



# CONNECTICUT JOURNAL OF INTERNATIONAL LAW

## ARTICLES

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Their Differences and Consequences for the  
International Ordering of State, Law,  
Politics, and Economy

*Larry Catá Backer*

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Justification and Defensibility of Torture

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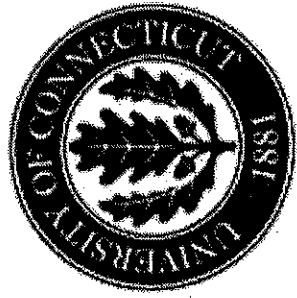
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# CENTRAL PLANNING VERSUS MARKETS MARXISM: THEIR DIFFERENCES AND CONSEQUENCES FOR THE INTERNATIONAL ORDERING OF STATE, LAW, POLITICS, AND ECONOMY

Larry Catá Backer\*

## Abstract

*Two theories of Marxist state organization have been developing recently, each pointing in quite distinct ways to the organization of society, the state, government and the role of the vanguard Party. The development of an Asian "Markets Marxism" Model is well understood. The recent emergence of a Latin American "Central Planning Marxism" Model is less well understood. This paper examines the characteristics of this emerging "Central Planning Marxism" mode by looking at its development in Cuba since 2011. The examination centers on the official theory produced from the 6<sup>th</sup> through the 7<sup>th</sup> Congresses of the Cuban Communist Party (PCC). The 7<sup>th</sup> PCC Congress stands in stark contrast to its predecessor. A close examination of the development from the 6<sup>th</sup> to the 7<sup>th</sup> Congress may suggest the limits of reform in Cuba. These limits are structural as well as ideological. After a short introduction, Part II considers the structural constraints on reform as evidenced in the 7<sup>th</sup> Congress. process aspects of the 7<sup>th</sup> PCC Congress. Part III then considers the ideological constraints on reform that were produced in the 7<sup>th</sup> Congress and its substantive consequences of what now appears to be a sputtering of the reform trajectory from the 6<sup>th</sup> to the 7<sup>th</sup> PCC Congress. That exploration revolves around a close reading of the major ideological product (Lineamientos) of the 6<sup>th</sup> PCC Congress, and provide the theoretical foundation for its further implementation of the reforms these Guidelines represented. Part IV then contrasts this emerging Model with the Asian "Markets Marxism" Model. The consequences for political economy, legitimacy and law are also discussed. Differences between the Asian Markets Marxism and the Cuban Central Planning Marxist Models may have profound implications for rule of law development and the structures of regulatory governance in administrative structures. Those differences suggest the difficulty of developing consensus for key concepts in law—from rule of law, to human rights and markets. An understanding of these quite distinct conceptual frameworks of understanding law, economics and politics will be essential as the leaders of these quite conceptually distinct systems seek to interact.*

*Dos teorías de la organización marxista del estado se desarrollan en los últimos años, cada una apuntando en formas muy distintas a la organización de la sociedad, el estado, el gobierno y el papel del partido de vanguardia. El desarrollo de un modelo asiático "marxismo*

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mercador" se entiende bien. La reciente aparición de un modelo latinoamericano "Central de Planificación marxismo" es menos conocido. Este artículo examina las características de esta modalidad emergente "marxismo planificador" al ver su desarrollo en Cuba desde 2011. Los centros de examen sobre la teoría oficial producido a partir de la 6ª a través de los 7º Congresos del Partido Comunista de Cuba (PCC). El 7º Congreso del PCC está en marcado contraste con su predecesor. Un examen detallado de la evolución del 6 al 7º Congreso puede sugerir los límites de la reforma en Cuba. Estos límites son estructurales, así como ideológico. Tras una breve introducción, la segunda parte considera las limitaciones estructurales de la reforma como se evidencia en el 7º Congreso. aspectos del proceso del 7º Congreso del PCC. En la Parte III se consideran las limitaciones ideológicas de la reforma que se produjeron en el 7º Congreso y sus consecuencias sustantivas de lo que ahora parece ser un chisporroteo de la trayectoria de la reforma del 6 al 7º Congreso. Esta exploración gira alrededor del producto ideológico más importante del 7º Congreso, su Conceptualización que está destinada a complementar las lineamientos del 6º Congreso del PCC, y proporcionar la base teórica para su ulterior aplicación de las reformas de las presentes directrices representadas. Parte IV contrasta este modelo emergente con el modelo asiático "marxismo mercador". También se discuten las consecuencias para la economía política, la legitimidad y el derecho. Las diferencias entre la teorías marxistas asiático y latinoamericano tendrán profundas implicaciones para el desarrollo del estado de derecho y las estructuras de gobernanza regulatoria en las estructuras administrativas. Estas diferencias sugieren la dificultad de desarrollar un consenso para los conceptos clave en el proceso legislativo del estado de derecho, los derechos humanos y de los mercados. La comprensión de estos marcos conceptuales muy distintas de entender el derecho, la economía y la política será esencial, ya que los líderes de estos sistemas bastante conceptualmente distintas buscan interactuar.

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*Nothing is accidental in Communist Cuba, everything has a political purpose.*<sup>1</sup>

#### INTRODUCTION

Two theories of Marxist state organization have been developing over the last five years, each pointing in quite distinct ways to the organization of society, the state, government and the role of the vanguard Party. The development of an Asian “Markets Marxism” Model is well understood.<sup>2</sup> Its driving force is centered on the ideological work of the Chinese Communist Party. This Model provides an ideological basis for the evolution of Marxist Leninist political, economic and social ordering that underlies the legitimacy of the state and colors its approach to law and constitutional order.<sup>3</sup> The recent emergence of a Latin American “Central Planning Marxism” Model is understood less. Its driving force, once centered in Europe and more particularly on the Soviet Union,<sup>4</sup> has now shifted to Latin America and more specifically to Cuba and reflects the ideological debates among the European Communist States leading up to the collapse of the Soviet system and its ideology after 1989.<sup>5</sup> The Cuban Communist Party (PCC) has recently sought to develop its own version of Marxist Leninist ideology to provide greater clarity in the ideological basis for the organization of the state, and the structures of its political and economic order. The characteristics of that Model, and its effects on the structures of law, regulatory governance and the state, stands in contrast both to the Markets Marxism of Asia and the Markets based regulatory model of the West, especially that of the United States. The object of this article is to examine this model “Central Planning Marxism” Model, a model with the potential to be influential in Latin America. The Central Planning Marxism Model supplies a set of premises and approaches—a language and outlook—that will fundamentally color the relationships between Cuba, China, and the United States.

The current expression of Latin-European Marxist Leninist theory was most recently the product of the PCC 7<sup>th</sup> Congress.<sup>6</sup> The 7<sup>th</sup> Congress of the PCC was held just weeks after the historic visit of the United States’ President Obama to

<sup>1</sup> Osmel Ramirez Alvarez, *Behind the Curtains of Cuba’s Communist Party Congress*, HAVANA TIMES (April 20, 2016), <http://www.havanatimes.org/?p=118256>.

<sup>2</sup> See, e.g., Hu Angang, *China in 2020: A New Type of Superpower* (Brookings Institute Press, 2011); Barry Naughton, *The Chinese Economy: Transitions and Growth 100-113* (MIT Press, 2007); Gary Sigley, *Chinese Governmentalities: Government, Governance, and the Socialist Market Economy*, 35 ECON. & SOC’Y. 487 (2006).

<sup>3</sup> See Larry Catá Backer, *Party, People, Government and State: On Constitutional Values and the Legitimacy of the Chinese State-Party Rule of Law System*, 30 B.U. INT’L L.J. 331 (2012).

<sup>4</sup> See, e.g., Leszek Kolakowski, *Main Currents of Marxism* (W.W. Norton & Company, Inc. 2005) (1978).

<sup>5</sup> See, e.g., PETER CRITCHLEY, MARX, MARKET SOCIALISM AND PARTICIPATORY PLANNING, 23-24 (2001) [https://www.academia.edu/788645/Marx\\_Market\\_Socialism\\_and\\_Participatory\\_Planning?auto=download](https://www.academia.edu/788645/Marx_Market_Socialism_and_Participatory_Planning?auto=download).

<sup>6</sup> *Resolution on the Central Report to the 7th Congress of the Communist Party of Cuba*, Partido Comunista de Cuba (Sept. 13, 2016), <http://www.pcc.cu/cong7.php>.



celebrate the normalization of relations between the United States and Cuba.<sup>7</sup> The official press of China described the 7<sup>th</sup> PCC Congress as a great success. “The 7<sup>th</sup> Congress of the Cuban Communist Party (PCC) closed on Tuesday, setting the country on a path of profound economic and social reforms by 2021 amid a leadership transition.”<sup>8</sup> More importantly, it celebrated that success in terms that profoundly resonated in China—*reform and opening up* that preserves the socialist path and the vanguard role of the ruling party.<sup>9</sup> “Rafael Hernandez, Cuban political analyst and head of the *Temas* magazine, said the task is among the hardest challenges facing Cuba in the last 20 years. “We are not rushing towards a free market economy, nor is our government taking us there. This is a gradual process of transformation, economic diversification and development of a nationalist private sector,” Hernandez told Xinhua.”<sup>10</sup> From this perspective, the great success of this Congress was ultimately capped by its transitional aspects. With echoes of Chinese weariness of cults of personality and entrenched leadership, the reports of the 7<sup>th</sup> PCC Congress focused on the ability of the vanguard Party to prepare for a succession of leadership—and survive. “This Seventh PCC Congress will be the last led by the historic generation,’ Castro said at the closing ceremony of the four-day party congress, where delegates gave his brother, revolutionary leader and former President Fidel Castro a standing ovation.”<sup>11</sup>

Yet, the 7<sup>th</sup> PCC Congress stands in plain contrast to its predecessor. The 6<sup>th</sup> PCC Congress appeared to usher in an era of at least limited opening up and the institutionalization of a private sector of sorts. It was preceded by unprecedented if well-orchestrated consultation among PCC cadres and the general population.<sup>12</sup> Its core documents, centering on the Lineamientos, were widely circulated within and

<sup>7</sup> See, e.g., José de Córdoba, *Post-Obama Visit, Cuba’s Communist Party to Signal Next Steps*, WALL ST. J. (Apr. 15, 2016, 5:30 AM) <http://www.wsj.com/articles/post-obama-visit-cubas-communist-party-to-signal-next-steps-1460712601>.

<sup>8</sup> Ramundo Urrechaga, *Spotlight: Cuba to embark on new reforms after Communist Party congress*, XINHUA: XINHUANET, (Apr. 20, 2016) [http://news.xinhuanet.com/english/2016-04/20/c\\_135297508.htm](http://news.xinhuanet.com/english/2016-04/20/c_135297508.htm).

<sup>9</sup> *Full Text of Constitution of Communist Party of China*, NEWS OF THE COMMUNIST PARTY OF CHINA (Mar. 29, 2013) <http://english.cpc.people.com.cn/206972/206981/8188087.html> (“Reform and opening up” is a specific element of the basic line of the Chinese Communist Party. It references the framework through which “China, socialism and Marxism . . . develop themselves.”) (“The Party must carry out fundamental reform of the economic structure that hampers the development of the productive forces, and keep to and improve the socialist market economy; it must also carry out corresponding political restructuring and reform in other fields. The Party must adhere to the basic state policy of opening up and assimilate and exploit the achievements of all other cultures.”) (“Reform and opening up” is a specific element of the basic line of the Chinese Communist Party. It references the framework through which “China, socialism and Marxism . . . develop themselves.”) (“The Party must carry out fundamental reform of the economic structure that hampers the development of the productive forces, and keep to and improve the socialist market economy; it must also carry out corresponding political restructuring and reform in other fields. The Party must adhere to the basic state policy of opening up and assimilate and exploit the achievements of all other cultures.”)

<sup>10</sup> Urrechaga, *supra* note 8.

<sup>11</sup> Urrechaga, *supra* note 8, at 1.

<sup>12</sup> Urrechaga, *supra* note 8, at 2.



beyond the national territory.<sup>13</sup> In its wake the state appeared on the verge of opening a small space for a movement away from the increasingly ancient European Marxist approach to macro-economic organization of the nation's political economy.<sup>14</sup> The opening up to normalization of relations with the United States, and with it the further promise of more robust integration with globalized markets, suggested the possibility of accelerated change, even if it served to reaffirm the current political framework and the leadership of the emerging architecture of PCC political economy.<sup>15</sup>

The promise of the 6<sup>th</sup> PCC Congress might have been expected to be realized in the 7<sup>th</sup> PCC Congress, especially in the context of limited political opening up, of planning for a succession, and of a more robust embrace of a distinct macro-economic model which is more market oriented. Instead, the 7<sup>th</sup> PCC Congress appeared to slow the pace of reform and opening up and appeared much less certain of its scope and trajectory than it had a mere five years before. The tone was set by the First Secretary when he suggested that a slow and steady course, with little deviation, should be the guiding principle of the Congress.<sup>16</sup> The First Secretary was able to offer only four items<sup>17</sup> —(1) a review and report of the slow course of reform (Lineamientos) from the 6<sup>th</sup> Congress and a plan for its implementation, (2) a five year plan together with (3) a discussion draft of the governing framework for “sustainable and prosperous socialism”<sup>18</sup> going forward, ‘*Conceptualization of the Cuban socio-economic socialist development model*’ (“*Conceptualización*”),<sup>19</sup> and (4) an action plan for PCC for PCC engagement in these efforts.<sup>20</sup> Of these, two of the

<sup>13</sup> VI Congreso del Partido Comiosta de Cuba, *Lineamientos de la política económica y social del partido y la Revolución* (Apr. 18, 2011) <https://www.scribd.com/doc/55084818/Folleto-Lineamientos-VI-Congreso-Partido-Comunista-de-Cuba>.

<sup>14</sup> See Larry Catá Backer, *Normalization With Cuban Characteristics: How Might Cuba Navigate Normalization to Avoid Political Instability and Enhance Economic Development?* 9-10 (Coalition for Peace & Ethics No. 1, Discussion Paper, May 2016), <http://www.thepepe.org/wp-content/uploads/2013/05/LASAS-2016.pdf>.

<sup>15</sup> See, e.g., Juan Valdés Paz, *Cuba-EEUU: Los desafíos de la normalización*, Sin Permiso (Apr. 3, 2016), <http://www.sinpermiso.info/textos/cuba-eeuu-los-desafios-de-la-normalizacion>.

<sup>16</sup> Raúl Castro Ruz, *El desarrollo de la economía nacional, junto a la lucha por la paz y la firmeza ideológica, constituyen las principales misiones del Partido*, GRANMA: EDICIÓN ESPECIAL, Apr. 16, 2016, at 9 [hereinafter Castro, *Informe*], <http://www.granma.cu/file/pdf/gaceta/congreso%20pcc.pdf>.

<sup>17</sup> See *id.* at 3.

<sup>18</sup> See *id.* at 3 (The term “sustainable and prosperous socialism” ought to be read against the much older and well developed concept of “socialist modernization” that has become the cornerstone of Chinese Marxist Leninist political economy); see also *Full Text of the Constitution of the Chinese Communist Party of China*, NEWS OF THE COMMUNIST PARTY OF CHINA, <http://english.cpc-people.com.cn/206972/206981/8188065.html>; *Conceptualización*, *infra* note 19 (showing the Five Year Plan beginning at p. 17 of the document in which the *Conceptualización* is published, consisting of an introduction p. 17, guiding principles and thematic hubs for the elaboration of the plan *Ibid*, national vision for 2030 p. 18, strategic hubs p. 18, and a discussion of strategic economic sectors p. 25; see generally *infra*, Part III).

<sup>19</sup> *Conceptualización del modelo económico y social Cubano de desarrollo socialista [Conceptualization of the Cuban Economic and Social Model of Socialist Development]*, VI Congreso del Partido Comunista de Cuba [Sixth Congress of the Communist Party of Cuba] [hereinafter the *Conceptualización*] <http://www.thepepe.org/wp-content/uploads/2016/05/Conceptualizacion-del-modelo-economico-PCC-Cuba-2016.pdf>.

<sup>20</sup> Castro, *Informe*, *supra*, note 16 (“Trabajo del partido en cumplimiento de los Objetivos aprobados en la Primera Conferencia Nacional y de las Directrices del Primer Secretario del Comité Central.”).

critical documents, the Implementation Plan for the Lineamientos going forward, and the *Conceptualización* were not finalized. With respect to the former, the 7<sup>th</sup> PCC Congress adopted a resolution approving the report and plan for implementation, and transmitting it to the National Assembly for approval and the PCC to implement.<sup>21</sup> A similar resolution was adopted for the Conceptualización.<sup>22</sup>

“The methodological approach to reform outlined by Castro and highlighted during the debate . . . throws cold water on hopes by some observers that the party gathering would speed up the process of change that began during the sixth congress of 2011.”<sup>23</sup> For sympathetic observers, the sense of anticlimax that marked a congress most notable for its lack of either transparency or popular engagement also pointed to substantial rifts between the leadership and PCC rank and file.<sup>24</sup> Still, the 7<sup>th</sup> PCC Congress in many respects appeared to disappoint.<sup>25</sup> Its members were permitted to criticize President Obama’s visit and the thrust of his statements (and indirectly of U.S. policy) during the course of the meeting.<sup>26</sup> Procedurally it appeared to mark a step back from the openness of the 6<sup>th</sup> Congress. And it offered little by way of political opening up, even an opening up ushering in more robust

<sup>21</sup> Fernando Lavín Carbonell, *Resolución la implementación de los Lineamientos de la Política Económica y Social aprobados en el 6th Congreso y su actualización para el periodo 2016*, GRANMA, (Apr. 19, 2016), <http://www.gramma.cu/septimo-congreso-del-pcc/2016-04-19/resolucion-la-implementacion-de-los-lineamientos-de-la-politica-economica-y-social-aprobados-en-el-6to-congreso-y-su-actualizacion-para-el-periodo-2016>;

Al presentar el proyecto de resolución, el miembro de la Comisión Permanente para la Implementación y de Desarrollo de los Lineamientos, Fernando Lavín Carbonell, subrayó que el 21 por ciento de los aprobados en el VI Congreso se han implementado totalmente, y el 78 por ciento se encuentra en diferentes fases, lo que ha implicado la aprobación de 130 políticas. Lavín Carbonell explicó que como resultado del proceso de actualización para la etapa 2016-2021, el 87,5 por ciento de los 313 lineamientos se mantienen, modifican o se integran entre sí, lo que unido a la incorporación de 50 nuevos totalizan 274 estructurados en 13 capítulos para dicho quinquenio.

*Congreso del Partido adopta resolución sobre la implementación de los Lineamientos*, CMBQ RADIO ENCICLOPEDIA (Apr. 18, 2016, 4:15 PM), <http://www.radioenciclopedia.cu/cuba-mundo/congreso-partido-adopta-resolucion-sobre-implementacion-lineamientos-20160418/>.

<sup>22</sup> See, *infra* Section II.

<sup>23</sup> Mimi Whitefield, *Cuba’s Communist Party Congress Wants Change, But Also More of the Same*, THE MIAMI HERALD (Apr. 18, 2016, 6:34 PM), <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article72522672.html>.

<sup>24</sup> See Marce Cameron, *Cuban Communist Party to Launch Post-Congress Debate Among Divergent Visions*, GREEN LEFT WEEKLY (May 8, 2016), <https://www.greenleft.org.au/node/61736>. See also, Associated Press, *Cuba’s Future Economic Model in Spotlight at Party Congress*, UNIVISION NEWS (Apr. 16, 2016), <http://www.univision.com/univision-news/latin-americca/cubas-future-economic-model-in-spotlight-at-party-congress>.

<sup>25</sup> See, e.g., Roberto Álvarez Quiñones, *The 7th Congress: A Reality Check*, DIARIO DE CUBA (Apr. 21, 2016, 2:17 PM), [http://www.diariodecuba.com/cuba/1461241072\\_21833.html](http://www.diariodecuba.com/cuba/1461241072_21833.html).

<sup>26</sup> See, e.g., *Cuba’s Communist Party Congress Approves New Reforms*, *Slams Obama Visit*, XINHUA: XINHUANET, (Apr. 18, 2016), [http://news.xinhuanet.com/english/2016-04/19/c\\_135294032.htm](http://news.xinhuanet.com/english/2016-04/19/c_135294032.htm) (“Cuban leaders and media have become more critical of Obama after his visit to the island, with Fidel Castro accusing him of sweet-talking the people and many articles finding fault with his speech to Cubans. Many have portrayed his trip as an attempt to seduce an emerging private sector to become a strong political force in the country and persuade ordinary Cubans to abandon the country’s socialist values for a free market economy.”).

intra-Party democracy. Most importantly, the 7<sup>th</sup> PCC Congress appeared to fall far short of confronting the economic model reaffirmed in the 4<sup>th</sup> PCC Congress—a model of central planning and Soviet bureaucratic mechanisms substituting for any sort of markets based regulation of economic activity. Indeed, the 7<sup>th</sup> PCC Congress appears to test the value that can be derived from U.S. Cuba normalization,<sup>27</sup> and the influence of Asian Marxist theory beyond its regional home. Yet, it was also made clear that the 7<sup>th</sup> PCC Congress was meant as a starting point rather than an ending point of discussion.<sup>28</sup> The extent to which that actually happens remains to be seen.

Among the most significant product of the 7<sup>th</sup> Congress was in the area of ideological and theoretical development. It marks the first time since the dissolution of the Soviet Union, of a concerted effort to develop a European Marxist Leninism, one that is substantially distinct from emerging Asian models. In this respect the work of the 7<sup>th</sup> Congress is both important and potentially consequential for the development of approaches to law and economy, especially in the developing world. Two theories of Marxist state organization are now developing; each pointing in quite distinct ways to the organization of society, the state, government and the role of the vanguard Party. Each also points to a different engagement with Leninism— which for Western individuals can be felt as different approaches to rule of law, to the nature and use of administrative discretion and to the understanding of human rights and markets. The development of an Asian “Markets Marxism” Model is well understood. The recent emergence of a Latin American “Central Planning Marxism” Model is less well understood.

This article focuses its examination on the construction and characteristics of an evolving “Central Planning Marxism” Model by considering its development in Cuba since 2011. The examination centers on the official theory produced from the 6<sup>th</sup> through the 7<sup>th</sup> Congresses of the Cuban Communist Party (PCC). A close reading suggests the limits of reform in Cuba. These limits are structural as well as ideological. Structural limits are exacerbated by an entrenched nomenclatura that is fearful that ideological change will subvert the authority of the PCC and its political framework. Ideological limits are suggested by a political timidity that has been built into the operating culture of the PCC. Structural limits suggest the way in which Leninist theory has been developed with Cuban characteristics that embrace the bureaucratic element of the function of a vanguard party. It embraces the idea that the PCC itself can substitute its organs for the functioning of the market itself. Ideological limits suggest a very specific reading of Marxism, one that posits the idea that the moment of revolutionary political victory produces the formative stage of the establishment of a Communist society that must then be perfected through the instrumental deployment of the means of production by the vanguard Party in the construction of a communist economy founded on the work of a model revolutionary worker.

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<sup>27</sup> See Generally, Larry Catá Backer, *Guest Post: On Cuban Normalization*, *Opinio Juris* (Jan. 5, 2015, 12:36 PM), <http://opiniojuris.org/2015/01/05/guest-post-cuban-normalization/>.

<sup>28</sup> Oscar Sánchez Serra, *El Congreso no se acabó*, GRANMA: EDICIÓN ESPECIAL, May 14, 2016, at 32, <http://www.gramma.cu/file/pdf/gaceta/congreso%20pcc.pdf>.

After this Introduction, Part II considers the structural and process aspects of the 7<sup>th</sup> PCC Congress. It sets the stage for the consideration of the most important ideological work of the PCC in a generation, the *Conceptualización*<sup>29</sup> and its ideological structures. Part III then considers the substantive consequences of the sputtering of the reform trajectory of the 7<sup>th</sup> PCC Congress that is the *Conceptualización* itself. It was meant to provide the ideological foundation for the great product of reform contained in the Guidelines (Lineamientos) of the 6<sup>th</sup> PCC Congress. Adopted in principle,<sup>30</sup> the *Conceptualización* serves to answer the question: what sort of theoretical model will guide the development of Socialism in Cuba. The *Conceptualización* is of particular interest for its potential divergence from the construction of Chinese post-Soviet Socialist Market theory within the context of socialist modernization.

Part IV then contrasts this emerging Model with the Asian "Markets Marxism" Model. The consequences for political economy, legitimacy and law are also discussed. The embrace of a "Central Planning Marxism" Model may suggest that the PCC is finding it hard to move even from soviet style central planning ideologies to Marxist market ideologies that have proven more successful in other states. It may also suggest not a dynamic evolution of European Marxism but instead a creeping paralysis that may be more dangerous to its long-term authority than any machinations originating in its enemies. The paper ends with a brief consideration of options and likely movement over the short term moving forward. Both the deviation of form from the 6<sup>th</sup> PCC Congress as well as the thrust of the *Conceptualización* make it clear that the PCC is finding it hard to move even from Soviet style central planning ideologies to Marxist market ideologies that have proven more successful in other states. More importantly, the central focus of Cuban Central Planning Marxism moves from a focus on institutions to the re-engineering of individuals. It is to the creation of the model worker inserted in a model economy who then also performs as a model consumer, citizen and participant in sport and culture that central planning is ultimately directed. That may have consequences not merely for the trajectory of reform—ironically it may be easier to effect limited political reform than economic reform at this time—but also its scope. In particular, differences between the Asian Markets Marxism and the Cuban Central Planning Marxist Models has profound implications for rule of law development and the structures of regulatory governance in administrative structures. The PCC is suffering from a paralysis that may be more dangerous to its long-term authority than any machinations originating in its enemies.

<sup>29</sup> *Conceptualización*, *supra* note 19.

<sup>30</sup> See *Resolución sobre el Proyecto de Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista*, Inter-Press Service en Cuba, INTER PRESS SERVICE EN CUBA (Apr. 19, 2016), <http://www.ipscuba.net/archivo/resolucion-sobre-el-proyecto-de-conceptualizacion-del-modelo-economico-y-social-cubano-de-desarrollo-socialista-2/>.

### I. THE PROCESS OF THE 7<sup>TH</sup> PCC CONGRESS: A STEP BACK FROM A VANGUARD PARTY?

On the eve of the start of the 7<sup>th</sup> PCC Congress, and in the wake of the state visit of the U.S. President to Cuba, there was a sense, not of expectancy in the wake of the great reform and opening up efforts of the 6<sup>th</sup> Congress, but rather of uncertainty and caution. “There should not be any big surprises, says Omar Everleny, a leading Cuban economist. “It seems as if nobody knows what to expect—except very little,” a Western diplomat said after speaking with senior Cuban officials.”<sup>31</sup> And, indeed, the old habit of looking to the United States as a source of the failures of Cuban policy lingered well into the start of the 7<sup>th</sup> Congress itself.<sup>32</sup> “At the opening of the PCC Congress on Saturday, President Raul Castro also warned of Washington’s attempts to weaken Cuba’s socialism. “We cannot ignore the influence of powerful foreign forces who call for the empowerment of non-state forces, to try and create agents of change in hopes of ending the revolution and socialism in Cuba,” he said.”<sup>33</sup> And on the issue of human rights, the First Secretary offered a sort of comparison with the United States, noting that the United States adhered to far fewer human rights treaties than Cuba.<sup>34</sup>

But uncertainty and caution also produced a return to past patterns of behavior, and provided a basis for the re-emergence of past fears.

The stasis was symbolized by the retention as second party secretary (behind only Raúl) of José Ramón Machado Ventura, an 85-year-old Stalinist ideological enforcer. Even officials had hinted that his powerful post might be passed to Miguel Díaz-Canel (56), the vice-president and Raúl’s putative successor as president in 2018. Five new, youngish members joined the politburo, but none is known to be a reformer. Earlier hopes in

<sup>31</sup> de Córdoba, *supra* note 7.

<sup>32</sup> See, e.g., Jon Lee Anderson, *Cuba After Obama Left*, THE NEW YORKER, (Apr. 1, 2016), <http://www.newyorker.com/news/daily-comment/cuba-after-obama-left>. But see, Marc Frank & John Paul Rathbone, *Cubans Look to Communist Party Congress for Evidence of Reforms*, FINANCIAL TIMES, (Apr. 16, 2016), <http://thecubaneconomy.com/articles/2016/04/cubans-look-to-communist-party-congress-for-evidence-of-reforms-a-month-after-obamas-historic-visit-disenchantment-over-reforms-is-setting-in/>.

<sup>33</sup> *Cuban FM Slams Obama’s Visit as Attack on Island’s History, Culture*, XINHUA: NEW CHINA, (Apr. 20, 2016), [http://news.xinhuanet.com/english/2016-04/20/c\\_135294353.htm](http://news.xinhuanet.com/english/2016-04/20/c_135294353.htm), (referencing a quote from Castro, *Informe*, p. 7, “No somos ingenuos ni ignoramos las aspiraciones de poderosas fuerzas externas que apuestan a lo que llaman el “empoderamiento” de las formas no estatales de gestión, con el fin de generar agentes de cambio en la esperanza de acabar con la Revolución y el socialismo en Cuba por otras vías.” made in the context of an introduction to the principles underlying the *Conceptualización*.)

<sup>34</sup> Castro, *supra* note 16, at 8. (Of course, treaty counting may be beside the point when the question is posed as a functional rather than a formal one. The United States, for example, concludes that such treaties may provide less than the coverage afforded under its own Constitution or may be otherwise incompatible with it. And mere adherence to treaty does little to suggest the nature of its transposition and implementation within a domestic legal order. But the point remains clear—that the Cuban state continues to look over its shoulder at the United States as it proceeds to develop within its own national context.)

Havana that the congress might approve an electoral reform and a bigger role for the rubber-stamp parliament were dashed.<sup>35</sup>

These were expressed not just in the signaling effectuated through the leadership appointments, but also in the process leading to the 7<sup>th</sup> Congress itself and the substance of its work. And, indeed, the substance of the 7<sup>th</sup> PCC Congress appeared to refine and develop the orthodox premises of the Fidel Castro's ideological framework already well developed by the beginning of the 21<sup>st</sup> Century.<sup>36</sup>

On Monday February 23, 2015 the First Secretary of the Cuban Communist Party (PCC), Raúl Castro, while presiding over the PCC's Central Committee, approved plans to begin preparation for the commencement of several programs to be established from 2015 to 2018 pursuant to the PCC's 6<sup>th</sup> Party Congress.<sup>37</sup> Among these programs that are to take place is the PCC's 7<sup>th</sup> Congress, which has been scheduled to be celebrated April 16-18, 2016.<sup>38</sup> According to the XIII Plenary of the PCC's Central Committee, the themes that led the debates of the 7<sup>th</sup> Congress are: the Conceptualization of the Cuban Social and Economic Model of Socialist Development, the Program of Social and Economic Development until 2030, which is directed to solve structural problems of the Cuban Economy by governmental policies with an integral and sustainable focus, and an evaluation of the results of the implementation of the Economic and Social Policy Guidelines (Lineamientos) of which 21% of the 313 have been implemented within the last five years and 77% are still in the process of being implemented), as well as their upgrading.<sup>39</sup>

Almost a year later after the announcement that the 7<sup>th</sup> Congress would take place, the Central Committee's XIII Plenary reviewed the documents, which were not released to the public until after the conclusion of the 7<sup>th</sup> Congress itself.<sup>40</sup> Party organs announced in January 2016 that the Plenary PCC's Central Committee held that month had considered all of the documents that would eventually be presented

<sup>35</sup> Michael Reid, *Fidel's Last Stand*, THE ECONOMIST, (Apr. 30, 2016), <http://www.economist.com/news/americas/21697888-cuban-communist-party-blocks-change-fideis-last-stand> (explaining that this might have been expected in the wake of the potential of the draft Lineamientos before the start of the 6<sup>th</sup> Congress had been predicted); the uncertainty had roots in the 6<sup>th</sup> Congress itself. *see, e.g.*, Larry Catá Backer, Order, Discipline and Exigency: Cuba's Vith Party Congress, the Lineamientos (Guidelines) and Structural Change In Education, Sport and Culture?, in Papers and Proceedings of the Twenty-First Annual Meeting of the Association for the Study of the Cuban Economy (ASCE) 21:148-170 (2011); <http://www.ascecuba.org/publications/proceedings/volume21/pdfs/backer.pdf>.

<sup>36</sup> *See* Fidel Castro Ruz, Una revolución solo puede ser hija de la cultura y sus ideas [A Revolution Can Only be the Daughter of Culture and Ideas], Aula Magna de la Universidad Central de Venezuela, (Feb. 3, 1999), <http://www.cuba.cu/gobierno/discursos/1999/esp/f030299e.html>; *see generally, supra*, Part III.

<sup>37</sup> *En abril de 2016 tendrá lugar el VII Congreso del Partido Comunista de Cuba*, CUBADEBATE, (Feb. 23, 2015), <http://www.cubadebate.cu/noticias/2015/02/23/en-abril-de-2016-tendra-lugar-el-vii-congreso-del-partido-comunista-de-cuba/#.VuaUsuhLcs>.

<sup>38</sup> *Id.*

<sup>39</sup> *VII Congreso PCC*, CONGRESOS DEL PCC, <http://congresopcc.cip.cu/congresos/vii-congreso-pcc> (last visited Mar. 17, 2016).

<sup>40</sup> *Evaluó Pleno del Comité Central documentos que serán debatidos en el VII Congreso del Partido*, GRANMA (Jan. 15, 2016), <http://www.granma.cu/cuba/2016-01-15/evaluopleno-del-comite-central-documentos-que-seran-debatidos-en-el-vii-congreso-del-partido-15-01-2016-00-01-11>.

to the 7<sup>th</sup> Congress. With respect to what would emerge as the *Conceptualization*, it was reported that a consensus had emerged about the value of memorializing the fundamental principles of the Cuban Marxist Leninist order to serve as a guide for future reform.<sup>41</sup> But consensus around the need to develop such a conceptual basis for Cuban Marxist Leninism did not produce consensus as to its form. It was reported that a substantial number of comments were received and would be reviewed as part of the process of finalizing the document for the 7<sup>th</sup> Congress.<sup>42</sup> The Central Committee also reviewed the Program of Social and Economic Development until 2030, which is designed to solve structural problems of the Cuban economy.<sup>43</sup>

The Central Committee also announced that 1,000 delegates would attend the 7<sup>th</sup> Congress, a number substantially the same as those attending the 6<sup>th</sup> Congress. They would represent all of the island's territories. These nominations, according to the information made available, began in June 2015 in "party units around the country."<sup>44</sup> Voting occurred February 1-15, 2016 and unsurprisingly the Castro brothers were elected as delegates in Santiago de Cuba (Raúl) and the "José Martí district in the municipality of Segundo Frente" (Fidel).<sup>45</sup> It has been reported that those delegates represent several groups of Cubans, including the self-employed, and the agricultural sector, among others. Moreover, 43.2% of delegates are women, and 84% are university graduates. The average age of, it has been additionally reported, is 48, while only 55 delegates being under the age of 35.<sup>46</sup> It has been further reported that around one and a half million people have participated in these meetings, including the participation of non-party members.<sup>47</sup>

By the end of February 2016, the documents that would be submitted for consideration and approval at the 7<sup>th</sup> Congress began to be reviewed across all the Cuban providences.<sup>48</sup> Several members of the National Assembly, members of the UJC, mass and social organizations, representatives from FAR and MININT, among others, took part in these reviews.<sup>49</sup> However, some of these documents were not released to the general public. Among the most important of these non-circulating documents was the *Conceptualization* itself, despite assurances that the general population's input would be solicited. This approach stood on contrast to the free circulation of the new Code of Labor and the Lineamientos in draft form before they were presented to the delegates of the 6<sup>th</sup> Congress.<sup>50</sup> Much of the online

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<sup>41</sup> See *id.*

<sup>42</sup> *Id.*

<sup>43</sup> See *id.*

<sup>44</sup> Yudy Castro Morales, *Looking toward 7th Party Congress*, GRANMA, (Feb. 29, 2016, 9:02 AM), <http://en.granma.cu/cuba/2016-02-29/looking-toward-7th-party-congress>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See *id.*

<sup>48</sup> See *Comienza hoy reunión de consulta de los documentos que se someterán al Congreso del Partido*, GRANMA, (Feb. 29, 2016, 11:02 PM), <http://www.granma.cu/cuba/2016-02-29/comienza-hoy-reunion-de-consulta-de-los-documentos-que-se-someteran-al-congreso-del-partido-29-02-2016-23-02-42>.

<sup>49</sup> See *id.*

<sup>50</sup> See Miriam Leiva, *A dos meses del VII Congreso del PCC*, CUBANET, (Feb. 16, 2016), <https://www.cubanet.org/opiniones/a-dos-meses-del-vii-congreso-del-pcci>.



commentary has been critical of this decision to not allow the general population access to these vital documents.<sup>51</sup> What emerged was a determination by the senior PCC organs to keep a tight control over the development of the *Conceptualización* itself, with the objective being the presentation of the finished product for consideration by the masses, including the masses of PCC cadres. In effect, there would be no engagement with the development of the *Conceptualización*, only commentary after its fundamental principles were adopted and used as the basis for the document itself. To some extent, then, the process produced a very public repudiation of the sort of interaction that had marked earlier reforms—returning substantial authority and control to the senior levels of the PCC.

The preparatory process leading up to this 7<sup>th</sup> Congress also stands in pronounced contrast with the previous Congress with regards to the disclosure of documents that would be discussed during the Congress and the lack of public input. And indeed, the 7<sup>th</sup> Party Congress appeals aligned more with the forms of earlier Congresses than with what appears the more aberrational 6<sup>th</sup> Congress. The differences are highlighted in the chart that appears at Annex A.

When Raúl Castro invoked the VI Congress on November 8, 2010, he made clear that the Congress would not only be a meeting of those who were selected as delegates, he also announced that the militancy and the entire population would be part of the process of discussion leading up to the VI Congress regarding the Lineamientos or decisions that were to be adopted in said Congress.<sup>52</sup> As opposed to the secretive 7<sup>th</sup> Congress, the 6<sup>th</sup> Congress, as the current president of Cuba described it, would be a Congress of the entire militancy and of the people of Cuba, who would “actively participate in the adoption of the fundamental decisions of the Revolution.”<sup>53</sup> As a matter of fact, the Lineamientos were published the following day after Raúl’s declaration that the VI Congress would take place. In that same declaration Raúl also detailed how the Lineamientos would be made available and the same day these were to be published, a national seminary was to take place composed of specialists to guide the process of mass and public discussion of the Lineamientos.<sup>54</sup> During this announcement Raúl further outlined how the Lineamientos would be made available for public comment, and in fact, these Lineamientos were “massively” discussed from December 2010 to February 2011 in

<sup>51</sup> See e.g., Eduardo Ortega, Comment to *Reuniones de consulta de documentos del Congreso del Partido comienzan hoy en Cuba*, CUBADEBATE (Mar. 1, 2016, 1:14 PM), <http://www.cubadebate.cu/noticias/2016/03/01/reuniones-de-consulta-de-documentos-del-congreso-partido-comienzan-hoy-en-cuba/#.Vu3Ub-JrJhE>; LR, Comment to *Reuniones de consulta de documentos del Congreso del Partido comienzan hoy en Cuba*, CUBA DEBATE (Mar. 1, 2016, 1:15 PM), <http://www.cubadebate.cu/noticias/2016/03/01/reuniones-de-consulta-de-documentos-del-congreso-partido-comienzan-hoy-en-cuba/#.Vu3Ub-JrJhE>; Rafael, Comment to *Comienza hoy reunión de consulta de los documentos que se someterán al Congreso del Partido*, GRANMA, (Mar. 1, 2016, 1:35 PM), <http://www.granma.cu/cuba/2016-02-29/comienza-hoy-reunion-de-consulta-de-los-documentos-que-se-someteran-al-congreso-del-partido-29-02-2016-23-02-42>, (there are many similar comments regarding the disclosure of these documents throughout Cuban online news engines).

<sup>52</sup> See Raúl Castro, *Comocatoria al VI Congreso del Partido Comunista de Cuba*, GRANMA: DIARIO, (Nov. 8, 2010), <http://www.granma.cu/granmad/secciones/6to-congreso-pcc/artic-01.html>.

<sup>53</sup> *Id.*

<sup>54</sup> See *id.*

centers of labor, studies and in communities,<sup>55</sup> something that has yet to occur for those documents that are going to be central to the PCC's 7<sup>th</sup> Congress.

And indeed, key documents were not ready to present at the 7<sup>th</sup> Congress itself. Rather than present and adopt the documents, the 7<sup>th</sup> Congress was reduced to adopting documents in principle and then awaiting circulation for a time after the conclusion of the Congress. The resolution adoption of the *Conceptualización* was made up of several instructions.<sup>56</sup> First, the 7<sup>th</sup> Congress approved the "Proyecto de Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista con las modificaciones incorporadas." Second, it charged the PCC Central Committee with the development of a consultation, but open to "todos los militantes del Partido y la Unión de Jóvenes Comunistas, representantes de las organizaciones de masas y de amplios sectores de la sociedad." Third, it authorized the PCC Central Committee to approve a final version of the *Conceptualización* incorporating changes from the consultation process. Fourth, it recommended to the National Assembly that they adopt the *Conceptualización* as it was approved and also monitor its implementation. Fifth, and last, it instructed the PCC Central Committee to develop a process of study of the final version among cadres, use the final version to guide mass organizations, and ensure that the document serves as a guide for economic reform.<sup>57</sup>

The documents were made available in May 2016. But hard copies were not distributed free of charge.<sup>58</sup> Nor were the wide ranging popular engagement strategies of the Lineamientos replicated. Instead, the PCC determined that targeted consultation among its cadres would occur between May and September 2016.<sup>59</sup> The kick off was staged with cadres in one of the biotech sectors—among the most sensitive sectors of the developing economy.<sup>60</sup> The state media organs were at some

<sup>55</sup> *Comienza hoy el Sexto Congreso del Partido*, GRANMA: DIARIO, (Apr. 16, 2011), <http://www.granma.cu/granmad/secciones/6to-congreso-pcc/artic-02.html>.

<sup>56</sup> *Resolución sobre el Proyecto de Conceptualización*, *supra* note 30.

<sup>57</sup> *Id.* (Specifically, the resolution instructed the PCC Central Committee:

- a) Desarrollar un proceso de estudio del documento finalmente aprobado, donde participen todos los militantes del Partido y la Unión de Jóvenes Comunistas;
- b) orientar a las organizaciones de masas, sociales y otras entidades, la realización de un proceso similar, adecuado a sus características;
- c) controlar que el documento aprobado sirva de guía para las acciones dirigidas a la actualización del Modelo de desarrollo económico y social de la nación, así como a su perfeccionamiento, en correspondencia con la evolución de los diferentes escenarios.)

<sup>58</sup> The price of the document was de minimis—one Cuban peso—but in a country where most people have very little income, even a small price could act as a barrier to purchase. Most likely fewer copies were sold than shared or otherwise made available to especially poorer communities. Moreover, among those with means, copies of the document were posted on line. Free copies, however, are available on line through Granma's website (see <http://www.granma.cu/cuba>, which provides a link to the pdf version at <http://www.granma.cu/file/pdf/gaceta/Copia%20para%20el%20Sitio%20Web.pdf>)—but it must be remembered that the price of internet access in Cuba is high.

<sup>59</sup> See María del Carmen Ramón & Ismael Francisco, *Biología cubana debate el futuro del país: arranca discusión de documentos del VII Congreso del PCC* (+ *Fotos y Video*), CUBADEBATE, (June 16, 2016), <http://www.cubadebate.cu/noticias/2016/06/16/biologia-cubana-debate-el-futuro-del-pais-arranca-discusion-de-documentos-del-vii-congreso-del-pcc-fotos-y-video/#.V5aGdI5vFo4>.

<sup>60</sup> *Id.*

pains to paint this consultation as evidence of the form of democracy that is developing in Cuba.<sup>61</sup> “A partir de hoy y hasta el 20 de septiembre se desarrollará en todo el país un debate democrático, en el que participarán directamente millones de cubanos.”<sup>62</sup> There is little indication that these consultations will produce substantial modification. An indication of the likelihood of substantial changes to the *Conceptualización* might be taken from the finalization of the proposal document for the implementation of the Lineamientos, approved by the 7<sup>th</sup> PCC Congress. The implementation document was approved by the National Assembly in July 2016 and circulated in August 2016, with little change from the document approved in April.<sup>63</sup> That suggests that the underlying theoretical basis for the implementation remains substantially unchanged. The Implementation document itself noted the tight integration between the Actualización (Implementation), the Conceptualization and the Economic Plan for 2030.<sup>64</sup>

For students of Chinese Communist development, there was an echo of recent efforts to theorize endogenous democracy, but in quite attenuated and distinct form.<sup>65</sup> These also underline arguments deployed during the development of the Lineamientos; yet here the post facto efforts do not quite match the more vigorous version of popular engagement which occurred in 2010–2011 in the prelude to the 6<sup>th</sup> Congress. Yet the contrast was not lost on critics: “Right now, the preparations for the 6<sup>th</sup> Congress appear in comparison to be the very model of democracy.”<sup>66</sup> For all that, it must be emphasized that in either case, the PCC retained substantial control

<sup>61</sup> *Id.* (Quoting one of the leaders of that sector to that effect:

“La discusión la abrió un hombre que ha hecho historia en los últimos años en Cuba: Jorge Berlanga, científico cubano líder del equipo creador del medicamento Herberprot-P. “El hecho de que este documento pueda sufrir modificaciones en el camino, que transite desde el punto en que se elaboró por profesores universitarios, académicos y políticos al nivel de la base, es una muestra elocuente de la democracia que existe en Cuba y un excelente referente en términos de conceptualizar la sociedad a la que aspiramos llegar”, afirmó frente a sus colegas y su intervención rompió el hielo ante los reunidos en el teatro de esta institución, que está próxima a cumplir los 30 años de fundada.”

And the article provided instruction in the type of comments that would be approved—technical and efficiency generating comments. There was no mention of comments going to the fundamental assumptions and principles at the heart of the document.)

<sup>62</sup> *Editorial de Granma: Un debate por el futuro de Cuba*, CUBADEBATE (June 14, 2016), <http://www.cubadebate.cu/noticias/2016/06/14/editorial-de-granma-un-debate-por-el-futuro-de-cuba/#.V5al5o5vF04>.

<sup>63</sup> See *Actualización de los Lineamientos de la Política Económica y Social del Partido y de la Revolución*, (Aug., 2016), [https://www.uschamber.com/sites/default/files/lineamientos\\_2016.pdf](https://www.uschamber.com/sites/default/files/lineamientos_2016.pdf); see generally Michael Weissenstein, *Cuba Releases New Economic Guidelines Without Major Changes*, reprinted in ABC News (Aug. 16, 2016), <http://abcnews.go.com/International/wireStory/cuba-releases-economic-guidelines-major-41432730>.

<sup>64</sup> *Actualización*, *supra* note 63, at 2.

<sup>65</sup> See Larry Catá Backer, *Crafting a Theory of Socialist Democracy for China in the 21st Century: Considering Hu Angang’s Theory of Collective Presidency in the Context of the Emerging Chinese Constitutional State*, 16 ASIAN-PACIFIC L. & POL’Y J. 29, 70 (2014).

<sup>66</sup> Rogelio Manuel Díaz Moreno, *Cuba’s Secretive 7th Communist Party Congress*, HAVANA TIMES, (Mar. 8, 2016), <http://www.havanatimes.org/?p=117223> (“What we take away from and confirm with these levels of secrecy is, once again, how terrified Cuban authorities are by transparency, and their lack of democratic will.”).

of both the scope of debate and reserved itself the power to weigh and incorporate suggestions as it saw fit. The democratic element here focused on engagement and participation—paired with the obligation of PCC officials to do their duty and listen, but always constrained by the ideological foundations on which the state is organized. Where, as here, that ideological foundation is itself not the subject of debate, then it is likely that the resulting product will reflect a specific viewpoint of Marxism and Leninism in Cuba.

And, indeed, that frustration seemed to run through the wide criticism of the consultation process both within and beyond Cuba.<sup>67</sup> Some analysts have suggested that the 7<sup>th</sup> Congress effectively confirmed the failure of the Lineamientos project (only about 21% of which has been implemented), requiring a new set of guidelines that align better with lower expectations.<sup>68</sup> And, indeed, in an effort to please both the reformers and hard liners it is likely that future plans will serve little practical effect. Others have focused on the uncertainty surrounding the 7<sup>th</sup> Congress that “seems designed to encourage public indifference.”<sup>69</sup> Some criticism was directed as well as the asymmetry in representatives to the Congress, most from the countryside in a state in which the majority of the population are urban dwellers.<sup>70</sup> And indeed, the criticism that ought to worry PCC leaders most is the one they are least able to meet—that the current system is Marxist Leninist in name only, or conversely, that the Marxist Leninism they are theorizing is, in any case obsolete, the recognition of both led to the lack of transparency in the *Conceptualización* project.<sup>71</sup> The failure to meet this criticism will pose more damage internally than any outside efforts by the United States to “destabilize” the current governmental apparatus.

<sup>67</sup> *Cuban leaders criticize both bureaucracy and private sector*, reprinted in FOX NEWS, (Apr. 18, 2016), <http://www.foxnews.com/world/2016/04/18/cuban-leaders-criticize-both-bureaucracy-and-private-sector.html> (“The congress has been criticized for its extreme secrecy by ordinary Cubans and even members of the Communist Party itself.”).

<sup>68</sup> See, e.g., Albright Stonebridge Group, Cuba’s 7<sup>th</sup> Party Congress 2, at 3 (Apr. 20, 2016) <http://www.albrightstonebridge.com/files/ASC%20-%20Cuba%20Party%20Congress%20Update.pdf>, (“Because many of the objectives outlined in the 2011 Guidelines have not yet been accomplished, the Congress approved a resolution to update the Guidelines for 2016-2021, paving the way for its long-term economic and social vision. The new document, which will need to be approved by the National Assembly, is expected to include 286 guidelines, 44 of which are new and 193 of which are modified versions of previous reforms”).

<sup>69</sup> Diaz Moreno, *supra* note 66, (“These days, a well-designed campaign aimed at keeping public opinion at bay prior to the next congress seems to be in place. This campaign has been able to rely on the population’s more pressing concerns, such as the galloping inflation affecting produce and livestock products.”).

<sup>70</sup> *Id.* (“Cuba’s Granma newspaper reports that the majority of the representatives who will take part in the coming congress come from the farm sector. This will allow the congress to reflect the country’s reality, this official newspaper claims. However, we know that more than 70% of Cuba’s population was born or resides in cities. The country’s predominant economic sector is that of services. Since, as we know, the instances where representatives are selected are chosen “at the top,” the makeup of these congress participants smells like manipulation.”).

<sup>71</sup> Ramirez Alvarez, *supra* note 1 (“Lacking any practical connections to the now-obsolete Marxist-Leninist doctrine, they met up with government philosophers and political scientists to engender a kind of politico-ideological platform, under their censorious gaze.”).

More sympathetic critics noted that the representation problem had another dimension—exposing a rift between leadership and rank and file even within the PCC itself.<sup>72</sup> One report notes that Esteban Morales,

a prestigious and outspoken Cuban intellectual whose party loyalty is beyond reproach . . . complained that “for months” he’d been asking for the Congress documents, to no avail. This would be a congress of party functionaries rather than the grassroots “which I consider to be the real party”, he added. He suggested the PCC was regressing in terms of party democracy, and described the mood among the party base as justifiably “indignant”. That perception was anchored in his “broad and continuous contact with Cuban society” as an intellectual and an ordinary citizen.<sup>73</sup>

When, in an editorial in late March, Granma published a set of justifications, grounded in its sense that there was no need for consultation because so few of the Lineamientos had been implemented and because in any case the 1000 delegates to the Congress and selected others had already given comments,<sup>74</sup> the response was not entirely supportive.<sup>75</sup> Beyond that, the lack of transparency—and the appearance of uncertainty within the leadership was troubling. As well what had started as a conceptual complement to the Lineamientos, turned into a site for conflict among PCC factions that threatened the Congress itself.<sup>76</sup>

## II. THE SUBSTANCE 7<sup>TH</sup> PCC CONGRESS: REFORM AND OPENING UP OR OSSIFICATION IN THE ADVANCEMENT OF SOCIALIST MODERNIZATION

Raúl Castro clearly set forth the ideological conundrum that Cuba finds itself in the wake of the “reform and opening up” of the 6<sup>th</sup> PCC Congress and the normalization of relations with the United States.

<sup>72</sup> Cameron, *supra* note 24.

<sup>73</sup> *Id.* (“In a similar vein, on March 27, PCC activist Francisco ‘Paquito’ Rodriguez published an Open Letter to Raul Castro on his personal blog . . . Rodriguez objected to “the lack of discussion of the key Congress documents—which are still shrouded in secrecy—in both the grassroots Party committees and among the rest of the citizenry.”).

<sup>74</sup> See Castro, *Informe, supra* note 16 (This was a position reiterated by Raúl Castro in his opening remarks to the Congress.).

<sup>75</sup> Cameron, *supra* note 24, at 4. (“As usual, readers submitted comments to the online version of the Granma editorial. Most touched on the controversy.”).

<sup>76</sup> Initially, the PCC leadership gave every indication that there would be a comparable consultation prior to the 7th Congress. Soon after the 6th Congress, the Central Committee began work—behind closed doors—on two strategic and programmatic documents to be presented to the 7th Congress. These two documents, the 2016-30 Plan and the ‘Conceptualisation of the Cuban socio-economic socialist development model’, would complement the Guidelines. As a set of concrete objectives based on certain principles, the Guidelines are neither a programmatic vision nor a socialist plan. As the 7th Congress approached, it became apparent that the drafting process was well behind schedule. Either the anticipated public consultation would have to be abandoned, or the Congress would have to be postponed. As late as February 23, the Central Committee’s Tenth Plenum reiterated its commitment to a public consultation on the draft documents prior to the Congress. *Id.* at 1-2.

La influencia en nuestra realidad de las complejidades del mundo en que vivimos, la política de hostilidad y acoso, las acciones dirigidas a introducir plataformas de pensamiento neoliberal y de restauración capitalista apoyadas por una perversa estrategia de subversión político-ideológica que atenta contra las esencias mismas de la Revolución y la cultura cubana, la historia y los valores que en ella se han forjado, la inmegable existencia de problemas acumulados en la sociedad, a lo que se suma el propio proceso de implementación de los Lineamientos y los profundos cambios en que nos encontramos inmersos, así como el nuevo escenario en las relaciones entre Cuba y los Estados Unidos, son hechos que imponen elevados desafíos al trabajo ideológico.<sup>77</sup>

Castro proposed what to outsiders might appear to be a reactive ideological framework. Gone are the days of an assertive ideology fully confident in itself and its place both within the specific context of Cuba and generally within the world of theory—and specifically of Marxist Leninist theory. In its place the caution of those who come to reform and opening up reluctantly—as something that must be accomplished, but must be undertaken purely as a defensive reaction to changed circumstances. The approach, then, is at once tentative and suspicious—with a subtext of longing for historical conditions that might never be restored. That approach distinguishes the Cuban engagement with Marxist Leninist theory development (within the specific context of Cuba) almost the opposite of the foundation for theorizing in China.<sup>78</sup> For the Chinese, evolving theory provides a path toward the objective of its role as a Leninist vanguard Party,<sup>79</sup> for the PCC, on the other hand, the protection of the victories of 1959 and the pre-1989 political

<sup>77</sup> Castro, *Informe*, supra note 16, at 9.

<sup>78</sup> *Full Text of Constitution of Communist Party of China*, supra note 9, at 1. (One need only compare the General Program of the Constitution of the Chinese Communist Party, and its articulation of the Chinese Party's basic line, with the caution and reactive approach of the PCC. In both cases, for example, there is a wariness of the errors and allure of "right" and "left" error in theory. But for the Chinese that is merely a caution as they elaborate Marxist Leninist theory in line with emerging historical stages. For the Cubans, the formative historical stage has been reached, and there is only adjustment to protect its essence against a relentless outside world. The General Program of the Chinese Communist Party, for example, embeds avoidance of left and right error within the more important task of integrating the basic line of reform and opening up with the Four Cardinal Principles, with vigilance against errors of the right but "primarily against 'Left' tendencies.") See, e.g., Angel Guerra Cabrera, *Cuba: No retornar al capitalismo jamás*, CubaDebate, CUBA DEBATE, 21, 2016) <http://www.cubadebate.cu/opinion/2016/04/21/cuba-no-retornar-al-capitalismo-jamas/#:V5ZKILUww44>. (In Cuba, on the other hand, it is "Right" error that constitutes the greatest fear.)

<sup>79</sup> *Full Text of Constitution of Communist Party of China*, supra note 9. (The symbolism of "path" or "road" toward the ultimate objective of the vanguard party is embedded in the General Program of the Chinese Communist Party. For example, the General Program of the Chinese Communist Party speaks to the "socialist road," adherence to the "spirit of the times," and to the fundamental line of "reform and opening up." The approach suggests that an essential element of Leninist theory is the principle that the task of theory and of the vanguard itself remains under development until the ideal of a communist society can be attained. Reform, then, is built into both theory and implementation.)

economy remains the foremost objective.<sup>80</sup> It is with this framework in mind, and with a sensitivity to its fundamental difference in approach from the Marxist Leninist line of the Chinese Communist Party, that one can usefully approach the *Conceptualización*.

The *Conceptualización* explicitly takes for its object the task of providing a theoretical referent or guide against which economic reform in Cuba may be tested.<sup>81</sup> Though it is written within the contemporary context of Cuba, it is meant to guide the future society toward which the vanguard aspires. Because its object is the exposition of theory, it does not suggest the means of its implementation—that is left to the Development Plan for 2030 that was also an object for study by the 7<sup>th</sup> Congress. It is meant to synthesize the thought of Fidel Castro and his conceptualization of the revolutionary movement that he embodies, along with the conceptual framework that gave rise to the Lineamientos. As such it is meant to develop both the basic normative framework but also point forward toward those practices and principles that might require change. In that respect two issues predominate: the first is the fundamental role of societal property, the second is the organization and function of the socialist state.<sup>82</sup>

A sense of the principle premises and organizing principles of the Model is discernable from its organization. It is divided into four chapters of 330 paragraphs, and a set of short “final considerations” bringing the total to 330 paragraphs. The Introduction sets out the historical context and general principles on which the Model is grounded, and its *political foundations*.<sup>83</sup> Chapter 1 structures the *economic aspects* of the Model. It consists of two parts; the first sets out the general principles of the construction of a Cuban socialist model, and the second describes the key changes in current practice and organization required by the principles.<sup>84</sup> Chapters 2 through 4 then speak to the construction of the economic-political-societal framework itself. Chapter 2 speaks to the character of the state ownership of the means of production and sets the foundation for central planning—the primacy and permanence of state ownership of capital and all productive forces.<sup>85</sup> Chapter 3 then speaks to the character of central planning itself—the organization of state planning for the control and deployment of the productive forces it controls.<sup>86</sup> Chapter 4 then speaks to the *societal element* of the Model. Its focus is the molding of the *revolutionary worker*—the individual who the state will engineer, and who serves both as a key means of production and as the object of that production.<sup>87</sup> The last chapter, entitled “Final Considerations,” speaks to the context in which the Model is

<sup>80</sup> See Larry Catá Backer, *The Cuban Communist Party at the Center of Political and Economic Reform: Current Status and Future Reform*, 8 NW. INTERDISC. L. REV. 71, 86 (2015).

<sup>81</sup> *Conceptualización*, *supra* note 19, at 3.

<sup>82</sup> *Id.* (“Las transformaciones se refieren a la consolidación del papel primordial de la propiedad social sobre los medios fundamentales de producción, el reconocimiento y diversificación de diferentes formas de propiedad y de gestión adecuadamente interrelacionadas, y el perfeccionamiento del Estado Socialista, sus sistemas y órganos de dirección.”)

<sup>83</sup> *Id.* ¶¶ 1-44, at 4-5.

<sup>84</sup> *Id.* ¶¶ 45-115, at 5-8.

<sup>85</sup> *Id.* ¶¶ 116-202, at 8-11.

<sup>86</sup> *Id.* ¶¶ 203-64, at 11-13.

<sup>87</sup> *Id.* ¶¶ 265-311, at 13-15.



framed.<sup>88</sup> It brings home the importance of the shadows cast by the United States and by long held views of regional political-economic integration.<sup>89</sup> While the United States figures prominently in the *Conceptualization*, there is no mention of the theoretical work of Marxism or Leninism developed in China or Vietnam. The Economic Development Plan Through 2030 then follows.<sup>90</sup> An extensive glossary of terms is also provided.<sup>91</sup>

The Introduction sets the stage.<sup>92</sup> It includes what is termed a succinct reference to the present historical moment in which Cuban society finds itself as it proceeds with the task of developing its Marxist model. It ties that historical moment to most significant elements of the process of revolution which preceded it and the principal strengths and weaknesses of the system which Cuba confronts in developing its form of socialism.<sup>93</sup> The Introduction sets out the theory and essential characteristics of the economic model.<sup>94</sup> The fundamental object is to bend theory to the creation of superior alternative to capitalism, and in this way to contribute to the advancement of humanity.<sup>95</sup> To that end, the Model is grounded on the essential principle of the consolidation of “socialist property,” which, though coexisting with others forms of property, the function of which is to move the nation towards a *socialist, prosperous and sustainable society*.<sup>96</sup>

The Model is built on this objectives foundation, the character of which was the product of the Cuban revolutionary experience adjusted for current internal and

<sup>88</sup> *Id.* ¶¶ 312-330, at 15-16.

<sup>89</sup> See, e.g., Fidel Castro Ruz, *De Seattle al 11 de septiembre* [From Seattle to September 11] (2002) (providing a sense of these ideological foundations).

<sup>90</sup> *Conceptualización*, *supra* note 19, at 16-26 (It consists of 251 paragraphs. Though it is not considered in this article, it is meant to represent a concrete application of its theory. I leave the analysis of that claim to others).

<sup>91</sup> See *Conceptualización*, *supra* note 19, at 27-32.

<sup>92</sup> *Conceptualización*, *supra* note 19, ¶¶ 1-44, at 4-5.

<sup>93</sup> *Conceptualización*, *supra* note 19, at 3.

<sup>94</sup> *Conceptualización*, *supra* note 19, ¶ 2 at 4 (“Expone las bases teóricas y características esenciales del Modelo Económico y Social Cuba no de Desarrollo Socialista”).

<sup>95</sup> *Conceptualización*, *supra* note 19, ¶ 8 at 4 (“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”) (To that end a number of transformations is necessary to advance toward a superior society); *Conceptualización*, *supra* note 19, ¶ 9 (“con el objetivo de avanzar hacia una sociedad superior”).

<sup>96</sup> *Id.* ¶ 10 (“en que resulta imprescindible que la propiedad socialista de todo el pueblo se consolide como la principal, coexistiendo con otras formas, en función de avanzar hacia una sociedad socialista, próspera y sostenible.”) (Noting that the terms “sociedad socialista próspera y sostenible” is a term of art further defined in the glossary of key terms); see *id.* ¶ 1, at 27 (Drawing a Sharp distinction with what its authors characterize as the fundamental premises of a capitalist system, one grounded in the supremacy of personal interest and consumerism in which social production which dehumanizes the individual); see also, *id.* at 28 (Avoiding capitalist dehumanization requires collective ownership of the means of production) (The Model promotes prosperity by satisfying spiritual and material need, sparking human creativity and initiative and transforming competition to social justice ends. Sustainable development references the ability to satisfy current needs without impacting future generations. These key premises will serve as the foundation for principles of state ownership, of rejection of markets as a mechanism of efficient choice and of the need to transform the individual to a new revolutionary model. Economics, thus, fused with both politics and societal objectives).

international conditions.<sup>97</sup> The Introduction provides a synthesis of this process of revolutionary learning and experience.<sup>98</sup> This process is undertaken in the shadow of the United States and its hostility, as well as with the intention to produce a system that appears to invert that of the United States. It is also developed in the shadow of the former Soviet Union and a relationship that remains a pleasant memory and a source of inspiration. There is an emphasis on necessity as a driver of Cuban responses to conditions after 1989, leading up to the reform and opening up of the Lineamientos in 2011. Revolution, hostility to the United States, friendship with the Soviet Union, and the stresses of surviving in a post-Soviet world provide the crucible within which this Model was forged.

That forging, in turn, produced seven fundamental principles<sup>99</sup> on which the Model is built and the idea of a socialist society, prosperous and sustainable, is developed.<sup>100</sup> These include, (a) unity and independence of the Cuban people;<sup>101</sup> (b) popular support of the leadership role of the PCC;<sup>102</sup> (c) the universality of social welfare services;<sup>103</sup> (d) the strengthening of Cuban values;<sup>104</sup> (e) active engagement of a socialist civil society;<sup>105</sup> (f) productive capacity to engage in global commerce in specified sectors;<sup>106</sup> and (g) augmented international prestige and standing among the community of nations.<sup>107</sup> As generalizations, none of these principles are unusual. But some details stand out. The unity of the Cuban people centers attention on Cuban youth and their training to ensure they are proper heirs to the revolutionary traditions set out in the Model.<sup>108</sup> Social welfare services are meant to mold the all around individual and to socialize them to serve as the proper heirs of the revolutionary system.<sup>109</sup> That Cuban values serve as an important objective of the Leninist enterprise is not unusual.<sup>110</sup> The construction of a socialist civil society,

<sup>97</sup> *Id.* ¶ 12, at 4.

<sup>98</sup> *See id.* ¶¶ 14-35, at 4-5.

<sup>99</sup> *See id.* ¶¶ 37-43, at 5.

<sup>100</sup> *Id.* ¶ 36 (“Entre las principales fortalezas con que Cuba cuenta para un desarrollo socialista próspero y sostenible se destacan”).

<sup>101</sup> *Id.* ¶ 37.

<sup>102</sup> *Compare Conceptualización, supra* note 19, ¶ 38 (This is a fundamental Leninist principle that remains a cornerstone of such political structures, with Constitution of the Chinese Communist Party, General Program, *supra* note 18 (“The Four Cardinal Principles to keep to the socialist road and to uphold the people’s democratic dictatorship, leadership by the Communist Party of China, and Marxism-Leninism and Mao Zedong Thought are the foundation on which to build the country. Throughout the course of socialist modernization the Party must adhere to the Four Cardinal Principles and combat bourgeois liberalization.”).

<sup>103</sup> *Conceptualización, supra* note 19, ¶ 39, at 5.

<sup>104</sup> *Id.* ¶ 40.

<sup>105</sup> *Id.* ¶ 41.

<sup>106</sup> *Id.* ¶ 42.

<sup>107</sup> *Id.* ¶ 43.

<sup>108</sup> *Id.* ¶ 37 (“Su juventud, exponente de lo mejor de la obra de la Revolución, heredera de las tradiciones de lucha y preparación para continuar su desarrollo en las nuevas condiciones históricas.”).

<sup>109</sup> *Id.* ¶ 39 (“acceso a los servicios fundamentales de educación y salud, cultura, deportes; la seguridad y asistencia sociales”) (This becomes central to the considerations of the Model in the construction of Social Politics in Chapter 4).

<sup>110</sup> *Cf.* Constitution of the Chinese Communist Party, General Program, *supra* note 18. (“The Communist Party of China leads the people in developing an advanced socialist culture. It promotes

however, deserves special pause.<sup>111</sup> “Civil society” is itself specifically defined.<sup>112</sup> This definition considerably touches on conceptions of the legal effect of human rights norms—particularly with respect to civil and political rights, within Cuban law and politics.<sup>113</sup> What is clear is that when President Obama and Raúl Castro speak about civil society, they mean very different things. That is the case as well when the ideologies of global human rights in business is transposed into the Cuban context.<sup>114</sup> That is possible because the conceptual basis that infuses that term with meaning is quite different for each representative of vastly different systems. Lastly, the principle of international prestige is meant to further Cuba’s South-South relationships and Latin American regional integration, long a policy priority in Cuba.<sup>115</sup> These principles are then refined and elaborated in the chapters that follow. But what is already clear is not merely the affirmation of the Leninist project as a basis of state organization, but more importantly, the primary role of PCC control of the means of production and the project to reshaping the individual to assume a proper role in the society under construction. To these ends both law and regulation will be utilized.

Having established the general normative foundation of the Model, Chapter 1 then focuses more specifically on two broad objectives.<sup>116</sup> The first is to elaborate the specific principles that sustain the economic Model. The second is to specify the transformations necessary to implement these principles. The strategic objective of the chapter is to build a total (an “all around”) Socialist Society.<sup>117</sup> The chapter considers the sustainability and prosperity aspects of the socialist Model it seeks to develop. To that extent it represents an elaboration of the more specific definition of sustainability and prosperity in the definition of the terms.<sup>118</sup> *Sustainability* is a function of development of a particular kind—one that requires rhythms and

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socialist cultural and ethical progress, combines the rule of law and the rule of virtue in running the country and works to raise the ideological and moral standards and scientific and educational levels of the entire nation so as to provide a powerful ideological guarantee, motivation and intellectual support for reform, opening up and socialist modernization.”)

<sup>111</sup> *Conceptualización*, *supra* note 19, ¶ 41, at 5.

<sup>112</sup> *See id.* ¶ 10, at 30.

<sup>113</sup> *Id.* (Socialist civil society are meant to contribute to Cuban culture and values, but perhaps more importantly, to so in a way that impedes manipulation from outside the state, a likely reference to the use of civil society by the United States to effect regime change-or transition. They are legitimate only to the extent they are deemed to contribute to the process of developing socialist society. They are, of course, subject to the leadership and direction of the PCC. These are meant to be mass organizations in a Leninist sense—as a means of mobilizing the masses to further state objectives).

<sup>114</sup> *See generally* Larry Catá Backer, *Globalization and the Socialist Multinational: Cuba at the Intersection of Business and Human Rights*; *See also*, HANDBOOK ON CONTEMPORARY CUBA: ECONOMY, CIVIL SOCIETY, AND GLOBALIZATION 287-299 (MAURICIO A. FONT AND CARLOS RIBOBÓ, eds., New York: CUNY/Paradigm Press, 2013).

<sup>115</sup> *Conceptualización*, *supra* note 19, ¶ 43, at 5 (“en circunstancias en que son relevantes las relaciones Sur-Sur, especialmente en América Latina y el Caribe.”) *See, e.g.*, Larry Catá Backer and Augusto Molina Ramon, *Cuba And The Construction Of Alternative Global Trade Systems: ALBA And Free Trade In The Americas*, 31 U. PA. J. OF INT’L L. 679 (2010).

<sup>116</sup> *See Conceptualización*, *supra* note 19, ¶¶ 45-115, at 5-8.

<sup>117</sup> *Id.* ¶ 49, at 6 (“impulsar y consolidar la construcción de una sociedad socialista próspera y sostenible”).

<sup>118</sup> *See id.* ¶ 1, at 28.

structures (*ritmos y estructuras*) of economic growth.<sup>119</sup> But not just undifferentiated economic growth but growth compatible with social justice, ecological harmony and the preservation of natural resources and the national patrimony.<sup>120</sup> But these rhythms and structures have a structure—the Lineamientos which provided the implementation framework for the new model of Cuban macro-economics and the politics of social construction and political institutionalization.<sup>121</sup> Prosperity is both material and spiritual, the latter in the sense of the cultivation of revolutionary consciousness; *this revolutionary consciousness is meant to remake the individual*.<sup>122</sup> It is grounded on a meaning of prosperity that assumes that the social production of wealth is the fundamental premise for a just distribution to individuals which, if it is successful, can produce a long slow increase in the level and quality of life—both material and spiritual.<sup>123</sup> And that is the ultimate objective of this model, but one which requires the constant hand of the vanguard party to maintain its flow and direction. This view of a perpetual Leninist party even in the attainment of a communist society produces its own contradiction—because it supposes that the end of class struggle is impossible and the need for a permanent leadership class is inevitable. This is a remarkable revision of Marxism through a Leninist institutional gloss that is premised on the permanence of hierarchy in politics, even in a communist state.

This sets the stage for the elaboration of the fundamental principles of the Model,<sup>124</sup> and then for the principal transformations in the current system the application of those principles demands,<sup>125</sup> including the role of non-state property ownership within the Model,<sup>126</sup> and its perfectibility.<sup>127</sup> The Model posits nine sustaining principles. These represent an elaboration of the basic principles of the Introduction in light of and as a continuation of the essential basis of Cuban

<sup>119</sup> *Id.* ¶ 50, at 6 (“La sostenibilidad del socialismo está asociada al desarrollo, y requiere ritmos y estructuras de crecimiento de la economía que aseguren la prosperidad con justicia social, en armonía con el medio ambiente, la preservación de los recursos naturales y el patrimonio de la nación.”)

<sup>120</sup> These norms must be understood within the ecology of the Model itself. While these start as universal values, they are given specific context within the ideology of Cuban Marxist Leninism that then focuses in on itself. Social justice, then, for example, might have to be interpreted in light of the class struggle ideology of the PCC and the long conflict with the United States. It may be expressed as a policy that treats law as a means of defining the streams of administrative discretion vested in state organs under the leadership of the PCC.

<sup>121</sup> *Conceptualización*, *supra* note 19, ¶¶ 50-51.

<sup>122</sup> *Id.* ¶ 52 (“el cumplimiento del deber, alta motivación y productividad, el ahorro, la eficiencia, y en especial, la aplicación de la ciencia, la tecnología y la innovación.”) (It is meant to produce a refinement of the working class that is ripe for participation in a socialist society under the leadership of the PCC, but not, it seems, one that can lose its class consciousness within a mature communist society in which class consciousness merges with the mass of the nation itself) (*Conceptualización*, *supra* note 19, Part IV).

<sup>123</sup> *Id.* ¶ 53.

<sup>124</sup> *See id.* ¶¶ 54-73 (Chapter 1.1 Principios de nuestro socialismo que sustentan el Modelo) (Sustaining Principles).

<sup>125</sup> *See id.* ¶¶ 74-87, at 6-7 (Chapter 1.2 and 1.2.1 Transformaciones principales del Modelo).

<sup>126</sup> *See id.* ¶¶ 88-96, at 7 (Chapter 1.2.2 Transformaciones principales del Modelo).

<sup>127</sup> *See id.* ¶¶ 97-115, at 7-8 (Chapter 1.2.3 Transformaciones principales del Modelo).

socialism.<sup>128</sup> One group touches on principles of societal values and structures. The first elaborates socialist human rights and moral values.<sup>129</sup> These values are elaborated as the inverse of what is to be avoided.<sup>130</sup> The second touches on principles of moral and juridical equality of rights and obligations of citizenship grounded in principles of equal opportunity, antidiscrimination and social justice,<sup>131</sup> including a right to work, health, education, sport, etc.<sup>132</sup> to ensure social welfare (§ 70-71).<sup>133</sup> Another emphasizes the Leninist character of the model, positing the leadership of the PCC as the Leninist vanguard party.<sup>134</sup> Additional principles touch on the State as the guarantor and source of sovereign authority,<sup>135</sup> socialist democracy is exercised through the legislature under the leadership of the PCC,<sup>136</sup> and the state as the source of popular rights and obligations through law.<sup>137</sup>

More importantly, the Model clearly posits the primacy of state ownership of the means of production as the central element of its political, economic and social model.<sup>138</sup> It follows that central planning is a necessary consequence of national ownership of the means of production.<sup>139</sup> This relationship between the PCC, the state and productive forces serve as the legitimating source of the Model and its assertion of the democratic character of socialist economics and makes possible the construction of a socialist welfare state.<sup>140</sup> The national character of the Model and

<sup>128</sup> *Id.* ¶ 57, at 6 (“Son resultado de nuestra historia, del legado martiano, el marxismo y el leninismo, el pensamiento y acción de nuestro líder histórico, Comandante en Jefe Fidel Castro Ruz, la obra del Partido Comunista de Cuba y la Revolución.”)

<sup>129</sup> *Id.* ¶ 58 (Noting that this follows the Chinese model, which also speaks to an ideal that the “people will have high ideals, moral integrity, a good education and a strong sense of discipline.”); see generally Constitution of the Chinese Communist Party, General Program, *supra* note 18.

<sup>130</sup> *Conceptualización*, *supra* note 19 ¶ 58, at 6 (“Todo ello, en contraposición al egoísmo, el individualismo y el consumismo enajenante y depredador.”); (“nondiscrimination”).

<sup>131</sup> *Id.* ¶ 68 (“El reconocimiento moral y jurídico de la igualdad de derechos y deberes de la ciudadanía y las garantías para hacerlos efectivos con equidad, inclusión y justicia social, expresados en la igualdad de oportunidades, y el enfrentamiento a toda forma de discriminación”) (These terms remain undefined, but are likely given effect through implementation policies set by the PCC).

<sup>132</sup> *Id.* ¶ 69 (“Entre ellos se destacan, el derecho al trabajo, la salud, la educación, a la seguridad ciudadana, la información, la comunicación social, al descanso, la cultura, el deporte, al sistema de seguridad y asistencia sociales.”)

<sup>133</sup> *Id.* ¶¶ 70-71 (The right to work provides a baseline obligation to work, on the basis of which the state will provide assistance—but only to those who really need it (“a quien realmente lo necesita”).

<sup>134</sup> *Id.* ¶ 59 (“fuerza dirigente superior de la sociedad y del Estado, expresión de la unidad del pueblo en torno a la dirección de la Revolución de los humildes, por los humildes y para los humildes.”) (The echo of Lincoln’s Gettysberg address is unmistakable).

<sup>135</sup> *Id.* ¶ 61.

<sup>136</sup> *Id.* ¶ 60.

<sup>137</sup> *Id.* ¶ 62 (“Garantiza los derechos y deberes individuales y colectivos, el respeto a la ley y las normas de convivencia, a las opiniones de los ciudadanos, el acceso a la justicia, el tratamiento con imparcialidad de las reclamaciones y la debida respuesta.”)

<sup>138</sup> *Id.* ¶ 63 (“a propiedad socialista de todo el pueblo sobre los medios fundamentales de producción, forma principal de la economía nacional y del sistema socioeconómico, base del poder real de los trabajadores.”)

<sup>139</sup> *Id.* ¶ 67 (“La planificación socialista, vía principal de la dirección de la economía para impulsar el desarrollo socialista.”)

<sup>140</sup> *Id.* ¶¶ 64-65 (“Esta condición ratifica y legitima sus derechos a participar en las principales decisiones sobre el uso de la riqueza creada con estos medios y ser beneficiarios de la misma, incluida la

the shadow of the United States produces a focus on national defense and the defense of the economic system posited against aggression from abroad.<sup>141</sup> And both serve to generate obligations on individuals—to defend the homeland,<sup>142</sup> and to protect state property and work hard (¶ 73).<sup>143</sup> The consequence for law is profound—economic law, at least, is directed inward toward the administration of the state as it administers the economic life of the nation. Law is institutional self-regulation. As such it becomes the means for structuring the bureaucracy and for assigning authority to make the discretionary decisions that are the foundation of a central planning economy. Law does not constrain, it assigns functions and describes the extent of jurisdiction. The patterns and vocabulary of rule of law becomes incomprehensible in this ideological framework.

The second part of Chapter 1 speaks to the points of necessary “transformation.” Though here one must think of transformation more in the form of “perfeccionamiento,”<sup>144</sup> grounded in the contemporary conditions in which Cuba finds itself<sup>145</sup> (and thus suggesting both imperfection and the impermanence of some of the characteristics of the Model). These transformations are divided into three parts. The first touches on the consolidation of the principal role of social property with respect to the fundamental means of production.<sup>146</sup> The necessary conditions for transformation with respect to the fundamental means of production include the creation of a revolutionary working class;<sup>147</sup> the modernization of SOEs (organization, technology, innovation;<sup>148</sup> application of Socialist distribution to workers (¶83);<sup>149</sup> SOE self-financing of development and improvement;<sup>150</sup> integrated SOE state ministry planning and direction;<sup>151</sup> and a unified currency.<sup>152</sup> The most interesting of these transformations is not the expected—those regarding the better management and operation of SOEs, but rather the emphasis on the reconstruction of the working class itself as a means of effective central planning as a substitution for markets.

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que se destina a los servicios sociales universales y gratuitos, así como a otros beneficios y subvenciones.”)

<sup>141</sup> *Id.* ¶ 66.

<sup>142</sup> *Id.* ¶ 72.

<sup>143</sup> *Id.* ¶ 73 (“cuidar la propiedad pública y social, acatar la disciplina del trabajo, respetar los derechos de los demás, contribuir según corresponda, al sostenimiento de los gastos sociales y observar las normas de convivencia socialista.”)

<sup>144</sup> *See id.* ¶¶ 74-115 (Chapter 1.2. Transformaciones principales del Modelo).

<sup>145</sup> *Id.* ¶ 75 (“Se refieren a las transformaciones que caracterizan los nuevos fundamentos del Modelo a partir de las condiciones internas y externas actuales.”)

<sup>146</sup> *See id.* ¶ 77 (Chapter 1.2.1. Consolidación del papel primordial de la propiedad social sobre los medios fundamentales de producción).

<sup>147</sup> *Id.* ¶ 80, at 7 (“La existencia de una clase obrera revolucionaria, capaz de trabajar con eficiencia y productividad en función del cumplimiento de los planes, reconociendo su papel de dueño—como parte de todo el pueblo—, de los medios fundamentales de producción.”)

<sup>148</sup> *Id.* ¶¶ 81-82.

<sup>149</sup> *Id.* ¶ 83.

<sup>150</sup> *Id.* ¶¶ 84-85.

<sup>151</sup> *Id.* ¶ 86.

<sup>152</sup> *Id.* ¶ 87.

The second touches on the recognition and diversification of different forms of ownership of property, its management, properly interrelated.<sup>153</sup> This includes controlled but enhanced foreign inbound investment—appropriately directed.<sup>154</sup> More importantly is its recognition of *complementary role of private property* over specifically designated means of production which *must be bent to the needs of perfecting the centrally planned economy*.<sup>155</sup> It is important to understand the way this substantially constrains the opening of the non-state sector that appears to be an important element of the 6<sup>th</sup> PCC Congress. First, the relevance and legitimacy of the non-state sector is recognized. But its role is tightly controlled as a complement to the state sector. And it is to be managed in a way that makes clear its subordination to and its utility for the state sector.<sup>156</sup> Effectively the idea of markets and markets based economic activity is decisively rejected. This restates an orthodoxy of Cuban Marxist thought that goes back at least to the 1980s.<sup>157</sup>

The third touches on transformations necessary for the perfecting of the socialist state, its systems and management bodies.<sup>158</sup> This follows from the principles of state ownership and direction of all of the productive forces of the state, with a complementary and highly regulated role for the non-state sector. These transformations are on their surface straightforward restatement of principle. The state is responsible for development of social and economic order.<sup>159</sup> Central planning of the economy must control both the state sector and private markets.<sup>160</sup> Import substitution and export growth as basic policy.<sup>161</sup> And judicial norms to be developed in aid of this system with order and discipline as its jurisprudential and implementation objectives.<sup>162</sup> The last echoes and expands Raúl Castro's call,

<sup>153</sup> See *id.* ¶¶ 88-96 (Chapter 1.2.2. Reconocimiento y diversificación de diferentes formas de propiedad y de gestión, adecuadamente interrelacionadas).

<sup>154</sup> *Id.* ¶89.

<sup>155</sup> *Id.* ¶¶ 91-96.

<sup>156</sup> *Id.* ¶ 94 (“forma parte de los elementos que condicionan la necesidad objetiva del reconocimiento del mercado, en el que interactúan bajo la planificación como vía principal de dirección de la economía”).  
<sup>157</sup> See, e.g., Fidel Castro Ruz, *Discurso pronunciado por el Comandante en Jefe Fidel Castro Ruz, Primer Secretario del Comité Central del Partido Comunista de Cuba y Presidente de los Consejos de Estado y de Ministros, en la clausura de la VIII Conferencia de la Asociación Americana de Juristas, celebrada en el Palacio de las Convenciones, (Sept. 17, 1987),* <http://www.cuba.cu/gobierno/discursos/1987/esp/170987e.html>.

<sup>158</sup> See *Conceptualización*, *supra* note 19, ¶¶ 97-115, at 7 (Chapter 1.2.3. Perfeccionamiento del Estado socialista, sus sistemas y órganos de dirección).

<sup>159</sup> *Id.* ¶ 99.

<sup>160</sup> *Id.* ¶¶ 101-04.

<sup>161</sup> *Id.* ¶ 105, at 7-8. There is irony here, as the policy harkens back to yet another artifact of developing state ideology from the post war “golden age”. See HA-JOON CHANG, *GLOBALIZATION, ECONOMIC DEVELOPMENT AND THE ROLE OF THE STATE* 21-23 (Zed Books, 2002) (“The desire of the newly independent nations to acquire not only political but also economic independence from their former colonial masters put rapid economic development at the top of the political agenda.” *Id.*, 21). As Chang also notes, though, “those strategies—which are usually (and somewhat misleadingly) known as import substitution industrialization (ISI) strategies—acquired the status of ‘the’ development strategy.” *Id.* 23. Yet trade liberalization has tended to force out local suppliers or deeply embed them in the middle and lower rungs of supply chains.

<sup>162</sup> *Conceptualización*, *supra* note 19, ¶ 106, at 8 (“Existe un sistema integrado de normas jurídicas, y su riguroso cumplimiento se controla con orden y disciplina”).



repeatedly made respecting the culture of labor in Cuba, for work progress that is ordered and disciplined (*con orden y disciplina*).<sup>163</sup> This order and discipline is to be contrasted with the disorder and undisciplined characteristics of markets, and its unsustainable consumerism.

Chapter 2 takes up the issue of the ownership of the means of production.<sup>164</sup> Here one comes to one of the central elements of Cuban theory—state ownership. The dominant position of state ownership, when combined with state control (chapter 3) forms the core basis of the theoretical conception of Cuban socialist modernization, whose “perfeccionamiento” is the object of this exercise. This stands in marked contrast to the Chinese General Program; whose central object is state management for the purpose of moving Chinese society closer to its ultimate objective—the establishment of a society so rich it can produce a communist social and economic order.<sup>165</sup> The chapter on the ownership of the means of production is divided into two parts. The first, and longest, touches on the organization of the means of production.<sup>166</sup> It organizes productive forces into a number of forms and specifies their characteristics.

The first consists of national socialist property (*propiedad socialista de todo el pueblo*).<sup>167</sup> These constitute the economic backbone of the state economy because of their strategic importance.<sup>168</sup> They are divided into two categories. The first includes non-commercial enterprises (*Las unidades presupuestadas*).<sup>169</sup> These may be operated directly by the state as part of its own government. The second includes commercial enterprises (*entidades empresariales de propiedad socialista de todo el pueblo*).<sup>170</sup> These constitute the state-owned enterprises and their production chains over which the state retains control.<sup>171</sup> For these enterprises salaries are set by

<sup>163</sup> See Raúl Castro *llama a los agropecuarios cubanos a trabajar con orden y disciplina*, CubaDebate (Sept. 15, 2013) <http://www.cubadebate.cu/noticias/2013/09/15/raul-castro-llama-a-los-agropecuarios-cubanos-a-trabajar-con-orden-disciplina-y-exigencia/#.V6PhNrUww44> (quoting the address of Raúl Castro: “Las dificultades principales y sus causas están identificadas. Lo importante ahora es trabajar con orden, disciplina y exigencia para dar el vuelco que la producción agropecuaria necesita y que nuestro pueblo, con todo derecho demanda.”).

<sup>164</sup> *Conceptualización*, *supra* note 19, ¶¶ 116-202, at 8-11.

<sup>165</sup> See Constitution of the Chinese Communist Party, General Program, *supra* note 18 (The CCP Basic Line recognizes the importance of the state sector, but has chosen to manage that sector through the regulatory governance mechanisms of the market, subject to the constraints of state policy).

<sup>166</sup> See *Conceptualización*, *supra* note 19, ¶¶ 119-91, at 8-11 (Chapter 2.1. Principales formas de propiedad sobre los medios de producción).

<sup>167</sup> *Id.* ¶¶ 121-57, at 8-9.

<sup>168</sup> *Id.* ¶¶ 123, 125, at 8 (“Esta forma constituye la columna vertebral de todo el sistema de propiedad de la sociedad socialista, por la función preponderante que desempeña.”) (by reason of its “carácter de ‘fundamental’ de un medio de producción radica en su papel estratégico en el desarrollo económico y social, la vitalidad, sostenibilidad del país y la seguridad nacional.”).

<sup>169</sup> *Id.* ¶¶ 138-42, at 9.

<sup>170</sup> *Id.* ¶¶ 143-157.

<sup>171</sup> *Id.* ¶ 148 (“el Estado decide y controla los destinos de las utilidades de las empresas propiedad socialista de todo el Pueblo, una vez cumplidas las obligaciones tributarias y otros compromisos.”).

reference to the obligation to satisfy the workers' basic needs,<sup>172</sup> and labor collectives participate in its operation<sup>173</sup> under the oversight of the State.<sup>174</sup>

Additional forms include the labor cooperative,<sup>175</sup> of which much has been written since they became a focus of the means of organization of the non-state sector.<sup>176</sup> Mixed enterprises (joint ventures) are organized to permit the investment from abroad, subject to substantial control by the state.<sup>177</sup> Also, the property of socialist civil society—the mass organization that are both public and private in character, is regulated.<sup>178</sup>

Of more interest, perhaps, is the recognition of the legitimacy of private property.<sup>179</sup> This form of economic activity must be found to serve a social function.<sup>180</sup> It is regulated by law to ensure that it serves as a complement to the state sector for the benefit of the economy as a whole.<sup>181</sup> This law provides general objectives and vests state administrators with wide discretionary authority to implement. This is the essence of the administrative function in central planning economies. Thus, wholly foreign owned enterprises may be authorized on a case by case basis.<sup>182</sup> As a critical reform, the ability of Cubans to form private enterprises is recognized. But the authority to engage in economic activities in this form is tightly managed to ensure that the non-state sector remains a complementary element to the economic development of the state.<sup>183</sup> Cubans may operate such enterprises if they constitute small family businesses,<sup>184</sup> and can form small, medium and micro scales with approval.<sup>185</sup> Critically, the state reserves to itself the power to constrain the authority to engage in private business activity by regulation that limits the concentration of property and wealth in the hands of private proprietors.<sup>186</sup>

The second generalizes principles derived from the organization of production through state enterprises.<sup>187</sup> Here the *Conceptualización* recaps the only permitted

<sup>172</sup> *Id.* ¶ 150.

<sup>173</sup> *Id.* ¶ 153.

<sup>174</sup> *Id.* ¶¶ 154-57.

<sup>175</sup> *Id.* ¶¶ 158-67, at 10.

<sup>176</sup> See generally Larry Catá Backer, *The Cooperative as Proletarian Corporation: Property Rights Between Corporation, Cooperatives And Globalization In Cuba*, 33 NW. J. OF INT'L L. AND BUS. 527 (2013).

<sup>177</sup> See *Conceptualización*, *supra* note 19, ¶¶ 168-72, at 10.

<sup>178</sup> *Id.* ¶¶ 187-91, at 10-11.

<sup>179</sup> *Id.* ¶¶ 173-86, at 10.

<sup>180</sup> *Id.* ¶ 174.

<sup>181</sup> *Id.* ¶ 175 ("La ley regula acorde con su papel complementario, de modo que contribuye a hacer más consistente el entramado empresarial y sus interrelaciones, en beneficio de toda la economía.")

<sup>182</sup> *Id.* ¶ 179.

<sup>183</sup> *Id.* ¶ 177 ("Los actores económicos de carácter privado son un elemento complementario, facilitador del bienestar, que canalizan potencialidades productivas que pueden aportar al desarrollo socioeconómico del país.")

<sup>184</sup> *Id.* ¶ 181 ("Pequeños negocios realizados en lo fundamental por el trabajador y su familia.")

<sup>185</sup> *Id.* ¶ 182 ("Empresas privadas de mediana, pequeña y micro escalas, según el volumen de la actividad y cantidad de trabajadores, reconocidas como personas jurídicas.")

<sup>186</sup> *Id.* ¶ 179, at 10. ("El ejercicio de los derechos de propiedad privada sobre determinados medios de producción se enmarca en normas que regulan los límites de la concentración de la propiedad y la riqueza, bajo los principios y finalidades del desarrollo socialista.")

<sup>187</sup> See *id.* ¶¶ 192-202, at 11 (Chapter 2.2. Sobre el sistema de entidades de carácter empresarial).

forms of economic organization.<sup>188</sup> It emphasizes the role of law in the constitution of the economic sector organized through these forms of economic enterprise.<sup>189</sup> All entities are regulated by law, but subject to the regulatory compliance defined by the State.<sup>190</sup> That regulatory compliance marks the structures of central planning through systems of regulation, review and approvals.<sup>191</sup> Its basis is State control of juridical persons in all respects through law.<sup>192</sup> Lastly, it reserves to the state the assignment of the provision of goods and services by any of these economic actors as it sees fit.<sup>193</sup> This last point underlines the subordinate relationship of the market, and of private ordering, to the central planning authority of the State. Both exist as and to the extent permitted and for so long as they remain compatible with the needs of the state as determined by the PCC. Private property, private enterprise and markets remain very much contingent and dependent.

If Chapter 2 deals with state ownership, Chapter 3 elaborates the principle of central planning—the nature of state power over the means of production in the service of socialist economics.<sup>194</sup> The essence of central planning confronts and rejects the notion of a significant role for markets.<sup>195</sup> It is divided into four parts—socialist planning, regulation, state management, and control. Each is considered briefly in turn.

Socialist planning is the foundation of economic activity.<sup>196</sup> Socialist planning is the means to achieving socialist development. Socialist Development is a term of art subject to its own definition.<sup>197</sup> Thus understood, within the *Conceptualización*, socialist development, in turn, is understood as built around human beings and their collective needs when organized in states.<sup>198</sup> It is to *the central planning of the*

<sup>188</sup> See *id.* ¶¶ 193-200.

<sup>189</sup> *Id.* ¶¶ 199-200, at 11.

<sup>190</sup> *Id.* ¶ 199. ("Todas las formas de propiedad y gestión están reguladas por la ley, sujetas al cumplimiento del marco regulatorio definido por el Estado y funcionan bajo similares condiciones en los mercados en que interactúan.")

<sup>191</sup> *Id.* ¶ 200, at 11. ("El referido marco regulatorio incluye, entre otros, los requisitos para su creación, posibles actividades, derechos y deberes de empleadores y empleados, así como responsabilidades sociales y medioambientales.")

<sup>192</sup> *Id.* ¶ 201.

<sup>193</sup> *Id.* ¶ 202, at 11. ("Asimismo, establece la selección de bienes y servicios que —por interés social—, han de proveerse por actores económicos de cualquier forma de propiedad y gestión.")

<sup>194</sup> *Id.* ¶¶ 203-264, at 11-13 (Chapter 3. La dirección planificada de la economía.)

<sup>195</sup> *Id.* ¶ 211, at 11 ("[D]e modo que las leyes del mercado no ejercen el papel rector del Modelo.")

<sup>196</sup> *Id.* ¶ 214, at 11.

<sup>197</sup> *Id.* ¶ 3, at 28. (It is offered as an alternative to capitalism, and as a humanist alternative to individualistic and unsustainable logic of capital) ("[S]e realiza en oposición a la lógica egoísta e insostenible del capital") (It requires the structural transformation of the economy and an instrumental engagement in international trade. It is grounded on the maximization of the creation of state wealth which is then distributed to the working class on an individual basis on social justice terms, which is in turn a function of collective benefit) ("Un requerimiento fundamental de este proceso es la creación de mayores riquezas, capaces de sostener y continuar avanzando en lo económico y social, con una distribución más justa y diferenciada según el aporte de cada uno, que al propio tiempo no deje a nadie desprotegido.")

<sup>198</sup> *Id.* ¶ 220, at 11. ("El desarrollo socialista se erige en función del ser humano considerando las dimensiones política, económico-financiera, social, demográfica, territorial, científico-tecnológica, formativo-cultural, de protección y conservación de los recursos y el medioambiente, entre otras.")

*individual*—rather than of the institutions and activities of state—that the *Conceptualización* is directed. Central planning is not narrowly tailored to the operation of the economy; it embraces all aspects of society—all actors in the economy and society.<sup>199</sup> Within this central planning model, regulation is associated with the ordering of transactions, as well as aspects relating to the distribution and redistribution of income.<sup>200</sup> Most important, it is understood as a means of market regulation and control.<sup>201</sup> Among the most important functions of regulation as a tool of central planning are the following responsibilities: (1) regulate market access and induce rational consumption; (2) identify areas suitable for market functioning; (3) establish standards and regulate competition; (4) consumer protection; and (5) restrict monopoly conditions contrary to societal interests. These regulatory engagements with the market hide critical concepts that distinguish Cuban from other forms of political economy. Among the most important are the framing notions of rational production and consumption as the framework within which planning decisions are made and produce social effects. Critical here are notions of rational consumption and production.<sup>202</sup> These have a long history that trace back to the 1980s and Fidel Castro's notions of capitalist consumerism as a veil for the exploitation of developing states.<sup>203</sup> And again, the Model emphasizes the constraining and regulation of those identified sectors in which market style activities may be tolerated.<sup>204</sup>

State management and control issues round out the chief characteristics of central planning theory. State management focuses on resource management and regional economic integration. It is written in the shadow of over a decade of theorizing regional integration on a socialist central planning model<sup>205</sup> through the *Bolivariana para los Pueblos de Nuestra América*.<sup>206</sup> Control speaks to issues of regulatory governance: monitoring, surveillance, and regulatory structures to detect offenses and enforce planning.<sup>207</sup>

<sup>199</sup> *Id.* ¶ 217 (“La planificación comprende a todos los actores de la economía y la sociedad, toma en cuenta las políticas definidas y asegura su respaldo material.”).

<sup>200</sup> *Id.* ¶¶ 224–25, at 11 (“asociada al ordenamiento de las transacciones, así como a aspectos referentes a la distribución y redistribución de los ingresos.”).

<sup>201</sup> *Id.* ¶¶ 245–50, at 12.

<sup>202</sup> *Id.* ¶ 246, at 12.

<sup>203</sup> See generally Larry Catá Backer, *Odious Debt Wears Two Faces: Systemic Illegitimacy, Problems and Opportunities in Traditional Odious Debt Conceptions in Globalized Economic Regimes*, 70 DUKE I. L. & CONTEMP. PROBS. 1, (2007).

<sup>204</sup> *Conceptualización*, *supra* note 19, ¶ 247, at 12 (“Delimitar los ámbitos o esferas de la vida económica y social en que se reconoce y utiliza el mercado, cómo y en qué medida, así como los derechos y obligaciones de los diferentes tipos de actores.”).

<sup>205</sup> *Id.* ¶ 259, at 13 (“Se promueve el fortalecimiento del proceso de integración económica con otros países, en especial con los de la región.”).

<sup>206</sup> See ALBA Info, <https://albainfo.org/what-is-the-alba/> (last visited Oct. 2, 2016). See generally Larry Catá Backer, *From Colonies to Collective: ALBA, Latin American Integration, and the Constitution of the Regional Political Power*, in ROUTLEDGE HANDBOOK ON DIPLOMACY AND STATECRAFT (B.J.C. McKeher, ed., 2012).

<sup>207</sup> *Conceptualización*, *supra* note 19, ¶ 264, at 13 (“El sistema nacional de estadísticas da respuesta a las necesidades del nuevo escenario en que interactúan diferentes formas de propiedad y gestión, utilizándose de manera combinada métodos directos e indirectos de captación de información, como registros administrativos y contables, censos, encuestas y otros métodos de estimación.”).

Chapter 4 finally takes up the issue of the relationship between Socialist economics and socialist society and culture, tying together economic and social development.<sup>208</sup> The specific object is the *management and control of labor markets and the social organization of the state*. That makes sense from the basic organizational principle of state control of the means of production. Those means include both capital and labor. It also follows that the management of labor markets as a control of labor as a factor in the production of wealth is intimately tied to the management of labor, and of the masses themselves. Yet strangely, and unlike the Chinese system, there appears to be a sense that there will always be a vanguard party leading—limited to a few—and the masses that must be led. There is no corresponding “three representations” line which assumes the eventual growth of the Communist Party to include larger numbers of citizens pointing to a time when people and party merge.<sup>209</sup> This division of authority and the permanence of a vanguard party relationship with the working class, the masses, under a system in which the vanguard controls economic transactions through decision making authority derived from law, produces a context in which labor is both a commodity and the object of the obligation of the vanguard to the state. It follows that, just as central planning is deployed to perfect, and substitute for markets, so the masses must be perfected—as revolutionary worker and as model citizen.<sup>210</sup> It is to those ends that Chapter 4 is developed. It is in this sense that Chapter 4 ties together economic and social development.<sup>211</sup>

What the *Conceptualización* references as societal politics (*politica social*) is understood as a further elaboration of the fundamental goal of producing a socialist society that is prosperous and sustainable. The Model speaks to the prosperity aspect especially in the context of developing a normative system for the working class—the masses who are the vanguard party’s charge—that like its notions of rational production and consumption, is grounded in rational choices corresponding to the values of society which are protected and nurtured by the state.<sup>212</sup> The object, then, is to embed the grand normative vision of the state within the bodies of its working class so that they might be the living embodiment of theory made active through their deployment within the economic construct overseen by the vanguard party. The

<sup>208</sup> *Id.* ¶¶ 265-311, at 13-15 (Chapter 4. La Política Social).

<sup>209</sup> See generally Larry Catá Backer, *The Rule of Law, The Chinese Communist Party, and Ideological Campaigns: Sange Daibiao (the “Three Represents”), Socialist Rule of Law, and Modern Chinese Constitutionalism*, 16 *TRANSNAT’L L. & CONTEMP. PROBS.* 29, (2006).

<sup>210</sup> *Conceptualización*, *supra* note 19, ¶ 268, at 13 (“El ideal de prosperidad de los ciudadanos se sustenta en perspectivas alcanzables de materialización de proyectos racionales de vida, individuales y colectivos, en correspondencia con los valores de nuestra sociedad, sustentados principalmente en los ingresos provenientes del trabajo, y los derechos constitucionales.”).

<sup>211</sup> *Id.* ¶ 265, at 13 (“La consolidación y desarrollo sostenible de nuestro socialismo solo es posible a partir de preservar los valores —en especial los éticos, políticos y culturales— y el aumento de la productividad, de modo que se incremente la riqueza para su justa distribución.”).

<sup>212</sup> *Id.* ¶ 268 (“El ideal de prosperidad de los ciudadanos se sustenta en perspectivas alcanzables de materialización de proyectos racionales de vida, individuales y colectivos, en correspondencia con los valores de nuestra sociedad, sustentados principalmente en los ingresos provenientes del trabajo, y los derechos constitucionales.”).

social space, like the economic space, is defined through the values that are identified and cultivated by the state through its workers.

And, indeed, *unless the vanguard can reconstruct its proletariat, the possibility of successfully substituting the planning of the economy for markets becomes impossible*. Here, then, is the key to *Marxist Central Planning Models*—the fundamental need to reshape the masses and direct them in their activation of the productive forces now owned by the state. The shadow of motivating labor, of producing the appropriate attitude—“alta motivación y productividad, el ahorro, la eficiencia”<sup>213</sup> has dogged the PCC since the 1960s. By 1979 Raúl Castro complained of the “problems of indiscipline, lack of control. Irresponsibility, complacency and negligence.”<sup>214</sup> Where the discipline of the market is rejected, then the focus must be redirected to the reform of the individual workers. And the shadow of the United States hangs heavy in its construction as well. The additional object of creating the model worker imbued in socialist culture is necessary not just to activate the planned economy but as a defense against the noxious enticements of bourgeois culture.<sup>215</sup>

Chapter 4 treats these issues in two parts. The first touches on economic and social rights.<sup>216</sup> The second touches on work as a source of welfare and prosperity.<sup>217</sup> The provisions on economic and social rights are understood as rights with a constitutional dimension.<sup>218</sup> The right to work is also an obligation—work contributes to the production of wealth which, in turn, is the source of wealth necessary to ensure the welfare of the masses as a whole.<sup>219</sup> The model member of the working class, then, works not just for herself, but for the working class itself. It is in this sense that the failure to work, and to work in accordance with the normative premises of the Model, *can be understood as political wrong*, and thus a legal one as well. If it is the obligation and privilege of individuals to work, it is the obligation of the state to ensure the production of workers appropriately trained and socialized. And so the Model focuses on the obligation to education and cultural socialization.<sup>220</sup> The state determines the premises of the concept of beauty,<sup>221</sup> and the appropriate

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<sup>213</sup> *Id.* ¶ 52, at 6 (“[A]lta motivación y productividad, el ahorro, la eficiencia”). [“[H]igh motivation, productivity, savings and efficiency”].

<sup>214</sup> CARMELO MESA-LAGO, *THE ECONOMY OF SOCIALIST CUBA: A TWO DECADE APPRAISAL* 135 (Univ. of N.M. Press 1981).

<sup>215</sup> *Conceptualización*, *supra* note 19, ¶¶ 270-71, at 13 (those enticements touch not just on the great social values—social justice, discrimination, rights and obligations to the state, but also on all aspects of culture that contributes to the mindset that makes for a perfectible mass actor—literature, sport, culture and the like).

<sup>216</sup> *Id.* ¶¶ 273-98, at 13-14.

<sup>217</sup> *Id.* ¶¶ 299-311, at 14.

<sup>218</sup> *Id.* ¶ 274, at 13 (but its constitutional dimension must be understood in Marxist Leninist terms; that is that such constitutional rights are modified by and interpreted through the basic line of the vanguard party to the extent that basic line remains true to the ideological foundations of the state. This is not constitutional law as understood in the West).

<sup>219</sup> *Id.* ¶¶ 295-98, at 14 (Guaranteeing of basic welfare services).

<sup>220</sup> *Id.* ¶¶ 277-84, at 13-14.

<sup>221</sup> *Id.* ¶ 285, at 14 (“Se cultiva el gusto por la belleza y la disposición a encontrar respuestas a las necesidades estéticas y éticas cotidianas en el diseño, donde se enlazan lo funcional y lo artístico.”).

approach to the use of non-working time.<sup>222</sup> To this construction of the socialist worker, the family is understood to contribute,<sup>223</sup> and to the extent regulated, as are all means of communication and information dissemination.<sup>224</sup> All is bent to the production of proper values and an appropriate basis for cultural knowledge and obligation in the service of the socialist state economy.

The provisions on work as a source of welfare and prosperity seek to conflate wealth distribution and social justice and the obligations of the revolutionary working class.<sup>225</sup> This requires a focus on wages and on consumption. Markets in wages are rejected. Just as the state substitutes itself for markets in the generation of economic activity, so it substitutes itself for markets in wages. That permits the break between prices, income and wages.<sup>226</sup> It is in this sense that it allocates wages based on its notions of social justice—wages are meant to provide for needs and may be differentiated on the basis of need and circumstances.<sup>227</sup> Such control of wages is made possible by the socialization of workers to accept the idea that the wages they receive are indeed just—and thus the importance of the model revolutionary worker.

As important, though, is the cultivation of cultures of rational consumption.<sup>228</sup> Consumption, like work, is thus a political as well as economic issue, one in which the state may lend a hand in determining the scope of the universe of consumables that may be offered to the revolutionary worker and her family.<sup>229</sup> That, in turn, requires confrontation with and a rejection of, what is understood as capitalist consumption—something that Fidel Castro has long condemned as both unsustainable and necessary for the production of hegemony by powerful states in

<sup>222</sup> *Id.* ¶ 286, at 14 (“[Q]ue toman en cuenta los intereses, preferencias y tradiciones de los diferentes grupos de edades y segmentos de la población. Se aplican políticas que promueven el acceso de todos a productos culturales de la más alta calidad, en correspondencia con las posibilidades de la economía.”); *See also id.* ¶ 289, at 14 (“Se garantiza el derecho universal a la práctica masiva de actividades físicas y recreativas; tomándose en cuenta las necesidades e intereses de los diferentes segmentos de la población.”).

<sup>223</sup> *Id.* ¶¶ 287-88, 293, at 14 (Discussing rural families).

<sup>224</sup> *Id.* ¶ 290, at 14 (“Mediante las vías de comunicación e información se accede de forma analítica, crítica y selectiva a la producción cultural, científica y tecnológica nacional e internacional, de modo que se asimila lo que tributa al desarrollo económico y social, en correspondencia con los valores de nuestra sociedad socialista.”).

<sup>225</sup> *Id.* ¶ 300, at 14 (“La distribución de la riqueza creada en correspondencia con el trabajo aportado por cada cual, es expresión concreta de justicia social y un importante factor motivador para que todas las personas aptas sientan la necesidad de trabajar, promoviéndose así una cultura de productores.”).

<sup>226</sup> *Id.* ¶ 305 (“La correlación entre la dinámica de los precios minoristas y los ingresos provenientes del trabajo, las pensiones y jubilaciones, son objeto de control en función de proteger los ingresos reales de los trabajadores, jubilados y beneficiados por la asistencia social.”).

<sup>227</sup> *Id.* ¶ 302, at 14 (“En consecuencia, existen diferencias en los ingresos de quienes trabajan, en función de la cantidad, calidad y complejidad de su labor y los resultados obtenidos.”).

<sup>228</sup> *Id.* ¶¶ 307-311, at 14-15 (“La propiedad personal sobre bienes de uso y consumo se protege, promoviéndose su incremento racional a partir de ingresos lícitos.”).

<sup>229</sup> *Id.* ¶ 308, at 14 (“Se aplican políticas que toman en cuenta el carácter de las necesidades que satisfacen los diferentes productos y servicios y el interés social de estimular o desestimular su consumo.”); *id.* ¶ 309, at 14. Such a range of products are contextually formed (“de acuerdo con las posibilidades de la economía y las características de cada territorio”) and are chosen for their compatibility with the values of socialist culture that the vanguard party seeks to cultivate (“al tiempo que se fomenta una cultura de consumo racional en correspondencia con los valores de nuestra sociedad.”).



globalized economic systems. Thus, again policy made in the shadow of the United States.<sup>230</sup> It follows that to this end the state is required to socialize the consumption expectations of its masses: "The state regulates advertising, aimed at responsible and sustainable consumption, based on ethical and aesthetic principles unrelated to any kind of deception, discriminatory or offensive to any sector of society, and promote as symbols of colonial and pro-capitalist messages."<sup>231</sup> Consumption, then, is conflated with the anti-capitalist, anti-globalist and anti-U.S. policies of the Cuban state.

The "consideraciones finales" sums up the project,<sup>232</sup> its potential and its weaknesses. The Conceptualización is understood as a necessary effort to make irreversible the construction of socialism in Cuba. The project is complex and bound up in the project of the implementation of the Lineamientos. But the conceptualization itself is a function of outside forces over which the state has little control—the hostility of the United States, Latin American integration and the international relations of Cuba in a complex geo-political world order.<sup>233</sup> Beyond the international situation, the particular relationship and actions of the United States stands as the ideological polar opposite against which the conceptualización itself might be measured—as a normative project.<sup>234</sup> In a sense, then, theorization of Marxist Leninism in Cuba must be a reactive exercise and constrained by geopolitical realities. Yet *one wonders whether such "realities" ought to affect theory or merely the form of its realization*. Indeed, that appears a substantial and traditional weakness of conceptualization within a Cuban state and Party that cannot disentangle theory and implementation. It is that fear of the outside that points conceptualization into a reactive character—it seeks to avoid the structural adjustments common to poor developing states within economic globalization, but tells us little about what theory suggests would provide a socialist path toward a precise national goal.

Within that constraint, the basic line is Raúl Castro's slow and steady progress principle.<sup>235</sup> Related to the slow and steady principle is the "cautious and systematic" practice of reform.<sup>236</sup> Such principles and the advancement of the Conceptualización requires participation—debate and engagement by key social sectors—labor and students. But it also requires a greater commitment to transparency—at least in the

<sup>230</sup> See, e.g., Fidel Castro Ruz, *Una Revolución Solo Puede ser Hija de la Cultura y sus Ideas*, Discurso pronunciado por el Presidente del Consejo de Estado de la República de Cuba en la Aula Magna de la Universidad Central de Venezuela (Feb. 3, 1999) (<http://www.cuba.cu/gobierno/discursos/1999/esp/f030299e.html>); See generally Larry Catá Backer, *Ideologies of Globalization and Sovereign Debt: Cuba and the IMF*, 24 Pa. St. INT'L L.R. 497, (2006).

<sup>231</sup> *Conceptualización*, supra note 19, ¶ 311, at 15 ("El Estado regula la publicidad, orientada al consumo responsable y sostenible, basada en principios éticos y estéticos ajenos a cualquier tipo de engaño, discriminación u ofensa a algún sector de la sociedad, ni promover símbolos portadores de mensajes coloniales y procapitalistas.").

<sup>232</sup> *Id.* ¶¶ 312-30.

<sup>233</sup> *Id.* ¶ 314.

<sup>234</sup> *Id.* ¶¶ 323-24.

<sup>235</sup> *Id.* ¶315 ("Debe avanzar sin prisa pero sin pausa.").

<sup>236</sup> *Id.* ¶316, at 15 ("Se requiere de tiempo y un sistemático control y evaluación de sus impactos económicos y sociales.").

form of informational transparency.<sup>237</sup> This process is to be controlled by the PCC as a Leninist vanguard organization. But that control ought to be dynamic in the sense that the Conceptualización serves as a baseline theory that requires improvement.<sup>238</sup> It is in this context that Cuba should assert its interests in the context of regional integration,<sup>239</sup> multilateral organizations,<sup>240</sup> and the internal construction of socialism in Cuba.<sup>241</sup> Cuba's internal development, then, is to be protected against outsiders and projected outward as well, one in which the state owns and manages the means of production, providing a very small space for individual activity that is not directed by the state under the leadership of the PCC. This is, in large respect, a refinement of the most advanced form of mid-20<sup>th</sup> century European Bureaucratic Marxism, one that views the outside world with suspicion and is sensitive to the notion that its very existence is threatened without end by its most implacable ideological enemies against which theory must be deployed.

### III. COMPARISON WITH CHINESE MARKETS MARXISM MODEL

The *Conceptualización* is now is meant to serve as the basis for a debate about the future of Cuban political economy. For students of markets, and that includes most people involved in the construction and management of the global economic order, including Marxist markets, this effort is worth considering. Not that it is right, but that it may be influential is alone worth the time to engagement with its principles and approaches. Indeed, the *Conceptualización* may serve as the most interesting *theoretical* counterpoint to the development of Marxism in a generation. Perversely, that interest is generated in large part by its anachronisms.

And, indeed, the *Conceptualización* nicely develops an alternative approach to the evolution of Marxist theory that, since the collapse of the Soviet Union, has been essentially a Chinese project. It brings back and evolves the European approach to Marxism and Leninism which can be distinguished from the development of markets Marxist theory in China in several ways. Interestingly, there is a broad convergence in the language of the *Conceptualización* language with that of the Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform,<sup>242</sup> and of the General Program of the Chinese Communist Party Constitution itself.<sup>243</sup> But the similarity of form and the echoes of the structure of the Model for Reform also reveal substantial differences in the substance of the Model. For Asian Markets Marxism markets are

<sup>237</sup> *Id.* ¶ 319 n.2, at 15 (“Es preciso asegurar más explicación al pueblo, más disciplina y exigencia y un mayor y más cercano seguimiento al proceso de cambios.”) (Quoting Del Informe Central al 7mo. Congreso del Partido, abril de 2016).

<sup>238</sup> *Id.* ¶¶ 321-22.

<sup>239</sup> *Id.* ¶¶ 325-26.

<sup>240</sup> *Id.* ¶ 327.

<sup>241</sup> *Id.* ¶ 328.

<sup>242</sup> Zhōng Guó Gōng Chǎn Dǎng Zhōng Yāng Wēi Yuán Huì Guān Yú Ruò Gǎn Zhòng Dà Wèn Tí (as adopted by 18<sup>th</sup> Plenary Sess., Nov. 12, 2013), (Jan. 16, 2014), [http://www.china.org.cn/china/third\\_plenary\\_session/2014-01/16/content\\_31212602.htm](http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm), translated in <http://lawprofessors.typepad.com/files/131112-third-plenum-decision---official-english-translation.pdf>.

<sup>243</sup> Constitution of the Chinese Communist Party, General Program, *supra* note 18.

a means *toward* Socialist Modernization. Under the Cuban Model markets serve as a marginal complement to State Control and operation of Political Economy. The consequences for approaches to regulatory systems follow. Asian Markets Marxism stresses management through rule against direct control. The Cuban Model inverts the relationship, stressing the need for control through layers of administrative discretion organized through rules, over management of autonomous actors.

There are other broad structural differences as well. The Asian Markets Marxism Model is internally driven. That is, it is driven by the logic of the internal conditions of the nation. It looks to those conditions to determine the path of its political and economic theory. Cuban Central Planning Marxism, on the other hand, appears driven by the shadows of its external enemies, especially of the United States, by its historical relationship with a state now long gone, the Soviet Union, and its historical desire for regional integration. The object of the Models are also distinct. Asian Market Marxism stresses its role as a *path* toward the construction of a socialist economy. The Cuban Model focuses on the improvement (*perfeccionamiento*) of that economy. The difference is subtle but important. One posits attainment of the goal of a socialist economy, the "*Socialist Road*" *toward Marxist society*. The Cuban Model posits the perfecting of something already at hand and stresses the need for *protecting the fruits of the Revolution and the socialist society created*. Lastly, the approaches to the control of productive forces—the essence of the vanguard role of Leninist Parties, also varies between the Models. For Asian Markets Marxism productive forces are meant to be liberated toward Leninist ends. That is the essence of the Chinese Communist Party's line of reform and opening up under its Four Cardinal Principles. For Cuban Central Planning Marxism, the deployment of productive forces is an end in itself. It is through that deployment that the Socialist system is maintained and perfected, and socialist "equilibrium" conditions are maintained.

It is possible to distill these differences among these two Marxist-Leninist theories of state power and political economy within two key areas of difference. The first touches on markets and Marxism. That is, on the compatibility of markets and market mechanism for the construction of a Marxist society, and more pointedly, its utility as a tool of Leninism in that construction. The second touches on the way in which Marxism understands the nature of the individual. That is, on the primacy of a notion of individuals as labor, and of labor, like capital, as a means of production that must be "owned" and managed by the state and deployed as a tool of Leninism in the construction of a Communist society. The implications of the answers and approaches to both questions have profound effects on how a political-societal order understands the world around it and how it perceives reality and the framework for decision making. This is especially important in the conceptualization of human rights and rule of law.

So, what of markets in this comparative analysis? Ironically, the advent of big data, of the algorithms that now increasingly automate markets, may itself make it possible to move the mechanism of the markets out of the private sphere and back into the state. But that touches on the markets and not on states, and the *Conceptualización* fails precisely because it inverts cause and effect. The state can manage markets—can substitute itself for markets—only by becoming the market

itself.<sup>244</sup> Contrast the construction of a “socialist market economy” as a part of the Chinese Communist Party’s basic line.<sup>245</sup> Rather than use markets as a means of developing productive forces—the Chinese Markets Marxism Model approach—<sup>246</sup> *the Cuban Central Planning Marxism Model would transform the state and its apparatus into the market itself*. The only exceptions are in those areas that the Cuban state has left to the individual. Those leftovers constitute a sort of detritus of economic activity with the lowest value added and the most marginal expressions of power.<sup>247</sup> It is only in that way that the directionless aggregation of individual decisions grounded in personal interest can be crafted into an instrument for the achievement of the overall objectives of the vanguard Party.<sup>248</sup> That applies not just to business planning and resource allocation to specified industrial sectors targeted for growth, but also more generally to the setting of prices for goods and services,<sup>249</sup> interest rates,<sup>250</sup> and what is termed rational production and consumption.<sup>251</sup> This is in marked contrast to Asian Markets Marxism in which, for example, the vanguard Party is charged to ensure the improvement of mechanism by which prices are determined mainly by the market.<sup>252</sup>

It follows that the *Conceptualización* speaks to business performance in terms of compliance with planning directives under conditions of a regulated market where centralized administrative measures are the production of interactions with macro-economic policies that can produce decisions that are in accord with the interests of the economy as a whole.<sup>253</sup> Such planning applies in equal measure to international

<sup>244</sup> *Conceptualización*, *supra* note 19, ¶ 211, at 11 (“El sistema de dirección planificada de la economía tiene en cuenta la vigencia de las relaciones de mercado, regula el accionar de sus leyes y limita los espacios de su actuación, de modo que las leyes del mercado no ejercen el papel rector del Modelo”).

<sup>245</sup> See Constitution of the Chinese Communist Party, General Program, *supra* note 18, ¶ 14 (Regarding the socialist market economy) (中国共产党领导人民发展社会主义市场经济。毫不动摇地巩固和发展公有制经济，毫不动摇地鼓励、支持、引导非公有制经济发展。发挥市场在资源配置中的基础性作用，建立完善的宏观调控体系。) [“The Communist Party of China leads the people in developing the socialist market economy. It unwaveringly consolidates and develops the public sector of the economy and unswervingly encourages, supports and guides the development of the non-public sector. It gives play to the basic role of market forces in allocating resources and works to set up a sound system of macroeconomic regulation.”].

<sup>246</sup> See, e.g., Constitution of the Chinese Communist Party, General Program, *supra* note 18, ¶ 15; see generally Larry Catá Backer, *Part 15 (CCP Basic Line-Reform and Opening Up) – On a Constitutional Theory for China – From the General Program of the Chinese Communist Party to Political Theory*, LAW AT THE END OF THE DAY (Sept. 18, 2015), <http://lcbackerblog.blogspot.com/2015/09/part-15-ccp-basic-line-reform-and.html>.

<sup>247</sup> Larry Catá Backer, *The Cooperative as Proletarian Corporation: Property Rights Between Corporation, Cooperatives And Globalization In Cuba*, 33 NW. J. INT’L L. & BUS. 527 (2013) at 579-82, 614-17.

<sup>248</sup> *Conceptualización*, *supra* note 19, ¶¶ 212-214, at 11.

<sup>249</sup> *Id.* ¶¶ 239-42, at 12.

<sup>250</sup> *Id.* ¶ 248, at 12.

<sup>251</sup> *Id.* ¶ 246, at 12.

<sup>252</sup> 18<sup>th</sup> Cent. *Comm. of the Communist Party of China*, *supra* note 242 (“Any price that can be determined by the market must be left to the market, and the government is not to carry out improper interventions.”).

<sup>253</sup> *Conceptualización*, *supra* note 19, ¶ 86, at 7 (“El desempeño empresarial en función del cumplimiento de los planes bajo las condiciones de un mercado regulado, donde las medidas

trade, to be undertaken is a necessary condition to sustainable internal development.<sup>254</sup> Asian Markets Marxism, on the other hand, speak to improvement of “the macro control system guided by the national development strategy and plans mainly through fiscal and monetary policies; institutionalize the formulation of macro control objectives and the implementation of policy measures, and enhance the coordination of fiscal, monetary, industrial and pricing policies.”<sup>255</sup> Likewise, Asian Markets Marxism poses open and integrated economic activity on the international level—an approach almost the inverse of the Cuban Model developed in the Conceptualización.<sup>256</sup>

Of course, as a general matter, technological innovation may well make it possible to substitute bureaucracy for markets. And that is possible only because markets themselves are becoming free of individual volition, as the availability of data may make it possible to substitute the predictive effects of “big” data for the real-time actions of the market itself.<sup>257</sup> Indeed, the emerging techniques of data management in transactions may make that possible.<sup>258</sup> In this form, in the form that big data that technology makes possible, that this poses the most interesting challenge. For Cuban “Central Planning Marxism” Model, the ability to use data to substitute for markets creates a contradiction for the leadership role of the Communist Party itself—where data may leave little room for or require a substantial transformation of the role of the PCC itself. But the predictive power of big data poses substantial challenges to Chinese Markets Marxism theory and the core of Western neo liberal market ideology. For the former, it suggests an autonomy of markets from the vanguard Party itself and will require theoretical innovation to ensure that data driven markets are still purposed to the main objectives of the Party. For the latter, it suggests that the very foundation of Western political-economy may

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administrativas centralizadas en interacción con las políticas macroeconómicas y otras, inducen a adoptar decisiones de acuerdo con los intereses de toda la economía”.

<sup>254</sup> *Id.* ¶ 105, at 7-8 (“En consecuencia, la política económica prevé las condiciones necesarias y estimula la competitividad, considerando las tendencias y dinámicas del mercado internacional; se estimula eficazmente la exportación y la sustitución de importaciones.”).

<sup>255</sup> *18<sup>th</sup> Cent. Comm. of the Communist Party of China, supra* note 242, at Part IV, ¶ 14.

<sup>256</sup> *Id.* at Part VII. (“To adapt to the new trend of economic globalization, we must promote domestic openness together with openness to the outside world, better integrate the “bring in” and “go global” strategies, stimulate the orderly and free flow of international and domestic factors of production, highly efficient allocation of resources and in-depth market integration, and foster new advantages in participating in and leading international economic cooperation and competition at a faster pace, in order to promote reform through opening up.”).

<sup>257</sup> *Cf.*, Bernard Marr, *How is Big Data Used in Practice? 10 Use Cases Everyone Must Read*, ADVANCED PERFORMANCE INSTITUTE, <http://www.ap-institute.com/big-data-articles/how-is-big-data-used-in-practice-10-use-cases-everyone-should-read.aspx> (last visited Oct. 2, 2016).

<sup>258</sup> *See, e.g.*, FRANK PASQUALE, “THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS THAT CONTROL MONEY AND INFORMATION” (2015); Andrew McAfee and Erik Brynjolfsson, *Big Data: The Management Revolution*, HARVARD BUSINESS REVIEW, (Oct. 2012), <https://hbr.org/2012/10/big-data-the-management-revolution/ar>; *cf. Best of the Blogs - AI, Machine Learning, Data Mining, and Big Data*, AUTOMATED TRADER [http://www.automatedtrader.net/articles/artificial-intelligence/153528/best-of-the-blogs\\_-ai-machine-learning--data-mining--and-big--data](http://www.automatedtrader.net/articles/artificial-intelligence/153528/best-of-the-blogs_-ai-machine-learning--data-mining--and-big--data); <https://hbr.org/2012/10/big-data-the-management-revolution/ar>; *cf. Best of the Blogs - AI, Machine Learning, Data Mining, and Big Data*, Automated Trader [http://www.automatedtrader.net/articles/artificial-intelligence/153528/best-of-the-](http://www.automatedtrader.net/articles/artificial-intelligence/153528/best-of-the-blogs_-ai-machine-learning--data-mining--and-big--data)

be undermined by a diminution of the centrality of the individual and individual autonomy within a system in which the only autonomous "person" are aggregations of individuals whose characteristics suggest their actions through the application of data driven algorithms.

And the differences in approaches to markets is mirrored in the differences in approaches to labor as well. Here the Chinese and Cuban approaches are quite distinct. The *Conceptualización* appears still very much grounded in notions of class struggle<sup>259</sup> that were subordinated to the primacy of socialist modernization in China from the late 1970s.<sup>260</sup> Individuals are understood as the central element of labor and labor is understood as the second of the two key elements of productive forces that are the key elements to operate if the vanguard party through the state apparatus is to substitute itself for markets. But individuals as a *productive force* creates a problem; unlike capital, labor has volition and, more importantly, their welfare as *individuals* is the animating element of Marxist theory. That model speaks to the recognition of the motivation of the working class to work and to be efficient, as well as the erosion of socialist values,<sup>261</sup> a revolutionary consciousness<sup>262</sup> that would help establish a "revolutionary worker" willing and eager to contribute productively and efficiently as directed by central planning needs and recognizing her role as a contributor to the functioning of a revolutionary society as an owner of the means of production.<sup>263</sup> The product would be the existence of a system of perfected planning from the top that is rational, agile, that is powered by motivated workers adequately paid producing wealth for the common good.<sup>264</sup> And for people in Cuba, that suggests the contradiction between motivated workers and a paymaster state which also directs all of the means of production to its own ends.

For Cuban Central Planning Marxism that leads almost inexorably to the task of remaking individuals to better serve the state and the project of maintaining a communist society. All of the provisions touching on labor obligations and on the making of the model citizen elaborate the fundamental principle of that model. But it also suggests an almost permanent separation between individuals who serve as revolutionary worker, and those whose function is to serve within the vanguard party apparatus itself. The permanent class struggle element inherent in that produces a

<sup>259</sup> See, e.g., *Conceptualización*, *supra* note 19, ¶ 80, page 7; see also *supra* note 122 and accompanying text.

<sup>260</sup> Constitution of the Chinese Communist Party, General Program, *supra* note 18 ("Owing to both domestic circumstances and foreign influences, class struggle will continue to exist within a certain scope for a long time and may possibly grow acute under certain conditions, but it is no longer the principal contradiction.")

<sup>261</sup> *Conceptualización*, *supra* note 19, ¶ 30, at 5 ("[H]a afectado la motivación para trabajar y ser eficientes, a la vez que se observa cierta erosión de valores inherentes a nuestra sociedad.")

<sup>262</sup> *Id.* ¶ 52, at 6 ("Una sociedad socialista próspera podrá alcanzarse a partir del trabajo, una profunda conciencia revolucionaria, el cumplimiento del deber, alta motivación y productividad, el ahorro, la eficiencia, y en especial, la aplicación de la ciencia, la tecnología y la innovación.")

<sup>263</sup> *Id.* ¶ 80, at 7 ("[D]e una clase obrera revolucionaria, capaz de trabajar con eficiencia y productividad en función del cumplimiento de los planes, reconociendo su papel de dueño—como parte de todo el pueblo—, de los medios fundamentales de producción")

<sup>264</sup> *Id.* ¶ 139, at 9 ("Forman parte del Estado socialista, cuyos sistemas y órganos de dirección han sido perfeccionados, de modo que la administración pública es racional, ágil y eficaz, con la vitalidad necesaria y trabajadores motivados, preparados profesionalmente y remunerados de forma adecuada.")

theoretical contradiction that is not addressed by the Model. For Asian Markets Marxism, on the other hand, both class struggle, and the relationship of the individual qua worker to the state takes on a distinct complexion. This is reflected in their respective approaches to wealth differentiation. For Asian Markets Marxism, the rise of income and wealth differentiation must be tolerated as the nation develops its productive forces.<sup>265</sup> For Cuban Central Planning Marxism the state must use law to avoid the development of wealth differences. The determination that private enterprises may be limited to the extent they amass too much wealth is a central element of this approach.<sup>266</sup>

The differences between the Asian Markets Marxism and the Cuban Central Planning Marxist Models has profound implications for rule of law development. Asian Markets Marxism is grounded in the development of socialist rule of law concepts. Though much criticized by Western commentators,<sup>267</sup> socialist rule of law is an important element of the basic line of the Chinese Communist Party.<sup>268</sup> It is bound up in notions of caging administrative discretion within a coherent structure of rules, and of holding officials to conformity with those rules.<sup>269</sup> In a well-known address of January 2013, Chinese CCP General Secretary Xi Jinping “ordered enhanced restraint and supervision on the use of power, he said, “Power should be restricted by the cage of regulations.”<sup>270</sup> In contrast, the Cuban “Central Planning Marxist” Model is grounded in the construction of systems of administrative discretion through law. In effect, while China seeks to constrain and guide the exercise of discretion to reduce its corruptive effects, the Cuban Model facilitates the construction of an administrative apparatus in which administrative discretion is its key component.<sup>271</sup> That is a necessary consequence of a Model in which the state apparatus is itself the substitute for the market. In such a system, it is necessary to vest administrative personnel with a wide discretion to produce the multiple decisions that are meant to substitute for the aggregation of individual decisions that constitute traditional market discipline. But it follows that law, itself, is transformed from a system of constraint on government, to a system in which a substantially free governmental discretion.

Thus, the difference in approaches to rule of law also has effects on the means of managing markets, of the means of constraining markets through a web of exercise of administrative discretion. For Cuba, the extent of discretion effectively displaces

<sup>265</sup> Constitution of the Chinese Communist Party, General Program, *supra* note 18.

<sup>266</sup> See *Conceptualization*, *supra* note 19, ¶ 179, at 10 and *supra* notes 160 and 183 and accompanying text.

<sup>267</sup> See, e.g., Rebecca Liao, *China Strives Incoherently for the Socialist Rule of Law*, FINANCIAL TIMES (Oct. 26, 2014), <http://www.ft.com/cms/s/0/3f4ebd30-5b84-11e4-a674-00144feab7de.html>.

<sup>268</sup> See, e.g., Constitution of the Chinese Communist Party, General Program, *supra* note 18; *Id.* *Cent. Comm. of the Communist Party of China*, *supra* note 242.

<sup>269</sup> See generally RANDALL PEERENBOOM, FLY HIGH THE BANNER OF SOCIALIST RULE OF LAW WITH CHINESE CHARACTERISTICS! WHAT DOES THE 4<sup>TH</sup> PLENUM DECISION MEAN FOR LEGAL REFORMS IN CHINA (2014), <http://ssrn.com/abstract=2519917>.

<sup>270</sup> Yang Lina, *Xi Jinping Vows “Power Within Cage of Regulations”*, XINHUANET (Jan. 22, 2013), [http://news.xinhuanet.com/english/china/2013-01/22/c\\_132120363.htm](http://news.xinhuanet.com/english/china/2013-01/22/c_132120363.htm).

<sup>271</sup> See generally Larry Catá Backer, *The Cooperative as Proletarian Corporation: Property Rights Between Corporation, Cooperatives and Globalization in Cuba*, 33 NW. J. INT’L L. & BUS. 527 (2013).

markets—substitutes discretion for market example of cooperatives and business plan pricing submissions. In China, such unconstrained discretion poses the problem of corruption that itself is a to be suppressed. “Anticorruption efforts will not hurt the economy. On the contrary, fighting corruption, including such malpractices as rent-seeking, will help build a clean government, remove hurdles that impede market operations, promote fair rules and bring about a better investment and business environment.”<sup>272</sup>

One can posit here the construction of a Latin American and an Asian variation of Marxism and Leninism in the construction of Socialist state development overseen by vanguard parties committed to the elaboration of a communist society. The Chinese remain very much in time; the Cuban approach to theory is outside of time. “Cuba’s Marxist *intelligentisa* perceives competing poles of socialist thought in Cuba today. Each polarity corresponds to divergent conceptions of the socialist transitional society in general and in Cuba’s conditions. Each is seen as influencing the evolution of Cuba’s emerging socialist model, and each polarity is reflected to some degree in the content of the Guidelines. Veteran Cuban sociologist Juan Valdes and Cuban cooperatives proponent Camila Piñero both perceive essentially three such polarities: state socialism, market socialism and socialisation.”<sup>273</sup> What appears clear, for the moment, is that the voices of the PCC remain committed to what they term state socialism—a Western anachronism embodying the sort of “left” error that might well be beyond the pale had it been put forward within the Chinese Communist Party. That suggests the constraints and limits within which well-intentioned efforts like the Conceptualization are likely to founder.

#### CONCLUSION

The 7<sup>th</sup> PCC Congress and its *Conceptualización* suggests both the *necessity and the difficulty of theorizing the normative basis of the state in times of crisis*. Both necessity and difficulty is made more acute in the shadow of normalization of relations with the United States. That perverse relationship has colored Cuban Marxist theorizing in ways that have led it to reject the emerging Asian Markets Marxism Model (socialist market economy) in favor of a system grounded in the rejection of markets as a means of ordering either economics or politics. Instead, economic and political power—the conflation of markets within the state apparatus itself contributes to a larger goal. That goal—the use of economics and politics to substantially reshape the social construction of the masses, of the individual as a part of the mass of individuals which when aggregated *becomes both the source of economic productivity and its object*—is fundamental to the differentiation of the state from both the markets driven United States and China as the great Asian polestar of Marxism. Within this thought structure, culture, democracy and social dignity is impossible in systems in which economic control is separated from

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<sup>272</sup> *Full Transcript: Interview with Chinese President Xi Jinping: China’s President Offers Written Answers to Questions*, WALL ST. J. (Sept. 22, 2015), at Q.11, <http://www.wsj.com/articles/full-transcript-interview-with-chinese-president-xi-jinping-1442894700>.

<sup>273</sup> Cameron, *supra* note 24.



economic production.<sup>274</sup> Cuban Marxism has advanced only to the point of refining the Cuban orthodoxy well developed by the 1980s, and the essence of Fidel Castro thought.<sup>275</sup>

Those who thought that the reform and opening up of the 6<sup>th</sup> PCC Congress would lead to some form of effective engagement with markets, even within the parameters of Asian Markets Marxism will be deeply disappointed by the *Conceptualización*. Those who tend to read Cuban reform in Western or Chinese terms will likely misunderstand and overestimate the form and character of reform in Cuba. Like it or not, the *Conceptualización* is an important document—not for the truth of what it states, but as a referent for the foundation about the way that key actors in Cuba think about the world. To fail to take it seriously will cause substantial misunderstanding. This takes on its most important form in the context of the focus of the re-making of the person to better fit within an economy in which markets are themselves rejected. Where the revolutionary transformation of the individual into the ideal worker/citizen is at the center of macro-economic policy, it will be difficult to speak the language of markets based regulatory governance of economic activity. The likelihood of miscommunication and incomprehension thus increases substantially.

Yet, at the same time, the vanguard appears to distance itself from the masses that are the object of the *Conceptualización*, and the core of its obligations. Critics have summed up the 7<sup>th</sup> Congress, and its theoretical Model in pessimistic terms: “If I were asked to sum up the Congress, in a nutshell, I would say that the civil-military elite of the West’s only single-party state doubled down on its reactionary positions and presented the rawest evidence in 57 years of the disconnect between the dictatorship’s leaders and the Cuban people.”<sup>276</sup> The PCC’s Conceptualization remains complex and remote; a specialist text. It does not speak to the masses. It appears more to speak to its own cadres and to the United States, against whose systemic premises it appears written. And yet even so, the theory remains embedded with ambiguity. The document is opaque and complex enough to require a large addendum of definitions of terms of art.<sup>277</sup> That is not negative in itself—but in a political and economic order in which substantial discretion is vested in both

<sup>274</sup> De Seattle, *supra* note 89 (“Nadie trate de engañarnos y confundirnos con las nuevas terminologías salidas de la propaganda hipócrita de los especialistas en engaños y mentiras, al servicio de los que han impuesto a la humanidad un orden económico y político cada vez más desigual e injusto, que no tiene absolutamente nada de solidario o democrático siquiera un ápice de respeto por los más mínimos derechos que son acreedores los seres humanos.”) [“No one should try to fool and confuse us with the new terminology flowing from out of the hypocritical propaganda of those specialists in lies and deceit, in the service of which there has been imposed on humanity an economic and political order increasingly unequal and unjust, that has absolutely nothing to do with solidarity and democracy, nor even a hint of respect for even the most limited rights that every human being deserves.”]

<sup>275</sup> See, e.g., Fidel Castro Ruz, Discurso pronunciado por el Comandante en Jefe Fidel Castro Ruz, Primer Secretario del Comité Central del Partido Comunista de Cuba y Presidente de Estado y de Ministros, en el acto central por el XXXI aniversario del asalto al cuartel Moncada, efectuado en la ciudad de Cienfuegos, (July 24, 1984), (<http://www1.lanic.utexas.edu/la/cb/cuba/castro.html>); see also, generally, discussion *infra* at Part III.

<sup>276</sup> Roberto Alvarez Quiñones, *The 7<sup>th</sup> Congress: A Reality Check*, DIARIO DE CUBA (April 21, 2016), [http://www.diariodecuba.com/cuba/1461241072\\_21833.html](http://www.diariodecuba.com/cuba/1461241072_21833.html).

<sup>277</sup> See *Conceptualización*, *supra* note 19, at 27-32.

vanguard party and state apparatus, the remoteness of text makes it effectively impossible for individuals—even the model revolutionary worker that is the object of especial treatment, to know or understand either the structure, foundation to principles of the system that has been erected in her service.

That disconnection between the masses and their elites appear to be a worldwide problem today.<sup>278</sup> And Cuba does not appear to escape its consequences—an increasing inability of elites to manage and lead their masses under whatever economic-political system they appear to operate. The 7<sup>th</sup> PCC Congress highlights a fundamental crisis in theorizing state power. Its Conceptualization remains complex and remote; a specialist text. It does not speak to the masses. It appears more to speak to its own cadres and to the United States, against whose systemic premises it appears written. And yet even so, the theory remains embedded with ambiguity. The embrace of a “Central Planning Marxism” Model may suggest that the PCC is finding it hard to move even from soviet style central planning ideologies to Marxist market ideologies that have proven more successful in other states. It may also suggest not a dynamic evolution of European Marxism but instead a creeping paralysis that may be more dangerous to its long term authority than any machinations originating in its enemies. Options and likely movement over the short term moving forward.

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<sup>278</sup> In the United States, see, e.g., David Frum, *The Great Republican Revolt*, THE ATLANTIC (Jan./Feb. 2016) <http://www.theatlantic.com/magazine/archive/2016/01/the-great-republican-revolt/419118/> (last visited Oct. 2, 2016); in the European Union, see, e.g., Darrell Delamaide, *Opinion: Brexit is Just the Beginning of a Popular Revolt Against Elites*, MARKETWATCH (June 26, 2016), <http://www.marketwatch.com/story/brexit-is-just-the-beginning-of-a-popular-revolt-against-elites-2016-06-24>; in China, see, e.g., Russell Leigh Moses, *For China's Communist Party, Stability as Usual Isn't Enough*, WALL ST. J. (May 26, 2014), <http://blogs.wsj.com/chinarealtime/2014/05/26/for-chinas-communist-party-stability-as-usual-isnt-enough/>; Larry Catá Backer, *Ruminations 65: Thoughts on the 2016 United States Presidential Election—Consequences and Tragedies*, Law at the End of the Day (Nov. 9, 2016), available <http://lbackerblog.blogspot.com/2016/11/ruminations-65-thoughts-on-2016-united.html>.

Process of preparing for the PCC's Party Congresses						
7 <sup>th</sup> Congress (April 16-18, 2016)	6 <sup>th</sup> Congress (April 16-19, 2011)	5 <sup>th</sup> Congress (Oct. 8-10, 1997)	4 <sup>th</sup> Congress (Oct. 10-14, 1991)	3 <sup>rd</sup> Congress (Feb. 4-7, 1986)	2 <sup>nd</sup> Congress (Dec. 17-20, 1980)	1 <sup>st</sup> Congress (Dec. 17-22, 1975)
During the X Plenary of the Central Committee held in Feb. 23, 2015, the 7 <sup>th</sup> Congress was agreed.	Announced by Raul Castro in an official invocation on November 8, 2010.	Invoked by the Central Committee on April 16, 1997	Invoked by Raul Castro on March 18, 1990.	On Jan. 2, 1985 the press releases the call to the Congress.	On May 4, 1980 the press releases the call to the Congress.	On April 16, 1975 the 1 <sup>st</sup> Congress is officially invoked.
An official invocation has not been released for the 7 <sup>th</sup> Congress as it was for the 6 <sup>th</sup> .	Key document prepared behind closed doors.	On May 21, 1997, <i>Granma</i> states that the entire population will discuss the document prior to the Congress.	On Jan. 5, 1991 the first assemblies of the Balance of the Cuban Communist Party take place in the provinces of Isla de la Juventud and Granma.	Preparatory Commission established to discover the contents of the Congress. This commission included members of the Political Buro and the Central Committee.	On June 1980, a Municipal Assembly process begins.	During May 1975 it is claimed that the Anteproyecto de Constitución was discussed with the Cuban people.
Key document, the Conceptualization of Cuba's Economic and Social Development Model, not yet released to the public.	Key document, Lineamientos, was released to the public.	On June 2, 1997, began the national discussion of the document entitled "El Partido de la Unidad, la Democracia y los Derechos Humanos que defendemos."	This was a preparatory step of the 4 <sup>th</sup> Congress.	On Nov. 11, 1985, began discussions of the Anteproyecto de los Lineamientos Economicos y Sociales para el Quinquenio 1986 - 1990.	These assemblies met throughout the months of June and July of 1980.	On May 28, 1975, it is reported that 28,116 assemblies were conducted to discuss this document with over 1.4 million of workers participating.
"Rank and file of the PCC in general has been denied the possibility of analyzing" the Conceptualization of Cuba's Economic and Social Development Model.	Cuban academics both inside and outside of Cuba had a chance to review the Lineamientos.	On June 20, 1997, <i>Granma</i> reports that the first stage of the process of discussion of this document is analyzed.	The Congress has 1,667 delegates and 500 invitees.	It is alleged that all workers in Cuba participated in these discussions.	On July 29, 1980, <i>Granma</i> reported that 38,000 assemblies took place in labor centers to discuss the proyecto de Lineamientos Economicos y Sociales para el quinquenio 1981-1985.	On June 12, 1975, a meeting of review of the first stage of work of the subcommittee in charge of the activities of the Congress took place.

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There is no official information that the Conceptualization of Cuba's Economic and Social Development Model will be the "main course of the Congress."	There was transparency and public comment on the Lineamientos.	On July 5, 1997 Granma reports that scholars review documents of the V Congress.		From Jan 24 to 26, 1986 every Cuban meetings held with delegates from the Congress, where Congress documents were discussed.	On Oct 14, 1980, a meeting for the analysis of the propaganda for the Second Congress took place.	From October 13-31, 1975 "popular consultation" of the Program of Platform of the PCC took place.
Meetings regarding the key documents held in all of Cuba's provinces.	Public discussion of the Lineamientos began Dec. 1, 2010.	This Congress was the first occasion that those in charge of determining who the members of the Congress would be were the leaders of the nuclei and other base structures.			On Oct. 27, 1980, a member of the Political Buro reveals that the Congress would take place from Dec. 17-20, and also reports its organizational status.	
Members of the National Assembly, members of the UJC, union leaders, mass and social organizations, and representatives from FAR and MININT attended these meetings.	A regime of public discussion of key Congress documents was announced by Raul when he invoked the Congress.	On Sept. 24, 1997, Granma reports that the provincial delegations of the V Congress began meetings.			On Nov. 19, 1980 began a national meeting in Villa Clara comprised of the "teams of study" of the 2 <sup>nd</sup> Congress.	
The attendees of these meeting will be into committees to expand the content of the documents,	After the Lineamientos were published, a national seminary run by those in charge of					

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expand them, and make suggestions that are considered to be pertinent.	guiding the mass discussion process was established.					
Recommendations made during review of the documents will be discussed during plenary sessions with all the attendees	These national seminars were to be established in every municipality.					
All of this will be taken into account by those in charge of drafting the documents ( <i>Granma</i> doesn't identify who these people are), to the higher organisms of the PCC, and finally presented in the 7 <sup>th</sup> Congress.	The process of public consultation was designed to last 3 months. The opinions gathered during this time were to be taken into account at the Congress.					
	By Mar. 1, 2011, it was reported that 127,113 meetings of debate took place with 7 million Cubans participating.					
	These participants made over 2.3 million "interventions," which is					

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7 <sup>th</sup> Congress (April 16-18, 2016)	6 <sup>th</sup> Congress (April 16-19, 2011)	5 <sup>th</sup> Congress (Oct. 8-10, 1997)	4 <sup>th</sup> Congress (Oct. 10-14, 1991)	3 <sup>rd</sup> Congress (Feb. 4-7, 1986)	2 <sup>nd</sup> Congress (Dec. 17-20, 1980)	1 <sup>st</sup> Congress (Dec. 17-22, 1975)
	reported to have resulted in 619,387 suppressions, additions, modifications , doubts, and worries over the content in the Lineamientos.					