trabajo*) analyzed the Project of Constitution.

²⁹⁵ Oscar Figueredo Reinaldo, et al., *Minuto a Minuto: Proyecto de Constitución a debate en la Asamblea Nacional, Segunda Jornada*, CUBADEBATE (Jul. 22, 2018), <http://www.cubadebate.cu/temas/politica-temas/2018/07/22/minuto-a-minuto-asamblea-nacional-continua-debate-sobre-proyecto-de-constitucion-de-la-republica-de-cuba/#.XPNw6ogzBIU>.

²⁹⁶ *Id.*

²⁹⁷ See Sylvia Shaw, *Off the Record: The Transcription of Parliamentary Debates for Political Discourse*

the transformation of spoken language into written summaries may affect linguistic analyses of parliamentary debates. These changes do not, however, affect data on the prominence of debate topics, on the position of individual delegates, on the general tone and direction of the parliamentary debate, and its outcomes.

In Cuba, unofficial debate started with the publication of the Project Constitution online, on July 30.²⁹⁸ Several official websites made the Project available, allowing users to comment on its release. We constructed a database of unofficial statements retrieved from the website *CubaDebate*.²⁹⁹ According to Alexa metrics, *CubaDebate* enjoys a significantly higher in-country ranking than the official websites of the two organs most involved in Constitutional reform: the Central Committee of the Communist Party of Cuba,³⁰⁰ and the National Assembly of People's Power.³⁰¹ *CubaDebate*'s higher ranking translates into greater global visibility of these and other websites, potentially eliciting a broad range of opinions on the Project Constitution, from both residents and the diaspora.³⁰² To identify the webpages most likely to be accessed by users hoping to comment on the Project Constitution, we relied on the Google search algorithm and ranking system. While susceptible to manipulation,³⁰³ this algorithm provides a reliable measure of the popularity of webpages among internet users. Results provided by Google's search and

Analysis, in *DOING POLITICS: DISCURSIVITY, PERFORMATIVITY AND MEDIATION IN POLITICAL DISCOURSE 105* (Michael Kranert & Geraldine Horan eds.) (2018) (examining the benefits and drawbacks of using verbatim reports); Stef Slembrouck, *The Parliamentary Hansard 'Verbatim' Report: the Written Construction of Spoken Discourse*, 1 *LANGUAGE & LITERATURE* 101 (1992) (discussing a classical analysis of divergences between "verbatim" transcriptions of parliamentary debate and spoken debates).

²⁹⁸ Descargue el Proyecto de Constitución de la República de Cuba, CUBADEBATE (July 30, 2018) <http://www.cubadebate.cu/noticias/2018/07/30/descargue-el-proyecto-de-constitucion-de-la-republica-de-cuba-pdf/#.XX7V3pNKiqD>.

²⁹⁹ Cubadebate is an official website established and maintained by the Association of Cuban Journalists Against Terrorism (*Círculo de Periodistas Cubanos contra el Terrorismo*). The Association is a government-approved social organization, describing itself as "composed by Cuban professionals specialized in dismantling the lies of big media, so frequent in our times" [*integrado por profesionales cubanos especializados en desmontar la mentira de los grandes medios, tan recurrida en estos tiempos*]. *Círculos Especializados, CUBA PERIODISTAS*, <http://www.cubaperiodistas.cu/index.php/circuitos-especializados/>.

³⁰⁰ *Top Websites Ranking, SIMILARWEB* (July 1, 2019), <https://www.similarweb.com/top-websites/cuba> (last visited Sep. 3, 2019) (rankings subject to change). As of September 3, 2019, CubaDebate was ranked 6th, while Granma ranked 8th in the Alexa ranking. *Id.*

³⁰¹ As of September 3, 2019, it ranked 2,122nd place in Cuba. *Id.*

³⁰² As of September 3, 2019, Cuba.cu was ranked at 238th. *Id.*

³⁰³ Tansy Woan, *Searching for an Answer: Can Google Legally Manipulate Search Engine Results*, 16 *U. PA. J. BUS. L.* 294 (2013) (discussing the manipulation of the Google search algorithm); Emilio Delgado López-Cózar et al., *The Google Scholar Experiment: How to Index False Papers and Manipulate Bibliometric Indicators*, 65, *J. ASS'N INFO. SCI. & TECH.* 446 (2014) (discussing manipulation of specific search metrics and algorithms).

ranking system were cross-checked with Alexa metrics,³⁰⁴ yielding *CubaDebate*'s article posting the Draft Constitution as the most popular online venue for unofficial discussion.

An independent platform to allow unofficial debate on the Project Constitution was provided by four University of Havana academics on the website *Postdata.club*.³⁰⁵ Founded in 2016 by three journalists and a data scientist, *Postdata.club* is a website devoted to data journalism.³⁰⁶ On August 13, it launched a section where Cuban residents, the diaspora, and advocacy groups could express their views on the Project Constitution as a whole, or on individual articles.³⁰⁷ Comments on *Postdata.club* were not moderated. Content could be posted following registration on the comment hosting service Disqus, or alternatively through individual Google, Facebook, or Twitter accounts.

On August 3, 2018, the hosts of *Postdata.club* created a public Facebook group devoted to discussions of the Project Constitution.³⁰⁸ The group, *Reforma Constitucional de la República de Cuba*, is composed of 2,377 members.³⁰⁹ This venue seems to be run according to principles modeled on direct democracy ideals: all members can enjoy administrative or moderation privileges, provided they ask for them.³¹⁰ Since the launch of this group, administrative privileges were obtained by 395 Facebook accounts belonging to individuals and to corporate persons.³¹¹ The group has one moderator, and allows Cuban residents, the diaspora, and members of advocacy groups to post content pro or contra the Constitution, the Cuban government, and the referendum vote.³¹² The moderator

³⁰⁴ Alexa is an Amazon.com company that specializes in providing free and premium tools for web statistics and analysis. "Alexa's traffic estimates are based on data from our global traffic panel, which is a sample of millions of Internet users using one of many different browser extensions. In addition, we gather much of our traffic data from direct sources in the form of sites that have chosen to install the Alexa script on their site and certify their metrics. However, site owners can always choose to keep their certified metrics private." *About Us*, ALEXA, <https://www.alexa.com/about> (last visited Jan. 24, 2020).

³⁰⁵ Ernesto Guerra, *Postdata.club-Best Team Portfolio (Small Newsroom)*, DATA JOURNALISM AWARDS (June 4, 2019), <https://datajournalismawards.org/projects/postdata-club-best-team-portfolio-small-newsroom/>.

³⁰⁶ *¿Quiénes Somos?*, POSTDATA.CLUB, <https://www.postdata.club/equipo/quienes-somos.html> (last visited Nov. 2, 2019).

³⁰⁷ Yudivian Almeida, *Debate in Postdata.club: The Numbers*, POSTDATA.CLUB (Dec. 10, 2018) <http://www.postdata.club/issues/201808/debate-en-postdata-los-numeros.html>; see *Reforma Constitucional De La Republica De Cuba*, FACEBOOK, <https://www.facebook.com/groups/1982034462051886> (last visited Nov. 2, 2019).

³⁰⁸ *Reforma Constitucional De La Republica De Cuba*, *supra* note 307.

³⁰⁹ *Id.* (the number of members is subject to fluctuation).

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *See id.*

allows content of all types, irrespective of political orientation as long as it is directly or indirectly relevant to the constitution.³¹³

C. *The Data Sets*

Given the nature of the Cuban Party-State, we concluded that it would be impossible to develop meaningful results from merely one data set. Given the fracture of the margins of popular expression in the shadow of the official structures of interaction, we thought it useful to develop four data sets.

- (1) The comments on CubaDebate on the proposed Constitution;
- (2) The *Minuto a Minuto* Summary provided by the Cuban government detailing debated actions being took in real time in a parliamentary setting;
- (3) an independent popular participation platform from *Postdata.club*—a web platform hosted by academics; and
- (4) *Reforma Constitucional* Facebook page group—a sample of comments from this Facebook page set up by hosts of *Postdata.club*.

The construction and usefulness of each is discussed in turn.

The website, *CubaDebate*, is maintained by a government-approved journalists' association, and therefore adopt stringent moderation guidelines.³¹⁴ The filtering of users' comments provided an objective limitation to any freedom to discuss the Draft Constitution of Cuba. At the same time, while unknown, the moderation guidelines indirectly shed light on the topics that the government of Cuba found useful to gauge the response of the public opinion to the public release of the draft constitution. And therefore, allowed to be expressed. Besides, as we describe in the following section,³¹⁵ the *CubaDebate* website was notable for the presence of human moderators. Rather than sanitizing public discussion on the Draft Constitution, our review suggests that human moderators attempted to shape public consensus towards very specific directions, but they did not appear to sanitize public discussion of the Draft Constitution. Often, this shaping appeared to coincide with sectoral and bureaucratic interests rather than with any general, and abstract, political orientation of the Cuban government.

The *Minuto a Minuto* summary of the debates held at the ANPP allowed to gauge the extent of the consensus discernable within Cuba's parliament on the

³¹³ *Id.*

³¹⁴ *Editorial Board*, CUBADEBATE, <http://www.cubadebate.cu/editores/> (last visited Sep. 27, 2019).

³¹⁵ *Infra* Part IV.

Draft Constitution. Parliamentary debate was also useful to assess whether the differences existed between the general concerns expressed by the Cuban population in the comments section of the *Cubadebate* website, and the priorities expressed by members of the Cuban Parliament. In the early 1960s, the Castro government chose the format of mass rallies instead of creating a stable parliamentary institution to avoid that popular demands and opinions be corrupted by representatives of the people.³¹⁶ A comparison between the positions expressed during parliamentary debate and popular comments allows to assess the fidelity of Cuban parliamentary institutions to the broader political and governance ideals articulated by Fidel, and further developed by Raúl Castro, and Miguel Diaz-Canel. For any Marxist-Leninist regime, the coherence between stated values and political behaviors enacted in official fora is crucial. Coherence is important not only as it relates to the broader issue of regime stability.³¹⁷ A disjunction between the interests articulated by the people, and those advanced by their representatives may not always or necessarily be an indicator of political instability. We believe that more often, discrepancies between the “official line” of communist parties, the content of parliamentary debates, and the aspirations of the people are a revealing signal of a radical process of systemic reform.

The *Postdata.club* website seemed to have a goal different from gauging the public opinion or publicizing parliamentary debates. On the surface, this website was not different from the other venues available for public debates. Yet *Postdata.club* was designed to allow users to express comments on individual articles of the Draft Constitution.³¹⁸ This circumstance is significant. The Draft Constitution was a lengthy, complex document. Given the limitations in access to the internet, and the notorious problem of voters’ awareness and engagement,³¹⁹ not every Cuban citizen could be expected to read the entire document and to understand its more technical provisions. *Postdata.club* was therefore likely to be used by the upper segments of Cuba’s population. This website allowed us to gather the perspectives of the island’s economic and intellectual elites, and to understand whether their viewpoints clashed with those expressed by ordinary citizens and members of the Cuban parliament. While a

³¹⁶ Edward Gonzalez & Kevin F. McCarthy, *Cuba After Castro: Legacies, Challenges, and Impediments*, RAND CORP. 14 (2004).

³¹⁷ See Pickel, *supra* note 129, at 75 (for analyses of the stability of Cuba’s governance system); see Steven Levitsky & Lucan Way, *The Durability of Revolutionary Regimes*, 24 J. DEM. 5 (2013) (for a more general view on revolutionary regimes).

³¹⁸ Almeida, *supra* note 307

³¹⁹ See generally Steve Martin, *Engaging with Citizens and Other Stakeholders*, in GOVERNMENT PUBLIC RELATIONS: A READER (Mordecai Lee ed., 2007); CLAES H. DE VREESE, *THE DYNAMICS OF REFERENDUM CAMPAIGNS: AN INTERNATIONAL PERSPECTIVE* (2007).

difference in the opinions expressed about the Draft Constitution is not necessarily a sign of political instability, such a difference, if detected, can provide further insights on the emerging mechanisms of endogenous democracy in Marxist-Leninist regimes.

Finally, the *Reforma Constitucional* Facebook group provided an outside “window” to the debate on the Draft Constitution.³²⁰ In this respect, the Facebook group allowed Cubans living outside of the island to engage in debate, without necessarily having to be exposed to the official perspectives that emerged from the *Cubadebate* website, or to its strict moderation. The *Reforma Constitucional* Facebook group, however, also had additional effects. First, it allowed non-governmental organizations based in the West to conduct advocacy campaigns on the Cuban Constitutional referendum. The availability of this venue avoided or at least reduced the use of government-approved websites by human rights groups based outside of Cuba. Thus, by allowing a complete freedom of expression, a *cordon sanitaire* was created around the domestic debate on the Draft Constitution. In fact, most of the voices sharply critical of the constitutional referendum, and more generally of the PCC, naturally flocked to Facebook, deserting any other available venue. Second, this Facebook Group allowed a very precise reconstruction of the transnational actors engaged in advocacy pro or contra the Cuban government. This Facebook Group also permitted some review of the Group’s networks of professional contacts.³²¹

III. THE EMPIRICAL STUDY OF POPULAR PARTICIPATION IN THE MARGINS

In order to provide a robust comparison of various popular participation platforms, we examine constructed data sets from four different cores: (1) The comments on *CubaDebate* (government run) on the proposed Constitution; (2) The *Minuto a Minuto* summary provided by the Cuban government detailing debated actions being took in real time in a parliamentary setting; (3) an independent popular participation platform from *Postdata.club*—a web platform hosted by academics; and (4) *Reforma Constitucional Facebook* page group—a sample of comments from this Facebook page set up by hosts of *Postdata.club*. Each data set is fundamentally different in its structure, but the information contained in each reaches across platforms—allowing us to vividly detail the differences in what the Cuban diaspora are saying on various platforms and if it lines up with the politicians actions on the ground.

³²⁰ Almeida, *supra* note 307.

³²¹ *Id.*

A. *Cuba Debate Commentary on the Proposed Constitution—Descriptive Statistics and their Implications*

Our sample on the *CubaDebate* commentary on the proposed constitution and its changes consists of 493 comments. We found a fascinating dialogue occurring between users who wanted to significantly shift the tone of the conversation towards the issue of gay marriage—while others countered with a more legalistic response (as if they were insiders).³²² The descriptive statistics below shed light on this amongst many other things:

Variable	Count	% of Distribution
Gender Female	74	15%
Gender Male	200	41%
Gender Anonymous	219	44%
Animal Protection	25	5%
Private Property	13	5%
Dual Citizenship	9	2%
Suggested Changes to Constitution	112	23%
Comment Positivity	Positive: 27 Leans Positive: 162 Middle-Ground: 182 Leans Negative: 113 Negative: 9	
Political Ideology	Far Left: 47 Left: 156 Moderate: 237 Right: 52 Far Right: 1	
Sophistication of Commentary	117	24%
Gay Marriage	179	36%
God	34	7%
Economy/Money Issues	73	15%

³²² This sample consists of popular comments on the Draft Constitution published starting from July 30, 2018 on the *Cubadebate* website. See *Descargue el Proyecto de Constitución de la República de Cuba*, CUBADEBATE (July 30, 2018), <http://www.CubaDebate.cu/noticias/2018/07/30/descargue-el-proyecto-de-constitucion-de-la-republica-de-cuba-pdf/#.XFmlUPZFxYf> (with the total of comments displaying a slight variation from the sample collected, given how readers continued to post their comments even after the end of the period of consultation) (last visited Nov. 2, 2019). The *Cubadebate* website was not created with the intention to provide a forum for unofficial discussion of issues related to the politics, law and governance of Cuba. Yet, the publication of the Draft Constitution, coupled to the availability of a public space for commenting, caused this article to become the focus of popular comments. Other articles about the Draft Constitution published on the same website saw a much smaller number of reactions and comments.

Explanation of Key Variables:

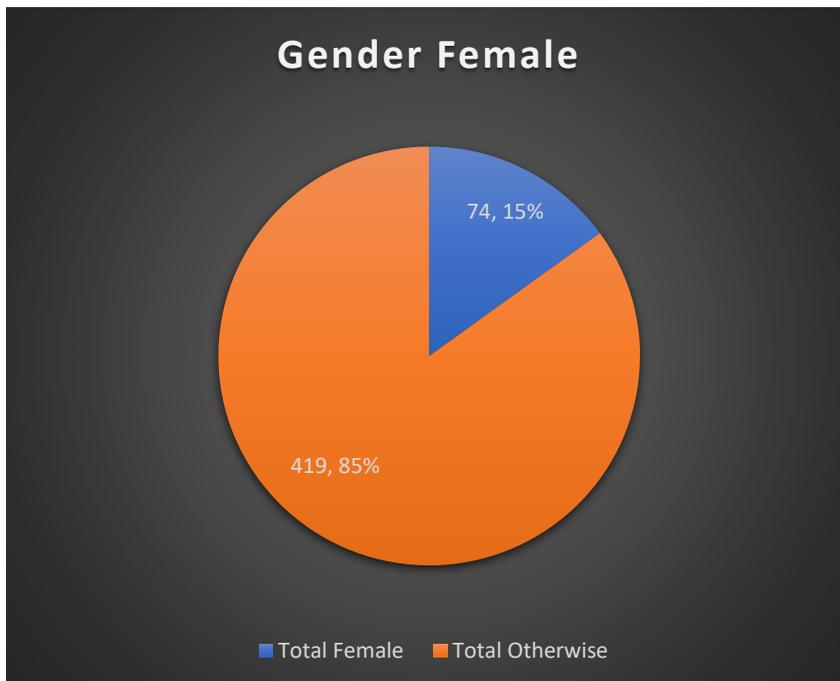
Comment Positivity

- 1: If user comment was extremely negative or derogatory
- 2: If user comment contained some negativity
- 3: If user comment was primarily neutral and didn't take a harsh opposing stance on any certain issue
- 4: If user comment tended to be more positive in its tone
- 5: If user comment was superfluous and extremely positive/fierce

Political Ideology

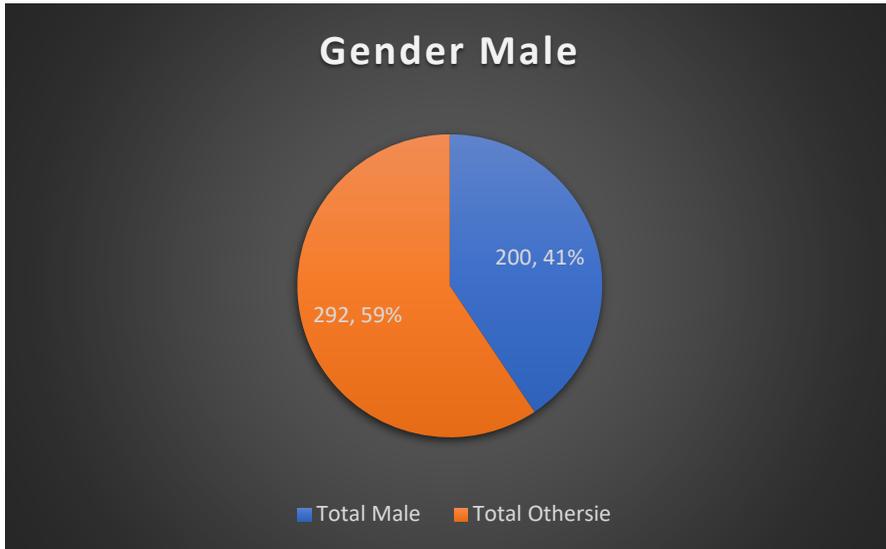
- 1: If user wrote a comment deemed far to the right and was extremely negative and or derogatory towards a certain people/place/thing
- 2.5: If user's comment contained some derogatory remarks that were more on the conservative side
- 5: If user comment primarily abstained from taking a position on an issue and such comment was not deemed hostile towards any certain group
- 7.5: If user comment contained moderate democratic/liberal ideology
- 10: If user comment contained content deemed far to the left in terms of the political spectrum

Following the descriptive statistics—it was necessary for us to produce visuals in order to show the story and provide a robust comparison amongst the various databases. This chart representing the distribution of identifiable female usernames who posted in the *CubaDebate* site sheds light on the still many important areas that Cuba has to go if it does want to achieve true equality—as it suggests it wants to do.

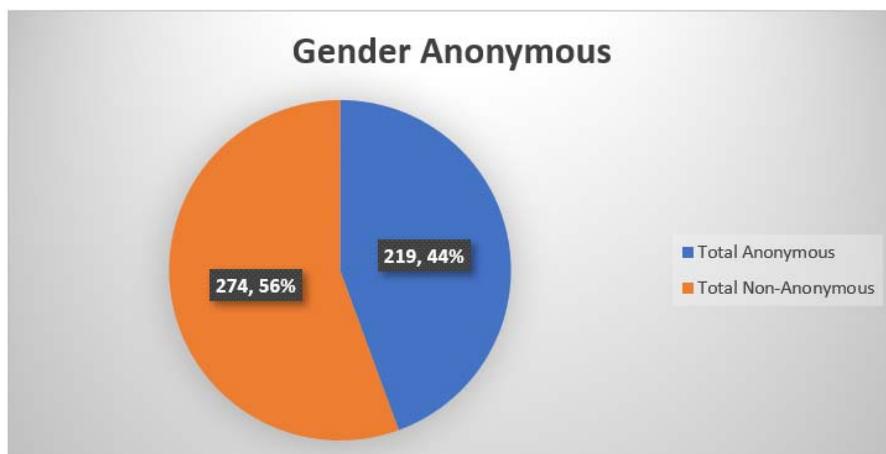


The revolution was founded upon a classless and raceless nation.³²³ This distribution, however, shows that males are participating overwhelmingly to a greater extent in the government sanctioned popular participation platform of *CubaDebate*.

After analyzing the distribution of identifiable female users of whom posted comments on the *CubaDebate* site, an analysis of the distribution of males naturally flowed next:

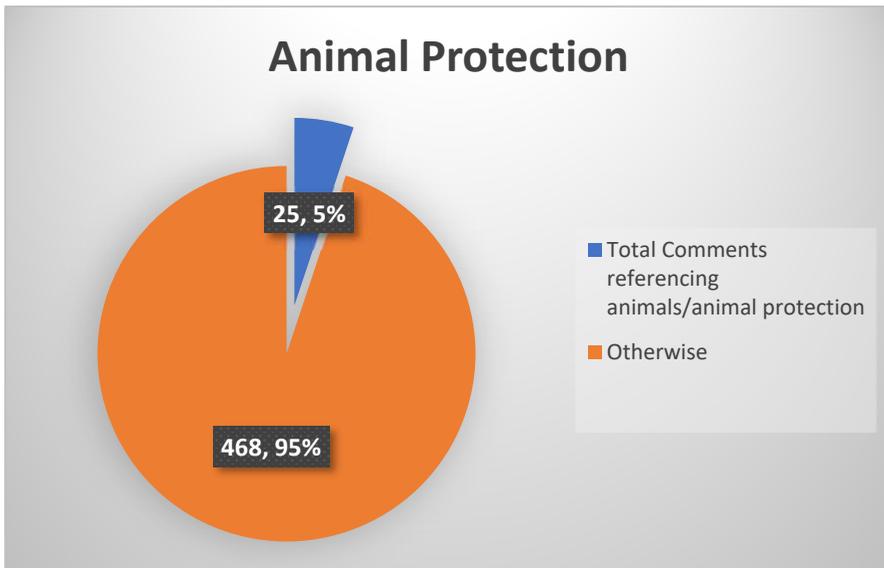


Looking at this pie chart, we can discern that males made up 41% of the distribution of the commentary on the *CubaDebate* site. Much larger than the sole 15% that was comprised of identifiable female users. Yet, a large proportion of the distribution of users was still unaccounted for. Therefore, we had to dive further into the data and the structure of the commentary of the users. This led to the creation of a new subclass for the gender variable of “Anonymous.” The descriptive statistics for anonymous users can be seen here:



A significant, and to us a surprising number, 44% of the distribution of the users who got their commentary published on *CubaDebate*, were classified as “Anonymous.” Much larger than the 15% of identifiable female users and slightly bigger than the 41% of users who could be positively identified as male. This suggests that the majority of users wanted to remain anonymous—most likely for the purposes of safety and privacy.

After obtaining the preliminary data for gender, we coded for more variables based on what the users were saying in the commentary.³²⁴ We noticed that the issue of “animal protection” was widely talked about in the comments and thus coded for:



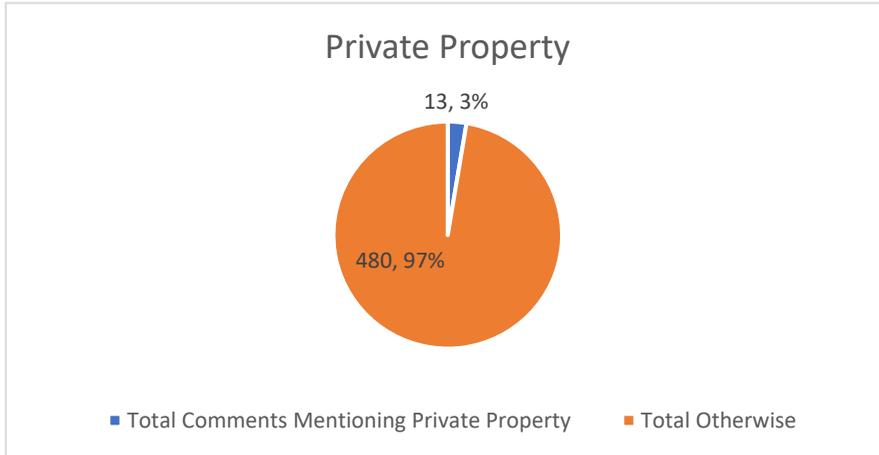
The pie chart shows that 5% or a total of n=25 users mentioned animal protection in their comment. An article from the Havana Times published in 2017 titled *Animal Rights Law Still Pending in Cuba* wrote that the majority of Cubans desired an animal protection act.³²⁵ The idea stems from the objective to

³²⁴ This choice in the coding of data avoided the imposition of categories extraneous to the discourse, allowing the data to faithfully account for the ideas expressed during the unofficial debate. See generally REBECCA COLEMAN & JESSICA RINGROSE, *DELEUZE AND RESEARCH METHODOLOGIES* (2013) (discussing the theoretical and philosophical nuances of the coding of inherently qualitative data); Dina Wahyuni, *The Research Design Maze: Understanding Paradigms, Cases, Methods and Methodologies*, 10 J. APPLIED MGMT. ACCT. RES. 69 (2012) (discussing coding methodologies).

³²⁵ See Yudarkis Veloz Sarduy, *Animal Rights Law Still Pending in Cuba*, HAVANA TIMES (Dec. 14, 2017), <https://havanatimes.org/?p=129222>.

eliminate discrimination. If Cuba is truly an egalitarian nation, it must treat its animals as such. Aside from this egalitarian mindset—the Cuban people do share an immense affinity and tradition of love for animals.³²⁶

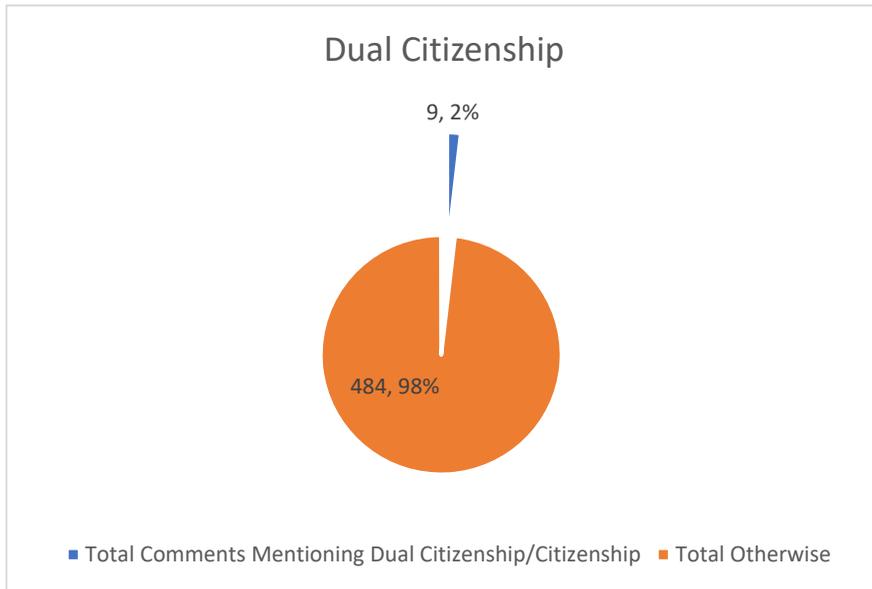
Aside from coding for the variable for animal protection, we also noticed “private property” being heavily discussed throughout the commentary. The pie chart below details the amount of comments discussing variable property.



A marginal 3% of the distribution mentioned private property. This consisted of 13 comments out of the total 493 comments that mentioned this variable from the commentary on *CubaDebate*. Still, the sheer fact that we were able to discern that this is an important variable from the commentary’s analysis should speak to a broader, unresolved issue. Thankfully, those who desired an implementation of private property in the new Cuban Constitution received their wish as Cuban voters accepted the private property measure added to the Constitution on February 24, 2019.³²⁷

³²⁶ *Id.*

³²⁷ See Andrea Rodriguez, *Cuba Votes on Updated Constitution, Accepts Private Property*, ASSOCIATED PRESS (Feb. 24, 2018), <https://www.apnews.com/e7713acc57a74550abdaf03ecf502f9c>.



Additionally, dual citizenship seemed to be a key concern for users who got their commentary published on *CubaDebate*—regardless of whether they were for or against the issue. Of course, only 2% of the distribution mentioned dual citizenship—a total of 9 out of 493 comments. However, this small distribution does speak to a wider issue speaking towards Cuba. The U.S. Embassy in Cuba published on its website:

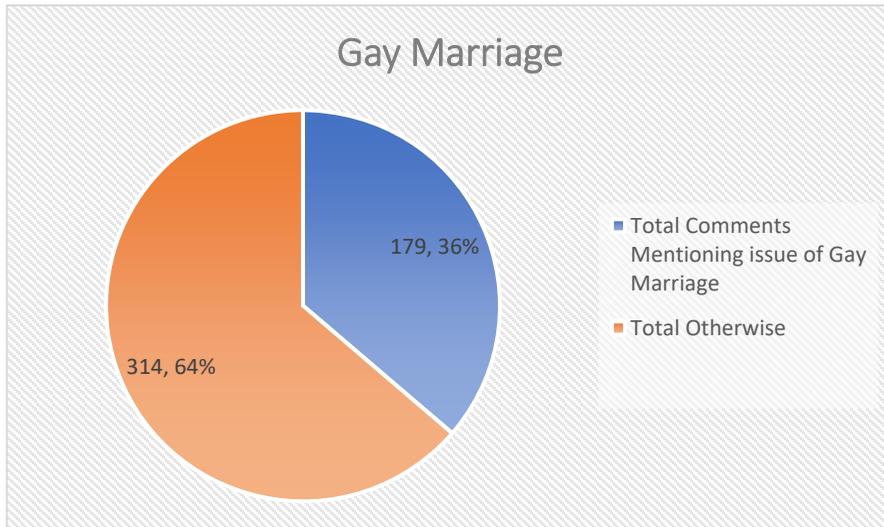
The Government of Cuba treats U.S. citizens born in Cuba as Cuban citizens and may subject them to a range of restrictions and obligations. The Cuban government requires U.S.-Cuban dual citizens who departed Cuba on or after January 1, 1971 to enter and depart Cuba using a Cuban passport. Using a Cuban passport for this purpose does not jeopardize one’s U.S. citizenship; however, such persons must use their U.S. passports to enter and depart the United States. Cuban-Americans who departed Cuba before January 1, 1971 may travel to Cuba on their U.S. passport but must apply for an HE-11 visa from the Cuban Embassy. Cuban authorities do not always notify the U.S. Embassy of the arrest of dual nationals and may deny U.S. consular officers access to them.³²⁸

Therefore, for those who departed Cuba before 1971, it’s not necessarily a salient matter. But for those trying to enter Cuba after departing on January 1,

³²⁸ For information posted on the official page of the U.S. Embassy in Cuba, see *Dual Nationality*, U.S. EMBASSY CUBA, <https://cu.usembassy.gov/u-s-citizen-services/dual-nationality/> (last visited Nov. 2, 2019).

1971—the fact that they need Cuban passports despite having dual citizenship remains a key issue of concern.

The most salient issues that we encountered being discussed in the commentary were “gay marriage,” “God,”³²⁹ and “economy/money issues.” Given the large discussion around these variables, it was natural to code for them. The results for gay marriage are as follows:



Regardless of the stance, 36% of the distribution, equaling to 179 out of 493 comments, mentioned gay marriage in some aspect or form. Article 68 which contained the gay marriage amendment was present in 66% of citizen meetings according to the National Assembly.³³⁰ The majority of the plebiscite had asked for its elimination.³³¹ In a blow to those who did advocate for gay marriage in Cuba, the government dropped the controversial amendment that would have laid the grounds to allow for same-sex marriage.³³² The Cuban National Assembly eliminated the language “remov[ing] a gender neutral description of marriage as a union of ‘two people’ with ‘absolutely equal rights and obligations’” in order to respect all options.³³³ What hurt pro-gay marriage

³²⁹ This variable was used to code all comments expressing views directly or indirectly related to religion.

³³⁰ See Sasha Ingber, *Cuba Scraps Words Establishing Same-Sex Marriage from Drafted Constitution*, NAT'L PUB. RADIO, INC. (Dec. 19, 2018, 7:21 PM), <https://www.npr.org/2018/12/19/678155969/cuba-scraps-words-establishing-same-sex-marriage-from-drafted-constitution>.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

advocates were the aggressive campaigns embarked upon by Evangelical churches within Cuba that rejected the proposal. Approximately twenty-one Evangelical denominations began collecting signatures to oppose the measure in October 2018.³³⁴ One Methodist Church in Havana stated from its Pastor Lester Fernandez, “We do not in any way approve Article 68 ... because the Bible condemns it.”³³⁵ At the same time, LGBT activists who campaigned on social media were limited by government restrictions and occasional harassment.³³⁶

Homophobia remains entrenched in Cuban history.³³⁷ In the decade preceding and throughout Fidel Castro’s presidency, “gay people were often sent to forced labor camps along with criminals and dissidents.”³³⁸ Often, they “were subjected to beatings and verbal abuse.”³³⁹ Mariela Castro did offer some hopes for LGBT groups in Cuba by announcing that the “announcement does not close the door to same-sex marriage.”³⁴⁰

Given the deep negative resentment we witnessed take place on the debate on *CubaDebate* relating to gay marriage that often invoked the principles of “God” or “Dios” and the Bible, we analyzed all commentary that mentioned “God” or “Dios.”

³³⁴ *Id.*

³³⁵ Nelson Acosta & Sarah Marsh, *In Rare Campaign for Cuba, Churches Advocate Against Gay Marriage*, REUTERS (Oct. 16, 2018, 3:11 PM), <https://www.reuters.com/article/us-cuba-constitution/in-rare-campaign-for-cuba-churches-advocate-against-gay-marriage-idUSKCN1MQ2N7>.

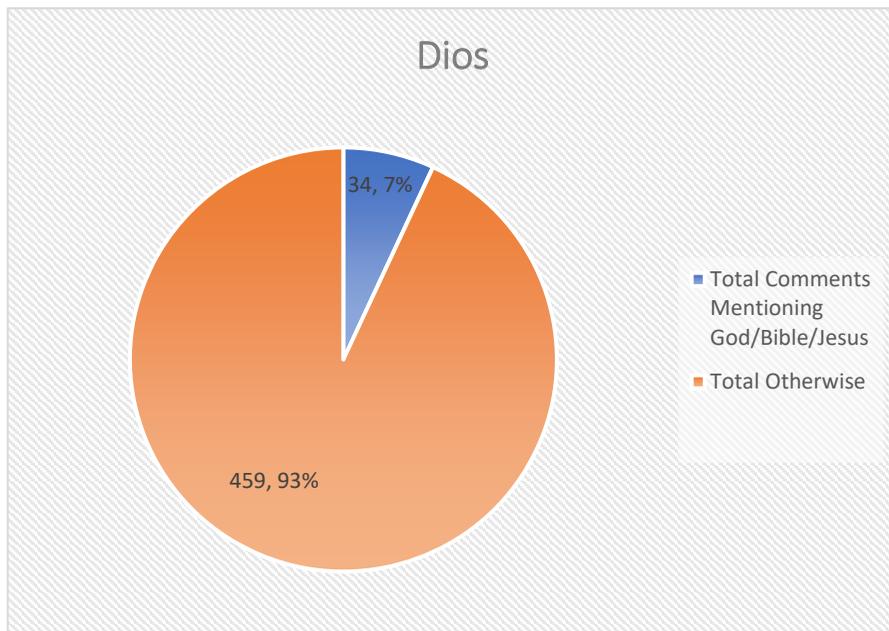
³³⁶ Ingber, *supra* note 330.

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*



Although not to the same extent that gay marriage was heavily discussed, “God” was mentioned a total of 34 times accounting for 7% of the distribution out of our 493 comments analyzed on *CubaDebate*. A report from CBS Miami details the grueling battle that God and the Church confront in Cuba.³⁴¹ The article mentions that Fidel Castro’s government punished Reverend Juan Francisco Naranjo, sending him to two years at a work camp because he preached in Cuba when atheism was the law.³⁴² He died in 2000, but by 2017 his church was packed and roaring with vibrant Protestantism.³⁴³ Meanwhile, the article details that the Trump Administration has repeatedly stated that religious freedom is one of the key demands it will impose on Cuba after completing its review on Obama’s rapprochement with the island.³⁴⁴ Many outside groups have accused Cuba of systematically repressing the island’s growing Evangelical class and other Protestants with acts of seizing and then demolishing churches across the island.³⁴⁵ The issue now lies in the fact that the

³⁴¹ See CBS MIAMI, CBS BROAD. INC., *Evangelical Churches Booming in Cuba Amid Tensions*, CBS MIAMI (Mar. 27, 2017, 7:47 AM), <https://miami.cbslocal.com/2017/03/27/evangelical-churches-booming-in-cuba-amid-tensions/> [hereinafter *Evangelical Churches Booming in Cuba*].

³⁴² *Id.*

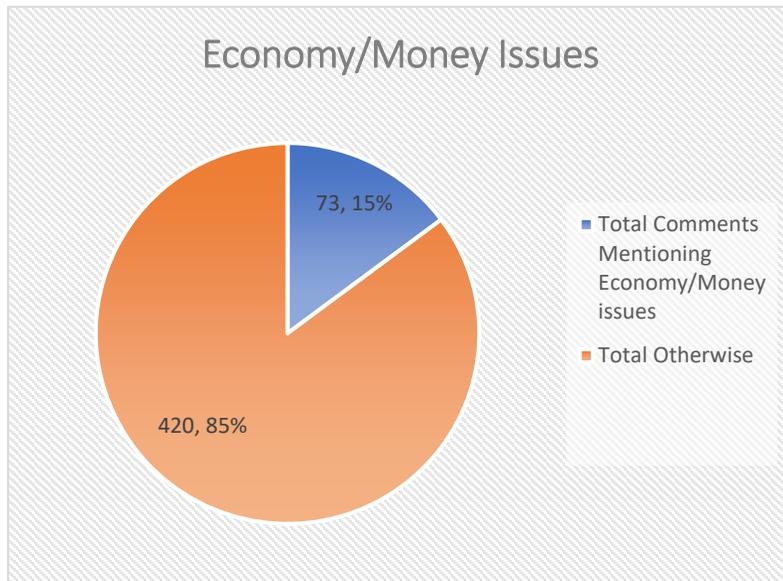
³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

Government does recognize freedom of religion now, but it does not grant the right to build churches or other structures.³⁴⁶ In the meantime, religion will continue to grow in Cuba as the Government becomes more open to the world.

Our final salient variable, “economy/money issues,” resulted in the following distribution:



A total of 73 comments out of 493 mentioned the economy or money issues in some form. This comprised 15% of the total distribution that placed a saliency upon economy/money issues. The reason we saw such a high proportion of commentary on economy/money issues is, at least in part, because Cuba is in the midst of a financial crisis.³⁴⁷ As of 2017, “the country is having difficulty obtaining trade credits due to late payments to suppliers, according to Cuban Economy Minister Ricardo Cabrisas.”³⁴⁸ At one point, during a clandestine closed-door session of the National Assembly, Cabrisas stated that export revenues through June of 2017 were short of expectations by \$400 million.³⁴⁹

³⁴⁶ *Evangelical Churches Booming*, *supra* note 341.

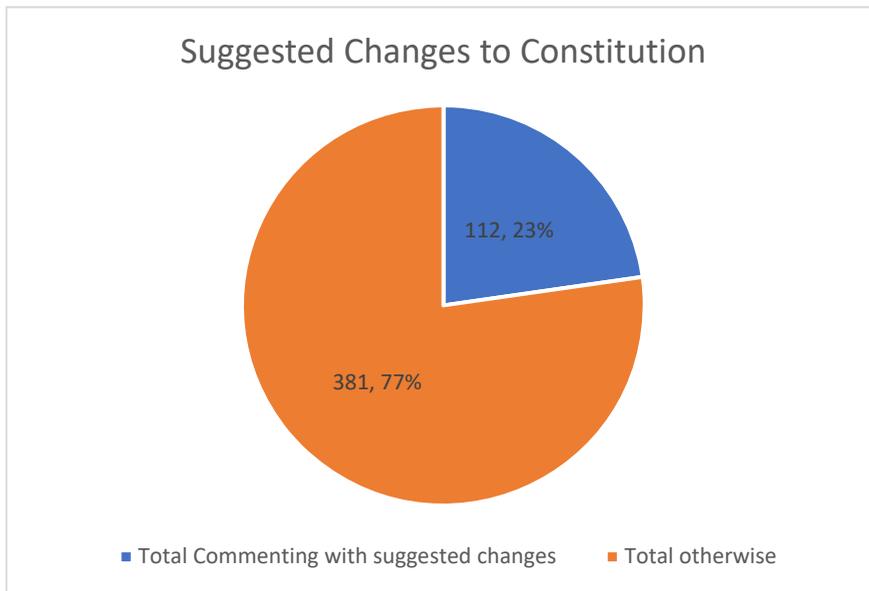
³⁴⁷ See generally Sarah Marsh & Nelson Acosta, *Cuba to Ration More Products Due to Economic Crisis, U.S. Sanctions*, REUTERS (May 10, 2019), <https://www.reuters.com/article/us-cuba-economy/cuba-to-ration-more-products-due-to-economic-crisis-us-sanctions-idUSKCN1SG2HA>.

³⁴⁸ Marc Frank, *Cuba's Financial Crisis Worsens: Economy Minister*, REUTERS (July 18, 2017), <https://www.reuters.com/article/us-cuba-economy/cubas-financial-crisis-worsens-economy-minister-idUSKBN1A321L>.

³⁴⁹ *Id.*

Moreover, he mentioned that imports in 2017 would decline again by roughly \$1.5 billion due to difficulties in using credits, limits assigning liquidity, and debts on expired letters of credit that have yet to be paid.³⁵⁰ On top of these problems, the low oil output from its strong political ally in Venezuela had forced the island nation to reduce fuel and electricity, which tipped its centrally planned economy into a recession for the first time in roughly a quarter century.³⁵¹ In short, the boom in tourism since the rapprochement under the Obama Administration has not been enough to stem the hemorrhaging of hard currency as production and prices of key export earners, such as refined oil products and nickel, have also fallen.³⁵²

Aside from key variables we identified from the analysis, we determined it was necessary to control for those users who “Suggested Changes to the Constitution.”



The resultant descriptive statistics showed that 23% of the distribution or 112 out of 493 comments suggested changes to the constitution. Normatively thinking, this signifies that the plebiscite was posting commentary that contributed to the nature of the ongoing discussion revolving around the newly

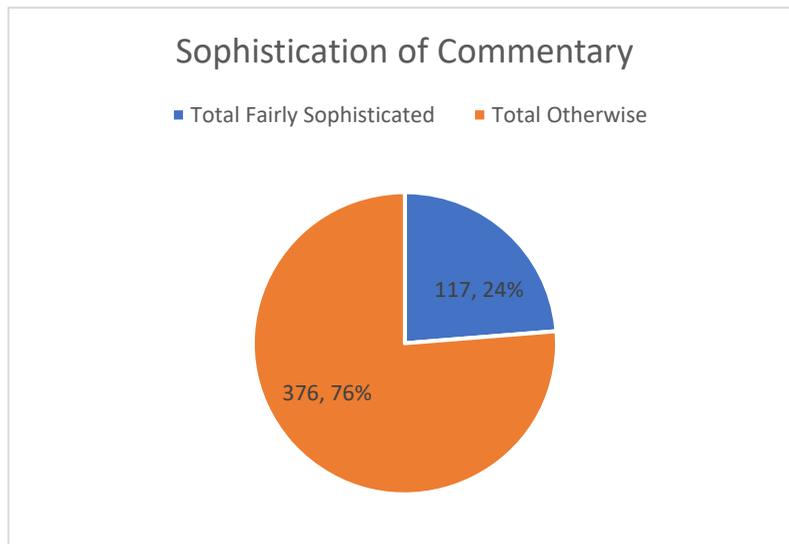
³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*; *Cuba Hopes to Receive 5 mln Tourists in 2018*, XINHUA NET (Jan. 15, 2018, 7:42 AM), http://www.xinhuanet.com/english/2018-01/15/c_136895771.htm.

proposed constitution. Given the professional nature of the government sanctioned site, it does make sense in a normative framework that a significant portion of the distribution would suggest changes to the constitution. This led us however to control for the sophistication of commentary in totality—not just those who suggested changes to the Constitution.³⁵³

Although subjective, we coded for two possibilities: those comments that had some sense of sophistication and those comments that were just pure nonsense or rhetoric either from the far-left or far-right.³⁵⁴ In totality, 117 comments out of 493, or 24% of the distribution, were deemed as having a fair sense of sophistication. This leaves 376 comments that were classified as not having any sense of sophistication to them. Thus, this suggests a significant influence campaign with respect to the commentary being published with the intent of swaying public opinion.

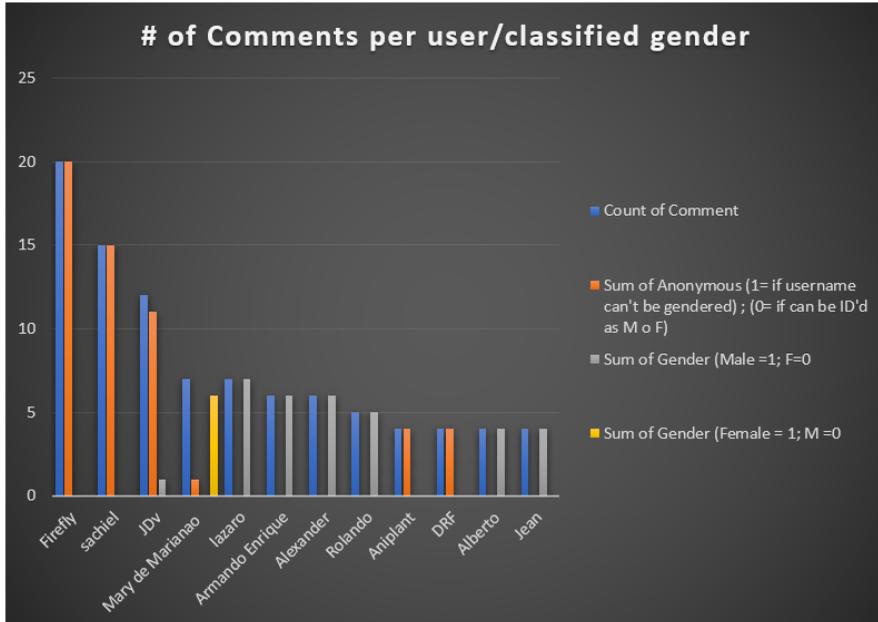


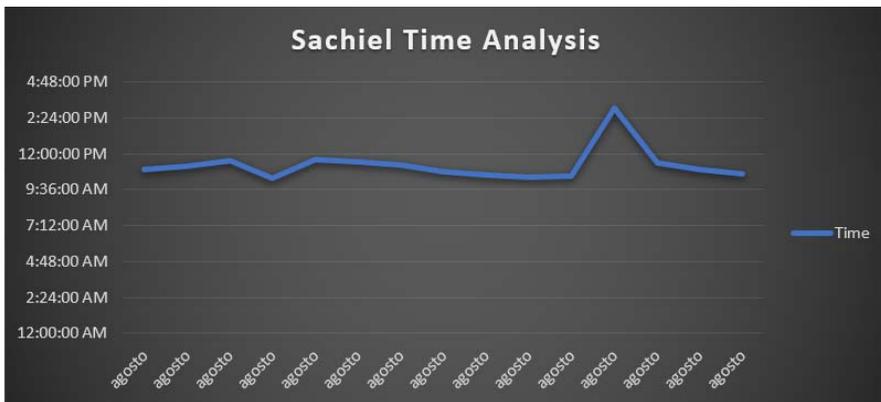
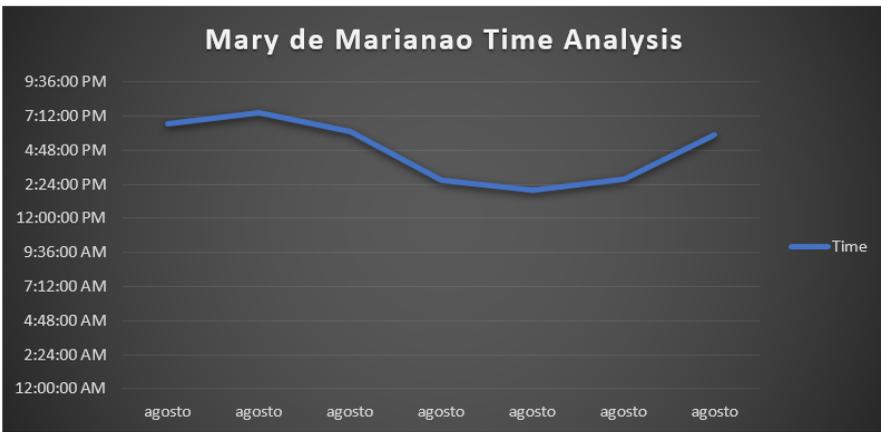
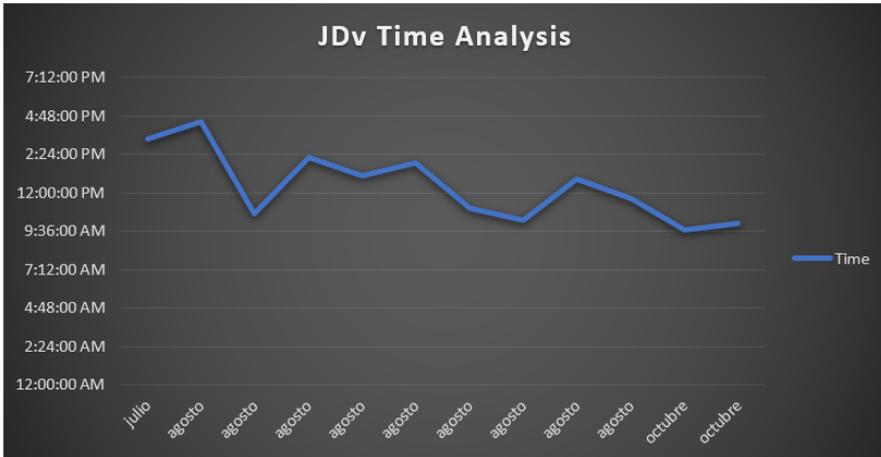
³⁵³ This variable refers to the conceptual complexity expressed in the comments, and to the level of knowledge and mastery about Cuba's governance institution and legislation displayed by the authors of those comments.

³⁵⁴ In Cuba, notions of "far-left" and "far-right" are unlike the same notions, as they are used in the United States or in any other liberal-democratic political system. By "far-left," we understood proponents of classical Marxist-Leninist views, relying on notions of a rigid state planning of the economy. By "far-right," the authors refer to advocates of a measure of economic liberalization, acknowledging the role and importance of private property and the private sector in Cuba's economy.

B. An In-Depth Comment Analysis of the Most Active Users Present in the CubaDebate Commentary

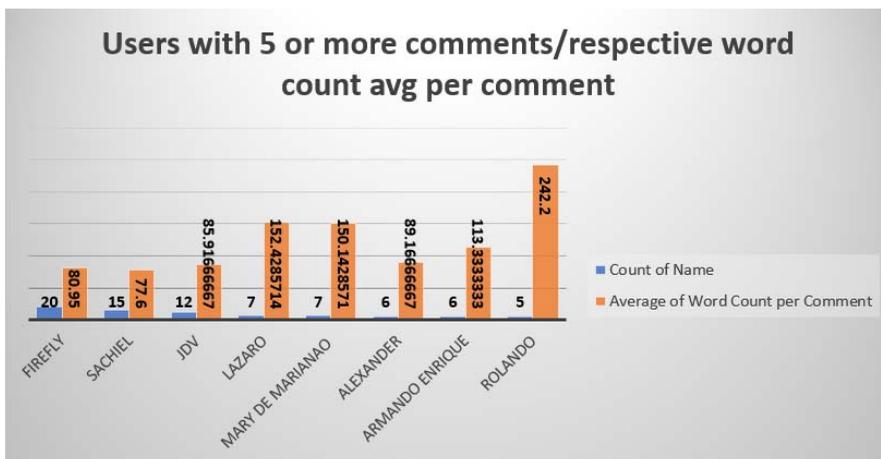
Analyzing the data in depth resulted in deep insight into who the most active users were and their efforts at swaying public opinion. The users named “Firefly,” “Sachiel,” “JDv,” “Mary de Marianao,” and “Lazaro” were identified as the top five users who commented the most on *CubaDebate* throughout the debate. The chart demonstrating the most active users along with when such users posted their commentary on the *CubaDebate* site can be seen below.





The user who identified as “Firefly” significantly tried to sway the conversation in favor of gay marriage and equality. We believe this user chose an unidentified username “Firefly” as a reflection of the book, *The Firefly Letters* by Margarita Engle. The book is about an early women’s rights pioneer and her journey to Cuba that transformed her life as she battled for equality and suffrage, just as the Cuban people are doing in this very day and age.³⁵⁵ This user did not offer any concrete policy descriptions nor changes to the constitution. On the other hand, “Lazaro” seemed to be a political insider and offered up many different proposed modifications to the debated constitution. “Sachiel” also spoke extensively of gay marriage and God, and open-source intelligence states that the name “Sachiel” is associated with Christian angelology and that Sachiel is an archangel from the order of cherubim and the name means “the covering of God.”³⁵⁶ Interestingly enough, the name “Lazaro” means “help of God.”³⁵⁷ It is for these reasons that we argue that the overwhelming commentary relating to God and gay marriage by these users is, in fact, not spurious but deliberate and has purpose and meaning.

We wanted to see whether there was any correlation between the users who posted the most frequently in *CubaDebate* and the length of the comment to measure how substantive these most active users truly were:



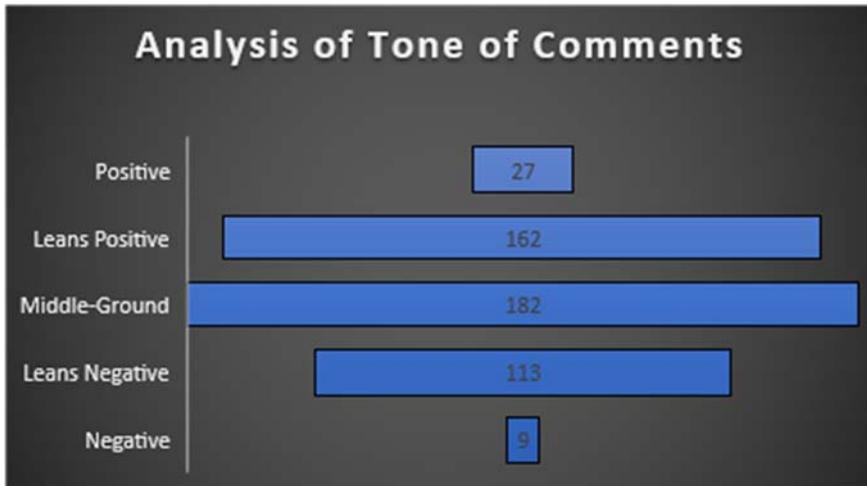
³⁵⁵ See generally Margarita Engle, *THE FIREFLY LETTERS: A SUFFRAGETTE’S JOURNEY TO CUBA*, 146–47 (2010).

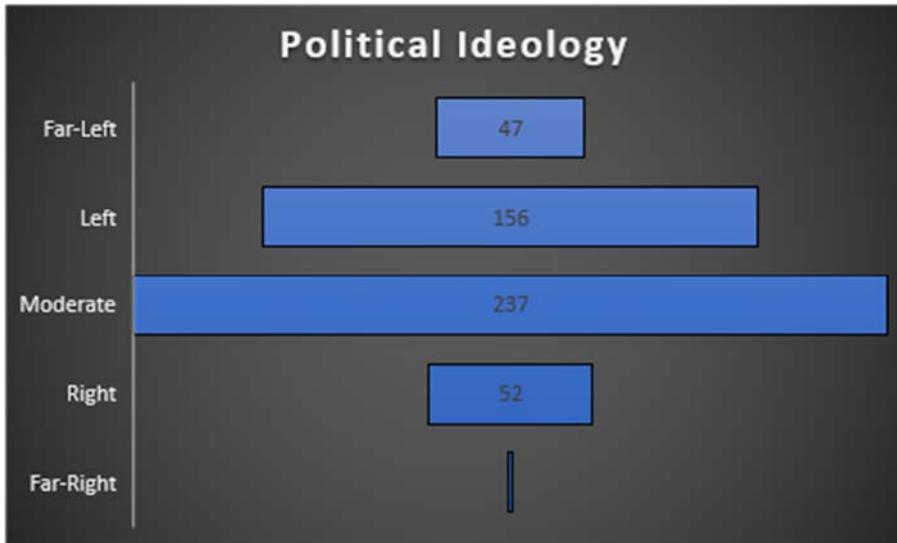
³⁵⁶ The meaning of this name is consistent in each one of the three monotheistic religions. See, e.g., Stephen Burge, *Angels in Islam: A Commentary with Selected Translations of Jalāl al-Dīn Al-Suyūṭī’s Al-Habā’ik fī Akhbār Al-Malā’ik* (2009) (Ph.D dissertation, University of Edinburgh).

³⁵⁷ ANTONIO PÉREZ-ROMERO, *THE SUBVERSIVE TRADITION IN SPANISH RENAISSANCE WRITING* (2005).

The chart clearly shows there is no correlation between our most active users in the *CubaDebate* sample and the respective length of their commentary. In fact, much of the commentary by the most active users was short and did not offer anything to the overall conversation aside from purely trying to sway public opinion and output.

The following two funnel charts and their associated variables, “Analysis of Tone of Comments” and “Political Ideology,” were pivotal in aiding us in the analysis of the impact gay marriage and God had with respect to political ideological choice through the creation of our logit and linear regression models.





We developed a logit model³⁵⁸ to help show the importance of gay marriage and God being discussed in the *CubaDebate* commentary.

The Model

$$\text{Gay Marriage} = 1/(1+\text{EXP}(-(-1.862+0.511*\text{Anonymous}+2.4042*\text{God}+0.289*\text{Comment Positivity})))$$

Parameters

Variable	Value	SE	Wald Chi-Square	Pr > Chi-Square
Intercept	-1.862	0.384	23.570	<0.0001
Anonymous	0.511	0.196	6.773	0.009
God (1 if spoken about; 0 if not)	2.042	0.444	21.207	<0.0001
Comment Positivity	0.289	0.111	6.843	0.009

Our logit model showed that at a 90% confidence interval, we can be 89.4% certain that gay marriage will be spoken about or mentioned in some way in the commentary being debated on the *CubaDebate* page if the person is coded anonymous; mentions or talks about God in some form; and if his/her comment positivity is five (positive). This suggests an extremely high corollary or interest

³⁵⁸ See JOSEPH M. HILBE, LOGISTIC REGRESSION MODELS 2–3 (2009) (discussing the usefulness of this method for the analysis of public opinion and public sentiment); ALFRED DEMARIS, LOGIT MODELING: PRACTICAL APPLICATIONS 2–3, 5 (1992).

among the variables, and it suggests that the higher the comment positivity rating, the more likely the person is to talk about the issue of gay marriage or homosexuality in a good way and vice versa. Furthermore, holding all other variables constant with the same figures in the model, including a scoring of five for the positivity score, but turning off the variable of talking about God (switching it from 1 to 0), the percentage drops dramatically to 52.3% likely that a person will talk about gay marriage or homosexuality in their commentary if they are anonymous, don't mention God at all, and have a high positivity score (5). This reiterates the notion that discussions relating to God and gay marriage seem to always be intertwined with each other. Finally, in changing the positivity score to 1 (negative), the lowest score, and keeping both the categorical variables God and anonymous switched on and set to 1, the probability that commentary will reference gay marriage or homosexuality equals 72.7%. This is alarming, and it suggests that there is extremism on both sides of the aisle in terms of how they view gay marriage or homosexuality as the commentary is rated either highly positive or highly negative (5 or 1). This suggests that the probability that gay marriage or homosexuality will be referenced is high on both ends of the political spectrum.

It was necessary to construct a linear regression model at the same time in order for us to try and explain the variation in comment positivity.³⁵⁹ The model and its output are laid out below.

The Model

Comment Positivity = $B_0 + \text{Political Ideology} * X_1 + \text{Gay Marriage} * D_2 + \text{God} * D_3$

Result

Comment Positivity = $1.475 + 0.273 * 10 + 0.130 * 1 + 0.177 * 1 = 4.512$

Parameters

VariableSEtPr > |t|

Intercept 0.10214.418 < 0.0001

Political Ideology 0.01617.080 < 0.0001

Mentions Gay Marriage in Commentary 0.0691.8810.061

Mentions God in Commentary 0.1311.3540.176

At a 95% confidence interval, the output variable in this model (Comment Positivity Score) is 4.512 with the regressors including Political Ideology Score, talking about gay marriage or homosexuality in commentary, and talking about

³⁵⁹ See Andrew Gleman, *Struggles with Survey Weighting and Regression Modeling*, 22 STAT. SCI. 153, 163 (2007). But see Christopher H. Achen, *Social Psychology, Demographic Variables, and Linear Regression: Breaking the Iron Triangle in Voting Research*, 14 POL. BEHAV. 195, 195–98 (1992).

God in some aspect in the commentary. This suggests that the overall likelihood of commentary is highly positive if the user talks about God, gay marriage, and scores 10 on the political ideology scale (signifying far left). In varying the variables in this model for the political ideology variable by switching it to 2.5 (right-wing) from 10 (far left), the output score for comment positivity significantly drops to 2.46 which is in between 2 (leaning negative) and 3 (moderate). This suggests that if the person is right-wing, and they talk about God and gay marriage, their commentary is likely to be significantly more negatively skewed. Furthermore, all of the variables are statistically significant within a 10% level of significance except for D3 (mentioning God) which is significant at roughly 83% confidence. Nonetheless, the variable is kept in the model, and it is deemed necessary given its relationship to X2 (Gay Marriage) and the overall model itself. Finally, 38% of the variation in the dependent variable is explained by the various regressors in the model.

C. *Minuto a Minuto Summary I and II*

The *Minuto a Minuto* Summary I and II were parliamentary debates contemplating and commenting on the Cuban Constitutional Project where General of the Army, Raul Castro Ruz, the first Secretary of the Communist Party of Cuba, was present during this important session.³⁶⁰ Through both the *Minuto a Minuto I* on July 21, 2018³⁶¹ and *Minuto a Minuto II* on July 22, 2018³⁶² we were able collect 51 definitive comments from various deputies and the actions they proposed.³⁶³ Below lie the descriptive statistics:

Variable	Count	%
Interaction	20	39%
Doubt	3	6%
Addition	17	33%
Ordering	1	2%
Modification	10	20%
Elimination	0	0%
Gay Marriage	4	8%
God	2	4%

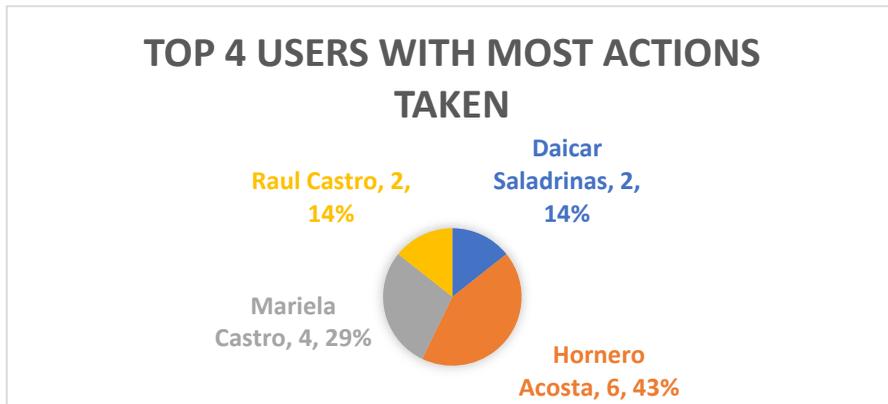
³⁶⁰ *Minuto a Minuto: Proyecto de Constitución es Presentado y Debatido por Diputados Cubanos (I)*, GRANMA (July 21, 2018), <http://www.granma.cu/reforma-constitucional/2019-05-11/en-vivo-primer-periodo-ordinario-de-sesiones-de-la-asamblea-nacional-de-cuba>.

³⁶¹ *Id.*

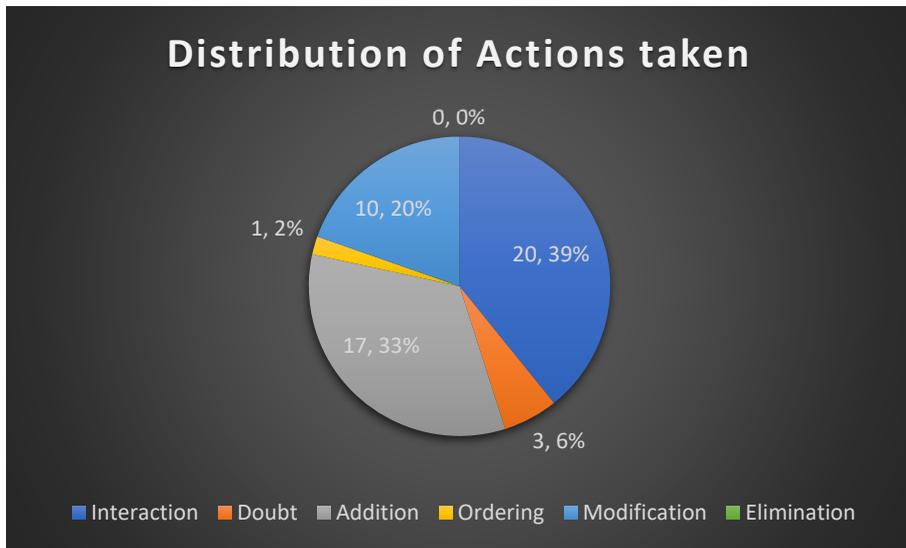
³⁶² *Id.*

³⁶³ *Id.*

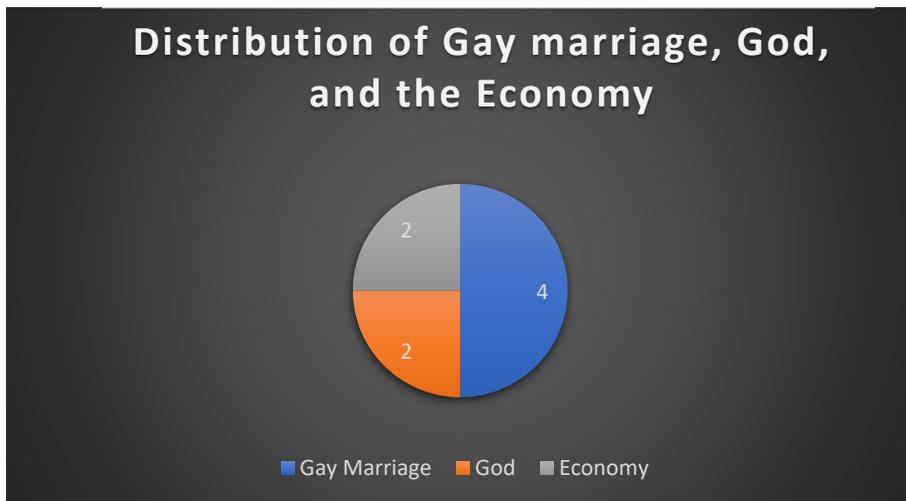
The top commenters during this parliamentary proceeding were the following four individuals: Daicar Saladrinas, Hornero Acosta, Mariela Castro, and Raul Castro. For her part, Saladrinas was active in commenting around issues such as freedom of speech, expression, and liberty. Article 88 was of key concern for this deputy. Hornero Acosta also offered up various talking points relating to sovereignty while Raul and Mariela Castro largely presented formal commentary and nothing radical in nature.



In analyzing the proposed actions, when deputies expressed doubt, it revolved around family obligations and defense of Cuban identity and culture. Additions by far made up the largest distribution of actions taken other than pure interaction commentary amongst the various deputies. The additions, for the most part, themed around gender identity, discrimination, and gay marriage. Meanwhile, the deputies who proposed modifications to the constitution shared a common theme also around the idea of culture and maintaining a vibrant and robust Cuban culture.



Relating to the discussion revolving around gay marriage, God, and the economy. Our three most revered variables that seem to be most widely discussed amongst the diaspora and plebiscite—gay marriage was once again the most widely discussed issue brought up amongst the representatives.



Through this analysis, it appears as if the Cuban parliament and its representatives have mirrored the larger discussion amongst the plebiscite on the

CubaDebate platform. It is a salient measure for reason and as mentioned *supra*, gay marriage is still not off the table for Cuba in the future. It is interesting to note how not one reference was made to God throughout the *Minuto a Minuto* session by members of Parliament. This speaks to the atheist nature of the Cuba's Marxist Leninist ideological backgrounds.

D. *Postdata.club*

Postdata.club is comprised of a small team of multidisciplinary Cuban professionals whose interests lie in constructing collective histories based on the interpretation of data.³⁶⁴ The professionals seek to support an objective and contextualized look at reality that permits a common understanding of what's happening pertaining to a particular event or phenomena.³⁶⁵ The journalists and academic mix obtain their sources traditionally from databases of public character or constructed themselves using subjective and objective methods.³⁶⁶ Their team comprises of the following individuals: Ernesto Guerra—journalist (licensed in journalism); Saimi Reyes—editor and journalist (licensed in journalism); and Yudiivián Almeida—Data editor and journalist (Ph.D. in Mathematical Sciences).³⁶⁷

Our database comprised of 119 comments and their analyses takes commentary from the Preamble up until Article 5 of the Constitution. Below are the descriptive statistics:

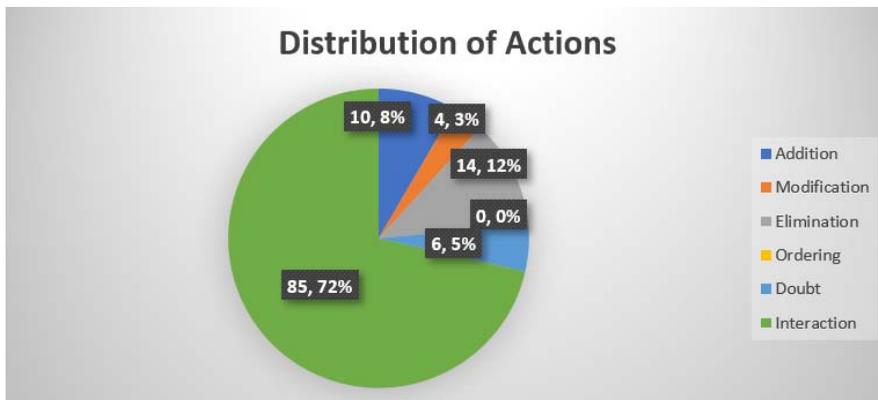
Variable	Count	Percentage of distribution
Addition	10	8%
Modification	4	3%
Elimination	14	12%
Ordering	0	0%
Doubt	6	5%
Interaction	85	72%

³⁶⁴ ¿*Quiénes Somos?*, *supra* note 306.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*



Again, interactions comprised of the largest amount of actions taken by members and their commentary on this open source non-governmentally run dataset provided by the owners of *Postdata.club*. Seventy-two percent of the comments comprised of interactions compared to 39% for the *Minuto a Minuto* dataset of the members of parliaments actions and 66% of the distribution for members of the *Reforma Constitucional* Facebook Group. This demonstrates that on our two open sourced platforms—*Reforma Constitucional* Facebook Group and the *Postdata.club*—interactions are much more common amongst members making comments. This is in contrast to the government commentary provided by the *Minuto a Minuto* I and II in which interactions still comprised the majority of the commentary proposed, but to a much lesser extent.

E. *Reforma Constitucional Facebook Group*

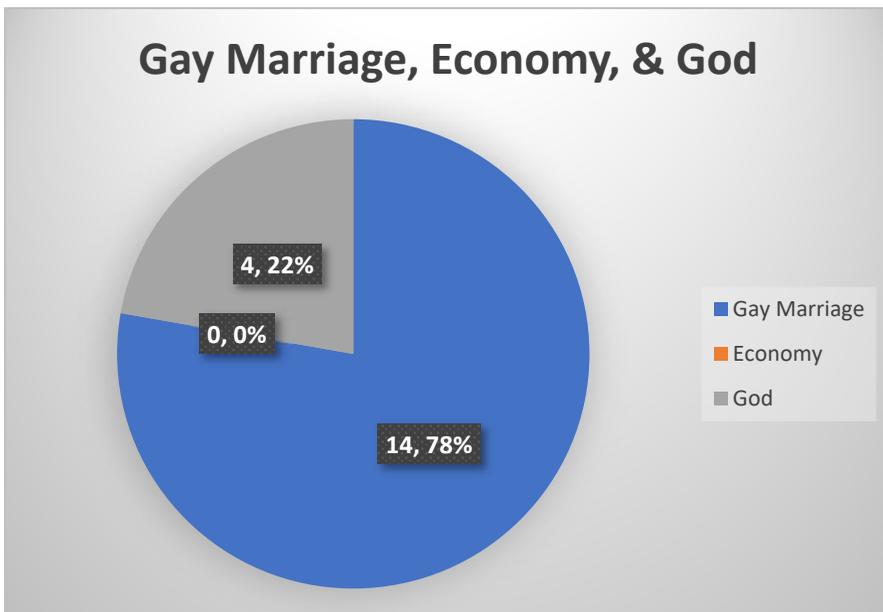
The *Reforma Constitucional* Facebook Group is a public Facebook group set up and created by the owners of *Postdata.club*.³⁶⁸ The group has been in place since August 2018, we've analyzed commentary from January 13 through December 13.³⁶⁹ Overall, we analyzed a total of 196 comments from users that were physical, written text—not a photo, video, or any other post shared. We kept the distribution of comments to solely written text to capture what users were thinking or debating allowing us to better estimate what the overall population is thinking or debating in an open-source manner.

³⁶⁸ *Reforma Constitucional de la República de Cuba*, FACEBOOK (Aug. 2, 2018), <https://www.facebook.com/groups/1982034462051886/about/> (last visited Sept. 7, 2019).

³⁶⁹ *Id.*

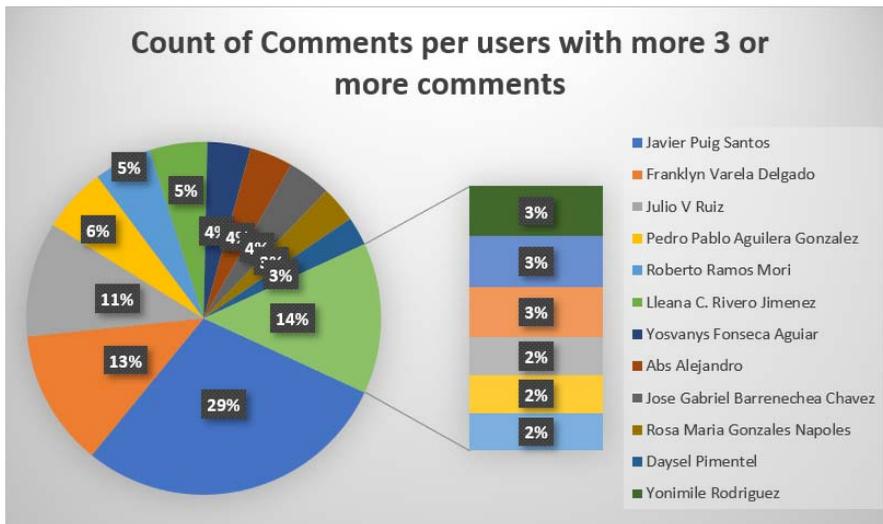
Below lie the descriptive statistics:

Variable	Count	Percentage
Gay Marriage	14	7%
Economy	0	0%
God	4	2%
Voting Distribution		
Yes Vote	1	1%
No Vote	25	14%
Unclear Vote	152	85%
Propositions		
Addition	5	2%
Modification	0	0%
Elimination	0	0%
Ordering	0	0%
Doubt	87	32%
Interaction	180	66%



Gay marriage was mentioned a total of fourteen times accounting for 7% of the distribution of the comments containing some aspect of gay marriage. We find this to be of common occurrence throughout all of our datasets; over 5% of the total commentary mentioned gay marriage in some aspect or form. The top

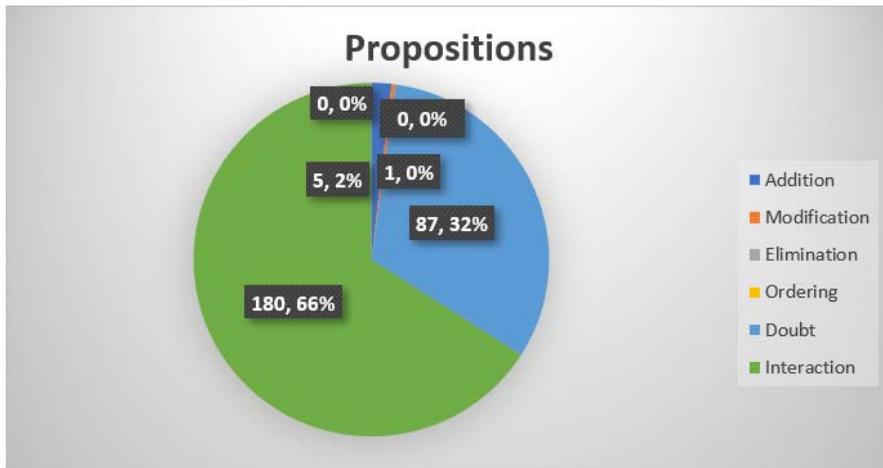
four commenting users in this distribution were: Franklyn Varela Delgado (Studied Lengua y Literatura Inglesa at University of Matanzas 2002; LGBT activist) (19 comments); Javier Puig Santos (Havana; Consultor Empresarial at Empresa de Gestión del Conocimiento y la Tecnología GECYT) (44 comments); Julio V. Ruiz (physician)(16 comments); and Pedro Pablo Aguilera Gonzalez (Universidad Santiago de Cali, Departamento de Humanidades) (9 comments). Delgado’s comments revolved around the awakening of Cuba and its people. He ardently bashed the totalitarianisms of the government and proclaimed a fetish for voting “no.” Javier Puig Santos also vehemently supported a “no” vote and appeared to be an artist. He defended the sovereignty and transparency of Cuba. Julio V Ruiz on the other hand tended to almost serve as a counter dialogue to Santos and Delgado. He stated that he would vote yes to the proposed constitution if he could. Pedro Pablo Aguilera Gonzalez, for his part, was also fervent in proclaiming his “no” vote. However, none of the commentary between these users appears to have any sense of dialogue amongst them. Purely a manifestation of popular participation—nothing more.



Several high commenting users were identified: Leonides Penton (16 comments); Yudivian Almeida Cruz (14 Comments); Gema Perez Davison (10 comments); and Norges Rodriguez (9 comments). Leonides Penton and his commentary was largely critical and offered a plentitude of critiques. It was smart and well-written, and it was noticeable he put thought into it. The issue of sovereignty appeared to be the main issue with which he was concerned. Yudivian Almeida Cruz’s commentary centered around the state and constantly

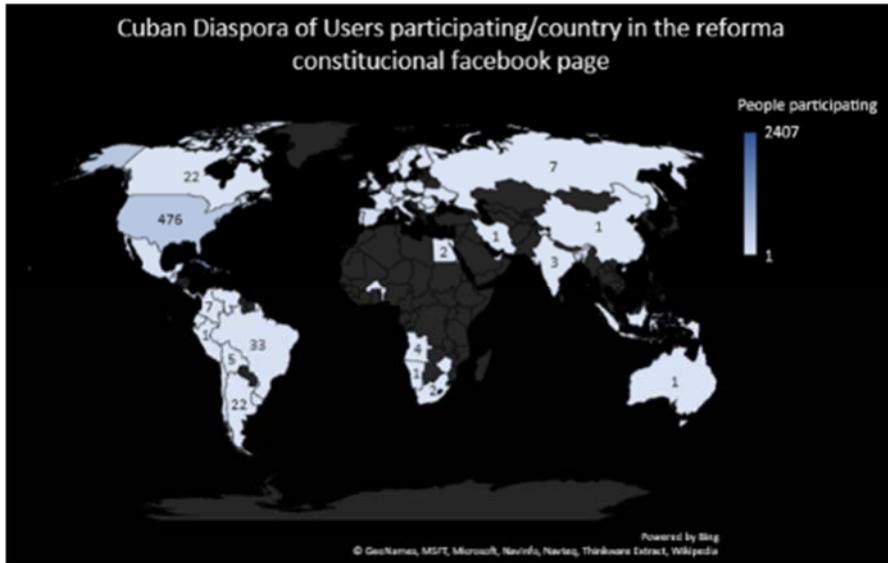
emphasized the vanguard of the Cuban Revolutionary Party. Gema Perez Davison’s commentary was less sophisticated in nature compared to the other two discussed priori. By and large, Davison seemed to have a free-enterprise economic mode of thought, and the elimination of socialism was a key theme in her commentary. Norges Rodriguez’s commentary was largely centered around the issue of sovereignty and the elimination of socialism as well—though much less sophisticated than the other three users identified above. Overall, no distinguishable theme can be identified of certain actors trying to “shove” the conversation one way or another. It appears as if the commentary on *Postdata.club* is neutral and fair and allowed for popular participation to take place outside of the state’s control, which helped us to gauge the overall relative mood of the entire population.

After looking at what the users were saying and who was saying what, we analyzed the propositions to provide a robust comparison with our other databases.



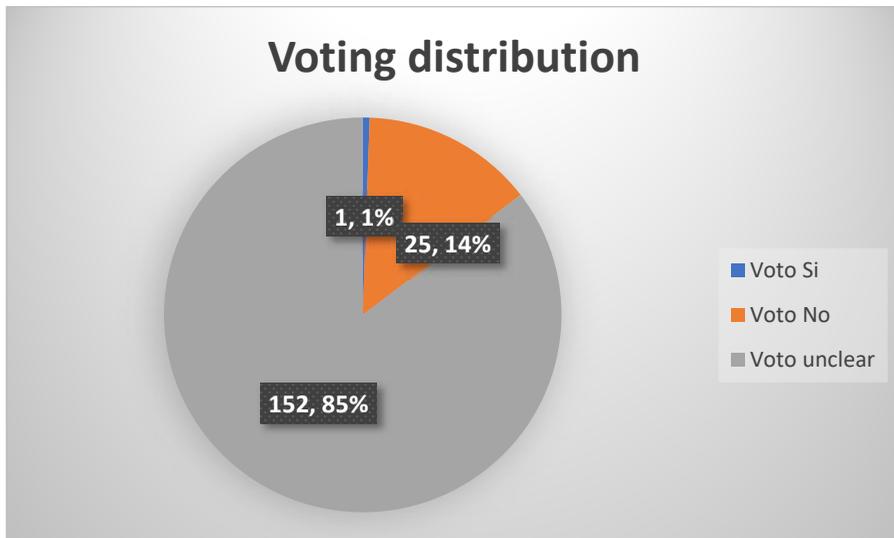
Interactions made up the largest amount of commentary in both the privately ran platform of *Postdata.club*, *Reforma Constitucional* Facebook Group, and in the *Minuto a Minuto* Database amongst the members of parliament. However, 66% of the comments were classified as interactions on the Facebook page group compared to only twenty percent for the *Minuto a Minuto*. This speaks to the nature of the different platforms. Given that Facebook and the *Reforma Constitucional* Facebook Group is an open source platform, it follows the paradigm that this database would mostly consist of users purely interacting amongst each other on their commentary. This is in opposition to the *Minuto a*

Minuto database of members of Parliament where they are actively suggesting changes, modifications, and proposing their new ideas et cetera. Moreover, for the *Postdata.club* Facebook Group, doubt made up the second largest figure of the total distribution comprising 32% of the commentary. This is in stark contrast to the sole 6% of commentary that expressed doubt amongst the members of parliament in the *Minuto a Minuto*. Given that the Facebook Group and its diaspora were very diverse as evident by this visual third graphic:



This might suggest the extent to which members of the *Asamblea Nacional* on the ground in Cuba are not necessarily in touch with the larger Cuban diaspora's overall wishes. Many members of the diaspora expressed doubt about what the members of Parliament were acting on. Speaking to a larger rift amongst Cuban expatriates and patriots.

One final unique variable we were able to measure in this dataset was the number of users who expressed their desire to vote "no" or "yes" on the new Constitution.



Although the desired voting preferences of many members who were active on the *Reforma Constitucional* Facebook Group were unclear, those who expressed their wishes overwhelmingly held a desire to vote no instead of yes. This is in direct contrast with the omnipotent passing of the new Constitution that took place on the ground in Cuba on February 24, 2019.³⁷⁰ Again, this speaks to the division of the greater Cuban diaspora who live outside their home country and those who live within the country.

F. Discussion of the Results

Unlike the comments posted in *CubaDebate* pertaining to gay marriage and God, the comments on *Postdata.club* on Article 68 were all very moderate and centered. Two other issues that were discussed on *Postdata.club* that did not once come up in the comments on *CubaDebate* are in relation to Article 68 and gay marriage: polygamy and underage marriage and how it should be essentially completely barred from the Constitution. Also, it's important to mention that not one single time was God in any form ever mentioned alongside these comments pertaining to gay marriage. That was an overarching theme on the *CubaDebate* site, and it seemed as if actors were trying to "shove" the conversation that way. However, this distribution on this open source platform tells lectors a different story. A story that's not so radical nor negatively charged and doesn't mention gay marriage and God once together—whether for good or bad.

³⁷⁰ Marc Frank & Nelson Acosta, *supra* note 10.

There were also many structural differences present throughout our four databases that we believe enhanced our findings thus making them more valuable for understanding the theoretical implications of popular participation undertaken by the Cuban plebscrite in different forms. The Facebook dataset on the *Reforma Constitucional* group showed popular participation and ardent passion amongst the Cuban diaspora. Many of the comments on Facebook were classified as “interactions,” and sensitive issues like gay marriage and equality were widely expressed. Meanwhile, the *Postdata.club* dataset showed a more leveled response amongst the diaspora who by and large erected commentary that was sophisticated in nature and largely abstained from sensitive issues. Our *CubaDebate* dataset proved robust in the sense that it was a state-run website as opposed to our other two data sets—*Postdata.club* and Facebook—and allowed us to gain insight into how the Cuban state wanted the popular participation to be perceived by allowing the commentary it chose to be published. We are confident that only a select amount of comments was published on the site for a reason, and that reason is to control the ideology and the vanguard of the revolutionary Communist party. Our final dataset on the *Minuto a Minuto* summary of the actions taken by the various deputies of the Cuban government gave us an inside look at what Cuban politicians on the ground were thinking and doing, and it allowed us to gauge how well the politician’s actions lined up with the various expressive thought of the diaspora on the various popular participation platforms we examined. Above all else, our results demonstrated the importance of allowing popular participation to flourish to maintain the integrity of the revolutionary party in power and limit dissent and hostile action taken against the state. Thus, to make people feel as if they are a genuine part of the process, one speaks of engagement rather than of either counter-revolutionary sentiment or threats to the political order. The data suggests the dangers of contorting facts within otherwise unreceptive ideologically driven imperatives.

The data, however, also suggests a number of other conclusions worthy of further study. First, the print media is no doubt anachronistic if compared to the web. The web amplifies Cuba’s capacity to gauge unfiltered popular opinion. Emotional uses of Facebook and Twitter, user naivete, and analytic projects such as *Postdata.club* seem to indicate how social media has become a privileged field to gauge public opinion. Second, in this respect Cuba has developed well beyond East Germany and China, where the government feels threatened by public discussion. The ability to manage social media points to distinct path of evolution for Cuba. Governance methods are just unique among socialist states. Precedents of Eastern Europe do not provide indication of political evolution or change. Context matters. This is an entirely autonomous strand of Marxism

developing its own capacities. Third, our method avoids binary categorization and coding of data. Our choice of variables and criteria used to code data is objective because it is anchored in textual evidence. We chose not to create a categorical taxonomy within which to confine the debate; we preferred to let the voices in the debate speak for themselves uncluttered by our own superimposed perspectives. In the Cuban system, elections are more than binary confrontations between those who are for and against the regime. Fourth, the power of archival evidence is emerging more distinctly now. Archives are good, but in the era of digital warfare, the nature of archives has changed and information valuable to understand broader trends is found online rather than in traditional archives.³⁷¹ Fifth, as proved by functions of grievance mechanisms in socialist systems, we are talking about entirely functionally distinct institutions. Lastly, we note how theories of regime change can yield false predictions; China provides a contemporary example.³⁷²

CONCLUSION

In the run-up to the February 24 plebiscite on the 2019 Cuban Constitutional Project, we have been trying to develop a more meaningful context from which one might better appreciate—even without agreeing with—the core principles and historical practices out of which the current plebiscite has been fashioned. The arc of development of notions of popular engagement from 1959 onwards reflected in part the ideological development of those who drove out the prior dictatorship from a sort of hard leftist and anti-imperialist concoction well understood in then-contemporary Latin America to a more orthodox Leninism with Marxist objectives for which the institutional structures of European Soviet Leninism proved convenient.³⁷³

A central element of that development can be seen in the emergence of quite distinct modalities of popular engagement within the structures of an illiberal state, the core of which is the leadership and control of the PCC over the state and societal apparatus.³⁷⁴ This Article has sought to examine the character, structures, and practices of what is emerging as new means of popular expression within a state whose political model would appear to make such

³⁷¹ This is a serious problem among academics in Europe with historians bashing digital sources other than Jesuit archives etc. but perhaps less so in the United States.

³⁷² Consider in this light the dashed expectations of the 1990s. See, e.g., Henry S. Rowen, *The Short March: China's Road to Democracy*, 45 NAT'L INT. 61–70 (1996).

³⁷³ Larry Catá Backer, *Part 6: On the Nature of Voting in Cuban Marxist-Leninism*, L. AT END OF DAY (Feb. 25, 2019) <http://lcbackerblog.blogspot.com/2019/02/part-6-on-nature-of-voting-in-cuban.html>.

³⁷⁴ *Id.*

modalities impossible. And yet here they are. And to some extent, here, they are both effective—to a limited extent—and tolerated. Where this will go is far too early to tell. That it offers a window into changes in the way in which the relationship of PCC to state to people can be understood is now beyond question.

This suggests two firm conclusions. First, the Cuban Party-State has been seeking a means of developing some sort of connection between its ruling power and the sensibilities of the people. It has sought to do this within the constraints of its ruling ideology. To that end it has begun to develop forms and practices of direct engagement that can be understood as the basic framework of an endogenous socialist democracy.³⁷⁵ These forms and practices have deep roots in the Cuban experience after 1959 and express themselves quite differently from similar efforts being undertaken in China.³⁷⁶ Second, the principal forms of the expression of this Caribbean socialist endogenous democracy—direct engagement through managed commentary and affirmatory plebiscites—have in turn begun to generate a much less-regulated space within which popular expression at both stages has begun to emerge. That expression is neither directly managed by the Party-State apparatus nor hidden from the Party-State. It is grounded in the new technologies that make it possible to develop communal virtual spaces that exist both within the websites of the Party-State and on platforms permitted to operate in Cuba. While it is not yet clear the extent to which these modes of expression have been directly influential, their existence and tacit acknowledgement by the formal structures of Cuban power suggest that someone is watching.

³⁷⁵ See generally Backer & Miaoqiang, *supra* note 76.

³⁷⁶ Backer, *supra* note 76.