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Transition in Cuba?

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Let us assume that both the United States' annexation of Cuba and a military invasion of the island by Cuban exiles can be discarded. In fact, the annexation of Cuba has been out of the U. S. government's agenda since the 1930s. In turn, a repetition of an operation like the Bay of Pigs in 1961 seems nowadays unconceivable. Still, in 1996 the Helms-Burton Act stated that "the Cuban government has posed and continues to pose a national security threat to the United States," but in 1998 the U. S. Department of Defense concluded that, due to the weakening of the Cuban army and state following the dissolution of the Soviet Union, "Cuba does not pose a significant military threat to the United States." The present involvement of the U.S. administration in the Middle East seems to make other military interventions abroad unfeasible in the short term.

There may be only two basic alternatives for the near future of Cuba, which can be labeled "continuation" and "transition." The possibility that the dictatorship continues after Fidel Castro relies upon the Revolutionary Armed Forces' strong control over not only the military apparatus, but also the police and security organization, and crucial sectors of the economy. This is certainly not the type of institutionalization that a stable dictatorship may require in the absence of the single person who concentrated powers to such a high extent as Fidel Castro did. In typical dictatorships not centered on a single man, a political party can channel diverse interests, ambitions, and internal fights within the power structure. For authoritarian rulers and would-be rulers in many Latin American countries, the historical PRI of Mexico, under the cover of a nationalist and populist ideology, was traditionally the model of that type of party. But even in the absence of such a complex political organization, a military dictatorship might survive in Cuba as a consequence of the

difficulties to develop external pressures over the island and the relative weakness of internal opposition.

For several decades, the rulers of Cuba have played a diminished form of conflict with the government of the United States, which could be prolonged in the near future. Immediately after 1959, the two governments developed a confrontation between “revolution,” implying a general expropriation of American and domestic properties and a significant threat to the U.S. security, and “counter-revolution,” including a foreign military intervention. But after the settlement of the missile crisis in 1962, the initial confrontation was replaced with one between “embargo” and “emigration,” between the U.S. trade, investment, and travel embargo against the island and Cuba’s periodical sending of emigration waves to the United States. By promoting massive “exit” of discontent subjects, the Cuban government was able to reduce their “voice” of protest. As is well known, the United States policy was extremely open to Cuban refugees, in contrast to usual requirements for would-be immigrants from other countries. But by opening the door to the “exit” of Cubans, the U.S. government neutralized some potential political consequences of the embargo policy, that is, the indirect promotion of internal protests due to economic difficulties and external isolation. (See my formal discussion in Colomer 2000a, 2004a).

The result was that, in spite of external pressures and internal economic breakdown, the Cuban dictatorship was able to survive. In the near future, even after the disappearance of Fidel Castro, if the basic structure of the “game” between the Cuban and U.S. governments, against the background of internal opposition weakness is maintained, the dictatorship could still survive in the island.

Conditions for a democratic transition

The hypothetical alternative of “transition” seems, thus, to require some significant changes in the current relationships among the main actors involved in the Cuban “game.” A transition to democracy, as a way of regime change which can be distinguished from a democratic revolution and an external invasion, is based on a negotiation between authoritarian rulers and the democratic opposition. For a process of this kind to be feasible in Cuba, two major changes should take place.

First, the internal opposition should be able to promote broader mobilizations and protests than in the recent past. Given the current level of organization and social influence of opposition groups, the most likely scenario for such a mass pressure might be a semi-spontaneous explosion of anger and protests when a big signal for changes will be given, due to accumulation of malaise and the hard daily-life conditions of most Cubans. In parallel, the United States should use the embargo policy as a pressure for political changes in the island. Even more important, Cuban exiles should be able to induce the U.S. government to reform its current migration policy in order to put barriers to massive emigrations from Cuba. Preventing a new wave of drafters from arriving to the coasts of Florida may be both in the U.S. government’s self-interest and in favor of political change in Cuba.

Second, the leadership of the Cuban Revolutionary Armed Forces should confirm with facts its commitment “not to intervene against the people,” which was solemnly publicized during the rafters’ crisis in 1994. In other words, if the Cuban military leaders faced broad popular unrest, they should be inclined to choose the search of a settlement with the opposition rather than launching harsh repression against protesters. The latter

condition was fulfilled in several cases of peaceful and negotiated transition in Southern and Eastern Europe in the 1970s and 1980s, in contrast to the Tiananmen Square slaughter provoked by the Chinese rulers in 1989. The Cuban military leaders, to whom some fascination with the “Chinese model” has been attributed, should not share this crucial part of the story. (For broader discussion, see Colomer 2003, Latell 2003).

It is, thus, under still dubious or non-existing strategic conditions that the project of a negotiated transition in Cuba may make sense. The term “transition” began to be widely applied to processes of change from dictatorship to democracy after the innovative experience of Spain in the second half of the 1970s. During its first few years, the Spanish transition implied an initiative role by a fraction of former authoritarian, reform-oriented rulers, rather than a victory of the democratic opposition. Further experiences of mostly peaceful processes of democratization introduced significant variants. In particular, the fall of communist regimes in Eastern Europe in the late 1980s and early 1990s included cases of more formal negotiations between authoritarian rulers and the opposition at a “Round Table,” as well as a number of sudden “breakdowns” of dictatorships at more eager opposition’s initiative. But the basic conditions for a transition by agreement can be generalized as implying, on one side, the impossibility for the authoritarian rulers to rule as usual (as a consequence of the dictator’s disappearance, some dramatic failure of the regime, or a surge in social unrest and pressures from the political opposition), and, on the other side, the impossibility for the opposition to attain a complete victory by its own in the absence of an armed uprising or external intervention. The comparison between the Cuban and the Spanish cases has been proposed before also due to the expectation that, in Cuba, as happened in Spain, the process of change should start precisely after the dictator’s death.

Change implies uncertainty

The hypothesis of a transition in Cuba is still received with skepticism by many of its potential actors. This is not surprising, as human beings tend to imagine the future on the basis of previously known experiences. The Spanish transition of the 1970s, in particular, developed in the midst of very high levels of uncertainty regarding the future and its hazards, mostly as a consequence of the fact that several decades of dictatorship had made most Spaniards unable to remember or imagine what Spain would look like without dictatorship. Similar psychological reactions of fear to the unknown emerged in the Soviet Union in the late 1980s, despite strong evidence that the communist system could not go on as it was. Comparable problems to imagine a different future were visible even in a milder process of political change as the one in Mexico in the late 1990s: no living Mexican had ever known Mexico without the PRI and this eventuality was, thus, hard to conceive. Analogously, strong psychological resistance to imagine Cuba without Fidel Castro can be observed nowadays among many Cubans. But this is only a consequence of a very long period of dictatorship, misinformation and the erasing of memory, which can approach its end.

In reaction to the actual happening of unanticipated events, actors participating in a transition process tend to stress indetermination and the power of human will. As was put, for example, by the reform leader of the transition in Spain:

An important lesson which I for one have learned from the Spanish democratic transition... is that historical determinism does not exist... the future, far from being decided, is always the realm of liberty, open and uncertain, although foreseeable by the analyses of the structural conditions and the operating forces of the society in

which we live, the most essential of which is the free will of those men who shape history. (Prime Minister Adolfo Suárez, 1983, quoted in Colomer 1995, p. 1).

In remarkably similar although unrelated words, the most prolific observing-participant of the Polish transition stated:

What we have learned during the past year 1989... is that there is no determinism in history, that our history depends far more on ourselves, on our will and our decision, than any of us thought. (Solidarity's activist and journalist, Adam Michnik, 1990, quoted in Colomer 2000b, p. 1).

In this spirit, some political and legal conditions for a democratic transition in Cuba, which could be created by "the free will and decision" of human actors, can be identified. They can be summarized the following way. First, a new government in control of the armed forces should introduce some preliminary constitutional reforms in order to unblock the system and open the gate of change by permitting the action of multiple parties and the exercise of civil liberties (to be specified below). According to the existing rules in Cuba, these initial constitutional reforms would require the approval by a two-thirds majority in the National Assembly of People's Power and, for fundamental issues, a popular majority in referendum. Second, intensive legislation should regulate political rights more specifically, including freedom of speech, reform of the penal code, and the establishment of a new electoral law permitting multi-candidate competition for public offices. Third, under these new regulations, the government should call a competitive assembly election. Finally, the electoral results, which should be open and a priori uncertain, would tip the

balance in favor or against further changes, including the elaboration of a fully new constitution.

This hypothetical process is obviously inspired in the Spanish transition. Note that it does not imply that authoritarian rulers develop a democratizing political reform on their own, but only that they introduce the necessary changes to call a sufficiently open election, whose result would determine the scope and orientation of further decisions. In order to start that process in Spain, the incumbent government did not ask the authoritarian assembly to approve a new constitutional model, but only a “law for political reform.” This can be an appealing strategy for incumbent authoritarians because they could maintain control during a first period of the transition and create reasonable expectations to preserve elements of continuity. In particular, in Spain former authoritarians achieved to secure that there would not be reprisals against them, in contrast to what had happened in France, Germany, Italy, and Japan at the end of the Second World War and, much more recently, in Portugal and Greece in the mid-1970s. By approving only a law “for” political reform, many important decisions regarding the constitutional, political, and economic model can be transferred to a further, and uncertain post-electoral process. (For more comparisons between Cuba and the transition in Spain, see Colomer 2004b).

Actual constitutional reforms in Cuba

A review of previous constitutional reforms in Cuba under the communist dictatorship may enlighten the scope and direction of possible future changes. There have been two reforms of the current Cuban constitution: one oriented to some opening of the system in 1992, and another with the explicit intention to reinforce the mechanisms of

continuity in 2002. While the first reform can be taken as a precedent for liberalizing changes to be approved in the future, the second reform introduced a major obstacle which may require additional political and legal effort.

The current Cuban constitution was established in February 1976, in the aftermath of the First Congress of the Communist Party of Cuba, during the period of maximum Soviet influence in the island. The entire constitutional text was embedded of Marxist-Leninist ideology and the Soviet model of political institutions.

After the dissolution of the USSR and the subsequent fall of the Cuban economy, the National Assembly of Cuba approved by unanimity a constitutional reform covering 79 of the 141 articles of the constitutional text. The constitutional reform which was approved by the National Assembly on August 10-12, 1992, included the following issues:

- First, an ideological redefinition of the state and the party suppressed references to the Soviet Union and the community of socialist countries, proletarian internationalism, the people's right to revolutionary violence, the driving role of the working class, socialist relationships of production, socialist legality, scientific materialism, education in the spirit of communism, and democratic centralism. New references were introduced to Latin America and the Caribbean, José Martí, the Cuban nation, and patriotic education. A few references to Marxism-Leninism were maintained.
- Second, there was an explicit acceptance and security of freedom of religion and the separation of the church and the state (after having accepted some believers in the communist party); the family was acknowledged as “the fundamental cell of society” with “essential responsibility and functions” in education and formation of

the new generations, while the possibility of non-state-controlled educational institutions was also introduced.

- Third, public companies were given financial and commercial autonomy; the economic system was open to private enterprises and foreign investments, as well as to the possibility of privatizing farms and other state-owned enterprises.
- Fourth, civil and political amendments included the autonomy of the Communist Youth from the party, the suppression of the constitutional status of the Confederation of Cuban Workers, the Committees for the Defense of the Revolution, the Federation of Cuban Women and other official organizations. This way, opening the possibility for other organizations to be legalized in the future; the suppression of denial of citizenship to “those who in foreign territory act against the socialist and revolutionary institutions of Cuba,” thus permitting the future acceptance of exiles’ political participation; the introduction of non-competitive direct elections to the provincial and national assemblies, in contrast to previous indirect elections from municipal assemblies; and the creation of People’s Councils as territorial administrative entities.
- Fifth, as a new reserve device to face the risks of this limited opening, the president of the Council of the State strengthened his powers over the armed forces. It was established that, in case of danger, he could declare a state of emergency. In this perspective, a new Council of National Defense, as well as provincial, municipal and zone councils of defense, which were mobilized for the first time in the summer of 2006, were created.

Fourteen years ago, this constitutional reform generated expectations of significant changes in the political system. A group of reform rulers, supported mainly by the Ministry of the Interior, drafted a plan that included the call of multi-candidate elections for parliament or for prime minister (depending on different versions), while establishing that Fidel Castro could maintain the presidency of the Republic or the command of the armed forces. But the initiative was thwarted by Castro himself by expelling the reformers from the Communist Party and reinforcing the control of the military over the Ministry of the Interior and other sectors of public activity.

The second constitutional reform in Cuba was introduced ten years later, in a moment of growing expectations fostered by visible signals of Castro's physical decay, increasing foreign pressures, and internal opposition's political initiatives for democratization. However, this reform was reactionary –in the literal sense of a reaction against demands for change. After a campaign to collect citizens' signatures, the National Assembly approved by unanimity, on June 24-26, 2002, a constitutional reform including two points:

- It was established that “socialism and the revolutionary political and social system [...] are irrevocable and Cuba will never go back to capitalism” (art. 3).
- It was excluded from the procedure of constitutional reform above mentioned, everything which is “related to the political and social system,” given its new “irrevocable” condition, as well as “negotiations of agreements under aggression, threat, or coercion by a foreign power” (art. 137), by this way trying to prevent any future exchange of economic aid for political democratization as had been proposed by both the United States and the European Union from the mid-1990s.

Future necessary reforms

From the starting point of the current constitution of the Republic of Cuba, a preliminary reform appears to be indispensable in order to make other democratizing reforms feasible: the abrogation of the 2002 reform. In some sense, the provision stating that Cuba will never go back to capitalism is innocuous; it is written as if Fidel Castro will never die. But that provision certainly creates a new obstacle to future reforms and, above all, it induces and anticipates a strategy of frontal resistance to changes by a hard-line core of rulers.

However, the existing legal text does not prevent its own reform and revocation. Legal arguments to introduce new major constitutional reforms in Cuba could be as following. First, there is a superior constituent principle, which is established in Article 3 of the constitution of Cuba, by which: “In the Republic of Cuba the sovereignty lies in the people, from whom all power of the state springs off.” This principle was explicitly confirmed in the law of constitutional reform of 2002, whose preamble holds that “the people of Cuba [are] the holders of the sovereign power of the state and henceforth of the constituent power of the nation.” The Cuban people’s sovereignty and their superior constituent power are exercised through the procedure before mentioned, which includes initiative before the National Assembly, approval by supermajority of the latter and, on fundamental issues, ratification by majority in popular referendum.

Second, in exercise of the people’s sovereign and constituent power, and following the established procedure of constitutional reform, it is possible to reform all elements of the constitution, including those points in articles 3 and 137 in which the “irrevocable” character of the existing political and social system is established. In other words, it is

possible to proceed legally to a constitutional reform with the same scope and the same procedures of the one introduced in 2002, but in the opposite direction. What was changed in 2002 by the people's sovereign and constituent power, according to the established legal procedure, can be changed again to re-establish the previous text of the constitution.

If this preliminary reform were approved, it would be possible to proceed to at least two additional constitutional reforms which seem to be indispensable in order to call a competitive election with participation of the opposition. They affect article 5 of the constitution, which establishes that the Communist party of Cuba is "the higher driving force of the society and the state," in a similar way to analogous articles that were eliminated from constitutions of East European countries at the beginning of their reform processes in the late 1980s. Second, at least two articles which impose strong restrictions on civil and political liberties should be removed in order to permit an acceptable level of political pluralism. They are article 58, which excludes private property of press, radio, television, and cinema, and article 62, which restricts liberties to those who will exert them according to the aims of the socialist state, socialism and communism. Of course, for an election to be fair, some basic requisites are freedom of press, as well as the opposition's access to public radio and television. (With comparable purposes, Domínguez 2003 discusses a much broader reform of the current Cuban constitution, including institutional aspects which are not strictly necessary to call a first competitive election, but can be deferred to post-electoral decisions).

The minimal reform here sketched to make a competitive election feasible is much less extensive than the constitutional reform that was approved by the National Assembly of Cuba in 1992 and, therefore, it should not be considered to be unattainable. As the

dissolution of the USSR motivated a broad constitutional reform, the unique event of Fidel Castro's disappearance could justify an initiative with at least similar scope. Likewise, the initial approval of the constitution by referendum in 1976 could help any future modification appear as legitimate to the regime's supporters as the constitution was from the beginning, and even more than the 1992 and 2002 reforms, which were not ratified by popular referendum.

Further stages of the transition process –involving major decisions on the general structure of the political system and on controversial issues such as property rights and the fate of state-owned enterprises-- would depend on the electoral results and the different actors' relative strength and capability of initiative. If the Cuban dictatorship were sufficiently pressured from inside and outside the island, a reform fraction of rulers could be motivated to undertake such process. But they would likely do it only if the outcome were uncertain and there were the possibility for former authoritarians to compete with some success in the electoral arena. In this framework, it would also be possible that a mostly peaceful and initially legal process of liberalization would lead to an acceptable degree of democratization of Cuba; as such a kind of change took place –to the great surprise of witnesses and actors-- in other totalitarian, communist, or military dictatorships.

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