

C. Essays

Policy as an Oscillation With the Illusion of Progress in the United States, China, and Cuba

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This short essay centers on the issue of political oscillation and systemic integrity on the character of policy choices (as oscillations or “progress” and the effects of using system tools in new and innovative ways on the fundamental ideology and operating forms of systems. Just as policy oscillates within constraints framed by systems--so that what appears as progress might be better understood as oscillations among plausible positions within ideological boundaries--the use of the operating rules of the system can also bring oscillations in the character (and thus the underlying ideology) of the system in which they are used. “Law, like politics, and the constitution of states, exists simultaneously as fabricated for public consumption, and as arranged for private advancement. In this sense, Jean-François Lyotard reminds us that a ‘subject, [which] is whatever constitutes itself,’ grows fangs.”²

As the American elections of 2020 suggested--once one gets through the utterly banal commentary that accompanies it--states work hard to provide the illusion of progress where in reality each operates within a quite narrow band of policy choices, toward the edges of which they oscillate as context and

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² Larry Cata Backer, “Foreword: Constituting Nations--Veils, Disguises, Masquerades,” *Penn State Int’l L. Rev.* 20(2):329, 330 (2002).

circumstance dictates. The Americans have just undergone a series of oscillations, first toward American exceptionalist universalism from 1993 through 2016 and then toward American singular universalism in the period that began in 2016, and which will likely remain a potent policy baseline through the first term of the incoming Biden (and more likely Harris) administration.

Those oscillations leave intact American exceptionalism, to be sure (though the source of irritation among its subordinate units globally appears from different vectors depending on whether one must endure Americans as the embodiment of the “*universal person*” or Americans as the embodiment of the “*perfected global individual*”). But the oscillation provides enough difference to permit embrace of the illusion of change. Now one must prepare (again) for that “other face” of American domination led by those elites whose extraordinary grumpiness at having themselves kicked out of power in 2016 (for a little while) will require readjustment internationally (after a short period of revenge taking), one no less intent on getting its own way than the one that will be abandoned (for a little while) after January 2021 (though not its substance).

For 2020, that path toward a managed oscillation requires the marketing techniques of television--one starts with a political replication of “*The Bachelorette*”³ and ends with a segment of a banal lawyer drama discussed by a group of people whose greatest assets are their celebrity. We then move back to a four year run of *Survivor*.⁴ But then the performance of American democracy is now instructed by its television shows, which better reflect current values and cultural norms than

³ The “*Bachelorette*” is a romance reality show, produced by ABC in which a woman, the star of the series, selects the bachelor with whom she would like to pursue a relationship. The process takes many episodes involving contests and interviews through which she (and the audience sometimes) participate in winnowing down the initially large number of bachelor contenders to two from which she selects one. Here the object is to win favor. See ABC Webpage, “*The Bachelorette*,” available [<https://abc.com/shows/the-bachelorette>].

⁴ “*Survivor*” is a reaty based television series produced by Paramount and distributed through CBS, in which a group of diverse individuals are located to a site (which varies from show to show) during the course of which they compete in challenges and are selectively voted off the game until one winner emerges. Here the object is to undermine and destroy competitors through fragile alliances and subterfuge. See CBS webpage, “*Survivor*,” available [<https://www.cbs.com/shows/survivor/>].

whatever comes out of the pious mouths and impious actions of those who once led but must now compete within the political framework of mass entertainment.

Still both have proven useful and extraordinarily influential--they served as the template for the construction of the Chinese Leninist variation that is much in evidence in the world today, especially through Chinese international universalism in international public organizations and Chinese private Leninist (communist) internationalism through the Belt and Road Initiative. Communist internationalism does present differently and thus the oscillations acquire a somewhat different character than their American "twin." The oscillations tend to focus on two things, the first is the character and functioning of the core of leadership within a vanguard party and the other the extent to which there is an identity between the vanguard (and its objectives) and the functioning of society over which it has authority. One end tends to produce a "reform and opening up" and "emancipating the mind" as the equivalent to the American universal person (but here with Chinese characteristics); China dominant but in the world. The other tends to "put the Party at the center" and suspicion of the "black hand of foreign interference" that is the equivalent of the American perfected global individual; China dominant but alongside the world.

These are important oscillations and worthy of some measure of monitoring and response. But most other states have tended to take their cues from the way that dominant states perform (and frame) politics. That is the case with Cuba. Since the disappearance of its last great Soviet master state (having undergone much longer oscillations among imperial masters, first Spain, and then the United States and lastly the Soviet Union, an oscillation that also merits substantial study for the mark it left on Cuban, even Marxist Leninist) political classes) Cuban leaders have carefully oscillated between two quite predictable policy poles to suit time and context.

In the case of Cuba the oscillation tends to focus on the great peculiarity of the Cuban political economic model--its relationship to markets and thus to the way it engages with its non-state sector. When times are good, or when there is fear of outside (e.g., US threats to overwhelm the state as was the case

during the last years of the Obama Administration), the state oscillates toward a rejection of markets and of the autonomy (strictly controlled) of the private sector. In crisis however--during the period after the loss of their imperial master in the 1990s, and in the shadow of pandemic now, Cuban policy oscillates toward a greater tolerance of markets and of the autonomy of the private sector (controlled but less strictly and a greater willingness to look the other way--e.g. as a strategically lax enforcement policy).

Communist-run Cuba will allow farmers, private traders and food processors to engage in direct wholesale and retail trade as long as farmers meet government contracts, state media reported on Friday. The government will also loosen some price controls and delegate others to local officials' discretion. The measures do away with the state's monopoly on produce distribution and sales and are part of a series of policy changes in the sector approved by the Council of Ministers amidst a growing food crisis. Similar market-oriented reforms were adopted by the Communist Party a decade ago after a lengthy popular discussion, then reversed in 2016 with little explanation.⁵

Thus the oscillation. And again the misreading. People (especially talking heads and other analysts) will see in this or project onto it some of trend line toward some sort of progress that will produce transformation. It will not. It is an oscillation that is both measured and designed to produce that sort of illusion. These align with a number of other policies announced in the last several months--all designed to take the burden off that state in a context in which the state is unable (temporarily) to bear it, but which preserves the fundamental structures so that as necessary, a reversion may be attempted.

Still even controlled oscillation never brings us back to the same place but rather like the oscillation of a pendulum moves use to a place different enough that other possibilities--within systemic constraints--may become apparent. And it is in the taking advantage of those that really interesting statecraft

⁵ Marc Frank, '[Cuba loosens state monopoly on food sales amid crisis](https://www.reuters.com/article/cuba-economy-reform-idUSL1N2HS132)' Reuters 6 Nov. 2020); available [https://www.reuters.com/article/cuba-economy-reform-idUSL1N2HS132].

follows. And that is where the challenge and opportunity lies in systems of these kinds--not just in imperial systems like those of the United States and China, but in subaltern systems like that of Cuba. Oscillations stress the structures within which they occur. In ordinary terms, they pose a risk to the integrity of the system and its smooth operation. Pushing structural elements of systems to their limits eventually breaks them. One wonders whether that is the case in the United States since 2000 and in China since 2013, and in Cuba since the 1990s. In each of those cases factions push the limits of structural flexibility by deploying structural elements.

The history of the Roman Republic reminds us that any constitution, even that of a venerable republic, can be transformed without the benefit of an amendment. Such a transformation may so reshape a republic that it begins to function as a monarchy in everything but name. But the political transformation of a polity can be masked. The most easily fashioned mask consists of the forms of the superseded political systems. Totalitarian dictatorships can masquerade as democracies by maintaining democratic institutions, such as legislatures and judiciaries, which are under the control of the ruling group. The early Roman Empire retained the institutional forms of the Republic even as power was transferred to the imperial household.⁶

The vanguard factions of the three states have learned much about the use of systemic tools to undermine the ability of opposing factions to govern and to advance their own interests. These lessons have no ideology; nor do the tools developed by the factions holding authority in each regime (or through their societal networks and narrative spinning organs). That creates an interesting set of parallel movements. On the one hand, the policy oscillations of states continue to swing within the borders of system constraints, and each swing continues to suggest linear progress (toward some goal) or the embrace of the correct alignment of policy and ideology.

⁶ Larry C. Backer, Race, "The Race," and the Republic: Re-conceiving Judicial Authority After *Bush v. Gore*, *Catholic University Law Review*. 51:1057, 1060 (2002).

That is the most interesting question--whether contained policy oscillations will also produce stresses on the form of government through which the oscillations are managed. As each of these states utilizes its structural mechanics (litigation, information management through platforms and news media), party organization and discipline, and societal control levers) to advance factional interests, it is to the long term effects of the utilization of these tools on the character of the political economic model that is worth serious consideration. The evolution of political tools all bear watching as the global New Era continues to reveal its characteristics. This is certainly an old political story, but one the lessons of which require retelling, especially at stress points in historical development--as are now occurring in the US, China, and Cuba (my three examples of a wider phenomenon). "Now the corruptions attending each of these governments are these; a kingdom may degenerate into a tyranny, an aristocracy into an oligarchy, and a state into a democracy. Now a tyranny is a monarchy where the good of one man only is the object of government, an oligarchy considers only the rich, and a democracy only the poor; but neither of them have a common good in view. "⁷

In the United States the stress toolkit has become more sophisticated with a greater potential for destabilization. Some that come to mind: (1) an overtly political press sector that then seeks to both project its power in politics as an autonomous actor while claiming constitutional privilege for its role in civic life (the New York Times and New York Post were interesting examples); (2) platforms overseen by private sector institutions and individuals with a substantial power to shape narratives and perceptions by their control of platform inputs and outputs (including notoriously Twitter and Facebook); (3) the increasing and accelerating trend toward judicialization of administrative decision making and the parallel trend of subjecting political decision-making to the discretionary limitations of administrative organs ; (4) the use of state security organs for investigations (from the end of the Obama administration through that of Mr., Trump and likely going forward); (5) the utility of impeachment as a juridico-political

⁷ Aristotle, *Politics* (William Ellis, trans., original publication London: JM Dent & Sons, 1912; Project Gutenberg June 5, 2009 [EBook #6762] (before 322 B.C.)); available [https://www.gutenberg.org/files/6762/6762-h/6762-h.htm#link2HCH0032] at Book III, Chp. VII.

tool; (6) the use and misuse of the executive order (tied of course to its counter thrust, the judicialization of administrative decision making No. 3 above); and (7) the legitimization of essentialist and reductionist politics.

In China the stress toolkit centers on the mechanics of vanguard working style. Unlike the United States, China has recently experienced the instability that is produced when the system is used against itself and is more conscious, in this case of avoiding the instability of the 1960s. Outside the Communist Party apparatus--(1) the administration of consultative democracy, especially through United Front and the Chinese Peoples' Political Consultative Conference (CPPCC) organs; (2) the role of the National People's Congresses at the national and provincial levels.; and (3) deviation Within the CPC apparatus--(1) democratic centralism, communist internationalism, (2) anti-corruption campaigns; (3) core leadership principles; (4) rectification campaigns and purges.

In Cuba the stress toolkit is simpler but no less potent. These include the relationship between the state and party apparatus; the mechanics and abuse of the consultation process; and the abuse of bureaucratic process (beyond the usual tolerable levels, at least from a historical perspective). The rest is endemic--corruption, risk aversion, and paralysis driven by the high cost of mistakes treated as ideologically sensitive. The risk in Cuba is different as well--distortion threatens not just the Part's working style but the viability of the Party as well. The recent oscillations in the Cuban economic-political model, culminating in the reforms announced in the Autumn of 2020 provide a good illustration of the point.

One of the great markers of the Cuban political economic model was its tight control of the non-state sector. Though much of the propaganda directed toward the hopeful and gullible masses in liberal democratic states (and especially its intelligentsia) was carefully drafted to suggest (but not declare) an embrace of market and market oriented principles, the reality has been much more aligned with the quite clear strictures of the Cuban Communist Party's (PCC) political economic model adopted during its 7th PCC Congress in 2016. The conceptual blueprint for the Cuban political economic model has been widely distributed in the form of its *Conceptualización del modelo económico y social Cubano de*

*desarrollo socialista: Plan nacional de desarrollo económico y social hasta 2030: Propuesta de vision de la nación, ejes y sectores estratégicos*⁸ and its embrace of central planning (along with the fundamental distrust of markets as an economic-political ordering mechanism) as the operative form of macroeconomic and politically driven planning has been advanced strenuously even in the face of challenges.⁹

But the collateral effects of the COVID-19 pandemic has produced a challenge of a substantially different character for the Cuban political-economic model and its conceptual basis elaborated in its *Conceptualización del modelo económico y social Cubano*.¹⁰ The economic effects of the pandemic has affected key sectors of Cuban economic planning through 20230. The most acute effects have been felt in the tourist sector; but that direct effect has produced substantial secondary effects as well. The absence of tourism affects not only direct employment and investment, but it also affects business (state and non-state sector) dependent on tourism, from house renting to dining to guides, trinket sales and the more importantly the domestic sale of "signature" Cuban products (liquor, cigars, art, etc.).

While the pharma sector has benefited, the economic rather than the political benefits of medical research that is COVID related has yet to be assessed. The same is true of Cuba's medical internationalism. While the political benefit of the provision of medical staff outside of Cuba has brought some positive political benefits, it is not clear that the overall economic effects have been enough to dent the shortfalls from other economic sectors (and this is particularly the case where some of the provision of medical services may have been done at reduced at no cost to the recipient territory).

⁸ *Conceptualización del modelo económico y social Cubano de desarrollo socialista: Plan nacional de desarrollo económico y social hasta 2030: Propuesta de visión de la nación, ejes y sectores estratégicos*; available [<http://www.thecpe.org/wp-content/uploads/2016/05/Conceptualizacion-del-modelo-economico-PCC-Cuba-2016.pdf>].

⁹ See, Larry Catá Backer, "Central Planning Versus Markets Marxism: Their Differences and Consequences for the International Ordering of State, Law, Politics, and Economy," *Connecticut Journal of International Law* 32(1):1-47 (2017).

¹⁰ *Conceptualización del modelo económico y social Cubano de desarrollo socialista*, supra.

When one adds difficulties in remittances from abroad and the increasing financial requirements on the state to provide for food, water, and services scarcities, the pressure on the Cuban state--again one that has banked on central planning and a tightly controlled non-state sector--has become enormous. In response, Cuba has begun--officially--to adopt a number of reforms (discussed in the recent Conference of the Association for the Study of the Cuban Economy (ASCE)).¹¹ Part of the reforms are meant to make a little easier the ability of non-state sector businesses to obtain materials and funds.¹²

One of the more interesting developments has been the much trumpeted decision by the state to eliminate one of the key structures for the control of the private sector--the requirement that all private activity be licensed, coupled with the control of the sort of economic activity that could be licensed (e.g., if there is no license for an activity, it may not be undertaken except by state organs). The system of private activity licensing in its current forms is at least a decade old and closely tied to the *Lineamientos* (Guidelines) which were developed by the PCC to chart a pathway to reform (which after 2016¹³ was to be further constrained by the principles of the

¹¹ "Destrabando" the Cuban Economy: An Assessment of Reforms and the Road Ahead" and the Carlos Díaz Alejandro Lecture--"Racism with Equality? Measuring Racial Inequality in Cuba, 1980-2010"; Today's Program for the Conference Cuba From the Castros to COVID," Law at the End of the Day (14 August 2020); available [https://lbackerblog.blogspot.com/2020/08/destrabando-cuban-economy-assessment-of.html]. See also José Antonio Alonso and Pavel Vidal on "La Reforma Económica en Cuba: Atrapada en el Medio" (Working Paper Foro Europa-Cuba; November 2019)," Law at the End of the Day (17 December 2020); available [https://lbackerblog.blogspot.com/2019/12/jose-antonio-alonso-and-pavel-vidal-on.html].

¹² Andrea Rodríguez, "Economy Tanking, Cuba Launches Some Long-Delayed Reforms," ABC News (6 August 2020); available [https://abcnews.go.com/International/wireStory/economy-tanking-cuba-launches-long-delayed-reforms-72212581] ("the government last month announced that it would allow private restaurants to buy wholesale for the first time. Ministers also announced that private business people could sign contracts to import and export goods through dozens of state-run companies with import/export licenses.").

¹³ *Lineamientos de la política Económica y social del Partido y la Revolución para el período 2016-2021*; available [http://www.granma.cu/file/pdf/gaceta/Lineamientos%202016-2021%20Versi%C3%B3n%20Final.pdf]. The Lineamientos are a moving

*Conceptualización del modelo económico y social Cubano.*¹⁴ It was meant to retain effective state control of the non-state sector will effectively devolving operational tasks (at the lowest levels of consumer goods and services) to individuals. The licensing system proved difficult to enforce and resulted in substantial "work around" tolerated by the state but often subject to campaigns against abuse, wealth accumulation, corruption, etc.

My very brief observations:

(1) there is a wide gulf between announcement and rolling out, which is nebulously planned for the future and in (slow?) stages;

(2) it is not clear how much regulatory impediments will be built into the new structures for private sector operation (if the model of foreign investment is any guide, the bureaucracy around this reform may be formidable. . . and expensive);

(3) it is not clear what sectors of the economy will be roped off from private sector permitted activities;

(4) the ability of foreigners to invest in the private sector enterprises is not clear;

(5) the nature of aggregations of capital or labor that may take advantage of the reforms has not been specified with any clarity, the official suggested that small enterprises and labor Coops would be the focus;¹⁵ and

(6) the extent of monitoring and approval of specific activities has yet to be determined (that is the extent to which

target; they have been modified several times since its initial version to reflect changes. They can serve as a barometer of official taste (aspirational of course) for change.

¹⁴ *Conceptualización del modelo económico y social Cubano de desarrollo socialista*, supra. See also "Under Cover of the Sonic Weapons Attack: The Cuban Private Sector as Collateral Damage as Cuba Retreats Toward Central Planning)," *Law at the End of the Day* (24 December 2017); available [https://lcbackerblog.blogspot.com/2017/12/under-cover-of-sonic-weapons-attack.html].

¹⁵ On Cuban labor cooperatives, see, e.g., Larry Catá Backer, "The Cooperative as a Proletarian Corporation: The Global Dimensions of Property Rights and the Organization of Economic Activity in Cuba," 33 *Northwestern Journal of International Law & Business* 33:527 (2013).

the newly opened private sector must still report on its business planning, pricing, and sales models to obtain approval before they can proceed) though it is clear that there will be monitoring and approval processes imposed.

As is most Cuban economic reforms, it is the detail rather than the broad statements that merit substantial attention. The broad statements serve political ends; the details serve economic ends--and it remains to be seen the extent to which the reforms remain, in their details, consistent with the *Conceptualización del modelo económico y social Cubano*.¹⁶ However, it is this connection with the ideological foundations of the Cuban political-economic model, as well as the strong connection between quite specific patterns of implementation and the reform announcements that will be missed by many who treat these reforms as if they were being announced by the Government in Paris rather than in Havana.

Taken together one might consider that the great changes in leadership (or their failure to change), those events by which systemic and policy changes are judged and measured may be less useful in recognizing and gauging either. Policy changes express the plausible; but the techniques to push that oscillation beyond its traditional limits affects not just the amplitude of oscillation but also the integrity of the system. Or better put it transforms not just policy but the normative premises and working style of the system itself. Thus it might be more useful to judge great changes in a political-economic model not by the obvious, changes in policy that are predictable and in line with factional lines. Instead changes to the mechanics of a system by using its methods against itself provide a better basis for measuring change.

Now may be the time to get those measuring sticks out - -not to judge changes in the policies of these three states, but to measure the way that these policy changes evidence the more profound oscillation in the character of the political-economic model. And those oscillations are best gauged, not by social scientists and their invocations of the deities of data and analytics, but by watching carefully the way that politics imitates popular culture and the way that popular culture

¹⁶ *Conceptualización del modelo económico y social Cubano de desarrollo socialista*, supra.

mimics politics in a dialectic that is more revealing than any model produced through the reductionism of modelling.

This is not a new phenomenon, certainly, but technology has made its creation and diffusion far more pervasive and powerful. In China, Cuba, and the United States, it is to television rather than the televised performances of political actors (the term is deliberately used in all its senses here) from which one ought to extract the politics of a state. That is what the American election of 2020 teaches (as well as its run up) reminds us today; China and the Cubans follow with national characteristics.

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