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REPORT ON CITIZENSHIP LAW: CUBA

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Report on Citizenship Law

Cuba[1]

Julio César Guanche

(Trans. Lucrecia Rubio Grundell)

1. Citizenship as status, active political practice and egalitarian content

In this text, I use as a framework the debate between the conception of citizenship as a right bearing status, on the one hand, to which the liberal theory of citizenship ascribes, and republican theory's approach to citizenship focused on political participation, on the other. [2]

The republican conception of citizenship questions liberal theories for reducing citizenship to the condition of a status, adjusted to the individualistic conception of rights. For republicanism, there is a more demanding conception of democracy, with regard to citizenship: it is a rights status as much as an active political practice and an egalitarian ideal (Pettit 1999).

The attempt to delimit or extend the number of people who possess the legal status of citizenship is of crucial importance. In the classic republican tradition —Isocrates, Thucydides, Plato, Aristotle, Polybius, Cicero— only the *sui iuris* were citizens, those that could act on their own behalf in judicial acts. This capacity was determined by the legal and material sufficiency that one had to not be subjected to the will of another. While this is the nucleus of republicanism, —free is he who does not depend on another to live and is due only to the law— within it differences were elaborated depending on whether the political community was conceived as the legitimate private preserve of those already free, or whether the aim was to expand the number of citizens.

Democratic republicanism considered democracy —after the experience of the Athenian plebeian revolution in the fifth century BC, with the governments of Epilates and Pericles— as broadening the access to the sphere of the free and equal. Athenian efforts abolished debt slavery and distributed land in order to increase the number of citizens. The project of redistributing freedom's legal and material conditions is thus, until today, the sign of democratic republicanism. In contrast, the non-democratic republican tradition accepted the limitation of the number of citizens as necessary to protect the quality of the political

[1] The text of this report includes some fragments taken from by doctoral dissertation (where I develop them extendedly) available in: http://repositorio.flacsoandes.edu.ec/bitstream/10469/12802/2/TFLACSO-2017JCGZ.pdf

[2] I choose this framework for my analysis, but I do not exclude the importance of other approaches. For example, the anthropological perspective on citizenship is very useful, (Lechner 1997), (Krotz 1997, Assies et al. 2002), as is the debate on the dimensions of redistribution and recognition in the construction of citizenship (Benhabib 2006); (Fraser 2006).

community. In the Aristotelian perspective, the "plebianisation" of politics, the invasion of politics by the poor and ignorant masses fostered demagogy or the dictatorship of the many (the free poor) over the few.

Classic oligarchical republicanism was better suited to achieve modern synergies with, starting in 1812, what began to be called "liberalism", as a stream of political thought (Annino 2012). Both accepted the existence of citizenship a scarce resource, they had arguments to justify such scarcity (the quality of participation) and instruments to achieve it, such as selective suffrage. In this way, in the United States, active citizenship was reserved, 'republicanly', for men with land, excluding women and white men who lacked the means to live for them themselves. At the same time, it 'liberally' put democracy within a limited sphere in the political, different to and independent from civil society or the economy. This is in contradiction to classic republican theory which did not recognise structural differences between the state and society, nor between politics and the economy[3]. This is what I call "liberal republicanism" in this text. The experience produced a transmutation of republicanism by liberalism. Known and hegemonic until today as "liberal democracy", which is capable of enabling simultaneously universal equality before the law, political citizenship for everyone and the oligarchic or "elitist" control of the socio-political order[4].

Republicanism attaches crucial importance to the legal condition of citizenship —to protect those who are already citizens or broaden the number of those who can be— but is critical of the way liberalism understands the rights proper to such condition. Unlike the liberal tradition —in the way of Constant or Berlin— republicanism defends citizen's "negative" freedoms (Constant 1997; Berlin 1998), protecting them through assigning private citizenship rights but also "positive" freedom. Its proposal recognises that freedom is a creation of the political community mediated by law, which, in order for it to be so, must safeguard citizen's freedom as much as the order that makes it possible, that is, the freedom of the republic.

Republicanism, in any of its versions, possesses a broadened version of citizenship that is not limited to the passive enjoyment of rights but includes the creation of political identities through active participation. It understands predication as decisive for the creations and maintenance of the rules that ordain the political community. It expects a "civic" or "citizen" behaviour, which it translates into "desirable activity", as a means of forming the *ethos* of a citizen identity. In this horizon, for Arendt citizenship is the space for the construction of the public (Arendt 1973) (see also Mouffe 1992, p. 235 and Pettit 1999).

Participation is an epistemic value central to republicanism because it allows fitting the conception of citizenship and that of democracy within an understanding of politics. If politics is the creation of, and deliberation on the ethos, on the political character and identity of subjects, it can only be created and recreated by means of the citizenry's active participation. Its commitment to self-government characterizes republicanism, therefore, as a way of self-expression and self-definition on behalf of citizens and not just a way of

[3] The North American experience became a program to maintain the oligarchisation of politics with popular accord: "federalists produced an ideology, specifically a redefinition of democracy, that would conceal the ambiguities of the oligarchic project (…) It was the undemocratic victors in the United States that gave the modern world their definition of democracy, a definition in which the dilution of popular power was an essential ingredient" (Meiksins Wood 2000, p. 238). Liberalism was presented as a substitute of democracy when it inserted "representative democracy", a liberal creation in the definition of the republic.

[4] For Gordon S. Wood, this did not mean that the whole republican tradition was substituted in line with something called "liberalism": "republicanism was transformed, rather than supplanted by liberalism". (Wood 1995, p. 95).

protecting individual interests. In another interpretation, while the republican tradition values democratic participation, it does not consider it an unshakable basic value. Even so, it understands it indispensable to promote the enjoyment of freedom (as non-domination) (Pettit 1999).

For liberalism, negative freedom is a priority in that it responds to an individualistic conception of freedom that protects the independence and autonomy of the persons against the prescriptive interference of the public. This thesis protects pluralism more through the neutrality that is expected from the state than through citizen participation. Neutrality is presented as a commitment from the state, who renounces to uphold a particular conception of the good. The starting point is that no idea of the good is ontologically superior to another. The democratic character of the liberal state is valuable, then, for the way in which its capacity is limited to not intervene in individual decisions. In this way, it privileges the protection of private goods over the defence of the common good.

The implementation of democratic republican ideals requires "tackling not only *imperium* —the relations of domination coming from state instances— but also, and especially, *dominium*, that is, relations of domination born out of dependency bonds rooted in the so-called civil world, which are, to a large extent, also the origin of *imperium*" (Casassas 2005, p. 239). Democratic republicanism recognises state intervention as necessary for the construction of a framework of freedom and establishes a range of problems the resolution of which is a responsibility of the state. As such, it promotes policies that favour the socio-economic independence of citizens as the specification of its egalitarian ideal. Within the latter, the regulation of the fiduciary nature of property (that is, rights to property but also on its behalf, with social duties and functions that property has to comply with) is central to its agenda.

The dispute over the access to citizenship as a right bearing status is linked, in this way, not only to the vocation of active participation, but to the practice of politics as an egalitarian ideal —between individuals with regards to the state and to other individuals— that needs the state in order to materialise. The recognition of social rights is necessary but not sufficient to ensure the material foundations of freedom, which republicanism locates in the material structures of society, such as the property regime, the organisation of production, and the regulation of labour.

The republican perspective, however, has difficulties in understanding certain dimensions implicit in the processes of broadening or delimiting citizenship. Its emphasis on the latter as a universal value can affirm universalism at the price of constructing racially exclusive forms of social identity and promote cultural assimilation. The emphasis on locating the threats to politics' egalitarian condition in the material structure of society does not always render visible how supposedly "cultural" issues, like racism, also become policies that restrict citizenship. The substantial commitment with public virtue and the common good can go along a "perfectionist" conception of politics —inattentive to societal pluralism and the evolution of contending identitarian projects. The defence of political values —which have to be shared by all— as the architecture of democracy can disavow the value of culture as the source of civic loyalties. These criticisms find adequate answers in light of the debate on citizenship as the interaction of dynamics of redistribution and recognition, for example, that I will not address here, however.

In Cuban academic literature, the treatment of citizenship in Cuba on behalf of jurists has concentrated regularly on its condition as a status (Piorno Garcell, Cutíe Mustelier 2015), (Matilla Correa 2014), (Prieto Valdés 2013a), (Prieto Valdés 2013b). More recently, it has also been treated as a political practice. This is what Lorie Tapia has done to study the

practices of Cuban Afro-descendants linked to the Independent Party of Colour in 1912 (Lorie Tapia 2014). René Fidel Gonzalez, Julio Antonio Fernández Estrada and Julio César Guanche have explicitly linked citizenship as status and as practice from within republican theory (González García, René Fidel 2004), (Fernández Estrada, Julio Antonio 2017), (Guanche 2013). From other disciplines, such as sociology or history, the issue is also dealt with that also explicitly work with, or argue against, the republican approach (Ferrer 1995), (Andry Matilla (coord.) 2009), (Núñez Vega 2002), (Rojas 1997), (Torres Santana 2016).

2. Citizenship in the thought of Independence

The constitutional thinking behind Cuban nationalism is based on four constitutional texts. These constitute the legal order of the republic in arms, applicable to the territory liberated from Spanish colonialism and to the insurgent domain. In this context, we cannot study citizenship in its modern sense, because there is no national state in the sense of a politically self-governed civic community.

Notwithstanding, the mention of these texts mention is useful in order to analyse how independentist thought conceived the republic and citizenship, and to compare it to the way in which the ideal of citizenship was consolidated after the independent republic was created (1902). It is an entrance point to analyse how the national republican framework included, limited or excluded individuals in the context of independence.

In fact, the "formation of Cuban citizenship" in the sense of civic practice, not of status —citizenship took place in relation to the metropolis— was not born, nor was it subsumed, in the practice and ideal of independence. In 1812, the issue of the representation of creoles in the Court of Cádiz was part of a process of demands differentiated from peninsular representation. Later, the establishment of political parties — Reformist and Autonomist— expressed a "modern public moral within Cuban society that could stimulate pressure —from bellow— for the acquisition of citizenship rights" (Bobes 1996, p. 204).

The independentist ideal chose the active side of citizenship. First, it was based on an independent republic, characterized by a self-governed political community, with duties regarding the maintenance of such community, regulated by Law. Second, it sought to develop into a social republic, a civic community of equals, with the abolition of slavery and the distribution of the right to property. For José Martí, the "role of man in the rescue and maintenance of his dignity: those are the duties, and the attempts, of the revolution. She will be governed so that the war, thriving and capable, gives soon a firm home for the new republic" (Collazo 1900, p. 112). For the enemies of independence, there were "enigmatic declarations, the calculated obscurantism of which was easily explained by the difficulty of clearly explaining their purpose" (La insurrección de Cuba ante los Estados Unidos 1895, pp. 55–56). However, it is not difficult to uncover how the meaning of the Martí's phrase had a translation within independentist constitutionalism.

The constitution of Guáimaro (1869) —reformed seven times— fully expressed the democratic republican ideal[5]. First, it treated citizenship as a status as well as a civic practice (a duty towards the republic): "All the citizens of the Republic are considered soldiers of the liberating army", (art. 25); at the same time, such status granted rights over the control of

[5] The cited constitutions and laws, unless otherwise indicated, appear in (Barreras 1940). As has already been written, the mambisian constitutions analysed (Guáimaro, Baraguá, Jimaguayú and La Yaya) were conceptualised for the republic in arms, during the war of Independence, without Cuba being and independent state during that time.

political representation: "The President of the Republic, the general in chief and the members of the House shall be accused, when there is cause, before the House of Representatives. This accusation can be done *by any citizen"* (Art. 8). Secondly, it conceived it as an egalitarian ideal: "All inhabitants of the Republic are entirely free" (art. 4.) —which entailed the abolition of slavery—; "the Republic recognises no special dignities, honours nor privileges (art. 26) and "the citizens of the Republic will not be able to admit honours or distinctions in a foreign country (Art. 27). Thirdly, it protected citizenship as the site of sovereignty against the government: "Public contributions and loans, the ratification of treaties, the declaration and conclusion of war, the authorisation of the President to grant letters of marque, the raising and maintaining of troops, the provision and maintenance of the army, and retaliation statements towards enemy must be the object of law" (Art. 14). Fourthly, it was committed to revolutionary republican cosmopolitism[6] (in the debated that approved it): "all Americans [Latin Americans] that [desire] to acquire our (Cuban) citizenship are equated to the inhabitants of the island of Cuba". It established proportional representation, suffrage and the separation of powers as the institutional axis of the political system. The constitution of Baraguá (1878) reiterated the primary demand of a self-governed political community: "The [independentist Provincial Government] will not be able to make peace with the Spanish government on other bases without the knowledge and consent of the people" (Art. 4).

The constitution of Jimaguayú (1895), repeated, for the war, the exigence of active citizenship contained in Guáimaro: "All Cubans are obliged to serve the revolution with their persons and interest, according to their aptitudes". It also constitutionalised the issue of property as part of the democratic republican agenda: "The estates and properties of any type belonging to foreigners will be subjected to the payment of a tax in favour of the revolution among those whose respective governments do not recognise belligerence with Cuba" (Art. 20). At the same time, it established for itself a validity of two years if the war did not finish earlier, associating what today we know as legality and legitimacy. After that period, an assembly of representatives could be convened, which could modify it, elect a new governing Council and censor the outgoing one.

The constitution of La Yaya (1897), fulfilling that mandate, and imagining, the close end of the war, legislated more thoroughly on the Cuban "nationality/citizenship" of those who were to be considered Cuban: those born on Cuban territory, the children of a Cuban father or mother, even if they were born abroad and those who were directly serving in the revolution whatever their nationality of origin (art. 3).[7] At the same time, it reissued the approaches of its predecessors treating citizenship as an egalitarian practice and civic duty: "all citizens are obliged to serve their country with their person and belongings, according to the law and to what is allowed by their attitude" and "military service is compulsory and irrepressible". Article 10 made a spectacular declaration at the time: "Electoral law will be regulated by the government on the basis of universal suffrage". In the same democratic republican sense, it considered the public regulation of property and resources necessary to sustain the material base of citizenship. In its context, this meant: the (insurgent) Republic of Cuba only guaranteed the debts recognised by the constitution of 1895, and those legitimately

[6] On the cosmopolitan content of revolutionary republicanism, see: (Domènech 2004).

[7] Citizenship and nationality are treated as interchangeable terms in the Constitution of La Yaya, as well as in the whole Cuban constitutional tradition until 1992. For example, the Code of Private International Law (Bustamante Code), of 1928, regulated in its articles 8 and 9: "It does not approve those principles that modify the system of 'jus soli' as a means of acquiring nationality" and "It does not admit precepts that resolve conflicts relating to 'double nationality' without prejudice to the exclusive application of 'jus soli'. "The 1976 Constitution expressly regulated citizenship, but on one occasion used the term nationality as a synonym of citizenship (Article 29, ch.). Since the constitutional reform of 1992 only "citizenship" is used for this issue.

assumed afterwards (art. 46). Foreigners could not claim compensation for any damages the Cuban forces may have caused to them prior to the date on which their respective governments recognised the belligerence or independence of Cuba (art. 47).

Part of this order, particularly that of Guáimaro, was questioned for being "civilist" and of little use in responding to the contingencies of the revolution. For example, Máximo Gómez, General in Chief of the Liberation Army expressed it as such: "those institutions (…) were the result and the work of the purest patriotism and the most finished democratic republicanism, in those sublime times of holy enthusiasm of a people, which seems counted more on the consciousness of its rights and the notoriety of its chains to triumph than with the strength of its canons" (Gómez 1916, p. 108). However, such order contained crucial tensions other than those specifically "political". The abolition of slavery was disputed within the revolutionary domain, and a file such as the "freedmen regulation" "mediated" the issue, establishing patronage and the obligation to work for freedmen in exchange for food and clothing[8] (Balboa Navarro 2003, p. 25). Despite the fact that the Liberation Army was a multiracial force, with blacks being the majority of members and 40% of the officers, racism did not cease to be a problem within the insurgent spectrum itself[9].

The issue re-emerged after the North American occupation of 1898, in order to define who was to be given Cuban citizenship. A constitutional project of Salvador Cisneros Bentancourt (1900) —who had served with honours in the revolutions of 1868 and 1895— sought to establish as Cuban citizens the Africans who had lived on the island for more than 25 years (art. 4), while foreigners were demanded, instead, "over ten years of being rooted in the country" (Cisneros Betancourt 1900, p. 9).

Yet the most radical difference with the independentist constitutionalism is seen in texts such as the "Provisional Constitution of Santiago de Cuba, or of Leonard Wood", of October 20th, 1898. During the occupation, an education reform and health programme took place, the Constituent Convention was prepared, and political parties were formed. At the same time, the Liberation Army and the Cuban Revolutionary Party created by José Martí were dissolved. The administration legislated for a country under occupation and translated such victory into rights from the liberal republican matrix characteristic of the United States: shielding some rights from the pressure exerted by other rights[10].

The text of 1898 established the political rights of peaceful assembly, freedom of religion, access to justice and protection of property. Likewise, it only regulated that "no private property will be taken for public use without due compensation" to its owners. Thus, subtracting the part of "civic function" that property had had within the insurgent constitutionalism and foreclosing the connection between the regulation of property and the

[8] Slavery endured de facto in Cuba until 1886.

[9] Regarding the centrality of race in the Cuban war of Independence in its context, Ada Ferrer has written: "Once Cuba and the racial question are situated at the centre of the story new motivations, meanings and intervention dynamics, as well as new avenues to link the history of race with that of Empire, because it is very significant that, in an epoch of ascending racism, the United States would choose temper the victory of a multiracial and explicitly anti-racist movement!" (Ferrer 2011, pp. 5–20).

[10] The democratic republican critique to the type of "liberal respect" towards citizenship rights specifies this point: there is a tension between rights and democracy (understood as collective political production), there where individual rights, without corresponding obligations, are used as trenches against the rights of the community, as only the former favour individual freedom. Liberalism, that proclaims itself as egalitarian via state neutrality, renounces egalitarianism when it protects the accumulation that comes from the exercise of created rights and prohibits the type of intervention that could avoid the consequences in the form of dispossession generated by the use of those same rights.

possibility of expanding social rights on the basis of the control of national resources.

As part of the same approach, the intervening government he approved, with support of Cuban conservative actors, a very restrictive Electoral Law (1901), which established active suffrage for Cuban males over 21 years of age who were able to read and write. For passive suffrage, it imposed that provincial governors had to be Cuban by birth (or naturalised before the age of 8), at least 30 years old, heads of family, as well as property owners or taxpayers in the province at least one year before the election. To become president, the person would also have had to have fought in the war of independence for at least 10 years (Electoral Law for the constitution of a republican government for the island of Cuba 1901). This requirement prevented the generation that fought in the war from 1895 onwards, as was the case of José Martí himself (killed in combat in 1895).

To close the circle of the "transfer of power", through the peace treaty between Spain and the United States of America (1898), which excluded Cuba, both nations mutually renounced any compensation claim, national, private or other. They also renounced to claims of their subjects or citizens against the government of the other country, which could have emerged from the beginning of the 1895 insurrection until the ratifications of the treaty. The two countries also renounced to all compensation for expenses caused by the war (Vivanco 1902, p. 154).

The legislation of the nascent Cuban republic would show these marks: the law of June 9th, 1902 granted amnesty for crimes committed during the period of intervention by citizens of the United States of America and their partners, accomplices and abettors. The law of October the 3rd, 1902 granted full amnesty for crimes committed by municipal officials in the exercise of their position until May 20th, 1902. All criminal acts committed under the aegis of the intervening power where thus validated, while the law of November 10th, 1902 granted amnesty for all tax offences committed until October 11th, 1902[11].

3. Citizenship in the constitutionalism of 1901

Thirty years of disputes over independence were also reflected in the ensuing legislation. On the eve of the creation of the independent republic, the Constitution of 1901 picked up part of the independentist program. Cuba was one of the first nations of the continent to establish universal male suffrage (for men over 21 year of age, although not universal as established in the Constitution of La Yaya in 1897), compared to existing electoral schemes in the region based on restrictive suffrage on the basis of census or education. While it excluded women (female suffrage started in 1936), the number and quality of the electorate determined singular logics of political struggle for the acquisition of voting rights (for example, with regards to Cubans of colour). This process took place within the framework of a new and quite broad Electoral Law (1908), which responded to the collective action deployed by diverse actors and to the great social protest generated by the restrictions on Cuban sovereignty by the United States (Celia, Soler 2000).

An amendment of a North American law —the Platt Amendment —was imposed on the Republic, as a condition for its emergence. The norm guaranteed the "right" of the United States to intervene in the country and to dispose of areas of its territory for naval and military ends. The Platt Amendment thus codified the relation between Cuba and the United States as

[11] This legislation can be consulted in (Borges 1935).

one of dependence. It dispensed the Cuban political system with commitments to legitimacy, as the United States was safeguarded by the Platt Amendment. The mobilisation of the Cuban people defeated the intent of annexation but did not avoid the creation of a virtual "protectorate", as referred to by the North Americans. "With regards to its interior regime, Cuba will be a sovereign nation, but from the international point of view it will be a state of the American Union" (Roig de Leuchsenring, Emilio 1939b, pp. 50–51). In 1902, 90% of the sugar trade —central to Cuban economic and social life— was destined to the United States, and dependence continued to reach these levels around 1930.

However, the constitution of 1901 was celebrated by ample sections of Cuban society. The constituent Domingo Méndez Capote expressed: "Hopefully […] this page of our history that has just been written here, constitutes the solid, permanent, firm and stable base of the prosperous, free and blissful Cuban republic" (Roig de Leuchsenring, Emilio 1939a, pp. 72–73). Of a liberal-individualist nature, the text is framed within the United States' liberal republicanism, in contrast to the democratic republicanism that independentist constitutionalism had adhered to. It regulated civil and political rights at the most advanced level to date, such as those of assembly and association, prohibition of detention without warrant, and inviolability of the home and of correspondence. Also inspired by the North American tradition, it forged a strong presidentialism, a legal loophole for political *caudillismo* in Cuba, within a normative framework that did not intervene in relation to the causes supporting "*caciquismo*", such as oligarchic landownership and the absence of social and political rights or the public provision of social resources.

The Magna Carta similarly modelled a defective system of power division. It promised to promote the independence of the judicial power, through the creation of the Superior Court of Justice, whose members could not be removed from office except by impeachment. However, judicial power became dependent on the executive power, which appointed its most prominent officials. It also enshrined a hyperbolic territorial distribution, which would be a permanent source of corruption and of various institutions' lack of quality, representativeness and effectiveness, such as the Senate and the provincial governors. In addition to an electoral system whose shortcomings —the partial bipartisanship of intra-oligarchic factions and the non-existence of an official register, among others— led to continuous electoral fraud.

During the constitutional debate, the inclusion of democratic republican measures in the Magna Carta was proposed, such as the prohibition of foreigners from acquiring Cuban land —a measure that had a tradition in great figures such as José Martí y Manuel Sanguily. This measure sought to impede the advancement of a grave fact: between 1899 and 1900 about 7 thousand rural properties changed ownership in favour of North American investors, at extraordinarily low prices[12]. But the proposal did not prosper. Henceforth, the foreign depredation of Cuban land —and the imposition of mono-productive landownership regimes in terms of the use of land and labour—was a fundamental cause of three issues: a) the authoritarian, and often explicitly violent, profile of Cuban politics; b) the emptying out of citizenship as a political practice and its seclusion within the profile of a formal status; and, c) the emergence of serious social conflicts, such as the "race" war of 1912, which added a peasant uprising to protests against racial exploitation (Pérez, Louis A. Jr 2002), and against which the constitutional framework legitimised its bloody repression.

Large landownerships —of national and foreign property— affected the practices of citizenship. Large estates were responsible for the 'savanisation' of Cuban territory, the

[12] In the Cuban orient, "unlikely" transactions were recorded, such as the one made by the United Fruit Company, which bought 170,000 hectares for less than $ 200,000 (Zanetti Lecuona 2013).

macrocephaly of Havana as the capital and the forced rural proletarianisation of large portions of the population. "*Caciquismo*" as a political relationship was structured on the basis of the concentration of property, the polarisation of income and the rural proletarianisation of the population. The fundamental political concept with which it operated was the exchange of favours for loyalty, a dynamic opposed to that of citizenship, focused, at least, on the exchange of duties and rights within a political community.

Within the framework of liberal constitutionalism, the constitutional body of 1901 defended the secularity of the state, with the separation of the state and the church, religious freedom, freedom to profess all religions, and the prohibition for the State to fund any cult. Although its text still retained the mention of "in favour of God" and the limitation of the "respect due to Christian morality and public order" [13]. However, in the field of social rights, it regulated very little content, which was nonetheless fought: the compulsory and free nature of primary education and arts and crafts. Both were left to the State, and experienced advances with respect to their previous histories. The state was also in charge of second and higher education (if the municipalities or the provinces could not sustain them), and freedom of teaching and learning was recognised, although the State reserved the right to demand special degrees —and their expedition— for the management of some professions. The absence of social rights and the provision of public services and resources pressured citizenship downward, to the point of reducing it to the sole condition of a status for immense social majorities.

From the point of view of citizenship as a status, the Magna Carta of 1901 established that citizenship could be acquired by birth or naturalisation. The first case comprised those born inside or outside the territory of the Republic to Cuban parents; those born on the territory of the Republic to foreign parents, if they claimed their status as Cubans in the corresponding Registry, upon reaching maturity; and those born abroad to Cuban parents who had lost their Cuban nationality with the same requirements of majority of age and registration. Foreigners who had belonged to the Liberation Army and who claimed Cuban nationality in the six months following the promulgation of the constitution were naturalised; as well as foreigners who, established their domicile in Cuba before the 1st of January, 1899,; foreigners who, after five years of residence on the territory of the Republic —and within no less than two since they declared their intention of acquiring Cuban citizenship— obtained a naturalisation card; the Spaniards residing on Cuban territory on the 11th of April 1899, who had not registered as Spanish in the corresponding Registries until the same month and day of 1900; Africans who had been enslaved in Cuba, and emancipated included in Article 13 of the Treaty between Spain and England of the 28th of June.

Cuban nationality was lost in the following cases: when a foreign citizenship was acquired, or following employment by or honours from another government without the consent of the Senate; taking arms with a foreign nation without the same consent, in the case of naturalised Cubans, for living five consecutive years in their country of birth, unless for reasons of employment or commission on behalf of the government of the Republic. Voluntary renunciation of citizenship was possible, too, and the law also provided for

[13] It is not until the 1930s that "afro-Cuban" beliefs begin to be considered by some as "religions", with the privilege this granted to the exclusivist dimension of "white" nationalism. However, the Constituent Convention of 1939-40, in discussing what morality could be demanded from the citizenry, "Cristian morality" as a synonym of "public morality" continued to prosper. Within this logic, for the vast majority of conveners there was no doubt about the "universality" of Christian morality. The only "religions" that were mentioned in the debate were (sic) "Spiritism" and "masonry" (*Diario de Sesiones de la Convención Constituyente*. Vol. II. No. 62. 31.05.1940, 25-39).

restoration of lost citizenship. A commentator noted at the time: "in principle we support that, in order to recover citizenship, the latter can only have been lost for the causes determined in Article 7, and the same conditions are required as to acquire the naturalisation for the first time, as being located, the Cuban, for losing his or her condition as such, in the position of any foreigner, it is natural that he or she be considered like any other foreigner to the effects of acquiring our citizenship" (Vivanco 1902, p. 17).

The designed procedure did not speak of marriage as a cause of loss or acquisition. The matter was regulated in the constitutional laws of 1934 (reformed twelve times) and 1935 (in force until the 10th of October 1940) —dictated by provisional governments without creating constitutional assemblies— which established that "foreign women married to Cubans by birth or naturalisation" could be Cuban citizens by naturalisation, "as long as they do not opt for their nationality of origin." The prohibition of dual citizenship is still a common factor in Cuban constitutionalism. Likewise, these two norms established —in equal terms— that "the Cuban women married to a foreigner will always be considered Cuban", when it was traditional practice to obtain authorisation on behalf of the husband to undertake acts related to citizenship. Since then, going through the Constitution of 1940, marriage has not conditioned the modification of Cuban citizenship.

Enrique Gay Galbó commented in 1937 that the system established in 1901 should have accepted only one of two systems: to close the constitutional clauses of acquisition and loss of citizenship, or to leave their definition completely open to the legislator. The problem implied here was the "desirability" of a certain type of immigration (Cuba was a country of immigration until the 1930s[14]), and thus selectivity in the granting of citizenship. Afro-Caribbean immigrants experienced several processes of expulsion, and Chinese nationals experienced great difficulties in legalising their situation[15].

Under the protection of the Citizenship Law of 1902, and Decree 859 of 1908, registration was established as well as the provision of valid documentary evidence of birth, but the procedure gave rise to fraud, such as the impersonation of names or other personal characteristics and extortion on behalf of officials. Faced with the pressure to regularise their situation and thus acquire citizenship rights —because the status matters— the process was abused. This was because the confirmation by witnesses to the veracity of what the applicant said was enough for the person in charge of the civil registry to consider it truthful and thus for the Secretary of State to have them deemed as legal. A "deplorable system", according to Gay Galbó, was constituted (Gay Galbó 1937).

In addition to the definitions of status, the 1901 text collected few cleavages on active

[14] Latin America received discontinuous waves of immigration (above all between 1820-1930) from Europe and Asia (with higher marks between 1860-70 and 1930). Cuba was part of the process and received hundreds of thousands immigrants until this last date.

[15] Among those expulsed were from the Caribbean such as the "jamaiquinos". The process always had racial connotations. According to José Ignacio Rivero, director of 'Diario de la Marina', the prolific increase of blacks, who unlike whites did not restrict their natality, and the limitation of those immigrations that prevented "the influx of whites into the country", helped by the law of the 50% of employment for natives, gave way to "a dark threat: that before a quarter of a century, blacks, with no economic strength or sufficient educational calibre [will have] outnumbered whites" ("No hay tal peligro negro." *Adelante* 1. 4. 09.1935). In the case of the Chinese, they faced many problems with their regularisation. For example, Decree No. 458 of April 9, 1915 extended the period established by Decree No. 1223 of 1914 for the admission into the Republic of certain Chinese citizens. Decree No. 559 of May 8, 1924 suspended the issuing of visas for citizens with Chinese passports on behalf of Cuban consuls with the exception of the passports of diplomatic and consular officials and employees. Decree No. 573 of April 27, 1926 (which repealed Decree No. 559 of 1924) created a "Consular Visa Registry for Chinese Citizens" in the Secretary of State.

citizenship —in line with the liberal republican framework, which privileges the protection of private property over the defence of the common good. The Cuban citizen was obliged to serve the homeland in arms and to contribute to public expenses, and had as a right the impossibility of being expatriated and prevented from entering the territory of the Republic. Politically, the regulation of citizenship configured a space for the protection of "negative" freedoms: protection against arbitrary detention (Article 20) and against deportation (Article 41). It did not contain measures to regulate political representation in a fiduciary manner —with revocation of mandates and control over representatives— nor the possibility of expanding "positive" freedoms through public interventions aimed at providing greater social equality, as was the case, already alluded to, of its limited provision of social rights. The regulations on property were limited to shielding the exclusive and exclusionary character of private property, a liberal conception of private property (Article 33).

4. Citizenship in the Constitutionalism of 1940

The official order that enabled the celebration of the constituent assembly of 1900-01 was read in English, by a military governor, Leonard Wood. In contrast, the assembly that drafted the 1940 Constitution was, emphatically, "free and sovereign", and was experienced as a nationalist exaltation. In the tradition of the Weimar constitution, and under the influence of processes such as the North American *New Deal*, the struggle for the Spanish Republic, as well as Mexican nationalism, the Cuban Magna Carta of 1940 was a translation of global advances in matter of political and social rights. It became an avant-garde social-democratic text —more recently studied as "populist"— influential for the Peronist constitution of 1949 and for other constitutional texts subsequently approved in Europe. From the theoretical framework, it ascribed to democratic republicanism, unlike the clearly liberal base of the Constitution of 1901[16].

Unlike the Constitution of 1901, written by "distinguished patriots", the specification of the content of the 1940 text owed much more to social pressure and elaboration. It was the result of the presence of an ample spectrum of actors, the concurrence of a complete system of political parties —representing the entire political spectrum— and of a diversified public opinion. It established a broad catalogue of political and social rights and guarantees: the right to strike, habeas corpus, universal and mandatory voting, freedom of association and expression, worship and speech, business and trade, the secular state and a broad legislation of social, cultural, labour and family protection.

Blas Roca, a communist leader, judged, at the time, the new text in the following way: "the Cuban constitution of 1940, by its content, can be described, in general, as progressive and, in some aspects, as really advanced" (Roca 1940, p.14). Roca explicitly valued its democratic republican contents: the consecration of the principle of state intervention in the economy; the legal regulation of lease contracts, setting maximum rent and the minimum duration; the limitation of large landownerships; the abolition of censuses and the restriction of land ownership for foreigners. Likewise, the text of 1940 established universal male and female suffrage (it had been defended since the government of the "Hundred Days", and approved in the constitutional law of 1934, Cuban women voted in 1936, but here it acquired a definitive constitutional profile). It, furthermore, defended racial justice as a problem that

[16] Domínguez has commented the "illiberal" character of the Cuban constitution of 1940, which restricted some political rights, at the same time that it extended social ones (Domínguez 1998)

demanded cultural recognition and material redistribution, and created the crime of discrimination for the first time in Cuban constitutional history.

The 1940 Constitution also modelled, for the first and only time in Cuban institutional history, a semi-parliamentary regime. This regime has recently been qualified as "attenuated presidentialism" (Pérez Hernández 2016, pp. 94-95). The system was characterised by the absence consecutive presidential re-election and a waiting period of eight years before being able run again, with the figure of a prime minister (it would be one of the ministers, with or without portfolio, appointed by the president) and with cooperation mechanisms among all public powers to moderate the weight of the Executive. This system has long been questioned as ineffective. Also, it did not alter the political-territorial structure and thus reissued the problems that this posed to the apparatus of political representation. It maintained the tri-partition of powers and did not modify the representative system (against proposals to create "functional" institutions, such as a corporate senate), and it created new institutions for the protection of rights —the Court of Constitutional and Social Guarantees— and expanded the use of the appeal of unconstitutionality, for example, to the contentious-administrative area.

The 1940 Constitution had enemies. Important sectors of the so-called "living classes" clamoured against it. Willard L. Béaulac, United States vice-consul, accused the constituent assembly of "violating the mandate of its people", of "attacking the sovereignty of its members", of being "tyrannical" and "contrary to democracy" (Report of George S. Meeresmith to the Secretary of State, July 18). Some of these actors described the 1940 Constitution as a "communist triumph", and as having "socialist" content. The text was a partial defeat, an undesirable result, for the previously almighty Cuban oligarchy and for American banking and sugar interests.

As had happened in 1901, the accessory legislation that had to complement, develop and enforce the content of the constitution had great shortcomings. According to one calculation, a decade after the 1940 text was enacted, only ten of the seventy special laws pending had been issued (Rasco 1991, p.125). On the other hand, the agrarian reform — which was included in the text of 1940— did not take place until 1959 and the prohibition of large landownership turned out to be a dead letter, as its structure was not modified until then. Other constitutional articles defended oligarchic interests for other areas: they limited the taxation work of municipal governments and protected foreigners with regards to the servicing of debt. United States diplomats considered that the most radical constitutional contents would bring "psychological rather than real effects" (Report of Willard L. Béaulac to the US Secretary of State, June 26).

The 1940 Constitution was the result of the revolutionary and reformist pressure that propelled the 1930-1933 revolution. For the sectors involved in it far from enabling the diverse representation of the social was a barrier against such diversity in favour of the old oligarchy. The liberal oligarchic format was not democratic but a substitute for democracy, in so far as it structured the dissociation between political power and the people, between the State and the nation. The questioning that the oligarchic and "*caudillista*" containment of politics in Cuba received was not against "democracy" but to "old politics". The questioning of "liberal democracy" by "populist" actors was not based on the contestation and the ignorance of what they considered to be the virtues of liberal democracy (they did not impugn universal suffrage, the weight of public opinion, the separation of powers, nor the virtue of limited government or the supremacy of parliament), but on its defects.

The matter is of capital importance as the revolutionary and reformist proposals sought to "complete the republic", correcting the problems of liberal democracy, but not to dismount it, and even less, to substitute it. The slogan had been expressed graphically by

Fernando Ortiz since the 1920s: “we have to republicanise Cuba”. With that phrase, he referred to “a program of public actions denouncing government corruption and requesting efficient political, social, economic and legal reforms to stop the risk of state bankruptcy” (Cairo, p.43).

In 1939 there were twelve political parties in Cuba. The bulk of them were described as “institutions created to satisfy group ambitions”. The cause of the problem was located in “individualism, so characteristic of Cuban personality” (García Mayo 1940). They were accused of being dominated by an “absolute lack of ideology” and of legislating in their own interest. Corruption continued to be an evil incarnated in political life. Several discourses found their cause in structural factors, and not just in “moral” judgments. They understood that bureaucracies were the livelihood of the Cuban middle classes: easy work, quick enrichment, a scenario of impunity and their lack of insertion in the national economy, were factors that, together, made “the Cuban of the middle class a being that vegetates in public office in order to subsist” (García Mayo 1940). Professional politicians were denounced for working for vested interests and for themselves[17].

Given the above, the institutional system was useless for different relevant social sectors: for some it was insufficient to correct *imperium* (the exclusionary political power of the oligarchical “caciquismo” or the political parties that represented it), for others it was incapable of attacking *dominium* (the despotic private power of capitalist companies or of capitalist landlords). If “productive’ capitalist sectors, and professional and intellectual sectors, had a problem of control over the political system —with regards to the old oligarchy—the popular sectors were excluded. The reaction to this was to dispute the notion of democracy, in order to make it more inclusive.

Those critical of oligarchic liberalism included diverse social actors such as the “productive” bourgeoisie, medium and small bourgeois sectors, professional sectors and workers, and by parties so different from each other like the PRC (A), sectors of the Liberal Party, the ABC, the Communist Party, and Fulgencio Batista. These groups were all critics of “old politics” —considered to be the source of despotism. Despotism originated in the concentration of both public and private power: "The individual is a fugitive, or rather, a displaced person of its own creation. However, the liberal-democratic state remained, to ironically console him, which, with its principle of non-intervention in private businesses, allowed the new economic powers (banking and super-industry) to evict the individual” (ABC 1934, p.14).

This thesis understood that the practice of freedom —among individuals with regards to state power and private powers— needed the active participation of citizens. In this way, the ABC, the magazine *Carteles* and other actors advocated mandatory voting; the Cuban Revolutionary Party (Authentic) called for the exclusion of amnesties for political crimes, to protect the quality of suffrage; and the Communist Party made an active mass campaign in search of the popular vote for the Constituent Assembly, supported as the right to strike as “sacred”, and the demand to vote at age 18, to expand the electorate (Alfonso Roselló, page 43). At the same time, they considered that the state should be able to act in favour of collective interests. With this, they defended an expanded conception of freedom, not limited to the “negative” enjoyment of rights. The argument had explicit democratic republican

[17] The number of legislative projects submitted to the House of Representatives in the mid-1930s was estimated at 500, a very important part of which had this destiny: it "stagnates or falls asleep or volatilises" in the congressional course (1936, p. 33).

content[18]: "the final vision must be that all, absolutely all the inhabitants of a State must be property owners. Not because of the fear "that it is dangerous to irritate to the extreme the man who has nothing to lose", but because of a strict spirit of fairness and love for the neighbour; a social function that we will soon deal with if we do not prefer capital" (López Rovirosa 1936).

The constitutional regulation of 1940 regarding the status of citizenship expressed these contents, in multiple dimensions. It fundamentally maintained the causes of acquisition and loss of 1901, with modifications tending to their facilitation. All Cubans born on the territory of the Republic would be Cuban by birth, with the exception of the children of foreigners who were in the service of their government; those born on foreign territory, to a Cuban father or mother, by the mere fact of living in Cuba; those who, having been born outside the territory of the Republic to a father or mother natural of Cuba who had lost its nationality, and who claimed Cuban citizenship in the manner provided by law; foreigners (a novelty with respect to 1901, as an honorary concession of citizenship *by birth*) who for a year or more had served in the Liberation Army, and who had remained in it until the end of the War of Independence.

On the other hand, naturalisation would be granted to foreigners who, after five years of continuous residence in the territory of the Republic, and not less than one after having declared their intention to acquire Cuban nationality, obtained the citizenship card, provided they knew the Spanish language. Furthermore, the foreign man who contracted marriage with a Cuban women, and the foreign women who contracted it with a Cuban man, when they had offspring as a result of such union or had two years of continuous residence in the country after the celebration of their marriage (these requirements were new with respect to the constitutional laws of 1934 and 1935). Dual citizenship was prohibited. Citizenship cards and certificates of Cuban nationality were exempted from taxation.

Citizenship was lost by acquiring a foreign one; by entering the military service of another nation, without the permission of the Senate, or by carrying out functions that implied authority or jurisdiction (the latter, a novelty with respect to 1901); for residing three consecutive years in the country of birth (in the case of naturalised citizens, which lowered the requirement of 1901 in two years), unless they express every three years, before the consular authority, their will to preserve their Cuban citizenship; and for accepting double citizenship (a novelty regarding 1901). The law would determine the crimes and causes for the loss of citizenship by naturalisation, by means of a judicial decision. Unlike other unconstitutionalities by omission (provisions of law that were never issued), the issue of citizenship did have accessory legislation: in 1940 the Citizenship and Migration Regulations were approved (Decree 3022 of 28 October) and then the Decree 358 of 1944, "Citizenship Regulation" (Official Gazette 1944). Never could the legislator at the time imagine that such Decree would retain (partial) validity. This is because, as will be discussed later, no other regulation on the subject have been dictated since 1976. The socialist constitution, in force since then is however substantially different from its 1940 predecessor.

The dimension of citizenship as an active practice was central the text of the 1940 Constitution. Those who prohibited or limited citizen participation in the political life of the nation were declared punishable (Article 38), as was coercion on behalf of the authorities compelling citizens to join a particular political party or preventing them from expressing

[18] For Doménech and Bertomeu the fundamental problem of the republican tradition can be sintetised in ths way: "given the plural motivation of agents, how to design the best social institutions (including the basic institutions that causally influence the distribution of property and the access to the means of social existence" (Doménech, Bertomeu 2005, p. 66).

their will (Article 101). A constitutional mandate was required to force a citizen to change their domicile (Article 30) and intervention in it required judicial authority. It established as citizenship duties to serve the homeland with arms; to contribute to public expenditures; to comply with the constitution and the law and to observe a civic conduct, "inculcating it to their children, promoting in them the purest national conscience" (Article 9).

Within the nationalist spirit that adopted by the Constitution, Cuban citizens received exclusive benefits for their nationality. In addition to political rights, such as carrying out public functions and positions, they also received other social rights: social assistance, public cooperation, preference for work (Article 10) and, potentially, affirmative action for sectors suffering from historical exclusion, such as black Cubans[19]. Universal, equal and secret suffrage was established for all Cuban citizens as a right, duty and function, and for the first and only time in Cuban constitutional history, it was established as mandatory (Article 97). A popular legislative initiative was stipulated, exercisable by ten thousand citizens (Article 135), and a declaration of unconstitutionality by 25 citizens (Article 194). For passive suffrage, in order to be Municipal Mayor, Manager, Commissioner or Councilman, it only required to be a Cuban citizen and be twenty-one years of age (Barriers 1940).

The issue of preference in employment for Cuban citizens/nationals was a field of conflict. Of the nearly 4 million inhabitants populating Cuba in 1938, at least 600,000 people (15.6%) were white Spaniards. Several social sectors considered that these were "the progenitors of the majority of the native population, to which they have transmitted all the psychic characters that they brought from the peninsula" (Marinello 1937, pp. 384-385). Access to jobs for such sector was limited by laws of affirmative action in favour of native workers that demanded up to 80% of employment for nationals[20] (Whitney 2010, pp. 264-265). Given this scenario, the distinction between Cuban citizenship by birth or by naturalisation become important, in favour of the former[21]. Cubans by birth accredited such condition by means of a document denominated "Certificate of Nationality" in the law, while

[19] Article 74 of the constitution of 1940 regulated: "The Ministry of Labour, as an essential part of its permanent social policy, will ensure that no discriminatory practices of any type prevail in the distribution of opportunities for labour in industry or commerce. In the removal of personnel and in the creation of new places, as well as new factories, industries or businesses that are established, it will be mandatory to distribute work opportunities without distinction of race or colour, provided that the suitability requirements are met. The Law will establish that any other practice will be punishable and prosecutable ex officio or at the request of the affected party".

[20] The crisis of 1929 had been devastating for the Cuban economy. When growth began, during the 1930s themselves, this was due to non-structural factors. Opportunities to substitute imports arose, but it was due to the fact that land and labour (with the systematic lowering of wages) were available to expand and diversify agriculture. At the same time, a partial non-payment of the external debt was possible without suffering sanctions or losing advantages, since direct investment was scarce and there were no credits. Daily life was perceived as a tragedy by the majority. In the 1930s the following situations were common: non-payment of wages, "slavery-like" working conditions, the dismissal of those who protested, payment in vouchers and tokens, scholarly exclusion, the breach of social laws and the transferal to the workers of the cost of newly acquired social rights. Practically, every day the press reported suicides of people "bored" with life, whose living conditions in most cases were described as very serious. According to contemporaries, the "most tragic problem in Cuba" was unemployment: "It is worthless for the active worker to earn a few more pesos of salary, if at the same time there are thousands of workers at rest oscillating between extremism, despair and delinquency" (Editorial 1937, p.17).

[21] Measures such as these had already been requested in light of a serious finding. A sentence of the Supreme Court of the Republic, of 1936, affirmed that: "for historical, social and economic reasons, the notoriety of which is expressed in this verification, the Cuban native has been successively and progressively displaced from the domain of land, commerce and industry, for the most part by foreign hands, and in the same fate, has been banished from jobs of all kinds in establishments, companies and private businesses, where communities of origin and kinship relations made traditional the constant preference and the importation of elements related to the employer" (Arredondo 1939, pp. 103-104).

naturalised Cuban citizens received a document called a "Citizenship card".

On the other hand, establishing the word "discrimination" in the constitutional text had concrete consequences for citizenship as status and practice. It meant extracting the problem of racism from the "moral" sphere, opening the doors to its social considerations and its legal sanction and granting it more power to situate itself within complex discourses like that of "Cubanism". It enabled, for example, to legally sanction acts of discrimination and — potentially— to launch affirmative action policies towards black Cubans. How this "worked" in practice, what stands out for our approach here, specifically, is that the act gave a completely new role to state intervention in the pursuit of justice in Cuba, in this case racial justice. The approval of discrimination as a crime also allowed the adoption of concrete responses to a problem that bedevilled many Cuban families, particularly of colour, among whom formal marriage was much less frequent than in white families: the prohibition of distinguishing between natural and illegitimate children. According to testimonies of the time, this was a "wound" in the heart of the nation, which amounted to a "second class citizenship" for natural children.

The validity of this Constitution was interrupted in 1952, by a new coup d'état by Fulgencio Batista. In the meantime, as the conditions that would allow for the expansion of rights were not structurally transformed, the possibilities of new participants exercising political life with higher quality were limited. Thus, along with social advances in the fields of work and consumption, patronage relations and corrupt state logics were maintained. The military coup of Fulgencio Batista (March 1952) cancelled the Constitution and fought the political and social rights enshrined in it. In addition, economic policy followed different channels to those the 1940 Constitution sought to privilege (economic diversification, pluralisation of productive actors and defence of consumers and workers). The recovery of the 1940 Constitution was one of the main flags of the broad political field that triumphed over the Batista dictatorship in the 1950s. It reached a point in which, once the revolutionary triumph of 1959 had taken place, the Fundamental Law of the Republic of 1959 restored the validity of the 1940 text, and part of its contents were formally maintained until 1976, while others, like certain civil and political rights, were cancelled or restricted.

5. Citizenship in Cuban constitutionalism between 1959 and 1976

The Cuban insurrection of the 1950s saw the political and social recovery of the democratic Republic as one of its foundations. Martí, the "intellectual author of the attack on the Monacada Barracks" (1953), had argued for "a pluralist democracy, a stable republic". Bonds of one thousand Cuban pesos issued by the July 26th Revolutionary Movement to raise funds for the revolution contained allegories of the Republic. José Antonio Echeverría, leader of the March 13th Revolutionary Directorate, assured that the revolution laid "the structural bases of the new republic, sovereign in its right, fair to all its children, honoured in the men who serve it, prosperous and secure in its economy, projected towards a universal culture with its own characteristics and oriented towards the fulfilment of its American destiny". Fidel Castro had affirmed (1953): "the problems of the Republic can only be solved if we dedicate ourselves to fight for it with the same energy, honesty and patriotism that our liberators invested in creating it" (Castro Ruz 2007, p.42). After 1959, the March 13th Revolutionary Directorate demanded the extirpation of "everything immoral, dirty and ugly that stains the honesty, uprightness and beauty of our revolutionary republic, free and sovereign". Fidel Castro asserted that "the Republic requires a good surgical operation and if we start spreading onto it

mercury-chrome, the Republic dies"[22]. The Civic Education Manual of the Rebel Army (1960) had as an illustration a Cuban version of the "Freedom guiding the people", by Eugéne Delacroix, the most famous democratic republican allegory, from the artist Carmelo- (Ministry of the Revolutionary Armed Forces 1960).

Yet in Cuba, the regime prevailing between 1902 and 1959 has largely been called "Republic" —with different adjectives— and the one that succeeded it until today, "Revolution". The nomenclature expresses a problem, because the official name of the country is still "Republic of Cuba", and its form of government is republican. However, the distinction between Revolution and Republic did not begin with 1959. Manuel Sanguily affirmed in 1924: "Looking back, could we properly think that the Republic is not the legitimate derivation, but perhaps the adulteration, as opposed to the antithesis, of the original elements created and maintained by the Revolution, that engendered and constituted it? Because in reality they seem two opposing worlds: one, a candid and heroic minority, all disinterest and sacrifice [the Revolution]; and the other, an accidental and mischievous majority, all business and money [the Republic]" (Sanguily 1950, p.304).

The interchangeability of the two terms, which was engrained both in the official discourse and in a good part of academia between 1902 and 1958 is a political and theoretical reduction to the absurd. However, it has a historical explanation in the "zero hour" on which the triumph of 1959 was affirmed. "Be brief, we have lost 50 years", was a phrase that could be read in public offices in the early revolutionary years, as well as the slogan "elections for what" also became famous. The phrase "that Republic" codifies its cancellation as a symbolic reference.

The question was expressed in the new constitutional order. Throughout the so- called "provisional" period (1959-1976), the Revolutionary Government concentrated the executive, legislative and constituent functions. (All the laws passed in this period were promoted by the Revolutionary Government —although several subjects were qualified for the legislative initiative—). It did not distinguish state functions from governmental ones; the laws that it specified gained constitutional character and directed all areas of social life. In the meantime, the new political power built an army capable of defeating an armed invasion by the United States —Girón, 1961—and of dissuading the constant military threat coming from it. The defence of national independence, an act of survival, affected consciences, habits and language. It became essential to the identity of the republic despite its serious economic consequences. (For example, between 1962 and 1965 a large part of the resources of the country was used for defence). On the other hand, a large number of people —and social sectors that would expand over time— left the country in exile, and, later, both exile and emigration. The event dismantled all potential opposition within the country, although the number of political prisoners in the early revolutionary years was significant by regional standards at the time[23], in line with the magnitude of the social and political change unleashed, and the belligerence it provoked against it.

In such a context, Cuban institutional culture developed an eternal consciousness of a "square under siege". State actors have considered that the best resources to accumulate strength and deter aggression are the concentrated control of resources and forces, popular "mobilisation" and the disciplining and control of citizen behaviour. Along this path, the state

[22] The unreferenced citations of this paragraph can be found in the newspaper *Combate*, 8th of April 1959, 6th of April 1959 and 15th of March 1959, respectively.

[23] The comparison has been estimated by Jorge I. Domínguez based on (Enhancing Global Human Rights 1979) and the data offered by Fidel Castro Ruz in (Lockwood 2003, ©1990).

apparatus accumulated power, which made the socialist state grow in proportion, influence and in the degree of programming of social life. At the same time, it developed social rights and framed in a more limited manner civil and political ones, conditioned by their exercise within state institutions and officially recognised social organisations, and 'in accordance with the aims of a socialist society". From this locus, the concept of Revolution substituted that of the Republic in official discourse.

Cuba's "provisional" period was the longest within the socialist field in the twentieth century. The fact collides with the republican formula of the precedence of Law, against political "decisionism" by decree. The reason for the delay of a new constitution —no elections were held during this period—was explained in this way: "[...] The Directorate of the Revolution did not hasten to establish its definitive form, understanding that the issue was not based on the formal existence of the organs of power, but in creating well-thought-out and lasting institutions that respond to needs" (Official Gazette 1944, p.163). The idea followed the Soviet "Marxist-Leninism" philosophy of the time: Constitutions are declarations of existing realities and do not have a constitutive character, that is, they must 'reflect the changing economic-social reality and, based on it, influence its transformation and the acceleration of its development according to its own material nature and the historical (ideological) socialist project" (Gómez Treto 1987, P. 52).

Hence, the fundamental law "must" legally consolidate the "already achieved". The thesis brought as a result, for its future, four changes: a) the scarce use of the constitutional text as a rule to limit the rights of power and to assign rights against power; b) the limited deployment of the normative force of the rights recognised in the Constitution; c) the scarce utility of the law to express and relaunch axiological debates on aspirations of new contents of freedom, dignity, justice and solidarity; and d) the consolidation of the concentrated exercise of power that would be formalised after the creation of the new institutions in 1976. When such text was promulgated, fundamental characteristics of the Cuban political system had already taken shape: a single communist party, a state economy, a Marxist-Leninist ideology and an alliance with the socialist field.

Because of these features, the model has received criticisms such as the following: "the resignification of the values of equality and freedom determines that citizenship has ceased to be the central criterion of unification and integration of the new Cuban socialist society, opening the way for notions of revolutionary and people as synonyms of citizen and electoral majority" (Bobes 1996) And, also: "The revolution (identifies) the civil or political, the people and the government, the nation and the State. To the point that, in the preamble of the 1976 constitution, the Cuban citizen, that is, the civil individual, appears as the defender of "the victorious doctrine of Marxism-Leninism", "proletarian internationalism", and "fraternal friendship", with the Soviet Union and other socialist countries" (Rojas 1997).

However, the Socialist Constitution of the Republic of Cuba was approved in 1976 by 97.7% of the votes of the Cuban electorate, resident on the island. According to Matilla, the new constitution "is not a work of political and ideological diversity, but the work of the political and ideological unity created by the evolution of the Cuban revolutionary process, led by the Communist Party of Cuba" (Matilla (coord.) 2016, p.9). The text resolved in the normative domain the problem of the fusion of powers and functions characteristic of the "provisional" period. Three fundamental objectives were raised: to regularise the decision-making process, to decentralise state power, and to consecrate the catalogue of citizen rights.

On the other hand, the social policies developed since the beginning of the revolutionary process —agrarian reform, urban reform, universalisation of free education and health, protected prices for public services and food, mass access to public cultural facilities

(libraries, houses of culture, cinemas, theatres)— with the State as guarantor, created over time "the first welfare state in Latin America" (Burchardt 2006), with incomparably high levels compared to the regional average. Its accumulation is still today —along with a nationalist ideology— the essential basis of political consensus —whatever its current degree, which is difficult to calculate accurately. The joint development of these and other indicators made Cuba the first Latin American country to achieve the Millennium Development Goals of the United Nations, despite suffering a politics of embargo by the United States government that lasted, with modifications, from 1961 to today.

The text of 1976 —according to Fernández Estrada—established the principles of equality (with extraordinary advances in terms of "race" and gender) and dignity as the axis of the political and social system. It did not foresee alignments with international military blocs (Cuba never subscribed the Warsaw Pact). However, it did consecrate the ideology —in democratic republican terms— of social justice, struggle for freedom, national independence and defence of the sovereignty of the people—on which it based an active and justice-based right of asylum. Furthermore, it gave priority to the public over the private interest in economic relations —it did not recognise private property or freedom of enterprise and prohibited the "exploitation of man by man". In terms of political power, it regulated the system of "popular power" as a the form of Cuban State, recognising popular sovereignty (through resources such as elections, popular legislative initiatives (with 10 thousand signatures of voters), processes of accountability and revocation of mandates by popular election), and established a unitary territorial structure and a democratic political regime (VVAA 2009).

The greater institutionalisation of this new political system in 1976 —in the opinion of Valdés Paz— allowed for a better division of political work and a better distribution of decision-making functions, representations and power. Subjects and actors gained more equality within the political system, not only as a result of the greater equality of society as a whole, but also because of the extension of citizens roles as assembly members, voters and combatants in the territorial militias. This increased equality of opportunity and decreased inequality between hierarchical and grassroots positions. Regarding subjects and actors, their active and passive suffrage were generalised, although in 1976 the provincial and national assemblies were integrated by means of indirect voting, a matter that was reformed in 1992. The system gave way to a greater participation in the execution of solutions through paid or voluntary work and in social control, through the exercise of complaints, accountability and the punishment vote (Valdés Paz 2009, p.82).

The legal status of citizenship confers rights of active participation and control over political representation. For example, the institutional design regulates voting in periodic elections and popular referendums and legislative initiatives as forms of direct participation. However, its analysis reveals limitations in its exercise: local, provincial and national government programs are not defined through the electoral process, as candidates present themselves to elections without a government program. The power of the National Assembly of People's Power to call referendums —both executive and legislative— on matters other than constitutional reform has not been exercised since 1976, nor have popular legislative initiatives on behalf of 10 thousand citizens and the declaration of unconstitutionality can only be exercised by the ANPP itself, although none are known since 1976. In addition to a broad list of social, cultural and family rights, citizens have duties, understood as a civic practice, to "take care of public and social property, abide by the discipline of work, respect the rights of others, observe the norms of socialist coexistence and fulfil civic and social duties" (Article 64); regarding the "defence of the socialist fatherland [as] the greatest honour and supreme duty of every Cuban", with obligatory military service (art. 65) and "to

contribute to the protection of water, the atmosphere, the conservation of the soil, flora, fauna and all the rich potential of nature" (Article 27), among others.

On the other hand, citizenship rights are limited by residence in the country. The Electoral Law of 1992 regulated that domicile in Cuba constitutes the qualifying condition for the exercise of political rights. Active suffrage requires "being a resident in the country for a period of no less than two years before the elections ..." (Article 6, paragraph b). And the right to passive suffrage requires being "permanent residents in the country for a period of no less than five years before the elections ..." (Article 8)[24].

The concept of participation used in the official discourse also appeals to "mobilisation", citizen participation in social and mass organisations, and emphasises participation in expanded social spheres and not only in the System of Organs of Popular Power (the Cuban state system). For example, according to Abel Prieto, current Minister of Culture: "[m]y work in front of the Ministry of Culture [...] is subject to permanent discussion with civil society. The Congress of Pioneers is celebrated and I receive what the children say about cultural policy. [...] I was in an Assembly of Writers of the UNEAC [...]. There we analyse things from copyright rates to the enriching role that the critique of revolutionary and committed intellectuals can have. I also attended the FEU Congress. Our enemies will say that this is the official, manipulated civil society, but these 'instruments of the regime', as they call them, require me to explain things, and very important rectifications have taken place" (Prieto 2008, p.331).

Critiques of the way in which civil and political rights are recognised point to their "conditionality", which subordinates their exercise to the framework of officially recognised social and political organisations, and to the framework established "in the law" —when in a significant amount of cases such law does not exist. This refers to a number of political rights not as rights —but "liberties"—, and that confuses rights with guarantees. For this reason, the current constitutional order has been questioned, from both liberal and Marxist and neo-Marxist perspectives, for refusing the notion of natural rights —which must belong to "man and the citizen"— and for not habilitating space for conflict as key in the elaboration of politics (Rojas 2012). In this line, the constitutional reform of 1992, which introduced the right of resistance, exercisable against "anyone who attempts to overthrow the political, social and economic order" established by it, does not recognize the right to strike. According to Marta Prieto: "rights that, seen from a present perspective could well have a civil character such as freedom of speech or press, and even socioeconomic, such as the right of association, in 1976 were restricted to their political expression" (Prieto Valdés 2016, page 180).

The above expresses a political content: the condition of "citizens" —as the main

[24] Since the 1960s, "definitive" migrant also saw the possession of their civil rights affected, a situation that changed after 2012. Correa Álvarez wrote: "In the order of civil rights, the Cuban immigration reform of 2012 eliminated previous regulations that limited the right of property over movable and immovable property. Decree-Law 302 of 2012 (published in the Ordinary Official Gazette No. 44 of October 16, 2012) directly repealed Law No. 989 of December 1961, which provided for 'nationalisation through confiscation in favour of the Cuban State of the goods, rights and actions of those who are absent from the country". Previously, modifications had been made to the General Housing Law, through Decree-Law 288 of 2011 -published in Official Gazette Extraordinary No. 35 of November 2, 2011" (Correa Álvarez). With the new regulation, the "Cuban citizen residing abroad" -unlike the "emigrated Cuban citizen", according to the terms of DL 302/2002- preserves his or her civil rights in Cuba. To keep such a condition, you must enter the country at least once every 24 months. According to this norm (Article 9.2): "It is considered that a Cuban citizen has emigrated, when he travels abroad for particular matters and remains there uninterrupted for a term exceeding 24 months, without the corresponding authorisation; as well as when they are domiciled abroad without complying with current immigration regulations".

category of relation to the State that has had less strength to exercise rights before power, rights of power and the control of power than that granted by other statuses of a political nature —not institutional—, like that of the "revolutionary". Hence, the use of terms such as "the people" has been more frequent than that of "citizens".

More recently, and contrary to that tradition, official documents use the concept of "citizens" frequently. Cuban academics also note: "In exchange for what did Cubans sacrifice and still sacrifice? Once again it will be necessary to recognise that only in exchange for their national independence, their sovereignty and, ultimately, their leading role in the direction and determination of their destinies as citizens of a country that belongs to them as beneficiaries, but also as legislators, consecrators, operators and creators, of a set of Human Rights, which then have their fullest realisation" (Férnández Bulté, Fernández Estrada, Julio Antonio 2007, p.16).

6. The current legal citizenship regime

From here on this publication will change its tone and style to enumerate from a strictly legal point of view the current regime on the forms of acquisition, loss and recovery of Cuban citizenship.

6.1. Acquisition of citizenship

Cuban citizenship is acquired, according to the text (reformed in this aspect in 1992) by birth or by naturalisation (Constitution, Article 28).

By Birth

(Constitution, Article 29)

Cuban citizens by birth, following the previous constitutional tradition, are those born on national territory, with the exception of the children of foreigners who are at the service of their government or international organisations; those born abroad to a Cuban father or mother, who are fulfilling an official mission; those born abroad to a Cuban father or mother; those born outside the national territory, of a father or mother natural of the Republic of Cuba who have lost Cuban citizenship[25] and foreigners who, due to exceptional merits achieved in the struggle for the liberation of Cuba, were considered Cuban citizens from birth. Argentina-born Ernesto Guevara de la Serna, exclusively, obtained Cuban citizenship for exceptional merits, and has thus been made into a Cuban citizen from birth.

In most cases, the recognition of Cuban citizenship by birth to foreigners born to a Cuban father or mother, no longer requires the individuals to "settle" [26]. Rather, the procedure

[25] The reform of 1992 substituted the work "nationality", which appeared in the text of 1976, for "citizenship", so as to not confuse both terms, as the previous constitutional history had done.

[26] This is a very recent measure (of the 28th of October 2017): which approved "the end of settlement requirements for the children of Cubans born abroad. In this way, their offspring may acquire Cuban citizenship". See: "Bruno Rodríguez: "El gobierno de EEUU cierra y Cuba abre"", in:

requires a passport from the country of birth and a visa to enter Cuba, registration of Birth in the Special Registry of Acts and Facts of Cubans Abroad, the Identity Card of the person of reference in Cuba and the sworn statement of the person of reference in Cuba who undertakes to guarantee their accommodation and maintenance, and declares that the procedure is not taxed[27].

In the case of descendants of Cuban citizens born abroad who are minors (up to 18 years old), application is lodged by a legal representative. The petition is addressed to the officials of the Directorate of Immigration and Foreigners (DIE) of the Ministry of the Interior (MININT). The minor must be registered by his/her parents in the Cuban Consulate of the country where he or she was born or resides. The birth must be registered in the Special Registry of the Ministry of Justice and thus obtain the Birth Certification. In the event that one of the parents is a foreigner, he/she must grant notarial consent for the acquisition of Cuban citizenship by birth of the minor. Once the application is approved by the Directorate of Immigration and Immigration, their residence in the Cuban territory is formalised, and registration is made in the Civil Registry. From this moment, the Cuban citizenship of the minor is official and recognised.

By Naturalisation

(Constitution, Article 30)

Foreigners who acquire citizenship in line with the law are Cubans by naturalisation. These include individuals who served in the armed struggle against the regime overthrown on January 1st, l959; and those who, having been arbitrarily deprived of their citizenship of origin, obtained Cuban citizenship by express agreement of the Council of State.

However, the citizenship law mandated by the Constitution has not been enacted so far, despite the expectation dated back to 1982[28]. A bill of Citizenship circulated in 1994 in the National Assembly of the Popular Power, but it did not reach promulgation either. Among the most commonly indicated causes to explain the absence of this law — in the absence of an official justification— are to maintain the obligation for all those born in Cuba to enter the country with a Cuban passport, so that they are bound by national law during their stay in the country (without being able to invoke any other citizenship, and its respective rights), and the collection by the State of the high consular costs of preserving the Cuban passport and its validity.

In view of the absence of a Citizenship Law, Decree 358 of 1944 is partially in force, which causes numerous inconveniences. The most important of these is that it is pre-constitutional, in addition to the fact that many of its articles are materially unrealisable, such as those that regulate the presentation of letters by merchants, and the report issued by the Municipal Mayor or the local Police Captain.

In practice, since 1959, concessions of citizenship by naturalisation have been scarce,

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http://www.cubadebate.cu/noticias/2017/10/28/cuba-anuncia-nuevas-medidas-en-vinculos-con-su-emigracion/#.WfXul3ZryM9, Consulted: 28.10-17. "

[27] This information appears, for example, here: http://www.redpinar.cu/es/migracion/extranjeros. Consulted: 07.10.2017

[28] In 1982 Faife León wrote the following: "We know that currently the Legal Studies Commissions of the National Assembly is working on a draft of the Citizenship Law that will undoubtedly reflect current realities, but it is the fact that this activity is still governed by Decree 358 of 1944, which causes no few inconveniences" (Faife León 1982).

because a rigorous criterion of selectivity is applied[29]. For example, the Law of January 18th, 1961, amending provisions for the grant of Cuban citizenship contained in the Fundamental Law of 1959, stipulates that the "foreign citizen of a nation of America in which exceptional conditions concur recognised by express agreement of the Council of Ministers". In this way, Cuban citizenship was granted in an "exceptional" manner to the Puerto Ricans Laura Meneses de Albizu Campos and Juan Juarbe y Juarbe in 1961.

The Constitution does not make a distinction between nationals and naturalised regarding the equality of citizens, but the regular practice has been to grant "settled" foreigners permanent residence and not citizenship. The latter grants them the same rights as Cuban citizens, except political rights. To acquire residence, the requirements of Decree 358 of 1944 are taken into account: Foreigners who after five years of continuous residence in the territory of the Republic, and no less than one of not having declared their intention to acquire Cuban citizenship, obtain the citizenship card according to the law, provided they know the Spanish language (Article 8 a), and the foreign man who marries a Cuban women, and the foreign woman who does so with a Cuban man, when they have a child of that union or they have two years of continuous residence in the country after marriage (Article 8 b). With permanent residence foreigners retain their citizenship of origin, and, if they fail to meet the requirements, they may lose permanent residency. Neither marriage nor its dissolution affect the citizenship of the other spouse or the children. (Constitution, Article 31).

6.2. Loss of citizenship

(Constitution, art. 32)

Automatic renunciation is not accepted. An administrative decision of the competent authority is required by ministerial resolution, dictated on a discretionary basis. Only in this case is a change of citizenship is admitted.

The causes of loss of citizenship established in the 1976 Constitution had a prior tradition in the following cases: acquiring a foreign citizenship; serving another nation in military functions or in the performance of positions that carry authority or jurisdiction —now "without permission of the Government" instead of "without permission of the Senate" as in 1940, since the 1976 text established a unicameral parliament; those who in any foreign territory conspire or act "against the people of Cuba and its socialist and revolutionary

[29] The need to grant citizenship by naturalisation was justified as follows in 1982: "To have a vision of the importance of this activity, it is good to point out that there are several thousand foreigners in our country, most of whom have a permanent residence and settled here several decades ago. We must not forget as factors that lead to this situation that the liberation of our country from the Spanish yoke did not mean at any time an exodus of the peninsulars, to the contrary, the affective and family ties between them and their descendants and other relatives were always very close, as well as different reasons in Spanish national life, a considerable migratory flow continued moving towards our country even after independence. On the other hand, during the years of the pseudo-republic, the need for cheap labour to work in our sugar harvests also gave rise to a considerable contingent, mainly from the area of Latin America and the Caribbean, which over time have become permanent residents. Similar examples can be put with Chinese immigration, which was during the colony and the pseudo-republic a considerable injection for our population. We cannot ignore either that the political and social conditions created by the Revolution also attracted our country to a number of citizens of other countries such as Latin Americans persecuted by their governments, European technicians attracted by the collaboration with our country, etc., many of which over time have formed families and have settled permanently in our Homeland". (Faife León 1982, p. 45)

institutions" (a novelty with respect to the previous history); Cubans by naturalisation residing in the country of their birth, unless they express every three years, before the corresponding consular authority, their will to preserve Cuban citizenship; and the naturalised ones that accept a double citizenship. In other words, a regulation very similar to that of 1940, except for the reference to arms and to acting "against the people of Cuba and its socialist and revolutionary institutions". The article stipulates crimes and causes of indignity that would cause the loss of citizenship by naturalisation, which had to be verified by a final judgment of the courts. In addition, it establishes that the formalisation of the loss of citizenship by serving a foreign army or attacking Cuba from the outside would be made effective by decree of the Council of State. The recovery of citizenship could also be obtained in accordance with the law.

Article 31, as reformed in 1992, is still valid today: it leaves the legislator free to define the causes for losing citizenship, it maintained the reservation of law for the recovery of citizenship, it specified that double citizenship is not accepted, as in the case of acquiring a foreign one, the Cuban one will be lost, but admitted the right to change citizenship[30].

In the absence of a citizenship law, there is currently no regular procedure for its loss. According to the norm, the Ministry of Foreign Affairs (MINREX) must instruct a file of loss of citizenship when it becomes aware that a Cuban citizen has acquired another citizenship and communicate its decision through a resolution. Then, MINREX must submit its decision to the Ministry of Justice, for registration in the Civil Registry. However, by state decision, MINREX refrains from making this type of declarations. The result is that, in practice, Cubans who reside outside the national territory, and who have acquired a new citizenship, do not lose the Cuban one. Therefore, they must enter the country with a Cuban passport, unless they have emigrated before December 31st, 1970, or can provide documentary evidence of the loss of Cuban citizenship. For all national purposes, only Cuban citizenship is recognized. There is a legal possibility to renounce citizenship, but no procedure for this.

A related issue is statelessness, which, is not recognised by the current Constitution, nevertheless has had a history and some occurrences. At the beginning of the revolutionary process, by Cause 111 (April 1962) pursued against the attackers of Playa Girón, those defendants that had Cuban citizenship were sanctioned with its loss, "for their betrayal of the Fatherland". One commentator noted that "as a result, [they] had been granted the legal status that corresponds to their status: stateless!" (Garriga 1973, p.58). The language and method were consistent with the treatment of the issue within "real socialism", in which the crime of treason turned the citizen into a stateless person, was judged among the most serious and was sanctioned with all the rigor of the law. The term "stateless" —as an insulting political qualifier— became commonplace in language and Cuban political discourse, as synonymous with "disaffection" or "counterrevolutionary", and was even used to name migrants, often considered "counterrevolutionary" during the first three decades after 1959.

On the other hand, measures have been applied that would to a certain extent cause statelessness. Law No. 989 of December 1961 provided for "the nationalisation through confiscation in favour of the Cuban State, of the assets, rights and actions of those who are absent from the country with a definitive character", regulation amended in 2012. Currently, the Civil Code in force (Law No. 59 of 1987), maintains "having definitively abandoned the

[30] The justification for this change was formulated as follows: "In Chapter II on citizenship, the main modification is proposed in Article 32, replacing the current text, to our judgment very regulatory, with a more flexible one, which forwards to the law the details that regulate the provision that "Cubans cannot be deprived of their citizenship or the right to change it, although it reiterates the constitutional principle that the existence of cases of dual citizenship will not be admitted"". Escalona Reguera, Juan 1992.

country" as an absolute cause of the inability to inherit. The Executive Committee of the Council of Ministers required from 2010 on a mandatory basis "all travellers, foreigners and Cubans residing abroad [who nevertheless retain their Cuban citizenship], in order to enter the country, having a policy of travel insurance, with medical expense coverage, issued by recognised insurance entities in Cuba" (Executive Committee of the Council of Ministers). In these cases, "the justificatory basis is the non-recognition of migrant Cubans as members of national belonging", what a commentator has associated — in a political, not a technical sense— with statelessness (Correa Álvarez).

In another sense, the Cuban Civil Code recognises statelessness, for foreign cases: it regulates that the civil capacity of people without citizenship residing in Cuba (it does not require permanent residence), is governed by current Cuban legislation (Article 12.2).

6.3. Dual citizenship

(Constitution, Article 32)

Multiple-citizenship is not allowed, but the right to change citizenship is allowed.

The practical impossibility of losing citizenship has been the object of an interpretation that ensures that "two citizenships" are recognised, but not "double citizenship" (Prieto Valdés 2013b, p.15). This means that, when recognising "two" citizenships, the existence of a foreign one is accepted, without losing Cuban citizenship. In practice, Cuban authorities do not accept that a Cuban within the country has another passport. A recent issue that activated this was the granting of Spanish citizenship by naturalisation to Cubans residing in Cuba who fulfilled the conditions (By the Spanish Law 52/2007, of December 28th, "Law of Historical Memory"). They obtained, within Cuba, Spanish citizenship, while continuing to maintain their Cuban citizenship. Explicit attempts have been reported by some of the "double" citizens, to renounce to the Cuban one, but, as has been written above, there is no procedure for it (See also Piorno Garcell, Cutie Mustelier 2015).

The only transparent rule on the subject, and that is obeyed in practice, is not of a state nature, but partisan. The internal regulations of the Communist Party of Cuba (CCP), which according to the Constitution "is the leading force of society and of the State" (Article 5), establishes that only "(e)xceptionally will Cuban citizens who also have another citizenship be admitted into the party" (PCC). Consequently, those who acquired Spanish citizenship, if they were militants of the PCC, lost that condition, and maintained Cuban citizenship.

7. Conclusions

In this text I have used as a framework the debate between liberal and republican conceptions of citizenship. I have committed myself to the republican argument, which understands citizenship as rights status, an active political practice and an egalitarian ideal. In this, the republican thesis has an expanded conception of citizenship that does not limit it to the passive enjoyment of rights but also to the creation of political identities through participation.

In its logic, the dispute over access to citizenship as a rights-bearing status is linked to the vocation of active participation, but also to the practice of politics as an egalitarian ideal,

which needs public action in order to materialise. Therefore, the recognition of social rights is necessary but not sufficient to ensure the material foundations of freedom, which republicanism locates in the material structure of society, such as the property regime, the organisation of production and the regulation of labour.

From this framework, I have analysed the legal regulation of citizenship in Cuban constitutionalism and its practical performances in their respective periods. I have described independence constitutionalism as democratic republican. This is for treating citizenship as a status as well as a civic practice, conceiving it as an egalitarian ideal, committing to protect citizenship as the repository of sovereignty against the government; engaging with republican cosmopolitanism, and regulating property in relation to the abolition of slavery and the right to distributed property.

I have identified the 1901 Constitution as liberal republican. I recorded the way in which it collected part of the pro-independence program, for example, with the establishment of male universal suffrage (for over 21 years) and how it regulated civil and political rights at the most advanced level at that time, while not intervening in the causes that sustained "caciquismo", like the oligarchic large landownerships and the lack of social rights and of public provision of social resources. I questioned that in the field of social rights, it regulated limited content, specifically in education, and that the rules on property were limited to shield the exclusive and exclusionary nature of private property.

I have placed the 1940 Constitution as ascribing democratic republicanism, because it established a broad catalogue of political and social rights and guarantees: the right to strike, the habeas corpus, the universal and obligatory vote, the freedom of association and expression, of worship and word, business and trade, the secular state, together with broad social, cultural, labour and family protection legislation. In unison, I explained that it established the principle of state intervention in the economy; the legal regulation of leases, the limitation of large estates, the abolition of censuses and the restriction of land ownership to foreigners, universal male and female suffrage. On the other hand, I argued that it defended racial justice as a problem that demanded cultural recognition and material redistribution, created for the first time in Cuban constitutional history the crime of discrimination, and endorsed the principle of the social function of property. Then, I located the way in which the dimension of citizenship as an active practice traversed into 1940, and how it benefited the nationality of Cubans.

I have argued how the process of achieving the revolutionary triumph in 1959 had its origin in the struggle for the social and political recovery of the Republic. However, I have explained that the synonyms used between "the republican" and the "existing republic between 1902 and 1958", cancelled "that republic" as a symbolic reference. I described that the Cuban institutional culture developed a "square under siege" consciousness, within which the state apparatus accumulated great power, at the same time as it amply developed social rights and framed in a more limited way civil and political ones, conditioned by their exercise within state institutions and officially recognised social organisations. I concluded that from such logic, the concept of Revolution substituted in the official discourse that of Republic.

However, I have identified expressly democratic republican content in such order: the embodiment of the ideals of social justice, struggle for freedom, national independence and defence of the sovereignty of the people, the priority of the public interest over private ones in relations and regulation of the system of "popular power", as a form of the Cuban State. Also, I have discussed the deficiencies that this system presents in practice, such as the absence of referendums, the lack of exercise of popular legislative initiatives and the conditionality of the practice of rights, which subordinated their exercise to the framework of officially recognised

social organisations and policies. For this reason, I expressed that the condition of "citizen" has had less power than that granted by other political —not institutional— statuses, such as the status of "revolutionary".

On the legal level, I presented the modes of acquisition and loss of citizenship and explained that the citizenship law has not been enacted. I specified that Decree 358 of 1944 is partially in force. In the face of this, it lacks the application and generates numerous inconveniences. I commented that in practice, since 1959 until today, concessions of citizenship by naturalisation have been scarce, since a rigorous criterion of selectivity is applied; that the Constitution does not make distinctions between nationals and naturalised citizens regarding equality, but that the regular practice has been the concession of permanent residence to "settled" foreigners —not citizenship—; that the automatic renunciation of citizenship is not admitted, but legally changing it is, although not double citizenship. To conclude, I argued that the lack of a Citizenship Law means that there is no regular procedure for its loss and that the result is that, in practice, Cubans who reside outside the national territory, and who have acquired a new citizenship, do not lose the Cuban one.

References

"La insurrección de Cuba ante los Estados Unidos" (1895). En *La España Moderna* (Año VII. Núm. LXXVIII. Director J. Lázaro, junio, Madrid, Establecimiento tipográfico de A. Avrial).

"No hay tal peligro negro"(1935). *Adelante* 1.4.09.

Ley Electoral para la constitucióln de un gobierno republicano para la isla de Cuba (1901). Habana: Imprenta Teniente Rey 23.

(1936). En *Bohemia* (Año 28, No. 44, Noviembre 1), p. 33.

Enhancing Global Human Rights (1979): McGraw-Hill Book Company.

ABC (1934): *Hacia la Cuba nueva*. El ABC ante la crisis de la revolución.

Alfonso Roselló, Arturo: "En charla con el Dr. Juan Marinello". En *Carteles* Vo. XXXIII, No. 45, 5 de noviembre.

Andry Matilla (coord.) (Ed.) (2009): *Estudios cubanos sobre control de constitucionalidad*. (1901-2008). México: Porrúa.

Andry Matilla (coord.) (Ed.) (2016*): La Constitución cubana. Cuarenta años de vigencia*. La Habana: UNIJURIS.

Annino, Antonio (2012): "Liberalismo y democracia. de dos historias a una. Europa 1919-1960, desde Max Weber hasta Norberto Bobbio". En *Prismas. Revista de historia intelectual. No. 16*, pp. 11–32.

Arendt, Hanna (1973): *On Revolution*. Harmanworth: Pelican Books.

Arredondo, Alberto (1939): *El negro en Cuba*. La Habana: Alfa.

Assies, Willem; Calderón, Marco Antonio; Salman, Ton (2002): *Ciudadanía, Cultura Política y Reforma del Estado en América Latina*. México: El Colegio de Michoacán, IFEM.

Balboa Navarro, Imilcy (2003): *La protesta rural en Cuba. Resistencia cotidiana, bandolerismo y revolución (1878-1902)*. Madrid: Consejo superior de investigaciones científicas (Colección tierra nueva e cielo nuevo, 47).

Barreras, Antonio (1940): *Textos de las Constituciones de Cuba. 1812-1940.* La Habana: Editorial Minerva. Obispo 530.

Benhabib, Seyla (2006): *Las reivindicaciones de la cultura. igualdad y diversidad en la era global*. Buenos Aires: Katz.

Berlin, Isaiah (1998): *Cuatro ensayos sobre la libertad*. Madrid: Alianza.

Bobes, Velia Cecilia (1996): *La utilidad de la virtud. Un estudio de la ciudadanía en Cuba*: 1898-1994. En *Perfiles Latinoamericanos (7)*.

Borges, Milo A. (1935): *Compilación ordenada y completa de la Legislación cubana (1899-1934).* La Habana: Cultural, S.A.

Burchardt, Hans Jürgen (2006): *Tiempos de cambio. repensar América Latina*. San Salvador: Fundación Heinrich Böll.

Cairo, Ana: "Nicolás Guillén y las polémicas sobre la cultura mulata". En *Revista de la Biblioteca Nacional José Martí* Año 93, No. 1-2. Enero-Junio.

Casassas, David (2005): "Sociologías de la elección y nociones de libertad. la renta básica como proyecto republicano para sociedades de mercado". En *Isegoría* (33), pp. 235–248.

Castro Ruz, Fidel (2007): *La historia me absolverá*. La Habana: Política.

Celia, Lucía; Soler, Lorena (2000): "La constitución pensada y la ciudadanía posible en la Cuba de 1901". En *Sociohistórica (7). [en línea].,* checked on 10/15/2017.

Cisneros Betancourt, Salvador (1900): *Proyecto de Constitución para la Isla de Cuba*. Habana: Imprenta de J. Huguet, San Ignacio Núm. 61.

Collazo, Enrique (1900): *Cuba Independiente*. Imprenta y Librería La Moderna Poesía. Habana.

Comité Ejecutivo del Consejo de Ministros: Acuerdo: Gaceta Oficial de la República de Cuba, No. 011, Extraordinaria de 26 de febrero de 2010, año CVIII.

Informe de George S. Meeresmith al Secretario de Estado. Julio 18. Confidential US Diplomatic. Post records. Central America. Cuba 1930-1945, Reel 68, 1940.

Informe de Willard L. Béaulac al Secretario de Estado de los EEUU, 26 de junio. Confidential US Diplomatic. Post records. Central America. Cuba 1930-1945, Reel 65. 1940.

Constant, Benjamin (1997): *De la liberté des anciens comparée à celle des modernes*. En : Écrits politiques. París: Gallimard

Correa Álvarez, Ahmed: "Cuba, migración y Derecho: reflexión preliminar sobre la no pertenencia". *Cuba Posible*. Available online at https://cubaposible.com/cuba-migracion-derecho/, checked on 10/26/2017.

Doménech, Antoni (2004): *El eclipse de la fraternidad. Una revisión republicana de la tradición socialista*. Barcelona: Crítica.

Doménech, Antoni; Bertomeu, María Julia (2005): "El republicanismo y la crisis del rawlsismo metodológico (Nota sobre método y sustancia normativa en el debate republicano)". En *Isegoría* (33), pp. 51–75.

Domínguez, Jorge (1998): "Cuba in the 1990s. A transition to somewhere". En : Democratic Politics in Latin America y Caribbean. Baltimore: The Johns Hopkins University Press, pp. 173–202.

Editorial (1937): "Las reformas sociales". En *Carteles* 29 (No. 27, julio 4), p. 17.

Escalona Reguera, Juan (1992): "En torno a la ley de reforma constitucional". En *Revista cubana de Derecho* (octubre-dic. Núm. 8).

Faife León, Ramón (1982): "Ciudadanía y Nacionalidad". En *Revista cubana de Derecho* (Año XI, enero-abril, Núm. 18).

Férnández Bulté, Julio; Fernández Estrada, Julio Antonio (2007): "Algunas reflexiones sobre los derechos humanos en Cuba". En *Revista cubana de Derecho* (Julio – Diciembre. Nñum. No. 30.).

Fernández Estrada, Julio Antonio (2017): "¿Por qué Cuba necesita una nueva Constitución?" Cuban Studies Program, Harvard University. En *Cuban Studies Journal* 45.

Fernández Pérez, Mario Antonio (2007/2008): "¿Cubanos con doble ciudadanía?" En *Encuentro de la cultura cubana* (Núm. 47, invierno). Available online at

http://www.cubaencuentro.com/revista/revista-encuentro/archivo/47-invierno-2007-2008/cubanos-con-doble-ciudadania-78863, checked on 10/20/2017.

Ferrajoli, Luigi (1999): *Derechos y garantías. La ley del más débil*. Madrid: Trotta.

Ferrer, Ada (1995): "Esclavitud, ciudadanía y los límites de la nacionalidad cubana la guerra de los diez años, 1868-1878 1995". En *Historia social, ISSN 0214-2570, Nº 22,*, pp. 101–125.

Ferrer, Ada (2011*): Cuba insurgente. Raza, nación y revolución (1868-1898).* La Habana: Ciencias Sociales.

Fraser, Nancy (2006): "La justicia social en la era de la política de identidad. redistribución, reconocimiento y participación". En : ¿Redistribución o reconocimiento? Un debate político-filosófico. With assistance of Pablo Manzano. Madrid: Ediciones Morata, S.L. pp. 89–149.

Gaceta Oficial (1944): Decreto No. 358. Reglamento de Ciudadanía. En *Gaceta Oficial de la República de Cuba* (Año XLII. Tomo quincenal. Núm. V. Numero Anual 112. Páºgina 3329).

García Mayo, Manuel (1940): "Estado actual de la sociedad cubana. Economía. Sociedad. Política". En *Revista Bimestre Cubana* XLV (primer semestre).

Garriga, Rafael (1973): "La pérdida de la ciudadanía en las constituciones cubanas". En *Revista cubana de Derecho* (Año 2, julio-diciembre, No, 6).

Gay Galbó, Enrique (1937): *Ciudadanía y extranjería*. La Habana: Publicación de la Revista de Derecho Internacional, Carasa y Ca.

GO. Concesión de la ciudadanía cubana en casos excepcionales.: Gaceta Oficial de la República de Cuba. 18 enero 1961.

Golías Pérez, Montserrat (2014): "Los nuevos españoles a través de la Ley de la Memoria Histórica en Cuba y Argentina ¿Oportunidad o identidad?". tesis doctoral UDC/2014. Director: Antonio Izquierdo Escribano. Departamento de Socioloxía, Ciencia Política e da Administración. Universidades Da Coruña. Disponible en https://dialnet.unirioja.es/servlet/tesis?codigo=41341. Consultado: 25.10. 2017

Gómez, Máximo (1916): *Horas de tregua*. t. III. La Habana: Imprenta Artística "Comedia" de Rodríguez y Ca. Zulueta No. 73.

Gómez Treto, Raúl (1987): "El concepto marxista de la Constitución y el sistema jurídico-normativo de la sociedad constituida en Estado". En *Revista cubana de Derecho* (31), pp. 3–62.

González García, René Fidel (2004): *La otra ciudadanía: tres ensayos sobre ciudadanía y república*. La Habana: Editorial de Ciencias Sociales.

Guanche, Julio César (2013): *Estado, participación y representación políticas en Cuba*. Buenos Aires: CLACSO.

Hall, Stuart (2010): *Sin garantías. Trayectorias y problématicas en estudios culturales*: Universidad Andina Simón Bolívar, Envión editores; y otros.

Krotz, Esteban (1997): "La dimensión utópica en la cultura política. perspectivas antropológicas". En : Cultura política a fin de siglo. México: Flacso, Juan Pablos Editor

Lechner, Norbert. (1997): "El malestar con la política y la reconstrucción reconstrucción de

los mapas políticos". En : Cultura política a fin de siglo. México: Flacso, Juan Pablos Editor.

Lockwood, Lee (2003, ©1990): *Castro's Cuba, Cuba's Fidel*. Eugene, Or.: Resource Publications.

López Rovirosa, Guillermo (1936): "La propiedad es función y cimiento social y ha de ser fruto del trabajo". En *Grafos*.

Lorie Tapia, Lilisbet (2014): "La ciudadanía como identidad y práctica política-jurídica de africanos y afrodescendientes 1902-1912. Una mirada al Camagüey". En Andry Matilla Correa (Ed.): Cuestiones histórico-jurídicas. I Jornada Nacional de Historia del Derecho: Editorial UNIJURIS.

Marinello, Juan (1937): "25 años de poesía cubana. Derrotero provisional". En *Revista Bimestre Cubana* XXXIX (primer semestre).

Marshall, T. H.; Bottomore, Tom (2007): *Ciudadanía y clase social*. Madrid: Alianza Editorial.

Matilla Correa, Andry (Ed.) (2014): *Cuestiones histórico-jurídicas*. I Jornada Nacional de Historia del Derecho: Editorial UNIJURIS.

Meiksins Wood, Ellen (2000): *Democracia contra Capitalismo. La renovación del materialismo histórico*. México: Centro de Investigaciones Interdisciplinarias en Ciencias y Humanidades, UNAM.

Ministerio de las Fuerzas Armadas Revolucionarias (1960): Manual de Capacitación Cívica. La Habana,: Departamento de Instrucción.

Mouffe, Chantal (1992): *Dimensions of Radical Democracy*. Londres: Verso.

Murilo de Carvalho, José (2004): *Ciudadanía en Brasil. el largo camino*. La Habana: Casa de las Américas.

Núñez Vega, Jorge (2002): "La república ambigua. soberanía, caudillismo y ciudadanía en la construcción de la I república cubana". En *WP núm. 204 Institut de Ciències Polítiques i Socials Barcelona*.

PCC: *Reglamento para el ingreso en el Partido Comunista de Cuba*. Available online at http://www.pcc.cu/pdf/documentos/reglamento/reglamento.pdf, checked on 10/20/2017.

Pérez Hernández, Lissette (2016): "El poder popular cubano luego de 40 años de su constitucionalización". En Andry Matilla (coord.) (Ed.): La Constitución cubana. Cuarenta años de vigencia. La Habana: UNIJURIS.

Pérez, Louis A. Jr. (2002): "Política, campesinos y gente de color: la "guerra de razas" de 1912 en Cuba revisitada". En *Caminos* (24-25), pp. 52–72.

Pettit, Philip (1999): *Republicanismo. Una teoría sobre la libertad y el gobierno*. Barcelona: Paidós.

Piorno Garcell, Marien; Cutíe Mustelier, Danelia (2015): "Ciudadanía múltiple en Cuba: lo cierto y lo controvertido". En *Revista Caribeña de Ciencias Sociales* (Núm. Septiembre). Available online at http://www.eumed.net/rev/caribe/2015/10/ciudadania-multiple.html, checked on 9/15/2017.

Prieto, Abel (2008): "El socialismo hoy: cultura y política". En *Último Jueves. Los debates de*

Temas, volumen II. La Habana: ICIC Juan Marinello/Revista Temas.

Prieto Valdés, Martha (2013a): "La ciudadanía y su inserción en el sistema de los derechos fundamentales en Cuba". En *Revista cubana de Derecho* (IV Época No. 41; Enero - Junio).

Prieto Valdés, Martha (2013b): "La ciudadanía: presupuesto del disfrute de los derechos. Pasado, presente y necesidades en y para Cuba". En *Revista Anales de la Academia de Ciencias de Cuba* (Vol. 3, No. 1,).

Prieto Valdés, Martha (2016): "Las garantías constitucionales de los derechos fundamentales y la Constitución de 1976". En Andry Matilla (coord.) (Ed.): La Constitución cubana. Cuarenta años de vigencia. La Habana: UNIJURIS.

Rasco, José Ignacio (1991): "Nacionalismo en la Constitución de 1940". En: La Constitución de 1940. Ciclo de Conferencias. Miami.

Roca, Blas (1940): "El pueblo cubano y la nueva Constitución". La Habana: Ediciones Sociales.

Roig de Leuchsenring, Emilio (1939a): "En un mes menos tres días discutieron y aprobaron los constituyentistas la Carta Magna de 1901". En *Carteles* (Vol. XXXIII, Num. 51, Dic. 17).

Roig de Leuchsenring, Emilio (1939b): "Nuestra primera Asamblea Constituyente. La elección de delegados a la misma y sus opiniones sobre la labor a realizar". En *Carteles* (Vol. XXXIII, Num. 49. Habana. Dic. 3).

Rojas, Rafael (1997): "Del espíritu al cuerpo de la nación. Identidad y ciudadanía en la cultura política en Cuba". En *Estudios Sociológicos XV: 43*, pp. pp. 239-260.

Rojas, Rafael (2012): "El socialismo cubano y los derechos políticos". En *Espacio Laical* (No. 3), pp. 67–69.

Rosaldo, Renato (2000): "La pertenencia no es un lujo. procesos de ciudadanía cultural dentro de una sociedad multicultural". En *Desacatos 3 (México, CIESAS)*, pp. 39–49.

Sanguily, Manuel (1950): *Brega de libertad*. La Habana:: publicaciones del Ministerio de Educación. Dirección de Cultura.

Torres Santana, Ailynn (2016): "Los costos de la vida: (re)pensar la ciudadanía para los ciudadanos". En *Temas* (Núm. 85-86. Enero-Junio.).

Valdés Paz, Juan (2009): *El espacio y el límite. Ensayos sobre el sistema político cubano.* La Habana: Ruth Casa Editorial/ICIC Juan Marinello.

Vivanco, José Clemente (1902): *Constitución de la República de Cuba, comentada*. Habana: Imprenta y Encuadernación San Ignacio número 58.

VVAA (2009): "Dossier sobre los desafíos constitucionales de la República de Cuba". (Dossier. Participantes: Jorge Ignacio Domínguez; Julio Antonio Fernández Estrada, Dmitri Prieto Samsónov, Roberto Veiga González.). En *Espacio Laical* Año V - No.20 ; Octubre-Diciembre, pp. 20–37.

Whitney, Robert (2010): *Estado y revolución en Cuba*. La Habana: Editorial de Ciencias Sociales.

Wood, Gordon S. (1995): *La democracia y la Revolución americana*. En : Democracia. El viaje inacabado (508 a.C. 1993 d.C.). Barcelona: Tusquets.

Zanetti Lecuona, Oscar (2013): *Historia mínima de Cuba*. Primera edición. México: Turner (Historia mínima).

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