

On the New Constitution of Cuba

Wu Hongying*

Abstract: Recently, Cuba, the only socialist country in the Western Hemisphere, approved its second constitution, the Constitution of the Republic of Cuba, since the victory of the 1959 revolution. On the surface, this constitution is the fourth revision of the 1976 Constitution. However, due to the wide scope of the revision and the significant content involved, it is essentially a brand new constitution. The new constitution not only reflects major changes in Cuba's political, economic, social and diplomatic fields over the past 40 years, but also marks the Cuban Communist government's thinking and planning on the sustainable development of Cuban socialism in the 21st century so as to ensure that it is irreversible and will not radically change. This revision of the Constitution is the most significant political reform since the victory of the Cuban Revolution in 1959 and will lead to a major and far-reaching impact on Cuba's future development in the fields of politics, economy, society and diplomacy.

Keywords: Cuba, new constitution, major reforms

Since April 2018, Cuba, the only socialist country in the Western Hemisphere, has carried out a large-scale campaign to revise its constitution, launching the second constitution, the Constitution of the Republic of Cuba (hereinafter referred to as the "New Constitution"), since the victory of the revolution in 1959. Because the New Constitution involves substantial revisions and significant content, it has attracted much attention from the international media. Some newspapers clamored for "Cuba to abandon communist goals,"¹

* Dr. Wu Hongying is a research professor with the Institute of Latin American Studies, CICIR and vice president of the Chinese Association of Latin American Studies.

¹ Sarah Marsh, "Cuba Aims to Build Socialism, not Communism, in Draft Constitution," Reuters, July 22, 2018, accessed August 24, 2018, <https://www.reuters.com/article/us-cuba-assembly/cuba-aims-to-build-socialism-not-communism-in-draft-constitution-idUSKBN1KB0ML>.

some hyped “Cuba finally recognizes private ownership and market,”¹ others exclaimed that “Socialist Cuba may allow same-sex marriage,”² and some even thought that this revision is “A referendum on Cuba’s one-party system and socialism.”³ For a time, the international community participated in a heated discussion about the revision. This paper attempts to make a preliminary analysis on Cuba’s constitutional revision campaign and its New Constitution.

A Comprehensive Preparation

After the independence of Cuba, a total of four constitutions were ratified, i.e. the 1901 Constitution, the 1940 Constitution, the 1959 Interim Constitution and the 1976 Constitution. The 1976 Constitution was the first constitution ratified after the victory of the Cuban revolution. It was based on the Soviet Constitution and defined Cuba as a socialist country. The National People’s Power Congress is the highest state power. The Cuban Communist Party is the leading force of the Cuban socialist revolution and its construction. The Cuban socialist economic system operates the property ownership of all citizens, which implements the centrally planned economy and adopts the principle of distribution according to work. Therefore, the 1976 Constitution is regarded as “a socialist constitution.” With the changing situation at home and abroad, Cuba revised the 1976 Constitution three times in 1978, 1992 and 2002. However, over the past 10 years, Cuba has undergone major changes in the political, economic, social and diplomatic fields, and it is urgent to reflect and confirm these changes from a legal perspective. Therefore, since 2013, the Cuban Communist Party and the government have met several times to discuss the issue of amending the constitution. In April 2018, the constitutional

¹ Kirk Semple, “New Cuba Constitution, Recognizing Private Property, Approved by Lawmakers,” *New York Times*, July 22, 2018, accessed August 24, 2018, <https://www.nytimes.com/2018/07/22/world/americas/cuba-constitution.html>.

² Andrea Diaz, “Cuba’s New Draft Constitution Could Pave Way for Same-sex Marriage and Remove Reference to ‘Communism’,” CNN, July 26, 2018, accessed August 16, 2018, <https://edition.cnn.com/2018/07/26/americas/cuba-constitution-gay-marriage-trnd/index.html>.

³ Patrick Oppmann, “Does Socialism Have a Future? Cubans are Hitting the Polls,” CNN, February 22, 2019, accessed March 19, 2019, <https://edition.cnn.com/2019/02/22/americas/cuba-constitution-referendum-intl/index.html>.

revision process was officially launched.

From the beginning of amending the constitution in April 2018 to the approval of the new constitution in April 2019, the constitutional revision process lasted for one year and can be divided into six phases. In the first phase, the amending process was initiated. On April 19, 2018, the newly appointed Chairman of the Council of State and Chairman of the Council of Ministers Miguel Mario Díaz-Canel Bermúdez officially announced the initiation of the constitutional revision process and began to mobilize and prepare for the constitutional amendment. In the second phase, a draft constitution was in place. On June 2, according to the special resolution of the National People's Power Congress, Raúl Castro, the first secretary of the Central Committee of the Communist Party of Cuba, was appointed as the director of the 33-member Constitutional Revision Committee, and Miguel Mario Díaz-Canel Bermúdez and José Ramón Machado Ventura, the second secretary of the Central Committee of the Communist Party of Cuba, were selected as the deputy directors. The committee also included different representatives from all walks of life and political backgrounds. On July 14, the Constitutional Revision Committee finished the draft of the New Constitution and submitted it to the National People's Power Congress for deliberation. In the third stage, the draft of the New Constitution gained preliminary approval. On July 21-22, the National People's Power Congress held the ninth plenary meeting wherein 572 representatives from different backgrounds conducted a heated discussion and preliminary review of the draft. Finally, the General Assembly unanimously adopted the draft of the New Constitution. In the fourth stage, public opinion was widely sought after. From August 13 to November 15, 133,681 meetings, 1,170,872 on-site consultations, and 2,125 face-to-face consultations were held with the public.¹ On the basis of extensive public consultation, the draft of the New Constitution was revised once again. In the fifth stage, it was formally deliberated. In December, the revised draft

¹ Redacción Digital, "Cuba dijo Sí a la nueva Constitución [Cuba said yes to the new constitution]," *Granma*, February 25, 2019, accessed March 19, 2019, <http://www.granma.cu/reforma-constitucional/2019-02-25/cuba-dijo-si-por-la-nueva-constitucion-25-02-2019-16-02-47>.

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of the New Constitution was submitted to the National People's Power Congress for final review and approval. In the sixth stage, a referendum was held. On February 24, 2019, Cuba held a national referendum and voted on the draft of the New Constitution. According to the data released by the National Election Commission on February 25, 2019, Cuba has a total of 9,928,277 voters, and the number of them who voted in the referendum was 7,484,343, accounting for 84.41 percent of all registered voters. Among the voter turnout, those who voted in favor of the draft of the New Constitution numbered 6,816,169, accounting for 86.85 percent of the voters; and those who voted against numbered 706,400, accounting for nine percent; blank votes numbered 198,674, accounting for 2.53 percent, and invalid votes 127,100, accounting for 1.62 percent.¹ Since more than 86 percent of the voter turnout voted for the draft of the New Constitution, it was officially approved by the referendum. Therefore, a brand-new Constitution of the Republic of Cuba was officially born. On April 10, 2019, the Cuban National People's Power Congress officially announced the entry into force of the New Constitution.

A New Constitution

The New Constitution can be described as a new legal system that combines the intelligence and wisdom of the entire Cuban Communist Party and the people of Cuba.

From the terms of the revision, there are many changes. The total number of articles has increased from 137 in the 1976 Constitution to 229 articles in the New Constitution. The New Constitution is divided into 11 parts, 24 chapters and 54 sections. Among them, eight new articles were added, 134 (59.8 percent) were revised, 87 (38.8 percent) were retained, and three (1.3 percent) were removed.²

From the scope of the revision, it involves a wide range. It involves political, economic, social, national defense, judicial, cultural, educational,

¹ Ibid.

² Flavia L. Dotres Sánchez, "New Constitution and 760 Changes," Radio Angulo, February 8, 2019, accessed February 29, 2019, <http://www.radioangulo.cu/en/holguin/236658-new-constitution-and-760-changes>.

and diplomatic aspects, highlighting the four key directions of the political, economic and social systems, as well as foreign investment policy.

From the contents of the revision, the changes are significant. First, the concept of “private property” is recognized for the first time. Private property has long been regarded by the Cuban Communist Party as “a key factor in Western capitalism”¹ and the 1976 Constitution did not recognize it. Article 21 of the New Constitution stipulates that the state recognizes seven types of property ownership, i. e. socialist property of the entire population, cooperative property, property of the political, mass and social organizations, private ownership, mixed property, institutional and associative property, and personal property.² Obviously, this is the first time private property has been referred to in the Cuban constitution. Second, the concept of the “market” is recognized for the first time in Cuba. The market has long been regarded as “a hotbed of corruption and inequality” by the Cuban Communist Party.³ The 1976 Constitution did not recognize it. Article 18 of the New Constitution stipulates that Cuba considers, regulates, and supervises the market according to the interests of society.⁴ Third, foreign investment has been upgraded to an “important” position for the first time. Article 28 of the New Constitution stipulates that Cuba encourages foreign investment as an important part of the development of the national economy and provides security for foreign investment.⁵ Fourth, the system of presidential term limits will be implemented for the first time and the primary system will be resumed. The 1959 Interim Constitution stipulated that Cuba adopts a presidential system and establishes the post of prime minister. However, the 1976 Constitution abolished the President and the Prime Minister, and established the President of the Council of State with considerable heads of state, as well as the President of the Council of Ministers with considerable Prime Ministers. Articles 125-128 of the New Constitution stipulate that the President is the head of state and

¹ Pascal Fletcher, “Cuba’s New Constitution: What’s In and What’s Out.”

² Constitution of the Republic of Cuba, art. 21.

³ Pascal Fletcher, “Cuba’s New Constitution: What’s In and What’s Out.”

⁴ Constitution of the Republic of Cuba, art.18.

⁵ *Ibid.*, art. 28.

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is elected by the National People's Power Congress for a term of five years and can be re-elected once. The President must be a natural born citizen of Cuba. From the start of his presidency, he must be no less than 35 years old and no more than 60. The President fulfills the duties conferred by the Constitution and the law, represents the country, guides the overall domestic policy and foreign policy of the country, and has the right to nominate the Prime Minister and the Deputy Prime Minister. Articles 140-141 of the New Constitution stipulate that the Prime Minister is the head of the government, nominated by the President and appointed by the National People's Power Congress for a term of five years. The minimum age of appointment is not less than 35 years old, and he must fulfill the duties conferred by the Constitution and the law.¹ The Prime Minister is responsible for convening and presiding over the executive meetings of the Council of Ministers and the Administrative Committee, responsible for the day-to-day administrative work of the Central Government, and responsible for the National People's Power Congress and the President.² These changes are unprecedented and have significant influence. Therefore, in this sense, the New Constitution is a "structural reshaping" of the current Cuban political system, marking the beginning of a new era in Cuba.³

There were two small incidents that occurred during the process of constitutional revision. First, Article 5 of the draft of the New Constitution, which was launched in July 2018, unexpectedly deleted the word "communism";⁴ second, Article 68 changed the definition of marriage from "a voluntary union of one man and one woman" in the 1976 Constitution to "a voluntary union of two persons." The first revision triggered a heated debate throughout the world about Cuba's possible abandonment of the "road towards communism." The latter revision caused the world to

¹ Ibid., art. 140-141.

² Ibid.

³ "Cuba's New Constitution Preserves Communist Power," *Economist*, July 26, 2018, accessed August 24, 2018, <https://www.economist.com/the-americas/2018/07/26/cubas-new-constitution-preserves-communist-power>.

⁴ Cuba's Draft Constitution of 2019, art. 5.

constantly speculate that Cuba might recognize same-sex marriage. Finally, on the basis of extensive public consultation, the New Constitution restored the provisions of “advancing towards a communist society” (Article 5), and redefined “Marriage as a social and legal institution. It is one of the organizational structures of families” (Article 82).

Several Major Reasons

The 1976 Constitution does not reflect the profound changes in the national conditions of Cuba and the international environment over the past 40 years. In order to “ensure the sustainable development of the socialist cause,”¹ Cuba must amend its constitution.

First, the constitution of the Soviet era is outdated. It is well known that the 1976 Constitution is a typical Soviet-era constitution with profound Cold War ideology that simply cannot reflect the major changes in the international environment in which Cuba has been in the last 40 years. On the one hand, with the disintegration of the Soviet Union in 1991, the pattern of bipolar superpowers no longer exists, and the global situation and international relations have undergone unprecedented changes. On the other hand, the relationship between the United States and Cuba has undergone a major turning point. Since 2013, US Democratic President Barack Obama and Cuban leader Raúl Castro have stood at the height of history and agreed to jointly promote the normalization of US-Cuban relations. On December 17, 2014, the two announced the initiation of normalizing the relationship between Cuba and the United States in their respective capitals. On July 1, 2015, the two countries announced the resumption of diplomatic relations and reopened the embassy on July 20. The relationship between the United States and Cuba, which had been deteriorating for more than half a century, has begun to normalize. With the easing of relations with the United States, the European Union, and Japan, the external environment of Cuba has improved markedly. However, on November 9, 2016, after Republican Donald Trump was elected President of the United States, the United States re-tightened its policy toward Cuba

¹ Sarah Marsh, “Cuba Aims to Build Socialism, not Communism, in Draft Constitution.”

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and the normalization of relations between the United States and Cuba was halted. How to evaluate the new international environment facing Cuba needs to be reflected in its Constitution.

Second, it is urgent to affirm and confirm the achievements of the “Renewal of Economic and Social Models” over the past 10 years. Since Raúl Castro’s regime came to power in 2008, he decided to promote the “renewal of economic and social models” (or “the Renewal of the Socialist Model”) in order to promote national economic and social development. In April 2010, the Sixth National Congress of the Communist Party of Cuba decided to officially launch the “Renewal of Economic and Social Models” process. In the economic arena, the Raúl government relaxed restrictions on commodity circulation and foreign exchange trading, allowing the development of individual economies and the use of “convertible pesos”, permitted citizens to buy and sell houses and cars, allowed idle land to be contracted to individual farmers, allowed foreign investment, and reduced the country’s intervention in the national economy, etc. These measures greatly stimulated economic vitality, and industries such as catering, tourism, transportation, and retail developed rapidly. As of May 2018, the number of self-employed individuals reached 591,000, accounting for 13 percent of the national labor force.¹ In 2017 alone, foreign direct investment reached US\$2.5 billion.² In the political arena, Raúl took the lead in handing over power and decentralizing the government by handing over the two positions of the chairman of the Council of State and the chairman of the Council of Ministers to the young Carnell, which opened the “intergenerational alternation” of the supreme power of the country and took the country’s political process a step forward toward the track of normalization and modernization. In the diplomatic field, Raúl has actively eased relations with the United States, flexibly handled the differences and frictions between the two countries, and won a rare opportunity for Cuba’s

¹ “Cuba Makes Changes—but Ignores One of the Most Important,” *Washington Post*, July 25, 2018, accessed August 24, 2018, https://www.washingtonpost.com/opinions/cuba-makes-changes--but-ignores-one-of-the-most-important/2018/07/25/0b42ef2e-8e99-11e8-8322-b5482bf5e0f5_story.html?utm_term=.73675c075036.

² *Ibid.*

“Renewal of Economic and Social Models.” However, jurisprudentially, all of these activities are illegal and prohibited under the 1976 Constitution. Therefore, it was urgent to write the results of the “Renewal of Economic and Social Models” over the past 10 years into law as a firm guarantee. As the Cuban Communist Party newspaper *Granada* reported, “The new constitution reflects the Renewal of the Economic and Social Models.”¹

Third, further reform and opening up is needed to solve the severe economic difficulties. Over the past 10 years, with the joint efforts of the Cuban government headed by Raúl and the people, Cuba’s economic development has achieved certain results. From 2008 to 2015, Cuba’s GDP growth rate reached 4.1 percent, 1.5 percent, 2.4 percent, 2.8 percent, 3.0 percent, 2.8 percent, 1.0 percent, and 4.3 percent, respectively.² However, in the past three years, Cuba’s economic growth has slowed down due to stagnation in the international economy and trade. Cuba’s GDP increased by 0.5 percent, 1.6 percent and 1.1 percent in 2016, 2017 and 2018 respectively, and is expected to increase by 1.0 percent in 2019, lower than the rest of the Caribbean (2.1 percent) and Latin America (1.7 percent).³ With the United States implementing trade protectionism, the Trump administration tightening its policy toward Cuba, Venezuela reducing its energy supply to Cuba, and the declining price of the nickel in the international market, Cuba is facing some unfavorable forces in its economic development. Therefore, “The economic part is the most critical for this constitutional amendment.”⁴

Fourth, it is necessary to rationalize some ideological and social disorder in the law. Over the past 10 years, with the rapid development of the private economy and the continuous entry of foreign capital, Cuban

¹ Yudy Castro Morales, “New Constitutional reflects economic model updates,” August 15, 2018, accessed August 29, 2018, <http://en.granma.cu/cuba/2018-08-15/new-constitutional-reflects-economic-updates>.

² ECLAC, *Preliminary Overview of the Economies of Latin America and the Caribbean 2017* (Santiago: Publication of United Nations, 2018), 99.

³ *Ibid.*

⁴ Carmen Sesin, “With Significant Constitutional Changes, Cuba’s Leaders Aim for Their System’s Survival,” NBC News, July 24, 2018, accessed August 29, 2018, <https://www.nbcnews.com/news/latino/significant-constitutional-changes-cuba-s-leaders-aim-their-system-s-n893641>.

society has divided on certain issues. Some private entrepreneurs and foreign-related departments have gradually become richer, creating Cuba's first "privileged class". At the same time, as the currency's "dual-track system" continues to exist, black-market transactions are still problematic, and there is corruption in the power seeking the interests and money-power transactions. Because of this disparity between the rich and the poor and the increasing corruption, some ordinary citizens have become confused, and they have begun to question the leadership of the Communist Party and the socialist system. In particular, some young people, who are concerned about their future, have lost an interest in politics and have begun to admire Western ideas about freedom and lifestyle. The membership figure of the Communist Party has witnessed an obvious decrease. At the end of 2015, there were 671,344 national party members, a decrease of 97,974 from 2012. Therefore, this revision of the Constitution is in response to some of these new social problems that have emerged during the process of reform and opening-up over the past 10 years.

Fifth, the older generation of revolutionaries headed by Raúl deeply felt that "the time is not waiting for me" and hoped to institutionalize the future transfer of power in the Constitution. Since the Cuban Communist Party and state leaders were mostly older generation revolutionaries born in the 1920s and 1930s, the problem of "old-age politics" had become increasingly serious. In 2011, when the Sixth National Congress of the Communist Party of Cuba was held, most of the members of the Central Political Bureau were old people aged 70 to 80. In the new State Council in 2018, the two vice-chairmen are over 80 years old and another vice-chairman is 76 years old. As the first secretary of the Central Committee of the Communist Party of Cuba, Raúl will serve until 2021, at which time he will be 90 years old. Machado Ventura, the second secretary of the Central Committee of the Communist Party of Cuba and the chairman of the National People's Power Congress, is more than 80 years old. Therefore, in order to ensure the smooth transfer of power, the older generation of revolutionaries headed by Raúl hope to spend the rest of their lives carrying out the top-level design and proper arrangement of the country's future political system to ensure the continuity of the socialist cause. As a

Cuban scholar said, “This is what Raúl is doing.”¹

Profound Influence

As a new fundamental law, the New Constitution will definitely have a major impact on the future development of Cuba.

First of all, it redefines the goal of “building a communist society” and points out the direction for the future development of Cuba. Article 1 of the New Constitution reaffirms that “Cuba is a democratic, independent and sovereign socialist state of law and social justice”;² Article 4 clearly states that this “socialist system is irreversible”;³ and Article 5 stipulates that the Communist Party of Cuba, unique, Martiano, Fidelista, and Marxist-Leninist, the organized vanguard of the Cuban nation, sustained in its democratic character as well as its permanent linkage to the people, is the superior driving force of the society and the state. It organizes and orients the communal forces towards the construction of socialism and its progress toward a communist society.⁴ Obviously, the New Constitution has become a guide and road map for Cuba’s future development.

Second, it establishes a mechanism to balance the highest power of the government, which greatly promotes the modernization of the national governance system. For more than half a century, Cuba has not been able to solve the problem of modernizing the national governance system. The New Constitution stipulates that Cuba must implement the “double-head system” including a President and a Prime Minister, wherein the President has the right to nominate the Prime Minister. This means that the state’s highest powers are redistributed and mutually balanced, which will completely change the state of high concentration of power that Cuba has had in the past; furthermore, the term limit system of the President and Prime Minister will completely eliminate the issue of future national leaders holding lifelong terms in office. Obviously, these political reforms will help to “build a more rational collective leadership structure” and

¹ Ibid.

² Constitution of the Republic of Cuba, art.1.

³ Ibid., art. 4.

⁴ Ibid., art. 5.

“promote the modernization of Cuba’s national governance system.”¹

Third, it recognizes the market and the private economy, which will inject great vitality into the development of the national economy. The New Constitution recognizes the existence of the market and allows the market to play a role in resource allocation, production, management and distribution. This is a key step for Cuba to move towards a socialist market economy. The recognition of private property will stimulate the enthusiasm of the masses to start businesses, expand operations, and accumulate wealth. The development of the private economy will usher in a new upsurge. The New Constitution affirms the important role of foreign capital, encourages foreign investment, and introduces advanced foreign technology, talents, equipment and management experience, which will inject a lasting and powerful vitality into Cuba’s economic development.

Finally, it stresses the rule of law, upon which civil rights will be better protected. People-oriented governance (i.e. governing for the people) is the spirit throughout the New Constitution. Article 1 of the New Constitution states that Cuba is committed to the enjoyment of liberty, equity, justice, equality, solidarity, and individual and collective well-being and prosperity.² Article 40 states that human dignity is the most supreme value.³ Article 42 emphasizes that all people are equal before the law, receive the same protection and treatment from the authorities, and enjoy the same rights, liberties, and opportunities, without any discrimination for reasons of sex, gender, sexual orientation, gender identity, age, ethnicity, skin color, religious belief, disability, national or territorial origin, or any other personal conditions or circumstances.⁴ Article 44 also affirms that the state creates the conditions necessary to guarantee the equality of all its citizens.⁵ Obviously, the New Constitution reflects the willingness and determination of the Cuban government to govern the country in

¹ “Cuba’s draft constitution omits the aim of building communism,” *Al Jazeera*, July 22, 2018, accessed August 29, 2018, <https://www.aljazeera.com/news/2018/07/cuba-draft-constitution-omits-aim-building-communism-180722133339232.html>.

² Constitution of the Republic of Cuba, art.1.

³ *Ibid.*, art. 40.

⁴ *Ibid.*, art. 42.

⁵ *Ibid.*, art. 44.

accordance with the law in Cuba's new situation. It is undoubtedly "a real great progress."¹

In short, this constitutional amendment campaign is the most significant political reform carried out by Cuba since the victory of the Cuban Revolution in 1959. It is a major political decision made by the Cuban Communist Party headed by Raúl Castro from the height of history and strategy. It is the latest attempt by the Cuban people to explore the socialist road under the new situation. It is a major measure of the Cuban government's determination to promote the "Renewal of Economic and Social Models" and advance toward a modernized system of national governance. As the most significant result of this constitutional amendment campaign, the New Constitution will surely be the most important guide for Cuba's socialist modernization in the 21st century, providing a legal basis and guarantee for the future reform and opening up of Cuba.²

(edited by Li Xin)

¹ Kirk Semple, "New Cuba Constitution, Recognizing Private Property, Approved by Lawmakers."

² Carmen Sesin, "With Significant Constitutional Changes, Cuba's Leaders Aim for Their System's Survival."