

C. Essays

The Right of Political Resistance¹ in the Cuban Constitution

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*(...) they want to regulate the forms of evil, and curing it in its manifestations; when it must be cured at its base (...) We would say to politics: Wrong, but console! Because who consoles never errs!*³

Moved by the sharpness of the economic-social scenario the Cuban people live, after only two years of a constitutional process where we saw the mobility of the government decision; however, we know that probably that Cuban government mobility never affected its base, which is the main issue of Cuban people have, and, what led us to writing this essay.

The new Cuban Constitution, approved 10 April 2019,⁴ was only the beginning of the changes will likely be touching

¹ The distinguished Cuban Professor at Law Luis Alberto Pérez Llody in his article named Political Resistance as a Fundamental Right. Reflections regarding the Centenary of the Mexican Constitution; he refers this category as "(...) an attitude for questioning the ways in which political power is exercised and law is realized." Available [http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-21472016000200004].

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³ José Martí, "La América, New York" (April of 1884), Jose Martí's *Complete Works* Tome XV.1. COVID-19 in Europe.

⁴ See Cuban Constitution, April 10, 2019. Available <https://www.gacetaoficial.gob.cu/es/constitucion-de-la-republica-de-cuba-proclamada-el-10-de-abril-de-2019>.

Cuban people who are residing in the country; however, nobody knows when these changes will take place.

Cuban Constitution set out the historical right of political resistance. One more time it is intentionally placed within the political grounds of the Cuban government; but, during the Constitutional debate it look likes it was not important to Cuban people because we could not find their analysis on this point. Other "more relevant constitutional issues" were launched by the Cuban government for discussion, and once again the Cuban citizen lost his compass.

The right of political resistance is inherent us, becoming inalienable to every citizen from a country. Although, it is part of the so-called "human rights." Given its importance the political resistance right is often used as a political tool by the empowered government.

The Other side of the coin: right of political resistance in Cuba?

The Cuban Constitution establishes by article 4 the following:

"Cuban citizens have the right to fight by all means, including armed struggle, when no other means are possible, against anyone who tries to overthrow the political, social and economic order established by this Constitution."⁵

It looks like an innocent article, but is one of the most important of the Constitutional text. It is the ground to change whatever government does not satisfying the interests and well-being of its people. But, most people in Cuban unknown the relevance of that, and for who knows it – such as lawyers, professors, and other professionals or not- is better writing about issues other countries have than looking and solving his little finger foot's issue.

⁵ These words are comparable with the predecessor Constitution of 1976, although with slight changes of form – because the before Constitution listed it by article 3 and the actual Constitution by article 4 - slightly intentional as the last pronouncement of a whole article about the defense of the homeland, the consequences of its betrayal and the Cuban "irrevocable socialist system."

What beautiful words are "it is necessary to change what must be changed" ... But it is a big lie when Cuban people cannot do that. This phrase is grounded on the "right of political resistance".⁶ Although, tightly, its interpretation and concretion in the Cuban Constitution moves away from its nature, and becomes another form of Cuban government politics.

The Cuban Professor at Law LUIS ALBERTO PÉREZ LLODY distinguishes three dimensions⁷ in which the right of resistance has historically been manifested, such as:

1. "*Resistance, sensu stricto, in its most primary form, as "natural right", innate to being. Semantically it is usually used for referring the idea that resistance implies, v.gr. the violence with people can oppose to an invader or a dictatorship. Understanding the phenomenon of dictatorship, according to this context, leads to a consequence of the institutional crisis of the State, a rupture between the idea of law and power.*"⁸

2. "*As an ethical form of externalization of conduct.*" The subjective dimension of rights places the individual at the center of attention in his particular relationships, and, above all, when he is involved with political power because he acts by controlling it. There is in its contents an action that is manifested when the good of freedom is threatened in conditions of political

⁶ Pérez Llody in his analysis of the Mexican Constitution states that the right of resistance after modernity was incorporated into the human rights regime; however, from the positivist criterion its usefulness was denied, exterminating its development and turning its essence into politics rather than legal.

⁷ See Pérez Llody, Luis Alberto: Political Resistance as a Fundamental Right. Reflections regarding the Centenary of the Mexican Constitution. Available http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-21472016000200004.

⁸ This author concludes that resistance is in itself a subjective, non-arbitrary, contentious quality, an attitude capable of operating under adverse circumstances that describe situations of social injustice and economic oppression where political repression or tyranny acts as the most visible element, trigger of the state of popular discontent as the first evaluative instance of the negative precedent. Such a phenomenon manifests itself independently of the will of the legislator. In politics, his notion is identified, in an incontrovertible way, with "the preservation of the institutions considered as legitimate".

oppression, which is equivalent to placing at risk an essential budget of the moral life. The way in which resistance is conceived in the public space, in terms of the limit of his own performance, becoming a test of ethics in political action."

3. "*As a fundamental right.*" It is consistent with the recognition of the constitutional text.

Furthermore, JUAN IGNACIO UGARTEMENDIA ECEIZABARRENA⁹, in his article, "The Law of Resistance and its Constitutionalization" points out that "beyond its conceptual ambiguity, the right of resistance *latu sensu* comprises the whole range of behaviors whose common denominator is the confrontation with state power, either to question its legitimacy or the justice of their actions in specific cases. According to its importance, it must be located in the field of rights and guarantees of the Democratic Constitution, the supreme law that governs the exercise of public power."¹⁰

Both professors at law tell us that although the right of resistance can be understood in different ways, it is clear that (1) it generates conflict from the citizen to their government, and, (2) it has constitutional scope.

The first one is a default response of the human being when he feels deprived, subjugated or restricted respect his rights or duties a government must be guarantee. The second one is regarding the recognition of their rights a democratic government offers its people; but it begs a question: is not the people who appoint their government and endorse their Constitution?

The Cuban Constitution incorrectly recognizes as a right of resistance only the action of the one who fights against anyone who tries to overthrow the entire system forged by the

⁹ Eceizabarrena Ugartemendia, Profesor Titular de Derecho Constitucional y de la Unión Europea (Facultad de Derecho, UPV/EHU), acreditado como Catedrático (ANECA). Cátedra Jean Monnet de la UE.

¹⁰ See Eceizabarrena Ugartemendia, Luis Ignacio: "The Law of Resistance and its Constitutionalization," [El derecho de Resistencia y su 'constitucionalización'], *Revista de Estudios Políticos (Nueva Época)* 103:213-245 (1999).

Cuban government. Furthermore, the majority of us who reside in Cuba voted for it.

Law cannot be understood as politics tool or viceversa, although the law is the political will of the economically empowered classes. However, there must be a supreme law to put limits to empowered classes 's managing. The Constitution guarantees a balance between the empowered classes desires and actions and people's rights, which cannot be affecting by those desires and actions.

Noticed here is the fragment taken from our Apostle (ut supra), part of his essay called "The Future Slavery", where he exposes by preceding a social economic formation that he did not know, more because of his high common sense he qualifies they want to regulate forms of evil that is to legitimize its strength.

We had to reach out the Cuban Constitution of 1940, where the right of resistance was crystallized before nowhere else. Its context, by itself, speaks of the democratic pressure of which the right of resistance was a very concrete result.

Title I "Of the Nation," established that "Cuba is an independent and sovereign State organized as a unitary and democratic Republic, "for the enjoyment of political freedom," social justice, individual and collective well-being, and human solidarity."¹¹

Title IV Section One, regarding "Fundamental Rights" found that "the inhabitants of the Cuba Republic have the right to assemble peacefully and without arms, and to march and associate for all the lawful purposes of life, according to the law, with no limitations other than those essential to ensure the public order."¹²

That supreme law also lay down is unlawful the formation and existence of contrary political organizations respect to regime of the democratic representative government

¹¹ See Article 1 of the Cuban Constitution 1940. Available <https://pdba.georgetown.edu/Constitutions/Cuba/cuba1940.html#:~:text=Art.,dimanan%20todos%20los%20poderes%20p%C3%BAblicos.>

¹² *Idem.* Article 37.

of the Republic, or that attempt against the fullness of national sovereignty.

In addition, set out “the legal, governmental or any other provisions that regulate the exercise of the rights this Constitution guarantees, will be null if they diminish, restrict or adulterate them.

More important, “the adequate resistance to the protection of individual rights previously guaranteed is legitimate.”¹³

Noticed is the right of resistance was included into Constitution of 1940 within the title of fundamental rights; these rights among others- such as political freedom- were protected by the Constitution, - that is why up to now it is recognized as the most prosperous and democratic Constitution Cuban people have had.

This Constitutional text allowed Fidel’s team and others to fight Batista’s government during the 50’s and, a posteriori, they got the victory. Of course, it answered that’s why after Fidel’s government the Constitutional right of political resistance was completely changed, not for Cuban people instead to keep safe the Cuban government.

The Cuban political, social and economic system does not pretend to have changes in the future, which is the political will of the government, not of the people. Employing the political resistance right by Cuban people, we should estimate the ends of the Cuban system imposed, for six decades, which is reversed in the economy of a whole country, and in a social system of muddy, wormy and rottenness ...

Jose Martí wrote in his work referenced above the following:

Spencer fears, not without ground, since the action of the state becomes so varied, active and dominant, it would impose burdens on the part of the working nation for the benefit of the Páupera part (...) From being a servant of himself, man would become a servant

¹³ *Idem*. Article 40.

of the State. From being a slave of the capitalists, as he is called now, he would go on to be a slave of the civil servants.

Moreover, he defined slave as "anyone who works for another who has dominion over him (...)".

It worth to recall the Doctor Calviño 's popular slogan "Drawing Your Own Conclusions", which ends each session of his "Vale la Pena" program.

The reality of anyone who intends to remain in Cuban territory, is that the society must need an imperative change; one step towards progress, a move away from the evils caused by the "civil service system" so much questioned, and is continuously professed by the Cuban government to be the idealized dream of the individual; however, it has resulted only for a few. Let us reminder what the special subject of the first sentence is: "Cuban people".

We are the people, the citizens of this Cuban country, those who are legitimated to exercise our rights. We are the actors in every such process ... We decide the future of our Cuba: the future Slavery or the Antagonistic Present: A capable, sovereign and dissident people with the fire extinguishing solutions offered by the underpinned, but in crisis, Cuban political system.

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2. Cuban Constitution, April 10, 2019. Available [https://www.gacetaoficial.gob.cu/es/constitucion-de-la-republica-de-cuba-proclamada-el-10-de-abril-de-2019]

3. Eceizabarrena Ugartemendia, Luis Ignacio: The Law of Resistance and its “Constitutionalization” [El derecho de Resistencia y su ‘constitucionalización’], *Revista de Estudios Políticos (Nueva Época)* 103:213-245 (1999)

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