

*The External Capitalist and Internal Marxist—The Fundamental Contradiction of Cuban Economic Reintegration in the Global Economic Order and the Role of the U.S.*

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**Abstract:** Since 2011, Cuba has sought to better embed itself into the global economy. But it has sought to do so on its own terms. That has produced a double contradiction. The first is outward facing and touches on the bifurcation between Cuban economic activity beyond its borders, or with global capital and investors. The second is inward and touches on the challenge of reconciling Cuba's markets based model abroad with its recently revised political economic model inside Cuban territory. This double contradiction, of Cuba as global capitalist and national central planner, has produced a singular structure for global economic engagement. But it is also a fragile one. The essay examines both the contradictions giving shape to the Cuban global engagement model, and its fragility in the face of American economic measures designed to make it difficult for Cuba to attain its global economic objectives. The essay starts with context—*Cuba in its "New Era of Development"*—situates the problem of globalization presented to the post-Fidel Castro government. The essay then introduces the basis conundrum in *Re-Integration and Cuba's New Era Double Contradiction*. The next section, *The Cuban Capacity for Reform*, focuses on the choices made by the Cuban state to overcome its ideological constraints in fashioning a global engagement project. These touch on the capacity of Cuban political, economic, and social organizations to incorporate reform of the type envisioned—markets-based in external activity, and centrally planned within the national territory. The essay then turns to the role of the United States and the repercussions of its tilt toward the Caribbean after 2017 as a key stress point of this enterprise of global economic engagement. Of specific importance is the role that re-introduction of sanctions regimes and the lifting of restrictions on lawsuits related to property confiscated from 1959 under the Helms-Burton law. The essay ends with a consideration of the ramifications of the convergence of these trajectories on Cuban engagement objectives. As elegant as the Cuban model of re-integration appears to be—external state capitalism buffering an internally autonomous centrally planned economy into which foreign elements cannot penetrate—the model is fragile. Its greatest fragility arises from the vagaries of regional geo-politics, and specifically the strong clash between the regional politics of Cuba and those of the United States.

This essay considers the challenges and opportunities facing Cuba in the context of its efforts to re-integrate itself into the global economy.<sup>1</sup> Cuban re-integration into global markets appeared to be a relatively simple task at the beginning of 2016. Cuba would conform to global expectations in the context of its engagements outside of its territory, while preserving its political-economic model within that territory. At the same time, a small opening would be tolerated (and highly regulated) as a complement to the state sector. In return, Cuba would secure much need capital for its key internal development projects, and would be able to finance critical economic sectors designed to increase the value of its exports. By the end of 2019, the effort appeared to be fatally stalled. The opening of the internal complementary private sector was stalled, efforts to access global markets were faltering in the wake of a quite substantial economic sanctions policy re-invigorated by the Trump Administration as punishment, in part for Cuban regional politics—especially its support for the

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<sup>1</sup> See, e.g., Pavel Vidal and Scott Brown, *Cuba's Regional Economic Integration: Begin with the International Financial Institutions*, Atlantic Council (July 2015). Available [https://publications.atlanticcouncil.org/uscuba/CUBAIFI\\_0709\\_DP.pdf](https://publications.atlanticcouncil.org/uscuba/CUBAIFI_0709_DP.pdf).

Maduro government in Venezuela. By October 2019, Cuba faced power shortages,<sup>2</sup> and it had returned<sup>3</sup> to the "special period" dollarization of its economy<sup>4</sup> in an effort to stop the economic bleeding.

Re-integration continues to be an important part of the Cuban Communist Party's (PCC) basic line, and serves as a cornerstone of the PCC's post Fidel "New Era." The use of the term "New Era" is deliberate and will invite the reader to consider the parallel development, as well as the deviation between, between Chinese Marxist-Leninism<sup>5</sup> and its Cuban Caribbean Marxist cousin.<sup>6</sup> In both cases, "New Era" is a reference to a "new era of development;"<sup>7</sup> each new era is bound to the actual conditions of a state within its geo-political context and each requires confronting contextually relevant challenges.<sup>8</sup> Yet "new eras of development" also produce contradiction, in the sense that they produce challenges to the integrity of the political-economic model in new circumstances. For China, grown right and influential following its own path, the contradiction shifted from one of production that resulted in the development of a Markets Marxism model through its Reform and Opening Up Strategy,<sup>9</sup> to one centered on the fairer distribution of the gains of productivity among the people.<sup>10</sup>

Cuba's "new era" contradictions, that is the challenges that proceed from efforts at fundamental reform in recognition of substantial changes to local and geo-political context, presents quite distinct challenges. Its origins lie with the transition from Fidel to Raul Castro, from the post "Special Period" settlement to the development of a more mixed economic model, and from efforts to re-engage with global markets, at least with respect to state enterprises. Cuba faces the quite different contradiction of economic reintegration into the pathways of contemporary global production while preserving its revolutionary moment that in many ways is fundamentally incompatible with contemporary global

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<sup>2</sup> See, e.g., Sarah Marsh and Nelson Acosta, "Amid crippling sanctions, Cuba deploys oxen, wood-fired ovens to overcome fuel crisis," Reuters (20 Sept. 2019). Available <https://www.reuters.com/article/us-cuba-economy/amid-crippling-sanctions-cuba-deploys-oxen-wood-fired-ovens-to-overcome-fuel-crisis-idUSKBN1W518L>.

<sup>3</sup> See, Marc Frank and Nelson Acosta, "U.S. dollar makes a comeback in Cuba to fight capital flight," NASDAQ (15 Oct. 2019). Available <https://www.nasdaq.com/articles/u.s.-dollar-makes-a-comeback-in-cuba-to-fight-capital-flight-2019-10-15> ("Cubans who want to buy from the specialist stores will need to use a dollar-denominated bank card from an account opened with tradable currencies, such as the dollar or euro. People may obtain those tradable currencies through offshore remittances or by other means such as exchanging local pesos on the street, the government said.").

<sup>4</sup> See, e.g., Arne C. Kildegaard and Orro Fernández, "Dollarization in Cuba and Implications for the Future Transition," Proceedings of the Association for the Study of the Cuban Economy 9:25-35 (1999) Available [https://www.ascecuba.org/asce\\_proceedings/dollarization-in-cuba-and-implications-for-the-future-transition/](https://www.ascecuba.org/asce_proceedings/dollarization-in-cuba-and-implications-for-the-future-transition/).

<sup>5</sup> See, China State Council Information Office, White Paper: China and the World in the New Era (September 2019). Available [http://news.cn/english/2019-09/27/c\\_138427541.htm](http://news.cn/english/2019-09/27/c_138427541.htm).

<sup>6</sup> See, Larry Catá Backer, *Cuba's Caribbean Marxism* (Little Sir Press, 2018).

<sup>7</sup> White Paper: China and the World, supra, n. 2, p. 3.

<sup>8</sup> Ibid. ("Copying or imitating other countries offers no way forward. The greatest inspiration from China's development is: What kind of path a country takes should be based on the experience of other countries, but more importantly on its own reality, and should be decided by its own people in accordance with its own history, cultural traditions, and level of economic and social development. . . . But modernization is not equal to Westernization, and cannot be mechanically carried out or achieved through the same model. Whether the path of a country is the right one depends on whether this path can solve the historic and practical problems facing the country, whether it can improve people's wellbeing, and whether it can win the recognition and support of the people." Ibid., p. 26-27).

<sup>9</sup> Larry Catá Backer, "Central Planning Versus Markets Marxism: Their Differences and Consequences for the International Ordering of State, Law, Politics, and Economy," *Connecticut Journal of International Law* 32(1) :1-47 (2016).

<sup>10</sup> Xi Jinping, Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era Delivered at the 19th National Congress of the Communist Party of China October 18, 2017 Report to the 19th Chinese Communist Party Congress, available [http://www.xinhuanet.com/english/special/2017-11/03/c\\_136725942.htm](http://www.xinhuanet.com/english/special/2017-11/03/c_136725942.htm).

production. That, certainly, has been the results of efforts at changes from the Lineamientos of 2011 to the great constitutional and political-economic model reform projects of 2016-2019.

Contradiction in the shadow of recognition of “new eras” of development, then, speak to challenges to ideological models (and their premises around which government is constituted and operated, however imperfectly). It is therefore necessary, if one is to usefully consider the current state of Cuban re-integration in global markets, to speak to *the role of ideology*. Ideology here is understood as the aggregation of premises, objectives and principles within which the Cuban vanguard constructs the reality through which it interprets the world around them and constrains the legitimate choices among which it may select consistent with its way of understanding themselves and the world around them. On other words, I will speak to how the Cuban vanguard understands (see) the world around them and how they then give meaning to what they say and do.<sup>11</sup> But that ideology does not exist in a vacuum, even as it serves to construct and interpret the world around them, ideologies provide the means by which the world around Cuba understands (sees) Cuba and how it gives meaning to what Cuban say and do—and in very different ways.

### ***Cuba in its “New Era of Development”***

The trigger for this examination is change. Within Cuba change (and again I speak to the ideological expression of change), has accelerated since Raúl Castro’s Lineamientos project and its naturalization within Cuban fundamental ideology in the PCC 6<sup>th</sup> Party Congress. It reached its current zenith with the reconceptualization of the political economic model and the 2030 Economic plan adopted in the 7<sup>th</sup> PCC Congress in 2016 and thereafter its embedding in the process that culminated in the adoption by plebiscite of the 2019 state constitution. These changes also appeared to broaden the vanguard’s toleration of popular participation, though not without sometimes aggressively definitive policing. That policing was especially noticeable in the way that Cuba continues to police its intellectual and cultural forces. As well its efforts to tightly control formal engagement in political reform also suggests the boundaries of the structures within which change will be addressed.



<sup>11</sup> The essence of the analysis is grounded in semiotic sensibilities. See, Jan M. Broekman and Larry Catá Backer, *Lawyers Making Meaning: The Semiotics of Law in Legal Education* (Springer, 2013).

useful contextualization.

First there were personnel changes at the top of the state and vanguard party hierarchies—but not too much change. Raúl Castro has made a point of seeking to move forward from the rapidly diminishing cohort of *históricos* to a (relatively) younger generation of new leaders.<sup>12</sup> The ascent of Miguel Mario Díaz-Canel to the Cuban Presidency was the much publicized poster child of that movement. This was generally hailed by the foreign press as a sort of “great leap forward” in the institutional evolution of the leadership of the state and a move away from what might have appeared to be a cult of personality built around the Castro brothers.<sup>13</sup>

Second the adoption of the *Conceptualización del modelo económico y social Cubano de desarrollo socialista*<sup>14</sup> appeared to suggest an ideological forward movement. That forward movement further suggested that the vanguard was willing to move away from the traditional model firmly established during the 1<sup>st</sup> PCC Congress in the mid-1970s to a model better suited to the times.

Third, the 2030 Economic Plan (*Plan nacional de desarrollo económico y social hasta 2030: Propuesta de visión de la nación, ejes y sectores estratégicos*)<sup>15</sup> suggested reform not just of the political but also of the economic model “as applied” to the challenges of actual practice. Lastly the process of constitutional reform suggested a move toward political reform that was distinct both from traditional liberalization and from the Chinese Communist model. Reconceptualization, constitution, 2030 Plan and Lineamientos (2011 and revised 2016)<sup>16</sup> were to varying degrees the product of a well-publicized new model of endogenous socialist democratic action. That process was undertaken under the string guidance of the vanguard party but also permitted well managed interventions by both the representative assembly of popular power, and the (well organized and managed)) masses themselves.

And yet the changes suggested by these actions actually appeared to leave the fundamental ideology—the core basis for the understanding of the world and of the range of legitimate choices within that understanding—substantially intact.

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<sup>12</sup> See, e.g., Michael Weissenstein, “Cuba’s Historical Generation Leaves Top Legislative Body,” AP 10 October 2019. Available <https://apnews.com/83e8f85f51f146c99ec2a22046946083> (“It remains unclear if the changes truly affect the workings of power in Cuba, a single-party state whose decision-making processes remain opaque. Raúl Castro remains head of the Communist Party, the ultimate authority on the island. And the country’s military and intelligence services wield deep influence over virtually every working of the state.”).

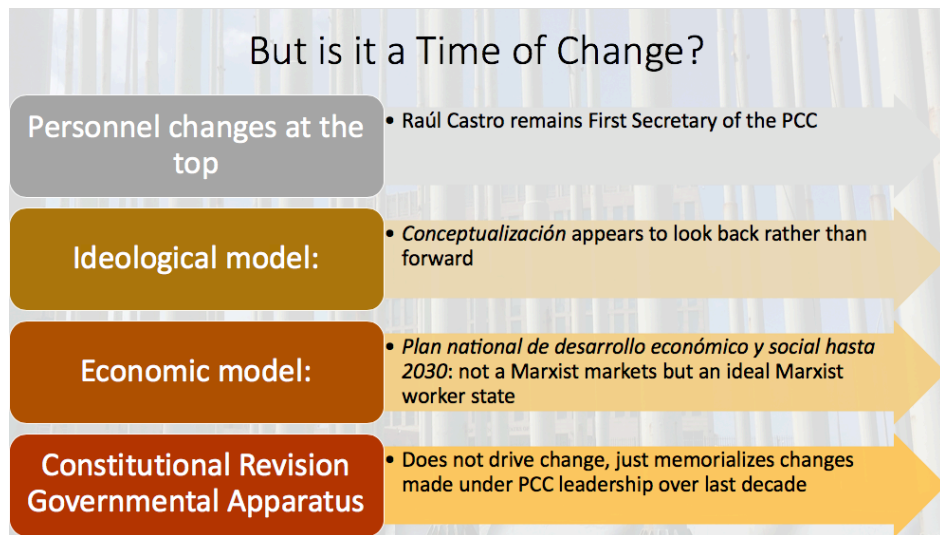
<sup>13</sup> South China Morning Post (19 April 2018) Available <https://www.scmp.com/news/world/americas/article/2142500/cuba-swears-new-president-miguel-diaz-canel-replace-castro> (“I like sticking with the ideas of President Fidel Castro because he did a lot for the people of Cuba, but we need rejuvenation, above all in the economy,” said Melissa Mederos, a 21-year-old schoolteacher. “Díaz-Canel needs to work hard on the economy because people need to live a little better.”)

<sup>14</sup> See, Partido Comunista de Cuba, *Conceptualización del modelo económico y social cubano de desarrollo socialista* (July 2017). Available <http://www.granma.cu/file/pdf/gaceta/Conceptualizaci%C3%B3n%20del%20modelo%20económico%20social%20Versión%20Final.pdf>

<sup>15</sup> See, Partido Comunista de Cuba, *Plan nacional de desarrollo económico y social hasta 2030: Propuesta de visión de la nación, ejes y sectores estratégicos* (July 2017), available <http://www.granma.cu/file/pdf/gaceta/Copia%20para%20el%20Sitio%20Web.pdf>.

<sup>16</sup> Lineamientos de la política económica y social del Partido y la revolución para el período 2016-2022, available <http://www.granma.cu/file/pdf/gaceta/Lineamientos%202016-2021%20Versi%C3%B3n%20Final.pdf>.

First real power remained substantially undisturbed as Raúl Castro retained the position of First Secretary and his key personnel in the military remained critically tied to the historical nomenklatura. Second, the reconceptualization on close reading could be understood as a



reconfirmation of the core principles of the 1<sup>st</sup> PCC Congress rather than a forward movement form that initial crystallization of the Revolutionary moment (even one that took place 15 years after the fact). The 2030 Economic Plan suggested a reaffirmation of an ideal Marxist worker state rather than pointing to a more robust embedding of the Cuban economy within global production. Global economic activity continues to be viewed as something in need of a string internal quarantine, even as at the level of the state, some of its value might be exploited for the benefit of the state. Lastly, the constitutional project and the general movement toward socialist endogenous democratic practice still enshrined the notions of affirmation under the leadership of the vanguard. Popular engagement does not drive change, just memorializes changes made under PCC leadership over last decade.

Nonetheless, the internal changes in Cuba has generated some substantial global expectations. Change has been very much in the air since the 2014 opening up between Cuba and the United States, and its sudden narrowing from 2016—and then with greater effect from the end of 2018. All of the great power actors have been involved, though to quite different effect. China looks to Cuba for its Belt and Rad Initiative.<sup>17</sup> Russia looks to Cuba for its Great Power politics.<sup>18</sup> The European Union looks to Cuba as a model for a new sort of transition—values driven in accordance with the prominence of human rights centered governance prominent as policy within the EU for several decades now.<sup>19</sup> And the Caribbean regions still looks to Cuba for leadership—either positive or negative.<sup>20</sup> All expect, to some extent, that Cuban influence will be dependent on Cuba's ability to re-engage with global production, on whatever terms it might be able to attain.

<sup>17</sup> See, "Cuba seeks to increase trade, join China's Belt and Road Initiative: Official," *China Daily* 1 Nov. 2017. Available [http://www.chinadaily.com.cn/business/2017-11/01/content\\_33984900.htm](http://www.chinadaily.com.cn/business/2017-11/01/content_33984900.htm).

<sup>18</sup> See, e.g., Sarah Marsh and Nelson Acosta, "Cuba Boosts Trade Ties with Cold War Ally Russia as U.S. Disengages," *Reuters* 19 Dec. 2017. Available <https://www.reuters.com/article/us-cuba-russia-analysis-idUSKBN1ED0FI>

<sup>19</sup> See, e.g., European Union, EU-Cuba Relations: Factsheet (6 Sept. 2019). Available [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/16558/EU-Cuba%20relations.%20factsheet](https://eeas.europa.eu/headquarters/headquarters-homepage_en/16558/EU-Cuba%20relations.%20factsheet) ("Relations between the European Union and Cuba are based on a political dialogue that promotes cooperation, respect for human rights, the modernisation of the Cuban economy, and the development of joint responses to global challenges. Both the EU and Cuba seek to strengthen the United Nations as the core of the multilateral system and to support the strategic partnership between the European Union and Latin American and the Caribbean.").

<sup>20</sup> "CARICOM Reaffirms Great Value of Relations with Cuba," CARICOM Today (18 June 2019). Available <https://today.caricom.org/2019/06/14/caricom-reaffirms-great-value-of-relations-with-cuba/> ("CARICOM "prizes highly" the links it has built with Cuba over the years through technical cooperation at bilateral and regional levels, trade

Moreover, despite the tentative nature of Cuban forward movement on the front of economic reform, there has been some forward movement. The Cubans have been aggressive in pushing development in favored sectors—principally tourism, Pharma, and to some extent infrastructure projects. Cuba has been more aggressive in reaching out to CARICOM and in pushing its own form of socialist regional integration through ALBA. They continue to work at the margins of global production, cultivating Iran and more surreptitiously, North Korea. They appear to be receptive to embedding in China's Belt and Road Initiative. They are aggressively targeting the EU for its pharma products. These efforts, in turn, have added to the expectation that Cuba is indeed more aggressively embedding itself into global trade regimes.

### ***Re-Integration and Cuba's New Era Double Contradiction.***

Does this suggest a new "Cuban Adjustment Program"? The reference, of course, is ironic and looks back to a different sort of adjustment program, the US program that permitted Cuban emigration to bypass the usual procedures Cuban Adjustment Act, Public Law 89-732, is a United States federal law enacted on November 2, 1966. The context just described thus frames the central issues of these remarks: First, the nature and extent of internal Cuban legal adjustments necessary for Cuba to enter into a fully normalized relationship with the rest of the world. Second, the constraints of Cuban geopolitics on the possibility of realizing is trajectory. And that, in turn, gives rise to the questions with respect to which the rest of these remarks will focus: What adjustments might Cuba have to undertake if it is to embed itself within the structures of global trade and finance? To what extent is Cuba is disposed to consider these possible reforms? What may be possible in the aftermath of the U.S. tilt toward the Caribbean of 2019?

**A Cuban Adjustment Program?**

**Issue:** What internal Cuban legal adjustments will be necessary for Cuba to enter into a fully normalized relationship with the rest of the world?  
What is the effect of Cuban geo-politics on this trajectory?

**Questions:** What adjustments might Cuba have to undertake if it is to embed itself within the structures of global trade and finance?  
To what extent is Cuba is disposed to consider these possible reforms?  
What may be possible in the aftermath of the U.S. tilt toward the Caribbean of 2017-19?

*The result, elaborated in the remainder of this essay, is something of a double contradiction. First, the fundamental expectations of the global economic order for an organization of the economic and political life of the state are fundamentally incompatible with the emerging Cuban political and economic model. That incompatibility stands at the center of the*

fundamental contradiction facing the Cuban state. Second, that contradiction produces a contradiction between an internal and an external economic model—the former aligned with global trade regimes, the latter excluded from them. For Cuban policymakers, the way around the fundamental contradiction is to bifurcate the state. First build a *cordon sanitaire* at the borders of the national territory, and then project economic power in markets outside of those borders or within

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and economic ties, the mutuality of interests and concerns in regional, hemispheric and international fora, and the fraternal spirit that comes to the fore in times of disaster.”)

specially designated areas or projects within it.<sup>21</sup> While the Cuban state, as a representative of the nation is willing to reintegrate itself in global production, projecting that participation outward. Within the national territory, however, the Cuban state has adopted a policy of strong segregation in order to preserve its ideological model from contamination by what it sees as the corrupting capitalist principles at the heart of global production. The success of this strategy has yet to be seen.

*The First contradiction* is grounded in the disjunction between external expectations and internal ideological capacity. The most straightforward element of the inquiry centers on the nature of the steps necessary to attain some rough embedding in global production and finance.<sup>22</sup> This is well worn territory but worth summarizing briefly if only to serve as a basis for understanding the extent of the contradiction of such “expectations” plans in the face of the Cuban political-economic model.

## Baseline Expectations

- Membership in the major multilateral actors**
  - IFI’s—the World Bank and International Monetary Fund, and perhaps the Inter-American Development Bank; Asian Infrastructure Investment Bank (AIIB)
  - Regional Associations OAS
  - But alternatives: ALBA; Association of Caribbean and Latin American States (CELAC)
- Internal Legal Changes**
  - Contract
  - Labor
  - Judicial system
  - Tort
  - Protection of foreign interest
  - Opening up internal economy
- Conformity with international human rights norms**
  - Investment partners may have have no choice
- International Remedial frameworks**
  - Arbitration regimes
  - Ramp up WTO participation

*The first* touches on membership in major multilateral organizations. These might certainly include the IFI’s—the World Bank and International Monetary Fund, and perhaps the Inter-American Development Bank and the Asian Infrastructure Investment Bank (AIIB). But it may also require membership in regional associations, starting with the OAS with which relations remain stormy. Cuba has regional alternatives. One of them is weaker--ALBA; the other has more possibilities, the Association of Caribbean and Latin American States (CELAC). And the alphabet soup of regional organizations in which Latin America is rich provide additional possibilities.

<sup>21</sup> These notions of territory have been used in an increasing number of situations that require both openness to global communities and a tight control over internal affairs. See, e.g., Donald G. McNeil Jr. , “Using a Tactic Unseen in a Century, Countries Cordon Off Ebola-Racked Areas,” *The New York Times* (12 Aug. 2014). Available <https://www.nytimes.com/2014/08/13/science/using-a-tactic-unseen-in-a-century-countries-cordon-off-ebola-racked-areas.html>.

<sup>22</sup> For a good discussion from the period before the change in U.S: policy after 2016, see Richard E. Feinberg and Ted Piccone (eds.), *Cuba’s Economic Change in Comparative Perspective* (Brookings 2014).

*The second* touches on a substantial number of internal changes to the Cuban domestic legal order. These include in the fields of Contract, Labor, the organization and functioning of the Judicial system, Tort, the protection of foreign interests, waivers of sovereign immunity, and most importantly with respect to the opening up of the internal economy. In some of these fields Cuba has already started work, principally with respect to contract. In other areas, the thrust of reform appears to work in the other direction—labor law, sovereign immunity, and the internal economy tend to resist integrative change.

*The third* is conformity with international human rights standards—as understood and applied by major global actors. Cuba has resisted these on grounds of ideology and interpretation, but it is important to note that Cuba's investment partners may have no choice, dragging Cuba with them. *The last* touches on international remedial frameworks. Some aspects might be hard to square with Cuba's internal model: international arbitration regimes and human rights remediation mechanisms. Others less difficult, starting with a ramping up of Cuban participation in organizations like WTO.

To the extent that Cuba has offered up any movement toward the realization of these embedding objectives, it has done so by partitioning its territory. *That produces the second contradiction*. One can call this the *Mariel Model*.<sup>23</sup> It is a model that looks back to the efforts by developing states, and more pointedly by China a generation ago, to designate special territorial zones—separated from and policed against contaminating the internal economies of the state—within which foreigners are allowed to engage in economic activity. The Mariel Special Economic Zone carries with it its own legal regime, it provides containers terminals, roads, railways, info-communications, warehouses and trade centers. It provides, in effect, everything necessary for economic functioning with the need to penetrate the interior. There are exceptions of course—tourism and infrastructure are two that readily come to mind. But even there the state stands between its foreign partners and direct engagement with localities and individuals. The state bargains for labor, and foreign partners negotiate with domestic state entities for other goods and services.

The Mariel Model, in turn, brings to the foreground the central issue—the Cuban capacity for reform. And with this foregrounding, ideology is also brought forward as the framework within which reform, and with it the impulse to effectively embed Cuba within global production, is actually possible without fundamental ideological change (which is not now forthcoming). I will consider this in several aspects. The first is the constraints in Cuban ideology as it moved from revolution to revolutionary principles. The second is the ideological constraints on operation of Party and state organization. The third is the capacity for economic reform beyond the special economic zones.

### ***The Cuban Capacity for Reform***

The move from revolution to revolutionary principles is grounded in foundational concepts of state ownership of means of production managed under leadership of vanguard party. *It is grounded* on the paramount value of state sovereignty whose expression is led by the vanguard party. *It is expressed* (through policy and state interaction with foreigners) dialectical historical materialism (in which political organization reflects the stage of development discerned by the vanguard) the normative basis of which was initially set in the declarations of the 1st PCC Congress and then refined.

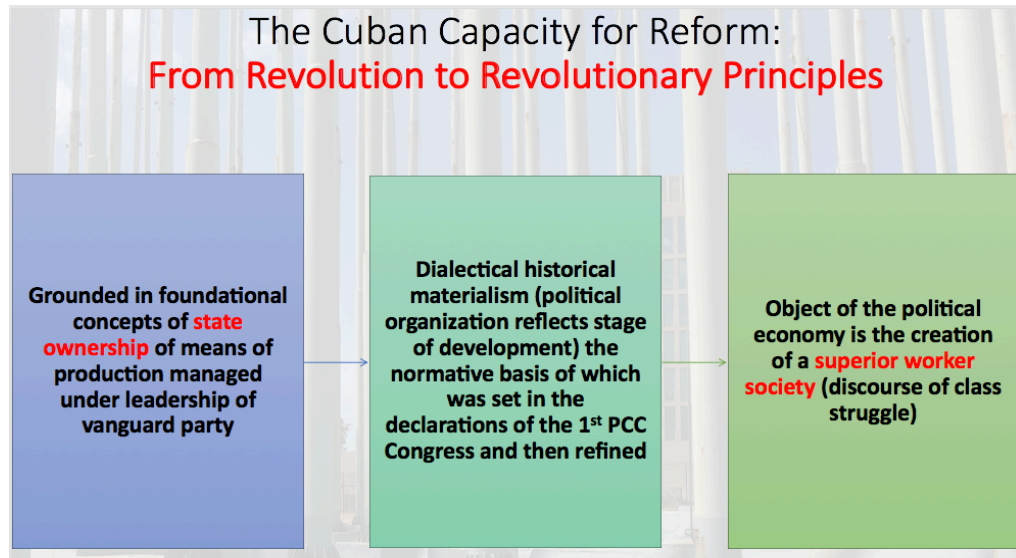
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<sup>23</sup> See, e.g., Mimi Whitefield, "Mariel is Cuba's Big Industrial Gamble; Could US Companies be Among Investors?", Miami Herald (23 Oct. 2017). Available <https://www.miamiherald.com/news/nation-world/world/americas/cuba/article180057406.html>.



And it has as its object the political economy is the creation of a superior worker society (discourse of class struggle). In this important respect, it rejects Chinese Marxist-Leninist characterizations of fundamental contradiction in the distribution of societal benefits or in the need to develop productive forces. And it rejects as well the plausibility of a markets driven bottom up organization of political life.

These fundamental ordering principles are then expressed in the in concept of "the Revolution" and its historical determinism embedded in its 7 core principles: (a) unity and independence of the Cuban people; (b) popular support



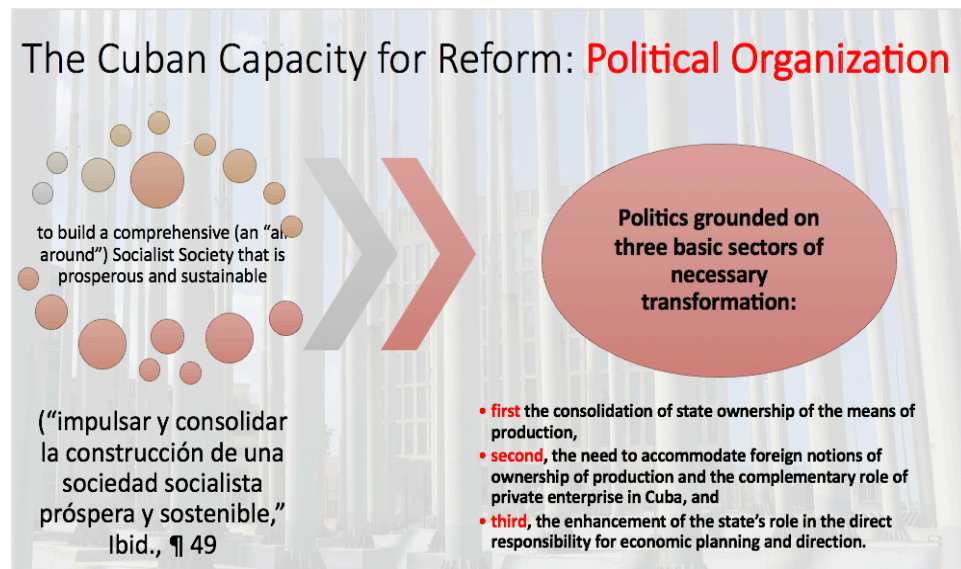
of the leadership role of the PCC; (c) the universality of social welfare services; d) the strengthening of Cuban values and enhancement of Cuban culture; (e) active engagement of a socialist civil society; (f) productive capacity to engage in global commerce in specified sectors; and (g) augmented international prestige and standing among the community of nations. Together these define "box" within which Cuban elites understand and respond to the world. These set the bases for the process of interpreting the actions and consequences of what is going on within Cuba and around the state. And it serves as the baselines against which Cuba can define "the other" who represents the aggregation of those characteristics, premises and principles that are the embodiment of "wrong"—the United States.

### ***The Cuban Capacity for Reform: Political Organization***

These principles into which the Revolution has been transformed, has significant effect on the character of political reform.

The politics of organizational transformation is grounded in *three basic sectors of necessary transformation* (the mechanics of the Cuban economic-political model). The first touches on the consolidation of state ownership of the means of production. This direct ownership extends to all means of production other than that deemed to be usefully devolved to private "ownership" under the management of state instrumentalities. The second recognizes the need to accommodate foreign notions of ownership of the means of production. For these arrangements can be made within specified territories and under the terms of specific economic arrangements made between the state and foreigners. Foreigners are not permitted direct access to internal economic activity except in partnership or under the supervision of the state. Likewise the complementary character of private

ownership is recognized but strictly delimited and controlled by state organs. Third, the state’s role in and responsibility for economic planning is to be enhanced in the context of all economic activity.



All issues of political reform revolve around the creation of institutional mechanisms that enhance efficiency and reinforce the leadership role of the vanguard party. All reform, then, must be bent to the building of a comprehensive (an “all around”) Socialist Society that is prosperous and sustainable (“impulsar y

consolidar la construcción de una sociedad socialista próspera y sostenible.”<sup>24</sup> This approach underlines the fundamental collective nature of the Cuban economic model and its rejection of individual welfare maximization through markets, as well as a fundamental rejection of markets and the language of markets as a basis for efficient allocation of resources.

This sensibility was well evidenced in the 2018-19 Constitutional reform project. That project set quite firm boundaries to the space within which popular consultation would be treated as worthy of consideration, and as well the forms within which legitimate engagement could be recognized. At the same time the state tolerated a substantial amount of “unofficial” and “off the books” discussion and engagement, even on the constitutional reform websites it maintained.

The key element was the transposition of the central ideological elements of the *Conceptualización*. The focus was on the construction of the administrative apparatus. Left intact, of course, was both the underlying political ideology and the authority of the PCC as the vanguard party in power and the holder of supreme political authority through its leadership and guidance role. That it changed the vocabulary of power—from Marxist and Leninist to socialist was of little moment; the structures



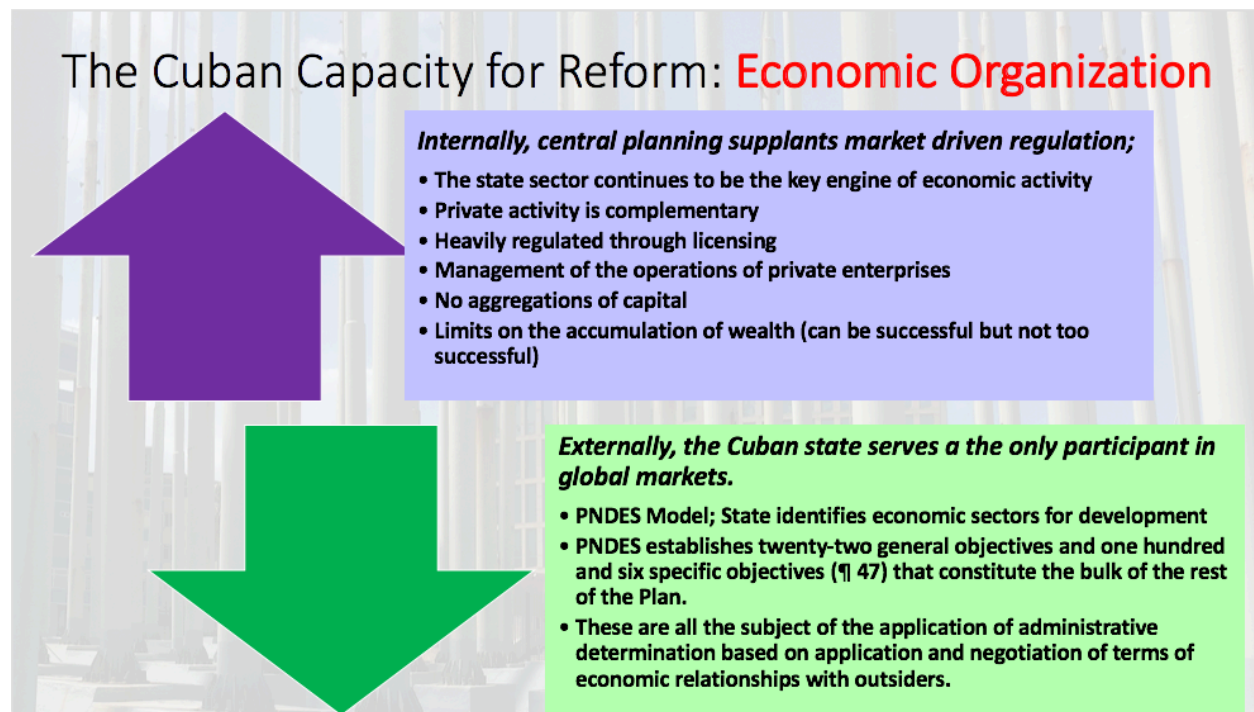
<sup>24</sup> *Conceptualización*, supra., ¶ 49.

remain well entrenched. One understands the Cuban constitution as Nkisi—as the means of channeling power that is not inherent in the object (the constitution) but which is derived from an extra-constitutional source (the PCC Basic Line and its *Conceptualización*).

### ***The Cuban Capacity for Reform: Economic Organization***

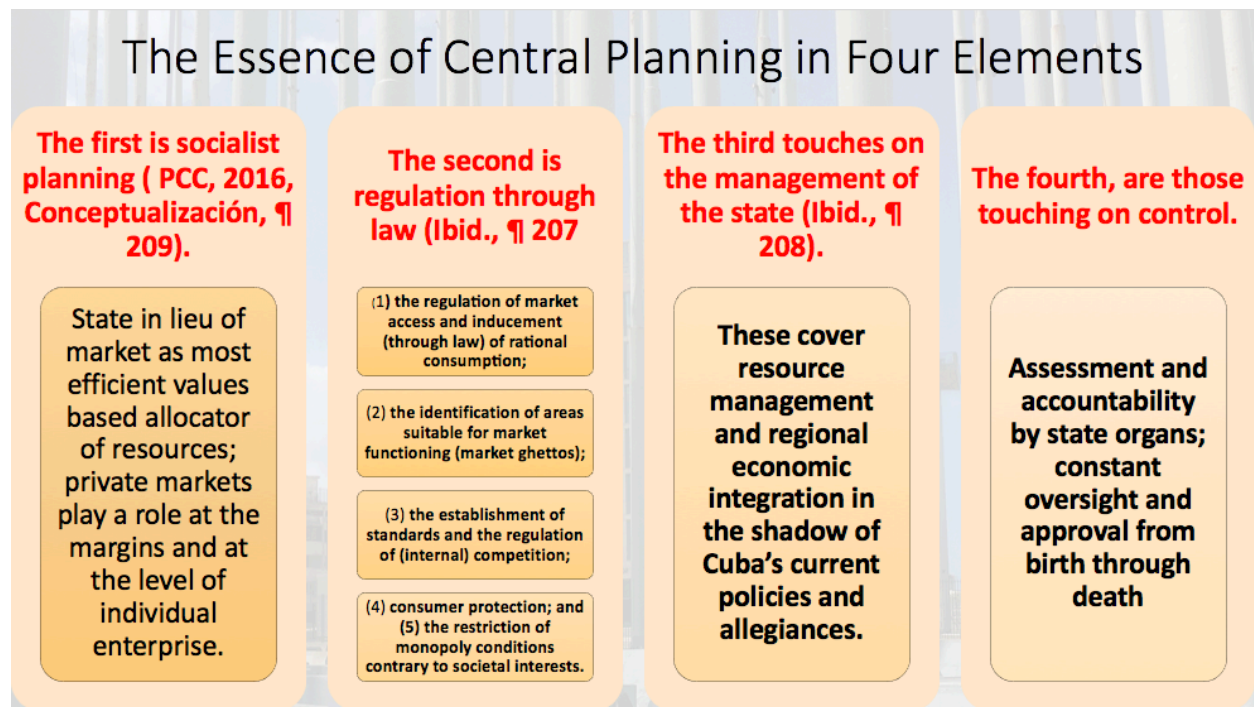
Likewise, the capacity for reform of the *economic model* of the state was severely constrained by the ideological premises and structured that were adopted as both orthodox and as defining the frame of reference for analysis.

That economic model produced a bifurcated approach to economic policy—one that mimicked the bifurcated currency that the Cuban state adopted. In both cases, economy and finance severely *segregated internal operation from the state's engagement with foreigners* in both form and operation.



*Internally*, central planning supplants market driven regulation. The state sector continues to be the key engine of economic activity. Private activity is complementary and as a gap filler for the planned economy. Private activity is in any case heavily regulated through licensing and oversight. And it is heavily taxed. The state retains a substantial (though sometimes only potential) hand in the management of the operations of private enterprises. The availability of forms of organization based on the aggregation of capital (corporations, partnerships and the like) remains strictly prohibited precisely because the economic model consigns to the state the ownership of the means of production and its exploitation. Moreover, the ideological core premise of horizontal parity in wealth produces a system that obsesses (at least formally and outwardly) about the limits on the accumulation of wealth. One can be successful but not too successful in the complementary private sector.

*Externally*, the Cuban state serves as the only participant in global markets. The template is the model on PNDES, the 2030 economic plan. It is for the state to identify those economic sectors chosen for development. It is for the state to exploit the means of production to the ends of advancing economic activity in those areas. It is for the state to deal with foreign partners and investors. And it is for the state to provide foreign investors or partners with access (through state entities) with the labor and materials they might locally source. The 2030 Plan establishes twenty-two general objectives and one hundred and six specific objectives<sup>25</sup> that constitute the bulk of the rest of the Plan. These are all the subject of the application of administrative determination based on application and negotiation of terms of economic relationships with outsiders.



At the heart of this model is the conceptualization of central planning. That conceptualization is the product of the aggregation of four distinct elements. *The first* is what the *Conceptualización* calls “Socialist Planning.”<sup>26</sup> Socialist Planning replaces the market with the state, and market mechanisms with the exercise of administrative discretion in making economic and allocation choices. The State, rather than the market, is premised to be the most efficient values-based allocator of resources; private markets play a role at the margins and at the level of individual enterprise. *The second* is regulation through law.<sup>27</sup> This consists of five parts: (1) the regulation of market access and inducement (through law) of rational consumption; (2) the identification of areas suitable for market functioning (market ghettos); (3) the establishment of standards and the regulation of (internal) competition; and (4) consumer protection; and (5) the restriction of monopoly conditions contrary to societal interests. The third touched on the management of the state as the locus of and substitute for the market.<sup>28</sup>

<sup>25</sup> 2030 Plan, *supra*, ¶ 47.

<sup>26</sup> PCC, 2016, *Conceptualización*, *supra*, ¶ 209.

<sup>27</sup> *Ibid.*, ¶ 207.

<sup>28</sup> *Ibid.*, ¶ 208.

These principles are concerned with resource management and regional economic integration in the shadow of Cuba's current policies and allegiances. What is of concern are not just wholesale markets, but the construction of trade based on the ALBA principles. *The last* touches on issues of control and systemic integrity. Assessment and accountability by state organs; constant oversight and approval from birth through death. Of course, the theoretical framework and the realities of the state are separated by a great distance. One need only read the speeches of high officials to get a sense of the great chasm between theory and practice. But the theory holds—and forms the basis for constructing both systems and the means for attempting accountability measures within the normative parameters of the economic model itself.

### ***Social Organization and the Model Worker as the Critical Tool of Central Planning Frameworks***

But what is at the heart of central planning; and related to that question; what is at the heart of the political and economic model? It is not the development of productive forces to produce an abundance of wealth; it is not the objective of securing for the vanguard a privileged position above society; and it is not about augmenting the value of production per se. Instead, the object of all of this effort is focused on the production of the model worker in a model society consuming a model amount of goods in perfect harmony with his fellow citizens within a self-sustaining social and economic community. It is the *production of a model worker in a model society against which the value of economic activity is measured.*

The Cuban Capacity for Reform: **Societal Organization**

A culture of socialism: "La sociedad cubana se encuentra en el proceso histórico de construcción del socialismo, como alternativa viable para superar el capitalismo y, con ello, contribuir modestamente a la supervivencia de la Humanidad," Ibid., ¶ 8.

From model state to model worker; consuming culture and leisure while producing wealth for the state

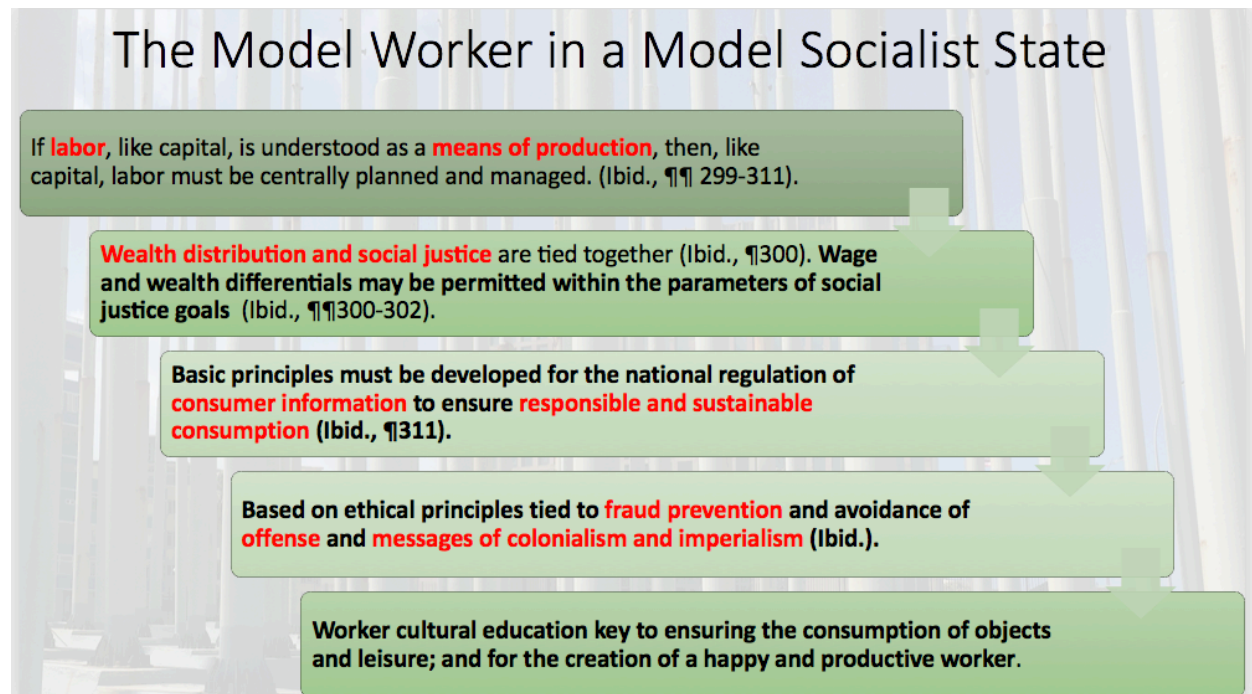
That is the measure of the success of the class struggle principal contradiction at the heart of cultural historical determinism.

he object of the socialism embedded in the Cuban political and economic model focused on the culture that socialism itself was meant to produce. That production, of course, was focused not on the production of wealth but on the *cultural production of people*. A culture of socialism: "La sociedad cubana se encuentra en el proceso histórico de construcción del socialismo, como alternativa

viable para superar el capitalismo y, con ello, contribuir modestamente a la supervivencia de la Humanidad."<sup>29</sup> The obligation is to move from the construction of a model state to that of a model worker; an individual who is capable of consuming culture and leisure while producing wealth for the state to be used for their benefit. That production is meant to be the measure of the success of the class struggle principal contradiction at the heart of cultural historical determinism.

So, what exactly is the model worker in a (Cuban) socialist state?

<sup>29</sup> Conceptualización, supra, ¶ 8) [Cuban society finds itself in the historical process of the construction of socialism as a viable and superior alternative to capitalism, and with it, to contribute modestly to the survival of humanity].



The logic runs something like this: If labor, like capital, is understood as a means of production, then, like capital, labor must be centrally planned and managed.<sup>30</sup> Wealth distribution and social justice are tied together.<sup>31</sup> Wage and wealth differentials may be permitted within the parameters of social justice goals.<sup>32</sup> To that end, basic principles must be developed for the national regulation of consumer information to ensure responsible and sustainable consumption.<sup>33</sup> These principles, in turn, are based on ethical principles tied to fraud prevention and avoidance of offense and messages of colonialism and imperialism (Ibid.). For these ends, Worker cultural education key to ensuring the consumption of objects and leisure; and for the creation of a happy and productive worker. Those are the ends to which all of the political forces of the Cuban Revolution are meant to be directed—the production of a properly socialized individual (worker) who together with all others serves as the pieces that in the aggregate constitutes the mosaic of a communist society of contented and motivated workers. It is to this work, *the work of perfecting the individual*, that the PCC is effectively charged.

### ***Cuban Reintegration in the Shadow of the U.S. Tilt Toward the Caribbean After 2017***

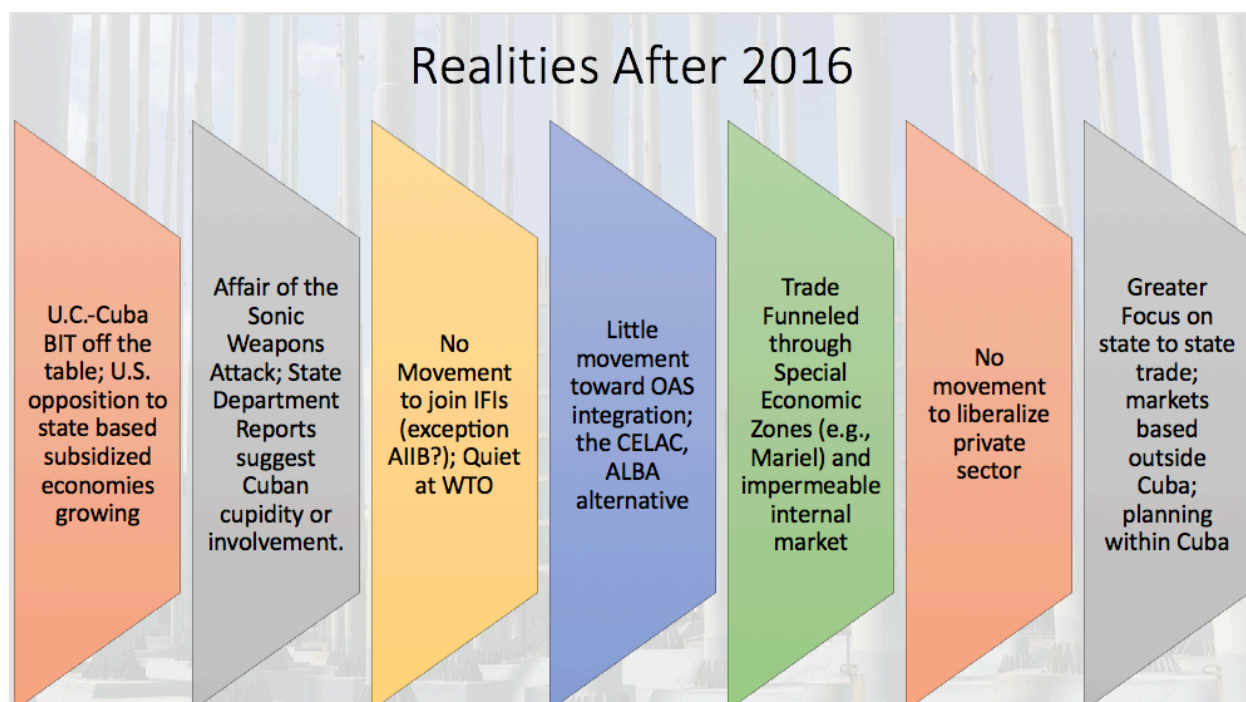
It is in this context that one can better understand the nature and feasibility—and also the limits—of Cuban economic reform in the shadow of Global engagement. And it is in that shadow that one can begin to understand the tensions and contradictions inherent in any project of embedding Cuba into the structures and world views of global production. Those contradictions were exposed quite clearly upon the election of Donald Trump to the US presidency in 2016, and manifested with increasing urgency after he took office in 2017.

<sup>30</sup> *Conceptualización*, supra, ¶¶ 299-311.

<sup>31</sup> Ibid., ¶300-.

<sup>32</sup> Ibid., ¶¶300-302.

<sup>33</sup> Ibid., ¶311.



Cuba was leery of U.S. normalization even as it was occurring through 2016.<sup>34</sup> Yet, the pre-2017 planning was all derailed by events after the US 2016 elections. First, any chance of a U.S.-Cuba BIT was off the table; U.S. opposition to state based subsidized economies grew as did U.S. suspicions that Cuban economic activity was tied to organizations the U.S. sought to suppress. That opposition is at the heart of the impasse between the United States in China in the negotiation of their trade agreement. But it also bleeds into Cuban relations with members of the global trade and finance order. On addition, the Affair of the Sonic Weapons Attack has had a noticeable effect on relations between the US and Cuba; the State Department Reports suggest Cuban cupidity or involvement.<sup>35</sup> Cuba has made little effort to join IFIs (with the possible exception of the AIIB); it remains relatively quiet in the WTO environment. Likewise, there is little movement toward OAS integration; the CELAC and ALBA as an alternative have come under stress because of aggressive countermeasures taken by the U.S. and its allies.<sup>36</sup>

Trade funneled through Special Economic Zones (e.g., Mariel) and an impermeable internal market have made integration effectively difficult.<sup>37</sup> Cuba remains willing to participate in global trade at the state level but is unwilling to open its territory to global production over which it has no direct control. There is little movement to liberalize private sector. A greater focus on state to state trade;

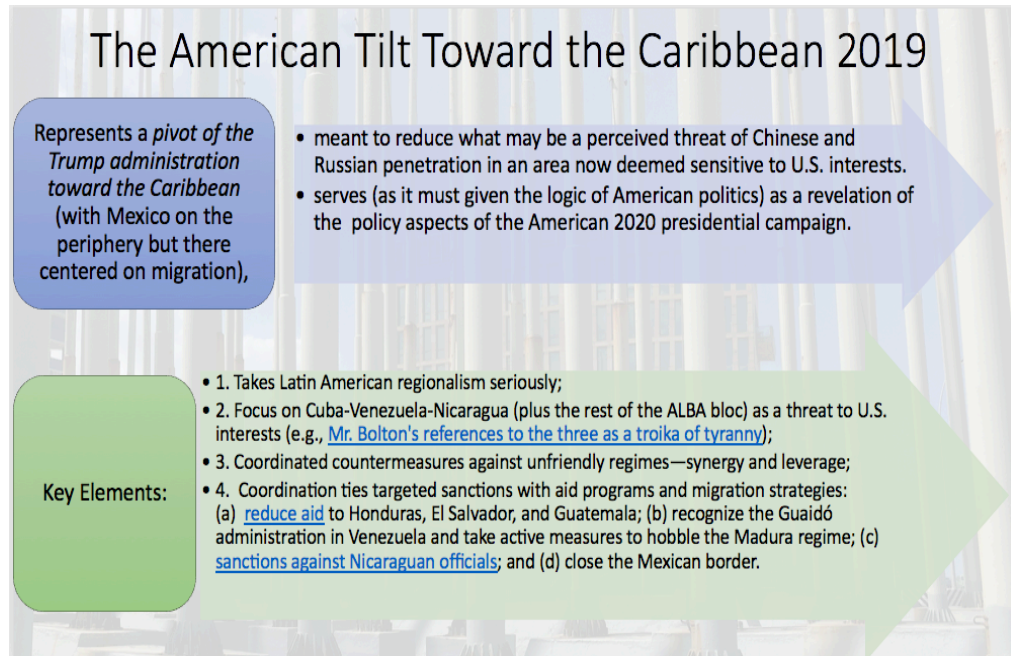
<sup>34</sup> William M. LeoGrande, "Cuba Reaches Out to Partners Far and Wide to Hedge Against U.S. Engagement," *World Politics Review* ( Oct. 11, 2016). Available <https://www.worldpoliticsreview.com/articles/20145/cuba-reaches-out-to-partners-far-and-wide-to-hedge-against-u-s-engagement>.

<sup>35</sup> For discussion with links, see essays at Law at the End of the Day, [Cuba Sonic Weapons Affair](http://lcbackerblog.blogspot.com/search/label/Cuba%20Sonic%20Weapons%20Affair). Available <http://lcbackerblog.blogspot.com/search/label/Cuba%20Sonic%20Weapons%20Affair>.

<sup>36</sup> See, e.g., "CELAC: La oportunidad de México para reconstruir la integración Latinoamericana," *Nueva Tribuna* (España) 8 Oct. 2019. Available <https://www.nuevatribuna.es/articulo/global/celac-oportunidad-mexico-reconstruir-integracion-latinoamericana/20191007115500166900.html>; Nuria Barbosa León, "Revitalizing the Bolivarian Alliance for the Peoples of Our America is strategic," *Granma* (21 May 2019). Available <http://en.granma.cu/cuba/2019-05-21/revitalizing-the-bolivarian-alliance-for-the-peoples-of-our-america-is-strategic>.

marks the outer boundaries of Cuban engagement. Cuba is willing to embrace markets as a sovereign participant outside of its national territory; within the national territory there is only the state and its management of economic activity either through state entities or a well-managed complementary private sector focused on consumer retail.

The American tilt toward the Caribbean, announced in a series of measures starting at the end of 2018 but intensified in 2019 also complicates the calculus for Cuban engagement in global production. This tilt represents not merely a *pivot of the*



*Trump administration toward the Caribbean* (with Mexico on the periphery but there centered on migration), but also is meant to reduce what may be a perceived threat of Chinese and Russian penetration in an area now deemed sensitive to U.S. interests. It also serves (as it must, given the logic of American politics)<sup>38</sup> as a revelation of the policy aspects of the American 2020 presidential campaign.

It is comprised of four key elements. First, it takes Latin American regionalism seriously. Second, in the case of Cuba-Venezuela-Nicaragua (and of course the rest of the ALBA bloc), it also takes Latin American regionalism as threatening (e.g., Mr. Bolton's references to the three as a troika of tyranny).<sup>39</sup> Third, it is meant to signal a coordination of countermeasures against unfriendly regions in ways that profit from coordination and synergy. Fourth, one cannot read the actions anticipated to be formally announced tomorrow without also considering how they coordinated with a series of rapid fire recent decisions including actions to (a) reduce aid to Honduras, El Salvador, and Guatemala;<sup>40</sup> (b) recognize the Guaidó administration in Venezuela and take active measures to

<sup>38</sup> For a taste, see, e.g., Will Wiessert, Opinion "Trump 2020 targeting Hispanic vote in nontraditional places" Washington Post (23 Oct. 2019). Available [https://www.washingtonpost.com/politics/trump-2020-targeting-hispanic-vote-in-nontraditional-places/2019/10/23/fc22d3f8-f551-11e9-b2d2-1f37c9d82dbb\\_story.html](https://www.washingtonpost.com/politics/trump-2020-targeting-hispanic-vote-in-nontraditional-places/2019/10/23/fc22d3f8-f551-11e9-b2d2-1f37c9d82dbb_story.html).

<sup>39</sup> See, "Trump adviser to give remarks on Cuba, Venezuela, Nicaragua," Associated Press (12 April 2019). Available <https://apnews.com/55f26efd1917413190ae97bf45b84857>.

<sup>40</sup> See, e.g., Gabriella Muñoz, "Trump to cut off aid to Honduras, Guatemala, and El Salvador over massive migrant caravan," Washington Post (22 Oct. 2018). Available <https://www.washingtontimes.com/news/2018/oct/22/trump-to-cut-off-aid-to-honduras-guatemala-and-el-/>.



hobble the Madura regime;<sup>41</sup> (c) sanctions against Nicaraguan officials;<sup>42</sup> and (d) close the Mexican border. Together these represent a substantial element of constraint to efforts at normalization of Cuban engagement in global finance and production.

Despite the overall theme of bilateralism that is the Basic Foreign Policy Line of the current Administration, the U.S. has now begun to apply a coordinated and regional approach to the Caribbean and Latin America. With origins in the National Security Strategy,<sup>43</sup> the United States has begun coordinating action against identified key competitors and enemies by targeting their flanks (referenced in the Statement of the Secretary of Commerce in his press release).<sup>44</sup>

One of the great consequences of this tilt, of this pivot toward the Caribbean, is that a policy initiative that appears directed against country A may actually be directed toward country B, or to the region as a whole or some of its parts (e.g., CARICOM). This has become especially apparent in the way in which the United States has been coordinating policy initiatives respecting Cuba and Venezuela, both identified as enemies--whose interests are aggressively adverse to those of the United, and both targeted for efforts to permit mass movements to overthrow their political and economic models (as well as their current leadership core).

The April 2019 Treasury Department's Specially Designated Nationals and Blocked Persons List (SDN) Human Readable Lists served to implement the policy.<sup>45</sup> But sanctions are not constructed by attaining rhetorical heights in speeches. It is created one state and one enterprise at a time. To that objective it is left to the administrative apparatus of the United States, constrained by the laws and regulations under which it may undertake this task, to identify those actors who are meant to be swept into the sanctions programs announced by high administrative and elected officials. The most interesting aspect of the list is that it serves as a nice illustration of the deep and complex network of economic relationships that must be unraveled when one targets specific states, people or enterprises. More importantly, it provides at least a rough mapping of the scope of Cuban global economic engagement and the enterprise forms within which it is undertaken. Note in that context as well the state that are included and those that are missing. That suggests both the targeted nature

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<sup>41</sup> See, e.g., Jasmine Andersson, "Here's a full list of all the countries recognising Juan Guaido as Venezuela's president, including UK, Spain and France," iNews (UK) (4 Feb. 2019). Available <https://inews.co.uk/news/world/venezuela-crisis-juan-guaido-president-latest-news-recognised-uk-spain-141452>.

<sup>42</sup> See, e.g., Dave Boyer, "Trump hits Nicaraguan officials with sanctions over corruption, human-rights abuses," *Washington Times* (27 Nov. 2018). Available <https://www.washingtontimes.com/news/2018/nov/27/trump-hits-nicaraguan-officials-sanctions/>.

<sup>43</sup> Discussed here: Larry Catá Backer, "Ruminations 76: From Global to Fortress America; Thoughts on "National Security Strategy of the United States"" *Law at the End of the Day* (4 Dec 2017). Available <https://lcbackerblog.blogspot.com/2017/12/ruminations-76-from-global-to-fortress.html>.

<sup>44</sup> Press Release: Commerce and Treasury Departments Implement Changes to Cuba Sanctions Rules (4 June 2019). Available <https://www.commerce.gov/news/press-releases/2019/06/commerce-and-treasury-departments-implement-changes-cuba-sanctions> ("Cuba remains communist, and the United States, under the previous administration, made too many concessions to one of our historically most aggressive adversaries," said Commerce Secretary Wilbur Ross. "The Trump Administration recognizes the threat Cuba's government poses in the region, and the Commerce Department is acting to limit commercial activity that provides revenue for the Cuban regime. Holding other countries accountable remains a focus for this Administration and we will remain vigilant.").

<sup>45</sup> Specially Designated Nationals and Blocked Persons List (SDN) Human Readable Lists (last updated 10/23/2019). Available <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>. Note the list is constantly updated. But in the wake of the pivot toward Latin America, the list in effect on the day of the announcement of the new American policy toward the region 17 April 2019) I thought it might prove useful to provide the list for Cuba, if only as a baseline for what will likely follow. These are generated by authority of the Cuban Assets Control Regulations, [31 C.F.R. part 515](#). Also included are the list of companies subject to Cuba related sanctions ([SDN List Sorted by OFAC Sanctions Program](#)).

of the sanctions (and thus its inability to provide a comprehensive mapping of Cuban activity) and the difficulty of actually teasing out the full extent of economic relations. As well, not listed here are the companies to which Cuba or its listed companies may be associated with (some of this is available)--that would deepen the scope of Cuban global engagement even more.

Much of the commentary that was published in the several weeks thereafter focused on rehashing already tired polemics about US-Cuba relations, the nature of neo-colonial exploitation in Cuba before 1959 (though not of neo-colonial dependence thereafter--that is always off the table), the extent of European offense at the action (and the Europeans, easily enough offended especially when caught in their own webs of principles loosely applied, will be especially offended since they have been the most eager to turn a blind eye to the source of assets with which they have been engaging with Cuba) there is a larger picture that ought not to escape attention.<sup>46</sup> At the same time, the rhetoric was elaborated in the shadow of Cuban strategies to diversify sources of economic engagement, some of which might eventually soften the blow of current (and likely changeable) US policy.<sup>47</sup>

The Cuban State response came quickly, a response that reflected both frustration and the realities of differences in power between the two states.<sup>48</sup>

It accuses Cuba of being responsible for the solidarity and firmness shown by the Bolivarian and Chavez government, the people of that country and the civilian-military union that defends the sovereignty of their nation. It blatantly lies in alleging that Cuba maintains thousands of military and security personnel in Venezuela, influencing and determining what is happening in that sister country. [The US] cynically blames Cuba for the economic and social situation that Venezuela faces after years of brutal economic sanctions, conceived and applied by the United States and several allies, precisely to suffocate it economically and generate suffering among the population. Washington goes so far as to pressure third-country governments to try to persuade Cuba to withdraw this supposed and implausible military and security backing, and even to stop providing support and solidarity to Venezuela. The current government of the United States is recognized, in its own country and internationally, for the unscrupulous tendency to use lies as a domestic and foreign policy resource. It is a habit that accords with old practices of imperialism. \* \* \* The Cuban government calls on all members of the international community and US citizens to stop the irrational escalation and the policy of hostility and aggression of the Donald Trump government.<sup>49</sup>

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<sup>46</sup> See, Jonathan Stearns and Nikros Chrysoloras, "Europe Tells Trump his Cuba-Property Shift Will Cause Friction," Bloomberg (2 May 2019). Available

<sup>47</sup> See, e.g., CELAC and China Joint Plan of Action for Cooperation on Priority Areas (2019-2021) (21 Jan., 2018). Available <http://www.itamaraty.gov.br/images/2ForoCelacChina/Joint-Action-Plan-II-CELAC-China-Forum-FV-22-01-18.pdf> ("In this process, mechanisms will be encouraged to stimulate and facilitate trade exchange including the exports of the member countries of CELAC and China, and the facilitation of the procedures related to tariff and non-tariff barriers." Ibid., §III, ¶3).

<sup>48</sup> *La Revolución Cubana prevalecerá firme ante la escalada agresiva de los Estados Unidos* ["The Cuban Revolution will prevail against the aggressive escalation of the United States"].

<sup>49</sup> Ibid. In the original: "Acusa a Cuba de ser responsable de la solidez y firmeza que han demostrado el gobierno bolivariano y chavista, el pueblo de ese país y la unión cívico-militar que defiende la soberanía de su nación. Miente descaradamente al alegar que Cuba mantiene en Venezuela a miles de efectivos militares y de seguridad, influyendo y determinando lo que ocurre en ese país hermano. Tiene el cinismo de culpar a Cuba por la situación económica y social que enfrenta Venezuela tras años de brutales sanciones económicas, concebidas y aplicadas por Estados Unidos y varios aliados, justamente para asfixiarla económicamente y generar sufrimiento en la población. Washington llega al extremo de presionar a gobiernos de

What is especially curious is the way that the Cuban state was able to nicely turn the language of the civil war among American elites respecting the legitimacy and character of the sitting President of the United States to their own advantage. It suggests, in quite powerful ways, the reality of a fluidity of narrative representations across national borders--and in this case the way in which the ideological civil wars among American elites (on the one hand) and Cuban elites (both within and outside the Island) now appear to be merging--at least in their discursive elements. And lastly, it reflects the importance of moment when the American pivot towards the Caribbean challenges over two decades of Cuban internationalism in the region. Read carefully, the Cuban response is as much about its relations with Venezuela (and the rest of the ALBA community), as it is about the now well-worn back and forth of the American Embargo.

By June 2019, the pace of these actions accelerated on the U.S. side. "The Trump administration on Tuesday imposed heavy new restrictions on travel to Cuba by U.S. citizens, including a ban on cruises, in a bid to further pressure the Communist island over its support for Venezuelan President Nicolas Maduro."<sup>50</sup> That action, it might be hoped, would accomplish two objectives--it strikes again at Cuban efforts to reintegrate itself into the global economy, especially in its critical tourism sector. And second, it is meant to put pressure (financial and military) on Venezuela by attempting the weakening or destabilization of the Cuba-Venezuela axis.

"This Administration has made a strategic decision to reverse the loosening of sanctions and other restrictions on the Cuban regime," Treasury Secretary Steven Mnuchin said in the press release. "These actions will help to keep U.S. dollars out of the hands of Cuban military, intelligence, and security services." The U.S. State Department added that tourism has "served to line the pockets of the Cuban military, the very same people supporting Nicolas Maduro in Venezuela and representing the Cuban people on the island."<sup>51</sup>

More specifically, the Trump Administration rescinded the exemption for travel to Cuba through a so-called people-to-people educational travel program. Second, it will no longer permit Cuban travel through passenger and recreational vehicles (cruise ships and pleasure boats). This targeting on the tourist sector comes just weeks after another American initiative was unveiled, targeting general efforts to engage in international economic activity--the lifting of restrictions permitting lawsuits against foreigners trafficking in certain identified classes of Cuban property confiscated after January 1959.<sup>52</sup>

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terceros países para que intenten persuadir a Cuba de que retire este supuesto e inverosímil respaldo militar y de seguridad, e incluso para que deje de prestar apoyo y solidaridad a Venezuela. El actual gobierno de los Estados Unidos es reconocido, en su propio país e internacionalmente, por la inescrupulosa tendencia a utilizar la mentira como recurso doméstico y de política exterior. Es un hábito que concuerda con viejas prácticas del imperialismo. \*\*\* El gobierno de Cuba hace un llamado a todos los miembros de la comunidad internacional y a los ciudadanos estadounidenses para detener la escalada irracional y la política de hostilidad y agresión del gobierno de Donald Trump."

<sup>50</sup> "Trump administration bans cruises to Cuba in clampdown on U.S. travel," Reuters (4 June 2019). Available <https://www.devdiscourse.com/article/international/548189-update-1-trump-administration-bans-cruises-to-cuba-in-clampdown-on-us-travel>.

<sup>51</sup> See, Alexandra Hutzler, "Can Americans Travel to Cuba? Trump Administration Prohibits Cruise Ship Visits Among New Restrictions," Newsweek (4 June 2019). Available <https://www.newsweek.com/can-americans-travel-cuba-visit-cruise-1442134>.

<sup>52</sup> Critically examined in José Gabilondo, "No Oligarch Left Behind: Trump's Title III Cuba Policy," Just Security (3 June 2019). Available <https://www.justsecurity.org/64385/no-oligarch-left-behind-trumps-title-iii-cuba-policy/>.

The Cuban response was immediate and not unexpected. In the style of the current administration it was delivered via Tweet:



(Credit).<sup>53</sup>

The actions build on those already taken in April by the U.S. Administration and follow the new strategy (adopted in all sectors of U.S. foreign relations) grounded in objectives based precise targeting of action. One has seen this is the case of China with the use of tariffs,<sup>54</sup> and in the related case of Mexico and the migrants issue (though that one might also bear connection with overall recast Caribbean strategies that involve Cuba and the Central American States essential to the current shape of the migration problem as publicized by the US press.<sup>55</sup> The targeting is evident by what was banned and what was not: "Commercial flights from the US will continue to be permitted as they "broadly support family travel and other lawful forms of travel," according to the spokesperson."<sup>56</sup>

In its Media Release the State Department also made the case for linking tourism (the extent of which had been tolerated even as it increasingly constituted what the State Department characterized as veiled tourism beyond the waiver of Embargo rules) with the Cuban military and then with the Venezuelan regime no longer recognized by the U.S.

The United States holds the Cuban regime accountable for its repression of the Cuban people, its interference in Venezuela, and its direct role in the man-made crisis led by Nicolas Maduro. Despite widespread international condemnation, Maduro continues to undermine his country's institutions and subvert the Venezuelan people's right to self-determination. Empowered by Cuba, he has created a humanitarian disaster that destabilizes the region. These actions are directly linked to the tourism industry, which has strong economic ties to the Cuban security, military, and intelligence sectors in Cuba.<sup>57</sup>

<sup>53</sup> Alexandra Hutzler, "Can Americans Travel to Cuba?" supra., n. 46

<sup>54</sup> Discussed here: CPE Working Group on Empire: Part I--A Critical Reading of China's State Council [国务院] White Paper "China's Position on the China-US Economic and Trade Consultations" [关于中美经贸磋商的中方立场], Law at the End of the Day (4 June 2019). Available <https://lbackerblog.blogspot.com/2019/06/cpe-working-group-on-empire-part-i.html>.

<sup>55</sup> Larry Catá Backer, "From Markets as Governance to Governance Through Markets," Law at the End of the Day (1 June 2019). Available <https://lbackerblog.blogspot.com/2019/06/from-markets-as-governance-to.html>.

<sup>56</sup> See Patrick Oppermann and Meagan Vazquez, "Trump admin imposes new travel restrictions on Cuba, banning cruise ships," CNN (4 June 2019). Available <https://www.cnn.com/2019/06/04/politics/us-cuba-travel-restrictions/index.html>.

<sup>57</sup> "United States Restricts Travel and Vessels to Cuba," supra.

The statements released by the Departments of State, Commerce, and Treasury underlined this coordination and targeting. It also made clear its objectives. Note the difference in tactics from those who the United States views as allies or trading partners or competitors--for those states tariff strategies have been implemented with the object of inducing and managing negotiation. In the case of enemies, the tactics take on a different hue.

By June 2019, some of these policies appeared to have some effect. Reuters reported<sup>58</sup> that the Cuban State has announced a series of sweeping controls on prices in the public and private sectors in the wake of the mounting economic crisis that is deepening in Cuba. That crisis, in turn has been made much more acute by the crisis in Venezuela (a principal supporter of the Cuban economy) with respect to which neither Russia nor China has provided an effective substitute. Those effects will likely be augmented by the repercussions of the October 2019 announcement by the Trump Administration that would ban all flights from the U.S. to Cuba other than to Havana.<sup>59</sup>

A few small points. *First*, price controls will have more symbolic than real effect. Even in the small private sector, the state maintains a substantial control on pricing even before the freeze. *Second*, the object appears to have been, as suggested in the anonymous quotes, to suspend the market during this new "special period" and to rethink the nature of its complementary role in economic planning. For the moment that might involve redirecting such production to meet shortfalls at the retail level. *Third*, the increased wages and pensions will have a negative effect on the economy. The problem right now is that already too much cash is chasing too few goods. The result of these increases will be either inflation or an inflated pricing scheme for the black market or barter transactions. *Fourth*, as a result, it will be difficult to both stimulate production (in the absence of state subsidies or orders) and combat inflation (while pouring more money into an economy where there are production shortfalls and no hard currency to meet demand with foreign goods). *Fifth*, this planning will only work if Russia, China, and Venezuela (the key players, there are others) will step in with subsidies. These traditionally involve overpaying for Cuban services (directing the surplus to the state), or underpricing goods and services provided to Cuba. Much of this will likely remain opaque and hard to gauge. *Sixth*, enforcement will likely be difficult and itself expensive. The tactful warnings of Pavel Vidal and Andrew Zimbalist<sup>60</sup> will not be heeded. But that is because the state ideology makes those approaches incompatible with the fundamental vision of the Cuban political-economic model.<sup>61</sup>

Whatever the effects of the irritations of U.S. actions against Cuba on the travel and related fronts, it is the actions of the United States in May 2019 that effectively pose a fatal challenge to Cuban reintegration. It was in May 2019 that the Trump Administration finally permitted lawsuits under Title III of the Helms Burton Act.

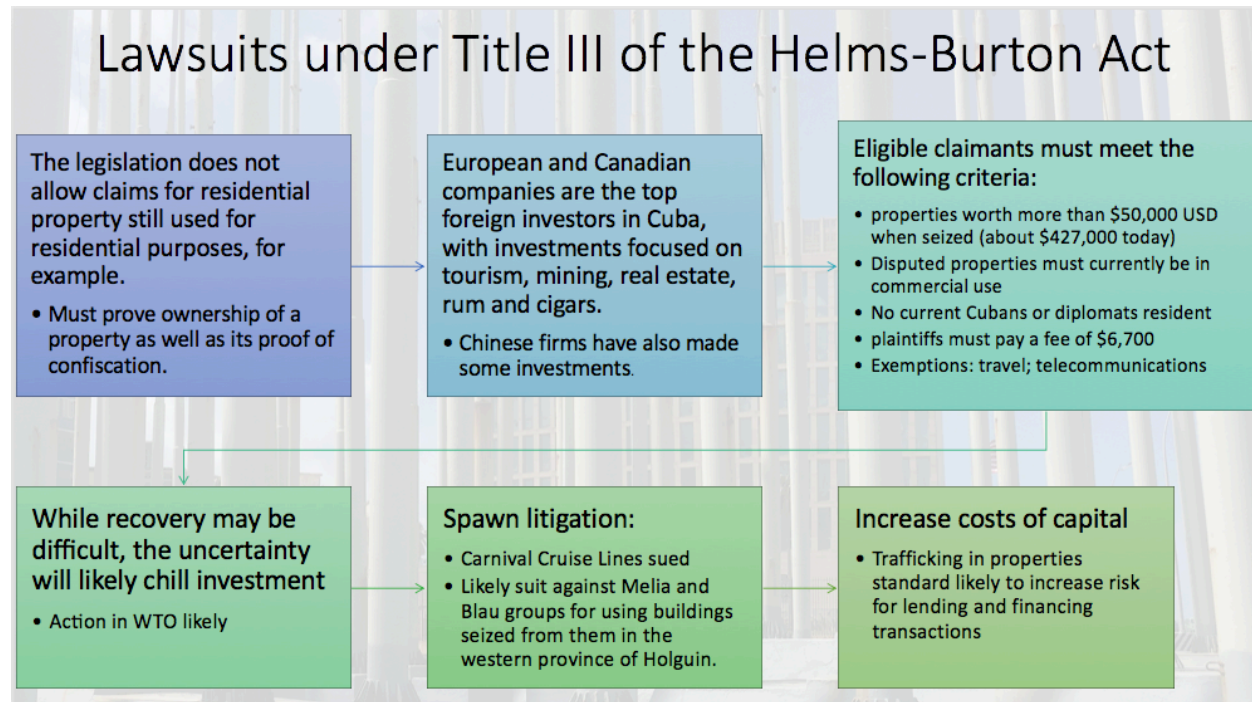
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<sup>58</sup> Marc Frank, "Cuba, battling economic crisis, imposes sweeping price controls," Reuters (30 July 2019). Available <https://www.reuters.com/article/us-cuba-economy/cuba-battling-economic-crisis-imposes-sweeping-price-controls-idUSKCN1UP28Y>.

<sup>59</sup> Doha Madani and Josh Lederman, "'U.S. Bans all Flights to Cuba Outside Havana in Latest Crackdown,'" NBC News (25 October 2019). Available <https://www.nbcnews.com/news/latino/u-s-bans-all-flights-cuba-outside-havana-latest-crackdown-n1072306> ("Secretary of State Mike Pompeo said in a letter to Transportation Secretary Elaine Chao that the flights are being suspended indefinitely because of Cuba's repression of its people and support for Venezuela's President Nicolás Maduro. An excerpt of the letter said the move was to "further the administration's policy of strengthening the economic consequences to the Cuban regime for its ongoing repression of the Cuban people and its support" for Maduro.").

<sup>60</sup> Frank, "Cuba, battling economic crisis," supra ("Pavel Vidal, a former Cuban central bank economist who teaches at Colombia's Universidad Javeriana Cali, took a similar view. "The more they control prices in formal markets, the more inflation and instability there will be in informal markets and the less incentive the productive sector has," he said.").

<sup>61</sup> Backer, *Cuba's Caribbean Marxism*, supra.



In a long anticipated move,<sup>62</sup> What changed between 2016 and 2018 was the willingness of the U.S. to begin to think about action in the Caribbean in regional terms (ironically embracing the position of the Cuba government developed over the last half century). Also changed was a new willingness to move aggressively to impose a series of coordinated sanctions designed to augment their individual effects on multiple targets. The principal targets were key members of the ALBA group in the Caribbean—Nicaragua, Venezuela and Cuba.

The Trump administration will allow lawsuits in U.S. courts for the first time against foreign companies in communist-ruled Cuba that use properties confiscated from Cuban Americans and other U.S. citizens during the revolution that began in the 1950s, a senior U.S. official said on Tuesday. The move, which will be announced on Wednesday, could expose U.S., European and Canadian companies to legal action, dealing a blow to Cuba's efforts to attract more foreign investment. It is also another sign of Washington's efforts to punish Havana over its support for Venezuela's socialist President Nicolas Maduro.<sup>63</sup>

The action was possible pursuant to the discretion given the President under Article III of the 1996 Cuban Liberty and Democratic Solidarity Act (also known as Libertad Act).<sup>64</sup> Under Title III of that

<sup>62</sup> Hatzel Vela, "U.S. allows lawsuits related to confiscated property in Cuba," Associated Press (4 March 2019). Available <https://www.local10.com/news/cuba/us-allows-lawsuits-related-to-confiscated-property-in-cuba>.

<sup>63</sup> Matt Spetalnick and Sarah Marsh, "In Major Shift, Trump to Allow Lawsuits Against Foreign Firms in Cuba," *US News and World Report* (16 April 2019). Available <https://money.usnews.com/investing/news/articles/2019-04-16/trump-to-allow-us-lawsuits-against-foreign-firms-doing-business-in-cuba-official>.

<sup>64</sup> Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, P.L. 104-114 (Codified in Title 22, Sections 6021-6091 of the U.S. Code).

act, United States citizens who had their property confiscated by the Castro regime were given the right to file suit against those who traffic in such properties.<sup>65</sup>

The legislation does not allow claims for residential property still used for residential purposes, for example. Claimants must be able to prove their ownership of a property six decades ago in another country as well as its confiscation. European and Canadian companies are the top foreign investors in Cuba, with investments focused on tourism, mining, real estate, rum and cigars. Chinese firms have also made some investments. According to the Act, those who may be eligible to seek to regain their properties have to meet the following criteria: (1) have properties worth more than \$50,000 USD when seized (equivalent to more than \$427,000 today); (2) the properties in dispute have to be currently in commercial use; and (3) there must be no Cubans or diplomats resident there; (4) plaintiffs must pay a fee of \$6,700. In addition, there are exemptions for travel or telecommunications industries. While recovery may be difficult, the uncertainty will likely chill investment. Action in WTO is likely, as threatened by both the European Union and the Canadians, two political entities whose enterprises would be most likely affected by potential U.S. lawsuits.

Litigation has already begun. The first action was filed in May 2019 against Carnival Cruise Lines. More recent litigation target European investment in the critical tourist sector.<sup>66</sup> And yet the suits have not proliferated as some feared.

Experts predicted that a flood of lawsuits would be filed after the Trump administration announced it would, for the first time since the enactment of the 1996 Helms-Burton Act, allow Americans to sue the Cuban government over property confiscated after Fidel Castro's 1959 revolution. But according to an analysis by *The Daily Business Review*, only four such lawsuits have been filed since May 2, when such litigation was allowed to proceed. The remarkably low number of lawsuits stands in stark contrast to the nearly 6,000 claims that have been certified by the U.S. Foreign Claims Settlement Commission.<sup>67</sup>

Nonetheless, the real value of the lawsuits to the United States is not measured in the number of suits or the size of recovery, but in the way that the threat of such suits closes Cuba off from financial markets and thus makes reintegration much more difficult. Even if little comes of this litigation, the effects may be felt in corporate finance. At a minimum, the potential for litigation may increase costs of capital. The trafficking in properties standard may likely to increase risk for lending and financing transactions. There is already reporting to that effect "A western banker, who like other businessmen and diplomats interviewed for this story requested anonymity, said that lawyers for financial institutions were increasingly wary of approving transactions in Cuba, even if their clients were not

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<sup>65</sup> See Libertad Act §§ 301-306. Section 302(a)(1) provides in relevant part:

Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages

But nothing involving Cuba, or Cuban related claims has ever been either easy or straightforward. Moreover in the process of racing toward remedy, there was a chance that the U.S. legal system, might be exposed to collateral damage--or more tactfully put, that its rules and systems of process might undergo dynamic change in the process of vindication claims (at least to the extent that such dynamic transformation is advanced by litigants and embraced by courts).

<sup>66</sup> Dylan Jackson, "Melia's Cuban Hotels Hit with Helms-Burton Class Action," *Law.com* (11 Sept. 2019). Available <https://www.law.com/dailybusinessreview/2019/09/11/melias-cuban-hotels-hit-with-helms-burton-class-action/>.

<sup>67</sup> Dylan Jackson, "Where are all the Helms-Burton Lawsuits?" *Law.com* (7 June 2019). Available <https://www.law.com/dailybusinessreview/2019/06/07/where-are-all-the-helms-burton-lawsuits/>.

contravening sanctions. . . A European diplomat said that some banks now wanted to see property deeds before agreeing to fund projects with Cuba following the tightening of Title III."<sup>68</sup>

Helms-Burton litigation against non-Cuban global enterprises has become something of a spectator sport among those who drive public opinion by drawing attention to things in ways that they would like attention drawn. That news either appears as "human interest" or "wow, look at the consequences of historical conflict unresolved" types of coverage. Lawyers, of course, enjoy technical news about the suits for any insight it might bring to sharpen legal skills and applying new strategies more broadly. Political people, especially those in the thick of the civil war among factions of the American elite will draw form the lawsuits "great" insights about the goodness of their faction and the evil of the other.

Much of this is helpful, I imagine, for the purposes for which it is launched onto the arena of manipulating mass opinion. It is less helpful for understanding one of its most important consequences--the way that *compliance and risk* itself continue to grow as has become potent tools in using financial markets to political ends. Some interesting reporting from Marc Fran for Reuters in Cuba,<sup>69</sup> provides a window on how it is working in the context of efforts to restrict Cuban access to financial markets. The reporting follows below with quite useful details.

What makes the reporting so interesting is the way it shows how it is the risk of litigation--rather than the threat of specific and concrete action, that has the greatest effect on access to financial markets. That access is restricted in two ways. First, access is restricted by increasing the cost of capital (building high risk into pricing). Second, and more crudely, access is restricted risk by avoiding the market for Cuban related financing entirely. Here one sees a curious mix of both business and legal risk in the calculus both of the cost of that risk (if one were to lend) or the value of the market for that financing in the first place because of the scope of the perceived risk in that market.

More important, perhaps, is the way that legal risk augments costs by the way in which it affects the structuring of transactions. In order to gain access to credit from institutions willing to finance a project, companies must go through the time and trouble to restructure their operations in a way that minimizes the exposes of the business to the risks of litigation. For many companies that involves the construction of multi-level legal structures that eventually tie into Cuba through joint ventures with Cuban locals (almost always the state). But this sort of structuring produces its own legal and business risk, and it costs time and money to develop and operationalize models that still run some risk of being caught up in litigation sweeps. Lawyers, accountants, bankers no doubt welcome the opportunity for the additional work and advising. For business, however, the additional costs of planning and the additional risk (even when minimized) may push a project from likely profitable to unprofitable. And, of course, all of this is added to the sometimes lengthy and inscrutable process of obtaining review and approval of projects within Cuba.

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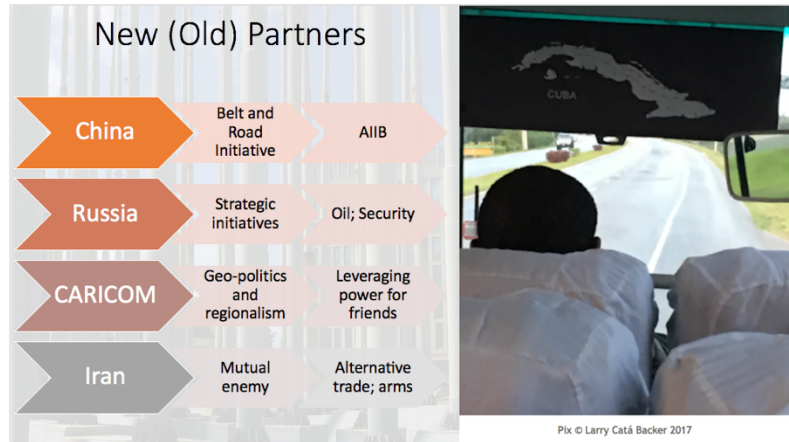
<sup>68</sup> Marc Frank, "Trump crackdown may have thrown wrench into U.S.-Cuba food trade," *Reuters* (28 May 2019). Available <https://uk.reuters.com/article/uk-cuba-usa-trade-analysis/trump-crackdown-may-have-thrown-wrench-into-u-s-cuba-food-trade-idUKKCN1SY1IF>.

<sup>69</sup> Marc Frank, "Tougher U.S. sanctions make Cuba ever more difficult for Western firms," *Reuters* (9 October 2019). Available <https://www.reuters.com/article/us-cuba-sanctions-investment-analysis/tougher-u-s-sanctions-make-cuba-ever-more-difficult-for-western-firms-idUSKBN1W02LP>.



The bottom line, the decision to permit litigation is having effect on Cuba. More generally it is teaching all (powerful) states that projecting targeted risk into financial markets can have substantial political effect. Expect to see more of this--and not only from the United States.

And where might that leave Cuba? In large measure it unravels the double contradiction by forcing Cuba back to its pre-1989 working style—supported by governments who see in Cuba a tool in their large competition with the United States. As a consequence, Cuba may be required to continue to rely on its old friends and allies, and to build on networks that bypass the current structures of global production and trade. This



includes China and its Belt and Road Initiative along with its infrastructure lending programs through the AIIB. Russia may be useful both for its petroleum, and security guarantees. Cuba would have to be willing to participate in Russian strategic initiative against the U.S. but that is hardly likely to weigh heavily on the Cuban conscience. CARICOM remains a willing partner for a variety of reasons. Among these are the value of a geo-politics of regional solidarity against larger powers and mutual protection. And, of course, there is Iran, whose long relationship with the Cuban state will continue and transform as Iran's relationship with the US and the EU becomes more strained.<sup>70</sup> None of this will contribute to reintegration, but may push Cuba toward an alternative engagement with global trade.

We can now begin to put these strands together. At best Cuban ideology and the realities of Western politics makes it clear that Cuba will not be able to effectively be integrated into the global system of economic production. That integration will at best be partial. Beyond Cuba, the state acknowledges and will engage with global economic structures and their governance on the best terms it can manage. That engagement will be undertaken by the state and for the purpose of advancing the state's internal objectives. But none of this will reach beyond the state and its instrumentalities. There will be no penetration of global production inside Cuba, nor will Cuba be open to global trade beyond engagement at the border and in special economic zones, with the state. But within the state there will be no effort to re-integrate. The state will stand between the nation and globalization. Those are the terms under which re-integration may occur.

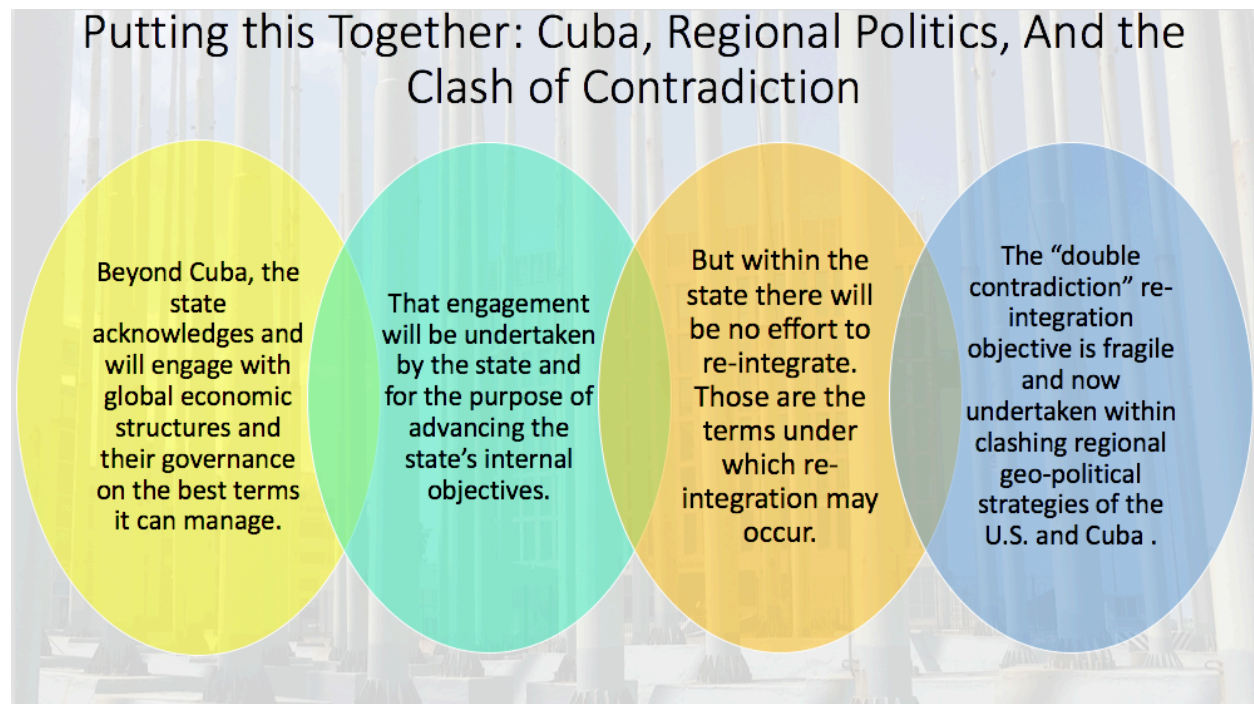
To sum up, it is possible to conclude as follows: Cuban re-integration would require substantial internal changes to Cuban politics, law, and economics. Cuban ideological and economic development has been moving closer to the embrace of a state based central planning model centered on the creation and utilization of ideal workers in the serve of the state. The state remains an administrative apparatus whose work is guided by the PCC. Reintegration can only occur at the margins: between the Cuban state and the rest of the world. There is little chance that such re-integration can extend beyond the public sector and its management by state officials under the guidance of the PCC. Finally, external pressure (principally from the US, but also from EU and Allies), may make flexibility difficult and politically unpalatable. By the end of 2019, what became clear is that the path to integration

<sup>70</sup> See, e.g., "Cuba, Iran Sign Multiple MOUs to Strengthen Relations," *Telesur* (17 Jan. 2019). Available <https://www.telesurenglish.net/news/Cuba-Iran-Sign-Multiple-MOUs-to-Strengthen-Relations-20190117-0005.html>.

envisioned in 2016 has now effectively been subverted. That subversion might be understood as inherent in the double contradictions under which it was attempted. The initial contradiction brought it in conflict with the United States; the second brought it in conflict with itself. For the moment, Cuba has been unable to effectively navigate around either.

### **Conclusion**

And thus, the resolution of the fundamental double contradiction for Cuba in its "new era" (contrast China's self-conscious alternative).<sup>71</sup> As elegant as that resolution appears to be—external state capitalism buffering an internally autonomous centrally planned economy into which foreign elements cannot penetrate—the model is fragile. Its greatest fragility arises from the vagaries of regional geo-politics, and specifically the strong clash between the regional politics of Cuba and those of the United States.



In order to reintegrate the state within the streams of global production, the state is willing to serve as a sole holder of national capital or productive capacity. It is the government, as the principal economic actor of the nation that will reintegrate, and not the nation itself. That engagement will be projected outward and changes will be made enough to comply with the requirements of necessary global transactions determined to be in the state's best interest. But such reintegration is rejected within the state. The fundamental objective of perfecting the worker and worker state rather than enhancing the acquisition of value measured in financial terms makes it impossible to consider opening the country to trade and investment. While *Cuban capital* may be exposed to global practices, *neither the Cuban worker nor Cuban society* can be exposed to what is felt to be its corrupting effects. Segregation, quarantine, and the interposition of state mediation marks the management of inward

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<sup>71</sup> Carrie Gracie, "China's Xi Jinping opens 'New Era' for country and the world," BBC News (25 October 2017). Available <https://www.bbc.com/news/world-asia-china-41744675>.

investment. A more robust engagement with markets, in contrasts, marks the engagement of the Cuban state, under the guidance of its vanguard party, will mark Cuba's engagement with the rest of the world.

But one must end where one started--with ideology. The analysis presented is neither a legal nor political analysis. It is an analysis grounded in the exposure of the ideological premises that both constrain and direct thinking and responses (to events, threats and opportunities) from a very specific worldview. For those who read the documents--*Lineamientos*, *Conceptualización*, and 2030 Plan as political or legal documents, of course, a very different type of analysis is plausible. One can always make documents read the way one wants--two centuries of US Constitutional hermeneutics has made that abundantly clear as a matter of law and politics. But we are *not speaking here of the use of the documents to some specific end*--a freer market, political liberalization or the like. Instead we are speaking here about how the documents themselves reveal their own hermeneutical constraints, constraints that are deeply embedded in the documents and then shape the ends that seem plausible variations of the legitimately possible. They also expose the disjunctions of communication when systems with divergent ideologies seek to speak and respond to each other through a communication that uses the same words but in which the words acquire quite different hues and suggest quite distinct interpretive possibilities. It is within these ideological clashes that the realities of macro and micro engagements within and beyond Cuba will take place, and choices made about the way that Cuba engages with global production. It will also determine the way that Cuba's friends and allies respond. Both are very much in evidence in 2019.<sup>72</sup>

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<sup>72</sup> For further reading on these issues, please see: Backer, Larry Catá, [Cuba's Caribbean Marxism: Essays on Ideology, Government, Society, and Economy in the Post Fidel Castro Era](#) (Little Sir Press 2018). Thank you.