

THE CUBAN COMMUNIST PARTY: CURRENT STATUS AND FUTURE REFORM

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Over the course of the last half decade, the Cuban government, led by the Cuban Communist Party (PCC) have sought to implement far reaching reforms of Cuban economic policy. Among these are a new foreign direct investment law, Ley 118.² News of Ley 118 was greeted with guarded praise, and some skepticism,³ much of which was centered on the approach to implementation⁴ “Will the government establish an investment climate that attracts foreign investments, and a truly transparent bureaucratic process that vets proposals in a prompt timeframe competitive with international standards?”⁵

If history is our guide, the answer will not be wholly positive. Administrative discretion may essentially gut any rule of law aspects of Ley 118, focusing all attention on the discretionary requirements of multiple

levels of approval. The vagaries of state policy and its genesis in the somewhat opaque relations between the Cuban Communist Party (PCC) and the state apparatus may substantially affect the application of Ley 118 and its implementation regulations depending on state sectors or the ministries to which approval may be required. The inability of the non-state sector to participate in this influx of capital may substantially weaken efforts to wean the population from dependence on state sector employment. Yet the old central planning template may find a way of re-emerging in the form of oversight rules for the activities of foreign capital.

Blame for these anticipated failings will be placed on the usual suspects—inept and corrupt administration, a nomenklatura jealous of its privileges and

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2. Ley No. 118 (Ley de la Inversión Extranjera, April 2014, published in Granma, Tabloide Especial, April 2014 (hereafter “Ley 118”), officially published in the Gaceta Oficial, *Gaceta Oficial No. 20 Extraordinaria de 16 de Abril de 2014*, pp. 177-189. Available http://www.cubadebate.cu/wp-content/uploads/2014/04/GO_X_20_2014_gaceta-ley-de-inversion-extranjera.pdf.

3. See, e.g., Richard Feinberg, Cuba’s New Investment Law: Open for Business, Brookings, April 1, 2014. Available <http://www.brookings.edu/blogs/up-front/posts/2014/04/01-cuba-foreign-direct-investment-feinberg>.

4. Ibid (The proof will be in the pudding, and investors will be watching closing for the fine print in the new regulations and, most importantly, for the implementation of the approval process.”).

5. Ibid.

power, and the failures of rule of law systems to be respected by a state grounded on the allocation of personal power through fiefdoms, a sort of socialist feudal state where allegiance is personal rather than institutional.⁶ The limitations and likely deficiencies of Ley 118 as applied are substantial evidence of systemic failure, failure at the most basic ideological level. This failure reflects the contradictions and tensions inherent in an ideological theory that has now become so disconnected from facts that it cannot produce positive objectives even in the face of crucial need. The system, in effect, is consuming itself.

Yet, those ideological failures do not in any way require the abandonment of the Marxist-Leninist foundations of the Cuban state, or the embrace of principles of Western style democratic state organization. Rather they are the problems of a Marxist-Leninist organization that has failed to mature and to develop a Marxist-Leninist theory appropriate to its circumstances. No consideration of “Cuba's Perplexing Changes,” its focus on internal reforms and impact on the Cuban economy, then, can be complete without a study of the PCC, especially in comparative perspective.

After this introduction, the next part of the essay considers the critical role of Marxist Leninist ideology on the formation of Cuban and Chinese Party-State systems and of its importance in constraining the analytical framework within which reform or development is possible. This essay makes six principal points around which it is organized. The focus of the analysis will be on the way in which each organization, and its relationship to the state apparatus is affected by the development of distinct foundational theories of state organization and the role of the Communist Party.

The first point considers the centrality of ideology to the “problem” of Cuba. The second examines the consequences for Cuba of the choice, made by its

vanguard party, to follow a distinct path toward the articulation and application of Marxism-Leninism in the organization and exercise of power. The third examines the direct effect of this ideological framework on the structures of the Cuban Party and state. The fourth assesses the consequential effects of ideology on the shape and scope of reforms. The fifth then argues that Marxist-Leninist ideology, like Western style democracy and markets oriented economic ideology, offers more than one path, and considers more directly, the alternatives offered by the Chinese path. Lastly, the sixth part weighs the consequences of the quality of the transition that is coming to Cuba, one that need not lead Cuba away from Marxism-Leninism and a Party-State system.

IDEOLOGY AND THE CUBAN AND CHINESE PATHS TOWARD SOCIALIST MODERNIZATION

The ideological development of the PCC evidences a number of critical points of potential weakness, especially in comparison to the ideological progress of the Chinese Communist Party (CCP). First, the PCC has not advanced the institutionalization of the Party and its structures as compared to those of the CCP. This is particularly noticeable in the differences with respect to the development of socialist rule of law frameworks in China and the continued emphasis on individuals and individual discretion in Cuba. Moreover Cuba remains substantially governed by members of the founding generation, and with it tended toward cult of personality and the subordination of collective Party leadership.⁷

Second, and most important, the PCC engagement with its founding ideology has become ossified. Its internal contradictions, exposed through that ossification, have created substantial tensions between the objectives of socialist modernization, economic reform, and the ultimate goals of crafting a communist society. These have substantially inhibited a robust

6. Among the interesting analyses is that of Javier Corrales, *The Gatekeeper State: Limited Economic Reforms and Regime Survival in Cuba, 1989-2002*, *Latin American Research Review* 39(2):35-65 (2004).

7. Raúl Castro, acting president since 2006, assumed the presidency in 2008 after his brother, Fidel Castro, the leader of both state and PCC since 1959, became incapacitated. He is President of the Council of State and of the Council of Ministers. See Raúl Castro Named Cuban President, BBC News Feb. 25, 2008. Available <http://news.bbc.co.uk/2/hi/americas/7261204.stm>.

dialogue for developing Marxism along lines compatible with the particular conditions of Cuba. The process of fashioning the *Lineamientos de la Política Económica y Social* for the 6th Party Congress in 2011⁸ suggest the potential and limits of party ideology in this respect. The CCP has, in contrast, incorporated premises of ideological dynamism and contextualism within its governing ideology, making it possible to build on Marxist-Leninist theory to better conform ideology, the ultimate objectives of the CCP in its vanguard role, and Chinese conditions.

Third, the PCC and state apparatus remain conjoined in ways that foster incoherence in governance. Convergence of authority suggest the conjoining of law and politics—of the political work of the party and the administrative work of the state that was a hallmark of European states within the Soviet orbit. A significant repercussion of this ideological organizing premise touched on the ability of a Marxist-Leninist state to create rule-based institutionalization through administrative mechanisms that produce coherent and predictable governance. In contrast, the CCP has increasingly distinguished between the work of the CCP, focusing on its Leninist vanguard role and democratizing its internal decision making structures.⁹ It has more deeply embedded the separation of powers between the political work of the CCP and the administrative obligations of the state apparatus, and in this way has been able to foster the beginnings of a rule of law culture (within state and Party apparatus) without constraining the vanguard political role of the CCP.

As a consequence, socialist modernization¹⁰ is substantially inhibited in Cuba by the ideological stasis of the PCC, only now just tentatively showing signs

of awakening from its long slumber, the lack of institutional discipline within the PCC, and the sloppiness of function convergence between state and PCC. This section organizes some considerations that may help usefully frame some of the ways in which the PCC's ideological choices (compared with those of the CCP) deeply affected and constrained the organization and operation of the communist parties of each state and the approaches to and function of the state apparatus. China used a scientifically developed theory of Marxist Leninism that incorporated additional layers onto the core theory that reflected China's conditions in light of its objectives, to produce an elaborate and complex governance system that reflected these theories. Cuba continues to struggle to adapt its ideology, built on the essential transformative and now timeless insights of the moment of revolutionary triumph, into a more flexible governance structures that can be adapted to the times and conditions of the state.

The Centrality of Ideology

Ideology is central to Marxism, at least in the sense that it may represent the elaboration of the core substantive notions of Marxism within the context for which it is to be applied. Here Marxism, in its substantive elements, represents a font of natural rights relating to the nature of human dignity and its relational aspects—that is of human dignity in the context of social, moral, economic and political organization. Its content and context has been contested since the late 19th century. In Western democratic societies the sources of relational human dignity also remain highly contested in their details, and there are a number of sources and descriptions for these rights, each of which together constitute a core ideology from which political, economic and social institu-

8. Lineamientos de la Política Económica y Social del Partido y la Revolución, 18 April 2011, adopted by the VI Congress of the Cuban Communist Party, available <http://www.juventudrebelde.cu/file/pdf/suplementos/lineamientos-politica-partido-cuba.pdf>

9. See Hu Angang, *Collective Presidency in China* (Beijing, Tsinghua Institute for Contemporary China Studies, 2013); discussed in 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(1) *Asian-Pacific Law And Policy Journal* 16(1):– (forthcoming 2014). Chinese language version 为 21 世纪的中国设计社会主义民主理论: 中国宪政国家兴起语境下对胡鞍钢“集体领导制”理论思考, *Tsinghua University Journal* (forthcoming 2015)

10. I use the Chinese term deliberately. See Liu Yunshan, *Working Out a Path of Socialist Modernization with Chinese Characteristics*, *Qiushi Journal* 3(2): (April 1, 2011) available http://english.qstheory.cn/politics/201109/t20110924_112568.htm.

tions are built and disciplined. These include natural law, the common constitutional traditions of civilized states, religion, and custom and tradition. In advanced democracies it has acquired a substantial political dimension—grounded in constitutionalism, and increasingly in international structures of human rights.¹¹ And thus it should come as no surprise that ideology has also progressed beyond its Marxist roots and has also acquired an important constitutional dimension in advanced Marxist-Leninist States.¹²

Ideology is also central to Leninism, as a means of disciplining a revolutionary party and preserving its vanguard role. It thus serves as the core element for which the vanguard party acquires legitimacy, while simultaneously serving itself as the object to which the vanguard party must devote itself for the advancement of the substantive goals of Marxism. Leninism thus posits, as a basic matter, the inseparability of the development ideas, its transmission and instrumental use to come closer to the objectives for which revolution is mounted. Here again, Leninism might be said to borrow and elaborate a variant on an old Western notion that posits the union of substantive rules within institutions that reflect their values. There is in Leninism, an adherence in the fundamen-

tal premise of the ordering of governance institutions—the premise that all legitimate governments reflect and are instituted to advance the normative order that is itself an aggregation of basic truths about the organization of society and the role of individuals within it.¹³

Ideology is basic to political discourse in Cuba,¹⁴ as it has been on other Marxist-Leninist States.¹⁵ But ideology has acquired an *originalist* cast in Cuba, in ways that parallel the rise of *originalism* in the United States.¹⁶ As a mechanics of interpretation (and application of policy and structure for the exercise of discretion), originalism has at its core a preservationist cast.¹⁷ This originalism has had substantial consequences for the ability of Cuba to develop its approach to governance and the structures within which reform is possible. The principal effect is something like a common understanding that in Cuba the PCC does not engage in theory.¹⁸

This approach reinforces the idea that ideology is not an object for development. Here is the version of Cuban *originalism* bound up with the revolutionary moment in the way that the constitutional moments of governmental organization are decisive for originalists in the United States.¹⁹ The PCC's work suggests the way in which the PCC may be used to amplify

11. Cf. Charles Howard McIlwain, *Constitutionalism Ancient and Modern* (Ithaca, NY: Cornell University Press, 1947).

12. See, 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, *supra*.

13. See Fidel Castro Ruz, *Histry Will Absolve Me*, Chp. XXXIX (New York: Lyle Stuart 1961).

14. For an early account, Richard R. Fagen, *The Transformation of Political Culture in Cuba* 1-19 (Stanford University Press, 1969).

15. Jiang Zemin stated: “The Chinese Communist Party attaches great importance to the guiding role of theory.” Jiang Zemin, Report at the Fifteenth National Congress of the Communist Party of China, Hold High the Great Banner of Deng Xiaoping Theory for an All-Round Advancement of the Cause of Building Socialism With Chinese Characteristics Into the Twenty-First Century, (Sept. 12, 1997), <http://www.china.org.cn/english/features/45607.htm>.

16. See, e.g., Robert H. Bork, *The Tempting of America* 146 (1990); Antonin Scalia, Originalism: The Lesser Evil, *57 U. Cinn. L. Rev.* 849 (1988-1989). Originalism does not just manifest itself as a mechanics for the interpretation of text; see, Caleb Nelson, Originalism and Interpretive Conventions, *University of Chicago Law Review* 70(2):519 (2003). More importantly it is the expression of a specific ideology that is meant to preserve a particular moment in time as itself constituted into the act of creating the structures of state. See, e.g., Nicholas Quinn Rosenkranz, Federal Rules of Statutory Interpretation, *Harvard Law Review* 115:2085 (2002) (interaction of text and interpretive regime; *ibid.*, 2142).

17. Criticized quite famously in Paul Brest, The Misconceived Quest for Original Understanding, *Boston University Law Review* 10:204 (1980).

18. Oral Commentary of Vegard Bye, Scantaram Norway, made at the Association for the Study of the Cuban Economy 24th Annual Meeting, “Cuba's Perplexing Changes,” panel on “Cuba's Reforms: Status and Prospects,” Miami Florida, July 31, 2014.

19. Criticized in Thomas Grey, Do We Have an Unwritten Constitution?, *Stanford Law Review* 27:703 (1975), and complicated in H. Jefferson Powell, The Original Understanding of Original Intent, *Harvard Law Review* 98:885 (1985).

but not develop Cuban Marxism-Leninism. The PCC has a role in applying the normative principles of Marxism-Leninism, as amplified by the theories of Fidel Castro (emphasizing class struggle, revolutionary internationalism and solidarity, a suspicion of markets, and central planning).

The Cuban Ideological Path—From Revolution to *Lineamientos*

Cuba's PCC has chosen to adhere to the European and Soviet approach to Marxism-Leninism, that tends to freeze the idea at the moment of the Revolution's triumph and to attempt to make eternal that moment. *Preserving* the Revolution becomes the paramount ideological stance.²⁰ A key feature of PCC ideology is grounded in theory and history. First the history—it has been well accepted that the Cuban revolution was a working class revolution and that class struggle remains central to Cuban Marxist ideology.²¹ Second, the theory—the premise of class struggle has been the cornerstone of the PCC's normative ideology, from which much of the rest of its framework is developed. But there is an element of nationalism as well. Anti-colonialist nationalism is grounded in two principal sources. The first are the writings of José Martí,²² whose writings are still foundational for Cuban political theory.²³ The second is Fidel Castro. In Castro, Martí's nationalism was transformed²⁴ into theories of regional state planning,²⁵ solidarity and internationalism,²⁶ and criticisms of globalization and sovereign finance as arms

of a ideological and national war against small and poor states.²⁷ This nationalist and anti-imperialist internationalism was deeply embedded.

Thus, at the core of Cuban communism are nationalism and Latin American solidarity, concepts self consciously grounded in the thought of José Martí, who retains a position of great respect within the pantheon of Cuban ideological parents. The PCC Constitution adds a number of norms grounded in class struggle and the moral imperatives of creating a classless society. These include fighting to ensure social morals, advancing collectivism, deepening the ideology of the Revolution and continuing to combat the exaltation of bourgeois ideology and related ideological errors, advancing social justice and equality, modesty, honor, overcoming racism and a lack of faith in Socialism, and fighting corruption.²⁸

With the 6th Party Conference, the PCC has begun to move toward a different approach to the ideology of Marxism-Leninism, although it still adheres substantially to its traditional forms. The difficulty was that the ideological reforms of the *Lineamientos* keeps to the ideological foundations of the great period of flux post 1989—the PCC must adhere to its basic line as it existed before 1989. All efforts to adjust that line in the face of the conditions of Cuba are understood to be temporary and must be elaborated with an eye toward preservation of the orthodox ideological positions developed before the collapse of the Soviet Union. This is particularly apparent in the

20. Sheldon Liss notes that “he almost always wears battle dress as a reminder of the ongoing revolution.” Sheldon B. Liss, *Castro!: Castro's Political and Social Thought* 3 (Westview Press, 1994).

21. Maurice Zeitlin, *Revolutionary Politics and the Cuban Working Class* 277 (Princeton: Princeton University Press, 1967).

22. See, e.g., Lillian Guerra, *The Myth of José Martí* (University of North Carolina Press, 2005).

23. See, especially, José Martí, *Nuestra América* available http://www.ciudadseva.com/textos/otros/nuestra_america.htm (originally published *La Revista Ilustrada de Nueva York*, 10 January 1891).

24. See, e.g., Richard B. Grey, José Martí and Social Revolution in Cuba, *Journal of Inter-American Studies* 5(2):249-56 (1963).

25. For an example, see, Fidel Castro Ruz, *On Imperialist Globalization* (Zed Books 1999); see also, Larry Catá Backer and Augusto Molina, Cuba and the Construction of Alternative Global Trade Systems: ALBA And Free Trade In The Americas, 31(3) *University of Pennsylvania Journal of International Law* 679-752 (2010).

26. See, Fidel Castro Ruz, On Behalf of the Movement of Nonaligned Countries (Address to the United Nations General Assembly, New York, Oct. 12, 1979), in *Fidel Castro Reader* (Ocean Press, 2008).

27. Discussed in Larry Catá Backer, Ideologies of Globalization and Sovereign Debt: Cuba and the IMF, 24 *Penn State International Law Review* 497-561 (2006).

28. PCC Constitution Cap. I.

context of the new social politics, which is grounded on continuing to preserve the advances of the Revolution,²⁹ continuing the path of cultural work,³⁰ or to address the central planning elements of industrial and energy policy.³¹

The Leninist repercussions of this approaches are also clear—a tendency to favor administrative discretion in rule making, the use of taxation to extract “surplus” from non-state sector activities, licensing of virtually all activities as a means of controlling their actualization, and the overarching assumption that any deviation from the classic state planned economic model is temporary and might be undone by the state at any time.

Indeed the concept of socialist modernization,³² key to the scientific development of CCP political lines, is noticeably absent from PCC discussion. And it is absent precisely because the ideological center of Cuban Marxism remains rooted in state planning. That is the cornerstone of both its internal and external economic model. Its opening up, then, remains mediated by its own approach to economic organization, one that makes it more difficult to achieve compatibility with the global system rules with which it interacts. But that is also an important element of resistance that has been a cornerstone of Castroism as it has elaborated the relationship between Cuban Communism and globalization.³³

The difference could not be clearer. The basic principles of PCC reflect the focus on the revolution and revolutionary values that are meant to take on a transformative and trans Revolutionary character—a

static dynamism that is meant to capture and hold steady the moment of revolutionary triumph. The PCC centers its revolutionary ideology around the following points: First, absolute loyalty to the interests of the working class and other working people; Second, unwavering opposition to the capitalist system and any other systems with exploitation; Third, creatively applying Marxist-Leninist theory to the specific conditions in Cuba and experience it according to their own experiences and other fraternal parties’ experiences; Fourth, loyalty to proletarian internationalism and oppose manifestations of nationalism and chauvinism, fighting alongside with all other communists and opposition forces of reactionaries and imperialism, and support the struggle against the capitalist exploitation of the working people of other countries; Fifth, close ties with people.

The Consequences of Ideology for State and Party Organization and Function

The key to the long-term success of any state organized along Party-State lines is the organization and operation of the vanguard (Communist) Party. That is the essential insights of the Leninist part of Marxist Leninist theory—if Marxism provides the baseline political ideology and objectives of the state, Leninism provides the foundations of its organizational principles.³⁴ But baseline principles do not necessarily suggest an end to ideological development, much less an engagement with the implementation of foundational principles within the specific context of a particular states. Indeed, the fear of theoretical ossification has dogged Leninism (and its Marxist founda-

29. *Lineamientos*, supra, ¶ 140.

30. *Ibid.*, ¶¶ 163-164

31. *Ibid.*, 215 et seq.

32. On my sense of socialist modernization, see discussion in Larry Catá Backer, *Socialist Modernization and China's Regional Development Policies--The “Go West” (西部大开发) Policy as Template, Law at the End of the Day*, July 14, 2014. Available <http://lcbackerblog.blogspot.com/2014/07/socialist-modernization-and-chinas.html>.

33. Discussed in Larry Catá Backer, *Odious Debt Wears Two Faces: Systemic Illegitimacy, Problems and Opportunities in Traditional Odious Debt Conceptions in Globalized Economic Regimes*, *Duke Journal of Law & Contemporary Problems* 70:1-46 (2007); Larry Catá Backer, *Ideologies of Globalization and Sovereign Debt: Cuba and the IMF*, *Penn State International Law Review* 24:497-561 (2006).

34. Discussed more fully in 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(1) *Asian-Pacific Law And Policy Journal* 16(1):– (forthcoming 2014).

tions) almost from the beginning of post Marxist theoretical work.³⁵

Cuba's organization remains deeply Leninist. Fidel Castro for decades continued to refer to himself as a professional revolutionary—which was interpreted by some to refer to his antipathy for injustice,³⁶ though it was more accurately a direct reference to the Leninist notion of professional revolutionary as a necessary ingredient in Communist revolution.³⁷ The irony, of course, is that this reference to the essential character of the Communist as a professional revolutionary was never successfully transposed into a post-revolutionary Leninism, except through notions of the communist international, a concept the PCC and Castro continue to embrace, though now without the European mechanisms for its institutionalization and in the form of an internationalized class struggle ideology grounded in the imperatives of proletarian revolution.³⁸

Though both PCC and CCP are Leninist parties, there is a substantial distinction in their institutionalization. That distinction arises in part from differences in their respective interpretation of the core objectives of their role as a Leninist vanguard party. The CCP has sought to progress beyond the revolutionary party organizational focus of Leninism to what is increasingly referenced as Socialist democracy. In the case of China, those normative elements of Marxism have been refined within the notions of socialist modernization:³⁹ the motive power of the reform of Chinese Communist Party is further developing the productive force and improving the construction of

the Party by consolidating the foundation of economy.

In contrast, the PCC remains very much a revolutionary party. The revolutionary moment remains a palpable concept—it has been detached from history and governs over all aspects of the operation of governance—political or administrative within Cuba. Perhaps this single minded focus on organization grounded in the spirit of the moment of revolutionary triumph is made necessary by the constant opposition of the United States; perhaps not. But it remains at the bedrock of the organization of state and Party in ways that substantially limit the ability of the PCC to organize itself as other than a vanguard party at the moment of its accession to power, rather than as the vanguard party tasked with the governance of a state that is tasked to eventually reach a level of development that makes the communist ideal attainable. And indeed, connected with the a-historicity of the revolutionary moment for PCC organization, is the idea that at that moment of triumph the communist ideal was also within reach. This is a substantially different premise than that embraced by the CCP and accounts for a significant difference in both the PCC's organization, and aims. The CCP *looks forward* to attainment of a communist society; the PCC assumes that its role is to *preserve* the communist society it achieved at the moment of revolutionary triumph. That distinction will have significant effects on the way in which the PCC approaches its relationships with outsiders and its internal governance. Preservation requires a single-minded focus on the consolidation of PCC power, though effectuated through the personalities of its leaders rather than

35. Indeed Lenin began one of his most influential Works by confronting the issue of theoretical ossification in Marxism—in 1901! See, Vladimir I. Lenin, *What is to Be Done?: Burning Questions of our Movement* (New York: International Publishers, 1929, 1943) (in the context of freedom of criticism, pp. 12-25).

36. Sheldon B. Liss, *Castro!: Castro's Political and Social Thought*, *supra* 4.

37. Vladimir I. Lenin, *What is to Be Done?: Burning Questions of our Movement* 116 (New York: International Publishers, 1929, 1943).

38. See, e.g., H. Michael Erisman, *Cuba's International Relations: The Anatomy of a Nationalistic Foreign Policy* 8 (Boulder: Westview Press, 1985).

39. Jiang Zemin, *Build a Well Off Society in an All Around Way and Create a New Situation in Building Socialism with Chinese Characteristics*, Report to the 16th Party Congress of the CCP (2002). Available http://english.peopledaily.com.cn/200211/18/eng20021118_106983.shtml.

through strong institutional structures.⁴⁰ This leads to some differences of the institutional construction of the two Parties and their operational cultures.

But the PCC is also Stalinist in the sense of the driving force of personality over institution.⁴¹ Institutions are essential instruments for the implementation of collective will, but that will is manifested through the politics of personality rather than situated within a matrix of rules that reflect collective application of ideological frameworks on individual issues. This succinctly describes the structural repercussions of the Latinized European Soviet style of Leninism and its reflections on the institution of the Communist Party after the moment of revolutionary triumph. That tension may be reflected, as well in the irregularity of the holding of Communist Party Congresses in Cuba.⁴²

But there are certain unique conditions to the PCC that also affect its character and structure, and the nature of the hold of revolutionary ideology in its operation. The PCC is the rare example of a communist party established after a successful communist revolution.⁴³ The task of building a communist party, then, became bound up in the work of building a socialist state after the attainment of power. The real institutional glue during this process was the military—a condition that continues to mark the relations among the military and bureaucratic establishment and which produces a distinct mediating role for through the party that sets it apart from that of

the CCP, for example. Institutionalization came late and was relatively weak. The first PCC Party Congress was not held until 1975.⁴⁴ At the time Fidel Castro in his address to the participants emphasized the value of institutionalization of the Party evidenced by the Congress for the purpose of stability, though noting that the ideological work for the Congress ought to be focused on implementation.⁴⁵ Yet behind the institutionalization, the force of personality remained vigorous. While China began moving toward a depersonalized CCP apparatus, Cuba would reinforce the personal element in party organization—the essential role of the Leninist professional revolutionaries in post revolutionary Cuba as the glue to keep the structures of state and party stable. Most of the Party Congresses after the collapse of the Soviet Union, in contrast, have been called to deal with the issue of preservation and adjustment. The idea in Cuba is that prior to 1989, Cuba had its internal ideological house in order—and that the function of the state and of the party apparatus was to resist change, for any change would signal a retreat from the revolutionary ideal. That factor has also shaped the organization of the PCC and its internal ruling style.

The cult of personality issue is still a very delicate subject in Cuba, in part because unlike China, where such discussion could occur after the passing of the revolutionary generation, that is still difficult in Cuba. While the official position of the state and Party disfavors personality cults, at least in its most blatant

40. See, e.g., Eusebio Mujal-Léon and Joshua W. Busby, *Much Ado About Something?: Regime Change in Cuba*, in *Cuban Communism, 1959-2003*, pp. 491-512 (Irving Louis Horowitz and Jaime Suchlicki, eds., Transaction Publishers, 2003).

41. But not without some questioning coming very recently, and quite tentatively. See e.g., W.T. Whitney, Jr., *Cuba, Culture and the Battle of Ideas*, *People's World*, April 25, 2014. Available <http://peoplesworld.org/cuba-culture-and-the-battle-of-ideas/>.

42. The PCC has held six Party Congresses at irregular intervals since 1959. See, *Partido Comunista de Cuba, Congresos del Partido Comunista de Cuba*, available http://www.pcc.cu/cong_asamb.php. In contrast, the CCP has held party congresses at regular four-year intervals almost since the founding of the People's Republic in 1949. *News of the Communist Party of China, Party Congress Review*. Available <http://english.cpc.people.com.cn/206972/207190/index.html>.

43. See, e.g., William M. LeoGrande, *The Cuban Communist Party and Electoral Politics: Adaptation, Succession, and Transition 3* (Institute for Cuban and Cuban-American Studies, 2002).

44. See *I Congreso del Partido Comunista de Cuba*, available <http://www.pcc.cu/cong1.php>.

45. Fidel Castro Ruz, *Discurso pronunciado por el Comandante en Jefe Fidel Castro Ruz, primer secretario del Comité Central del Partido Comunista de Cuba y primer ministro del gobierno revolucionario, en el acto en que le fueran entregados los compromisos del pueblo en saludo al Primer Congreso del Partido por parte de los dirigentes de las organizaciones de masas, en el Palacio de la Revolución, el 29 de mayo de 1975*, available <http://congresopcc.cip.cu>.

Soviet Stalinist forms, the reverence with which the founding generation are held, at least in official circles, suggests a tension between official reality and facts on the ground.⁴⁶ Only recently Raúl Castro spoke in general terms, of unspecified terms for the succession of leadership within the PCC.⁴⁷ But that speech itself suggested a lack of effort to institutionalization of leadership changes, and a continuation of the focus on personality and its bourgeois democratic implications. Still, the role of Fidel Castro Ruz, who led the state and Party apparatus for half a century, not only looms large over both administrative cultures and Party ideology, “[e]ven with the institutionalization of the late 1970s and early 1980s, there was little doubt that PCC cadres served at the pleasure of the maximum leader. He was not constrained by its routines or bureaucracy, and he answered to no one else in the Party leadership.”⁴⁸

Since the passing of Mao Zedong and the leadership of Deng Xiaoping, China has become particularly sensitive to issue of cult of personality, and its implications for the development of a socialist rule of law

state.⁴⁹ The CCP has thought to theorize the leadership of Mao Zedong for the lessons it provided a dynamic Leninist element in party organization.⁵⁰ Much current theorizing about the bureaucratization and institutionalization of political power within the CCP and the democratization of its exercise internally is guided by the need to ensure that Mao-style cults do not reappear.⁵¹ It also underlies, to some extent, the Chinese embrace of law—and rule of law concepts—as part of their administrative operations, especially within the state apparatus. This insight does not shape only the succession within the vanguard party, but also provides a measure of stability between periodic and stable changes within the Party’s leadership. It also permits a greater focus toward anti-corruption efforts, and perhaps the institutionalization of a large and increasingly effective intra-Party mechanism for anti-corruption efforts, though one that itself is subject to criticism.⁵²

Raúl Castro has been moving toward embracing a Chinese path to institutional succession. In February 2013, Raúl Castro announced plans to begin to

46. See, e.g., The Castro Cult: Fidel’s Fanclub, *The Economist*, April 26, 2011. Available http://www.economist.com/blogs/americas-view/2011/04/castro_cult.

47. See, Marc Frank, Cuba’s Raúl Castro Promises Succession Has Started, *Reuters*, July 26, 2013. Available <http://www.reuters.com/article/2013/07/26/us-cuba-castro-anniversary-idUSBRE96P0UD20130726>.

48. Eusebio Mujal-Léon and Joshua W. Busby, Much Ado About Something?: Regime Change in Cuba, in *Cuban Communism, 1959-2003*, *supra.*, 494-495. “Castro’s continuing presence and his constant exhortations to revolutionary struggle and ideology place strict, if formally undefined, limits on how far government and Party functionaries can deviate from the official canon of nationalism, anti-capitalism, and anti-Americanism.” *Ibid.*, 500

49. Indeed this has been a subject of importance in China and an important part of the CCP’s ideological line as it moves away from personality as the driver of politics and focuses on the dynamics of collective action through rules. See, e.g., Mo Zhang, The Socialist Legal System with Chinese Characteristics: China’s Discourse for the Rule of Law and a Bitter Experience, *Temple International & Comparative Law Journal* 24:1 (2010). As the discussion at the 18th CCP Party Congress suggests, the efforts to develop Socialist Rule of Law remains very much a work in progress.

50. Mao Zedong made ‘mistakes,’ says Chinese President Xi Jinping, Press Trust of India, December 26, 2013. Available <http://www.ndtv.com/article/world/mao-zedong-made-mistakes-says-chinese-president-xi-jinping-463497>. See 1980: Deng Xiaoping comments on Mao Zedong Thought, 17th National Congress of the Communist Party of China 25 October 2007. Available <http://www.china.org.cn/english/congress/229773.htm>.

51. Hu Angang, Collective Presidency in China (Beijing, Tsinghua Institute for Contemporary China Studies, 2013), criticizing Mao Zedong’s personal leadership style after the Great Leap Forward, “As a result, the Standing Committee of the Political Bureau of the Central Committee of the CPC was downgraded to an institution that simply implemented the personal instructions of Mao Zedong. The membership of the Standing committee underwent frequent changes in a non-institutionalized manner; the collective leadership of the CPC was seriously impaired, and existed in name only.” *Ibid.*, 26.

52. Discussed in Larry Catá Backer and Keren Wang, The Emerging Structures of Socialist Constitutionalism With Chinese Characteristics: Extra-Judicial Detention (Laojiao and Shuanggui) and the Chinese Constitutional Order, *Pacific Rim Law & Policy Journal* 23(2):251-341 (2014)

modify succession and its institutionalization in Cuba.⁵³ Most important, perhaps, was the announcement, in the style of Deng Xiaoping, of his retirement, projected to occur in 2018. “And yet, on an island where a Castro has been in charge since 1959, he also seemed intent on changing how his successors will rule. In an announcement more surprising than his retirement plan, Mr. Castro said he hoped to establish term limits and age caps for political offices, including the presidency. Some broad constitutional changes, he said, will even require a referendum.”⁵⁴ But even here Castro was careful to ensure the selection of successors who could mediate the interests of the state and Party apparatus against those of the military.⁵⁵

Lastly, Cuba, like China, has been challenged with the elaboration of post-Leninist approaches to the refinement of their respective Party-State systems. More specifically, both states have been facing the problem of the management and allocation of power between the Party and the State. Cuba has adhered formally at least to the old Leninist line that the state and Party functions ought to be kept separate except at the highest levels of authority where the two merge.⁵⁶ The reality has been somewhat messier at the levels below the leadership levels. The connection between state and Party is diffuse and it has been unclear what the division of authority may be. The resulting difficulties are ameliorated to the extent that the equivalent offices of State and Party are filled by the same set of individuals. Yet that mediating effect also substantially erodes the institutional autonomy of both organizations in ways that make it hard for

the PCC to focus on its role as the vanguard Party, leaving to the state the more technical task of administration.

The focus of the reform of the Chinese political system is the division of Party power and administrative power. This represents a fundamental shift in the application of Marxist-Leninist theory to the problem of governing the state and its relation to the vanguard party. In China, there has been a move toward a separation of powers grounded in a split between political power—which rests with the vanguard Party and exists above the Constitution, and the administrative power, which is exercised through the State organs and subject to the constraints of the national constitution. The object is to ensure that the political work of the Party as an institution is distinct from the work of the state as the apparatus through which such political work is implemented. That provides a basis for separating political issues, open only to Party members and the intra-party mechanisms of democratic centralism, from administrative issues, for which popular participation may be encouraged as an instrument for ensuring administrative efficiency. The national constitution is understood as the supreme law over the administrative apparatus, but it is also the application of the party line and is understood as the substantive principles of the party’s political in be which, as principle but not law is applicable to the CCP.⁵⁷ More importantly is the move toward what the Chinese call Socialist Democracy—an effort to routinize and institutionalize intra-Party democracy in collective decision-making and the de-

53. See Damien Cave, Raúl Castro Says his New 5-Year Term as Cuba’s President Will be His Last, *The New York Times*, Feb., 24, 2013. Available http://www.nytimes.com/2013/02/25/world/americas/raul-castro-to-step-down-as-cubas-president-in-2018.html?_r=0.

54. Ibid.

55. Ibid. (“‘He was a senior Communist Party official for Villa Clara and Holguín provinces, where there were important openings with foreign investment in tourism,’ said Mr. López-Levy. He added that Mr. Díaz-Canel often worked as an intermediary between the central government and the military, which has taken an expanded role in tourism under Raúl Castro. ‘In that sense,’ Mr. López-Levy said, ‘he will face the challenge and opportunity to prepare a smooth landing for a new type of civil-military relationship in the future.’”).

56. See Constitution of Cuba, Art. 5. Available <http://www.constitutionnet.org/files/Cuba%20Constitution.pdf>.

57. Discussed in Larry Catá Backer and Keren Wang, The Emerging Structures of Socialist Constitutionalism With Chinese Characteristics: Extra-Judicial Detention (Laojiao and Shuanggui) and the Chinese Constitutional Order, *Pacific Rim Law & Policy Journal* 23(2):251-341 (2014).

velopment of a theory that makes this effort compatible with basic principles of Marxism-Leninism.⁵⁸

The Consequences of Ideology on Economic Reform: Occupational Licensing, Cooperatives and Ley 118

Ideology has an important consequential effect on the shape and scope of reforms, and with it for the construction of a Socialist rule of law state. This is particularly evident in the way in which central planning and control is translated into a policy of vesting substantial discretion in functionaries, and on requiring all non state activity to go through a series of discretionary licensing, review and approval processes. The cumulative effect is to empty rule and law making of any substance and privilege the personal element in governance. The resulting potential for arbitrariness, corruption uncertainty and unpredictability can derail even the most otherwise substantial effort at reform. This ideological framework of Cuba explains the limits of current efforts at economic reform. Such reform can only be understood within the constructs of ideological taboos. These help explain the reasons such reforms may ultimately present inescapable contradiction (opening markets within a culture of central planning and administrative discretion for all market operations). It is ideology that drives a central planning ideal and the resistance to change.⁵⁹

The legal system that permits the pursuit of private occupations has been constrained by the operation of PCC ideology in its structuring and operation. It is grounded on a premise that private sector occupations are exceptional and require specific identification. In the absence of identification, the occupation remains state based. Each occupation requires a separate license, and each license requires submission to

an application process that vests substantial discretion in government functionaries. These functionaries may exert not merely formal authority but may also condition the license in ways that tend to vest power of direction in the state and its functionaries to a great degree. As discretion of this sort increases at the lowest and least monitored levels of administration, so do the temptations of corruption. And because the PCC has not built a systematic approach to corruption eradication unlike their CCP counterparts, the possibilities of corruption also has a detrimental effect on the construction of even this constricted non-state sector. Ideology here makes it impossible to consider a system that is the reverse of the one adopted—permitting all occupations other than those prohibited, and developing a system of self reporting and monitoring to maintain discipline. Moreover, even with a license, ideology has made it impossible to detach wholesale markets from the ambit of state control, and more detrimentally still, of central planning. As a consequence, incentives toward the unregulated market also grow. To make matters worse, the state might not merely turn a blind eye to these markets, but also seek to exploit them. A recent effort to tax the unofficial importation of goods from abroad, to get around supply chain bottlenecks within Cuba has produced a backlash that may threaten the even limited opening of the non-state sector.⁶⁰ Thus, lawlessness is encouraged in both state officials and in the population it is meant to serve.

These problems were exacerbated by the structures adopted when the state sought to operationalize the *Lineamientos* recommendation to permit a limited range of private activity through cooperatives and similar arrangements.⁶¹ Cooperatives grew out of the reform efforts of the *Lineamientos* and represent an

58. See, Hu Angang, *Collective Presidency in China* (Beijing: Tsinghua Institute for Contemporary China Studies, 2013).

59. Larry Catá Backer, Cuban Corporate Governance at the Crossroads: Cuban Marxism, Private Economic Collectives, and Free Market Globalism, *Transnational Law & Contemporary Problems* 14(2):337-418 (2004).

60. See Victoria Burnett, Cuba Hits the Wall in a 2-Year Push to Expand the Private Sector, *The New York Times*, July 16, 2012. Available <http://www.nytimes.com/2012/07/17/world/americas/economists-question-cubas-commitment-to-privatizing-businesses.html?pagewanted=all>.

61. Discussed in Larry Catá Backer, The Cooperative as a Proletarian Corporation: The Global Dimensions of Property Rights and the Organization of Economic Activity in Cuba, *Northwestern Journal of International Law and Business* 33:527-618 (2013).

effort to populate the small space created within the non-state sector for retail level operations in a tightly controlled range of activities. They produced a complex set of regulations that provided the appearance of a tightly developed rule of law governance context, but one that was riddled with layers of discretionary approvals by state functionaries at a number of different levels.⁶² Thus, though not controlled directly by the state, cooperatives remain well within its shadow, and the discretionary authority of state officials—that range from approval of the forms of cooperatives to their economic plans, reproduce the model of centralized state planning but not privatized within these cooperatives. But the discretion to issue approvals also appears to extend to the power to shut these enterprises down—again grounded in discretion that may be exercised without any appreciable mechanisms for checking abuse.⁶³ Cubans interested in business ventures have now apparently built these risks into their business plans, looking for quick returns.⁶⁴ Short-time horizon planning is exacerbated by ideology—an ideology that embedded in the implementing legislation the premise that the coopera-

tive was itself experimental in character and might be terminated at any time. All of that was in turn exacerbated by the indirect control of these enterprises through the management of wholesale markets, a control that also affected sole proprietors operating under occupational licensing, and thereafter the exploitation of the informal markets that grew up to avoid the inefficiencies of centrally planned wholesale markets.⁶⁵ And again, discretion also produces the conditions necessary for corruption as well.

It is the same sort of ideological constraints that now bind Ley 118. Beyond the usual issues relating to the compatibility of Cuban Marxist-Leninist ideology with international norms,⁶⁶ Ley 118 raises issues that run parallel to those that affect both the Cooperatives regulations and the occupational licensing scheme. Indeed, one of the more interesting things about Ley 118 is the way it represents an organic elaboration and modification of, rather than a break with, the structures of foreign direct investment in place in Cuba from the mid 1990s.⁶⁷ However, there is a suggestion of a greater commitment to what the CCP has called “opening up.” Ley 118 also accepts the

62. See Consejo de Estado Decreto-Ley Número 305 [Council of State Decree-Law Number 305] (GACETA OFICIAL EXTRAORDINARIA NO. 53, Dec. 11, 2012, at 249) (Cuba) [hereinafter Decreto-Ley No. 305]; Consejo de Estado Decreto-Ley Número 306 [Council of State Decree-Law Number 306] (GACETA OFICIAL EXTRAORDINARIA NO. 53, Dec. 11, 2012, at 254) (Cuba) [hereinafter Decreto-Ley No. 306]; Consejo de Ministros Decreto No. 309 [Council of Ministers Decree No. 309] (GACETA OFICIAL EXTRAORDINARIA NO. 53, Dec. 11, 2012, at 260) (Cuba) [hereinafter Decreto No. 309]; Ministerio de Economía y Planificación Resolución No. 570/12 [Minister of Economics and Planning Resolution No. 570/12] (GACETA OFICIAL EXTRAORDINARIA NO. 53, Dec. 11, 2012, at 270) (Cuba) [hereinafter Ministerio de Economía y Planificación Resolución No. 570/12]; Ministerio de Finanzas y Precios Resolución No. 427/12 [Minister of Finances and Pricing Resolution No. 427/12] (GACETA OFICIAL EXTRAORDINARIA NO. 53, Dec. 11, 2012, at 273) (Cuba) [hereinafter Ministerio de Finanzas y Precios Resolución No. 427/12]. For a discussion of the above regulations, see O. Fonticoba Gener, *Cambio a la actualización del modelo económico* [Updating Changes to the Economic Model], GRANMA (Dec. 11, 2012) (Cuba), <http://www.granma.cubaweb.cu/2012/12/11/nacional/artic01.html>

63. The case of the Cabildo nightclub provided a case in point. See, Marc Frank, *In Cuba an Opera Singer Builds an Empire*, REUTERS (July 11, 2012, 5:08 PM), <http://www.reuters.com/article/2012/07/11/us-cuba-theater-reform-idUSBRE86A1B620120711>.

64. Richard Feinberg, Havana Bars: The Next Wave of Private Innovation, Cuba Standard May 7, 2014. Available <http://www.cuba-standard.com/2014/05/07/havana-bars-the-next-wave-of-private-innovation/>.

65. Victoria Burnett, Cuba Hits the Wall in a 2-Year Push to Expand the Private Sector, The New York Times, July 16, 2012. Available <http://www.nytimes.com/2012/07/17/world/americas/economists-question-cubas-commitment-to-privatizing-businesses.html?pagewanted=all>.

66. See, José Álvarez, Foreign Investment in Socialist Cuba: Uncertain Real Profits for Foreign Capital and Continued Exploitation of the Labor Force, The Foundation for Human Rights in Cuba, May 1, 2014. Available http://www.fhrcuba.org/wp-content/uploads/2014/05/FHRC-final-Foreign-Investment-Report-5_09_14.pdf. Discussed in Juan O. Tamayo, Report Says Cuba's new foreign investment law violates international labor agreements, *The Miami Herald*, May 9, 2014. Available <http://www.miamiherald.com/2014/05/09/4108310/report-says-cubas-new-foreign.html> (“The professor said the foreign investment law approved by the country's parliament earlier this year violates at least seven international labor agreements and declarations approved by the United Nations and the International Labor Organization.”).

67. See Richard Feinberg, Cuba's New Investment Law: Open for Business?, Brookings, UpFront, April 1, 2014. Available <http://www.brookings.edu/blogs/up-front/posts/2014/04/01-cuba-foreign-direct-investment-feinberg>.

possibility of majority foreign-owned enterprises, and probably more as hope than as mandate, looks to streamlining the approval process. Yet the review and approval process remains at the center of the program, with all of its ideological baggage (a back door back into privatized state central planning, abuse of discretion, corruption, etc.).

But substantial constraints remain, constraints that are ideologically driven. FDI remains a province of the state and its enterprises. FDI is unavailable to cooperatives to through individual licensed proprietors. This retains the substantial connection between the planned economy and foreign contributions to it in the form of carefully targeted investment. It also drives a greater wedge between the state, which assumes a privileged position. And again, the eyes are on China, though the state has not been able to convey the nature of the Chinese path with any clarity to the masses (much less I would surmise, its own cadres).⁶⁸ If Raúl Castro manages to use the Ley 118 as a means of moving Cuban ideology out of its half century box, that, more than anything else, will mark this endeavor as extraordinary.

China and Alternative Paths to Marxism-Leninism

Marxist-Leninist ideology, like Western-style democracy and market-oriented economic ideology, offers more than one path. Beyond variations of European Stalinism (and its Trotsky Theory alternative), the Chinese have developed a different path since the death of Mao Zedong. That path has been grounded on a view of Marxism-Leninism as a dynamic and incomplete process that must be further developed (scientific development) toward the substantive goals of Marxism, for which Leninism provides the founda-

tion for organization approaches, though not their ultimate and enduring forms (socialist modernization). Harmonious development toward the goal of achieving a communist state, rather than egalitarianism and class struggle as a basis for further development that will augment a communist reality, tends to guide Chinese ideology. Most importantly, the emphasis of understanding Marxism as in development and necessarily subject to refinement under national conditions and in line with the times changes the institutional role of the vanguard Party from a guardian of past victories to something more akin to a magistrum, through which the entire wisdom of the Party may be applied to the development of what in the language of the Constitution of the Constitution of the CCP is references as “important guiding principle for China’s economic and social development and a major strategic thought that must be upheld and applied in developing socialism with Chinese characteristics.”⁶⁹

Under Deng Xiaoping’s leadership, China embarked on a different set of ideological choices for the elaboration of Marxism in China. Rather than repudiate the ideological choices of the past Deng chose to acknowledge them all and embrace that which made sense going forward and acknowledge mistakes. It has only been recently that the PCC has adopted a similar practice.⁷⁰ The CCP, after vigorous debate, determined to make substantial changes to its ideological line and adopted the framework that serves as the basis of contemporary CCP political theory, one embedded in the constitutions of the state and the CCP. The CCP adopted a traditionalist base line—the four cardinal principles—one the built on existing ideology and then developed it to suit current

68. Ibid. (“We should not forget that economic growth is not synonymous with social growth.”).

69. Constitution Chinese Communist Party General Program, available http://news.xinhuanet.com/english/2007-10/25/content_6944738.htm.

70. “We Cuban revolutionaries have committed errors, and we will continue making them. But we will never make the mistake of being traitors,” said Castro, 84, in an article published in the state-controlled press.” Revolutionary standard-bearer Fidel Castro admitted Thursday that Cuba’s leaders had made mistakes over the years but insisted they had never betrayed their communist ideals, Times Live (South Africa), Jan. 20, 2011, available <http://www.timeslive.co.za/world/2011/01/20/castro-admits-mistakes-were-made>.

conditions.⁷¹ Deng dismissed the ideology of the Cultural revolution as “the phoney, ultra-Left socialism pushed by the Gang of Four, which boils down to universal poverty,”⁷² and Marxism-Leninism and Mao Zedong Thought as an “integral, scientific system.”⁷³ But what liberated Chinese ideology from its past was the notion of progress inherent in the scientific nature of Marxism-Leninism-Mao Zedong Thought.⁷⁴

The characterization of CCP ideology as the expression of the results of a scientific system grounded in Marxism-Leninism, had the effect of freeing CCP ideology from a preservationist posture and permitting ideology to evolve to meet the conditions of China consist with the core objectives of the substantive principles of Marxism, and the organizational principles of Leninism. From the scientific application of the substantive premises of Marxism and Mao Zedong Thought, the CCP, over the next forty or so years developed a number of ideological lines, the most important of which were the de-centering of class struggle as the fundamental focus of ideological work and the substitution of opening up and the mobilization of productive forces for socialist modernization (opening the non-state sector broadly to achieve the ultimate aims of Marxism),⁷⁵ the principles of harmonious society and the framework for the scientific development. From the scientific application of Leninist principles, the CCP has been developing an ideology of Socialist Democracy grounded in intra-Party and intra-governmental democracy

and accountability and is increasingly institutional rather than personal, collective rather than individual. It has used the principles of the Three Represents (Sange Daibiao) to open party membership beyond the core group of workers and peasants. Cuba, of course, retains its fundamental embrace of class struggle based, and the Leninist view of the operation of the vanguard party, modified only by the nationalism and internationalism of Fidelismo.

One must be clear here—the comparison with China is not meant to suggest that only by copying the details of the Chinese approach might Cuba embrace a more viable Marxist-Leninist solution to the contradictions of its current economic, social and political situation. Nothing of the sort is intended. The Cuban path, should it choose to develop its Marxist Leninist ideological structures, is unique to it. The specifics of the framework they adopt are less material than the need to adopt an ideologically dynamic framework (the great insight of Chinese Marxism-Leninism) and follow through. What the PCC might learn most from the CCP is the need to embrace the instinct and insight—new theory—of looking forward and then matching their theory to their objectives and to the legal projects built thereon.

Ironically, perhaps, it appears that Raúl Castro has evidenced the greatest willingness to move Cuba forward towards a more Marxist path, one that frees Cuba from its ancient Russian and European Marxist-Leninist tutelage of the last century and substitutes Cuban for European and Russian priorities in the way in which Marxism is embraced and struc-

71. See Deng Xiaoping, Uphold the Four Cardinal Principles, March 30, 1979, available <http://english.peopledaily.com.cn/dengxp/vol2/text/b1290.html> (“keep to the socialist road; uphold the dictatorship of the proletariat; uphold the leadership of the Communist Party; and uphold Marxism-Leninism and Mao Zedong Thought.”).

72. Ibid.

73. Ibid.

74. “What we consistently take as our guide to action are the basic tenets of Marxism-Leninism and Mao Zedong Thought or, to put it another way, the scientific system formed by these tenets. When it comes to individual theses, neither Marx and Lenin nor Comrade Mao could be immune from misjudgements of one sort or another. But these do not belong to the scientific system formed by the basic tenets of Marxism-Leninism and Mao Zedong Thought.” Ibid.

75. The importance of this change cannot be underestimated. As late as 1969, it was clear that what was to emerge as the theory of the mobilization of productive forces for socialist modernization was viewed as incompatible with the class struggle based ideological posture of the CCP line. See Hung Hsueh-ping, Revolutionary Mass Criticism: The Essence of “Theory of Productive Forces” Is to Oppose Proletarian Revolution, *Beijing Review* 12(38):5-8 (1969). Available <http://marxistphilosophy.org/ProdForDet.pdf>.

tured more finely tuned to the conditions of Cuba.⁷⁶ But the conservatism of the Lineamientos, in its final form, suggests both the power and hegemonist error of European Marxism, made worse when wedded to an ideology that by its terms posits that it has attained its highest level of development in a state that is far from achieving that same objective. China also had to learn the lessons of the errors of hegemonism in its own relationships with the Soviet Union in the 1950s and 1960s. Until that lesson is learned, PCC ideological approaches—and thus its constraints on its political, administrative and governance frameworks—will continue to be subverted by an ideology out of tune with the actual conditions of Cuba. That incoherence is itself a fundamental error of Marxism.

Ideology and Transition—Cuba at a Crossroads

Transition is coming to Cuba. Everyone from the PCC to the most traditionalist factions in the United States and its government understand that change is coming to Cuba. It is the nature of the changes and their ultimate goals over which there is disagreement. Many in the West see the “transition” as inevitably moving toward western style democracy and market-based economy.⁷⁷ Many in the PCC see the “transition” as a gradual opening, as narrow as possible, to solve present crises without effectuating substantial changes in the basic character of the Cuban state—Stalinist, centrally planned, with a vestigial non-state sector and a robust set of state to state relations as the basis of its global engagement. Both of these factions, one based in Miami for the most part, and the other in Havana, are living on the ethers of dreams grounded in the phantasmagorical effect of January 1, 1959 and as incarnated, its living presence in policy and ideology. Both mistake mythology for reality, and the hard work of a vanguard party for the cathartic effect of the instant of revolutionary victory.

Today the PCC stands at a great crossroads—one that will determine its future and the future character of the operational ideology of the Cuban state. The internal self contradictions of European Marxism was brought to full flower within the unsustainable ideology of Stalinism, which itself was sustained only by an excess of bureaucratism and cult of personality. These self contradictions, embraced by the PCC, combined with the ossification of Cuban Marxism-Castroism—an almost obsessive reflex to use the entire resources of the nation to stop time on January 1, 1959 (an obsession mirrored perversely by their adversaries within certain elements of the Cuban exile community), threaten the viability of the PCC more than any threat by the Americans and the Cuban exile community, both of which have remained substantially impotent, ideologically and in terms of power politics, to affect facts on the ground in Cuba to come close to their own objectives. The failures and ideological gaps in the moves toward economic reform of the last 5 years suggests the problem.

Unable to escape the logic and tensions of the ideological stasis grounded in an unchanging approach to an understanding of Marxist Leninist theory, and even of the Castroism that sought to apply its logic to the context of Cuba, any effort to structure deep economic reform will necessary founder, its ability to conform to the realities of the Cuban situation irreconcilable with an ideological base that appears to be unchanging and indifferent to the scientific development inherent in the founding ideology itself. The problem of economic reform in Cuba, then, is not that the Cuban state is too Marxist—the problem might well be that *the PCC is not Marxist enough*.

These problems of the PCC are of their own making.⁷⁸ The PCC has the power to move beyond them. That requires, beyond the institutionalization of the PCC itself (a vast and complex task in its own right),

76. Discussed in Larry Catá Backer, *The Cooperative as Proletarian Corporation: Property Rights Between Corporation, Cooperatives And Globalization In Cuba*, *Northwestern Journal of International Law and Business* 33:527-618 (2013).

77. See, e.g., Edward Gonzalez, *After Castro: Alternative Regimes and U.S. Policy*, Institute for Cuban and Cuban-American Studies (2002).

78. See, e.g., Arturo López-Levy, *Communist Party Must Do More to Spur Cuba Reforms*, Fox News Latino, Nov. 19, 2011. Available <http://latino.foxnews.com/latino/politics/2011/11/19/scholar-communist-party-must-do-more-to-spur-cuba-reforms/> (“But, according to Lopez-Levy, the type of change insinuated by President Raul Castro’s reform plan requires a party that not only ‘wears the mantle of the revolution, of the historical path (the island has taken since 1959), but which is focused on the political task of promoting that reform.’ . . . ‘That involves more significant political changes that do not mean the (end of the one-party system) or anything of the sort, but do imply a more dynamic role for the party as a vehicle of change, reform and institutionalization,’ the expert said.”).

the de-personification of the structures of Party rule, and the institution of rule of law cultures within the Party, in the PCC's relationship with the state apparatus, and in the behaviors of the state apparatus itself. While the PCC as a vanguard Party is expected to set policy and the objectives to which the state ought to attain, Cuban Marxism fails by continuing the unsustainable policies of a half century ago that suggested that law and politics converge, the Party must govern as well as direct, and that there ought not to be a separation between administration and governance. The Chinese and the Vietnamese have shown, however much these systems still must develop and evolve, that it is possible to develop a Marxist system compatible with markets, without overweening state control of economic activity (though of policy), one that separates the Party from the administrative organs of state, and that eventually provide a space for popular engagement with state administration, while opening political participation more generally to all levels of Party members.

CONCLUSION

This essay has sought to make six principal points. First, ideology is central to the "problem" of Cuba. But ideology is not understood in its Western sense. Rather, ideology is better explained as the articulation of the fundamental tenets of the political, social and economic culture of the state,⁷⁹ the way one understands the political premises underlying the U.S. Constitution and the premises of its "Bill of Rights."

Second, Cuba through its vanguard Party, the PCC, has chosen a particular path toward the articulation and application of Marxism-Leninism in the organization and exercise of power. Cuba's PCC has chosen to adhere to the European and Soviet approach to Marxism-Leninism, that has proven to be a failure, mostly because of its inability to reconcile the contradictions between its ideological verities and the reali-

ties on the ground. That form of Marxist-Leninist-Stalinism tends to freeze the idea at the moment of the Revolution's triumph and to attempt to make eternal that moment. *preserving* the Revolution becomes the paramount ideological stance. The objective of preservation of revolutionary ideals becomes the engine of ideological development.

Third, the specific manifestation of PCC ideology has a direct effect on the structures of the Cuban Party and state. For Cuba that has meant a substantial intermeshing of Party in the functioning of the state and of the state apparatus subsumed within Party structures. It has also reduced the importance of law as a basis for administration and a substantial reliance on administrative discretion as a substitute for systems of rules. Only recently has the PCC indicated a vague willingness to "share the experience of governance" with China, for example.⁸⁰

Fourth, ideology has an important consequential effect on the shape and scope of reforms. The ideological framework of Cuba explains the limits of current efforts at economic reform. Such reform can only be understood within the constructs of ideological taboos. These help explain the reasons such reforms may ultimately present inescapable contradiction (opening markets within a culture of central planning and administrative discretion for all market operations).

Fifth, Marxist-Leninist ideology, like Western style democracy and market-oriented economic ideology, offers more than one path. Beyond variations of European Stalinism (and its Trotsky Theory alternative), the Chinese have developed a different path since the death of Mao Zedong. That path has been grounded on a view of Marxism-Leninism as a dynamic and incomplete process that must be further developed (scientific development) toward the sub-

79. In the Chinese context, see discussion in 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*. *Journal of Transnational Law and Contemporary Problems*, Vol. 16, No. 1, 2006. Available at SSRN: <http://ssrn.com/abstract=929636>.

80. Chinese Premier Meets Cuba's First Vice President, Xinhua, June 19, 2013. Available <http://english.cpc.people.com.cn/206972/206976/8290188.html>. Miguez Diaz-Canel, Cuban First Vice President, in Beijing for a meeting with Chinese Premier Li Keqiang, acknowledged the importance of bilateral ties between the two countries, and the relationship with China. He related that "the Cuban side is ready to increase high-level interactions, share the experience of governance and deepen practical cooperation with China in areas including trade, technology, infrastructure, telecommunication, education and tourism." *Ibid*.

stantive goals of Marxism, for which Leninism provides the foundation for organization approaches, though not their ultimate and enduring forms (socialist modernization).⁸¹ Harmonious development toward the goal of achieving a communist state, rather than egalitarianism and class struggle as a basis for further development that will augment a communist reality, tends to guide Chinese ideology.

Sixth, transition is coming to Cuba. Everyone from the PCC to the most traditionalist factions in the United States and its government understand that change is coming to Cuba. It is the nature of the changes and their ultimate goals over which there is disagreement. Most in the West see the “transition” as inevitably moving toward western style democracy and markets based economy. Many in the PCC see the “transition” as a gradual opening, as narrow as possible, to solve present crises without effectuating substantial changes in the basic character of the Cuban state—Stalinist, centrally planned, with a vestigial non-state sector and a robust set of state-to-state relations as the basis of its global engagement. Both of these factions, one based in Miami for the most part, and the other in Havana, are living on the ethers of dreams grounded in the phantasmagorical

effect of January 1, 1959 and as incarnated, its living presence in policy and ideology. Both mistake mythology for reality, and the hard work of a vanguard party for the cathartic effect of the instant of revolutionary victory.

A revolution may be consummated in an orgasmic moment, but a vanguard party must base its legitimacy—its right to continue to lead the political community that emerges from revolution—on its ability to develop truth from facts. China has shown one path toward a Marxist-Leninist system that is forward looking. Cuba must find its own if it is overcome the constraints and contradictions of the ideological dead ends it continues to embrace and retain, after the founding generation passes, its Socialist character and develop a Cuban variant of Chinese Socialist Democracy. That path must draw on Cuba’s own indigenous roots and be consonant with the political cultures of Latin America, within which its governance style remains situated. That requires a very different approach to the theoretical foundations of the Cuban Party and State, an approach to seek to do more than preserve and apply. In the absence of that sort of reform, something more radical and disruptive is more likely.

81. “The question is being asked, what is the relationship between this continuing class struggle in China which Premier Hua’s speech affirmed, and the campaign to carry out the four modernizations? Hua brought out the two controversial points dealing with this subject. First he said that ‘class struggle is no longer the principal contradiction in our society.’ Secondly he called for an end to ‘large scale, turbulent class struggle’ in the future.” Michael Klonsky, Commentary by CPML Chairman: Socialist modernization and the class struggle in China today, *The Call* 8(32) (1979), available <http://www.marxists.org/history/erol/ncm-5/klonsky-china-2.htm>. (“Whether here in the U.S. or in China, there can be no substitute for concrete analysis of concrete conditions. This is the heart and soul of Marxism-Leninism.”)