



2023

Transition-Denial and Structural Adjustment: Causation and Culpability in the Cuban Economy Culpability in the Cuban Economy

Jose Gabilondo

Florida International University College of Law, jose.gabilondo@fiu.edu

Follow this and additional works at: https://ecollections.law.fiu.edu/faculty_publications



Part of the [Banking and Finance Law Commons](#), [Common Law Commons](#), [International Law Commons](#), [Securities Law Commons](#), and the [Taxation Commons](#)

Recommended Citation

José Gabilondo, Transition-Denial and Structural Adjustment: Causation and Culpability in the Cuban Economy, 17 FIU L. Rev. 547 (2023).

This Article is brought to you for free and open access by the Faculty Scholarship at eCollections. It has been accepted for inclusion in Faculty Publications by an authorized administrator of eCollections. For more information, please contact lisdavis@fiu.edu.

Volume 17
Number 3 *Association for the Study of the
Cuban Economy (ASCE) Thirty-Second Annual
Conference – Florida International University
College of Law (Miami, Florida, 2022)*

Article 8

Spring 2023

Transition-Denial and Structural Adjustment: Causation and Culpability in the Cuban Economy

José Gabilondo

Florida International University College of Law, gabilond@fiu.edu

Follow this and additional works at: <https://ecollections.law.fiu.edu/lawreview>



Part of the [Banking and Finance Law Commons](#), [Corporate Finance Commons](#), [International Law Commons](#), [Law and Gender Commons](#), [Securities Law Commons](#), and the [Taxation-Transnational Commons](#)

Online ISSN: 2643-7759

Recommended Citation

José Gabilondo, *Transition-Denial and Structural Adjustment: Causation and Culpability in the Cuban Economy*, 17 FIU L. Rev. 547 (2023).

DOI: <https://dx.doi.org/10.25148/lawrev.17.3.8>

This Article is brought to you for free and open access by eCollections. It has been accepted for inclusion in FIU Law Review by an authorized editor of eCollections. For more information, please contact lisdavis@fiu.edu.

**TRANSITION-DENIAL AND STRUCTURAL ADJUSTMENT:
CAUSATION AND CULPABILITY IN THE CUBAN ECONOMY**

José Gabilondo*

ABSTRACT

This article examines some economic reforms implemented by the government of Cuba in 2020.¹ Called the *Tarea Ordenamiento* (“*Tarea*”),² these reforms involve a type of structural adjustment to the island’s economy that is controversial in developing countries. This article makes some observations about the challenges of evaluating the *Tarea* as a policy instrument.³ Structural adjustment programs are hard to assess because their effects can take decades to become apparent. Judging such a policy in the case of Cuba is particularly complex because U.S. sanctions severely constrain the island’s economy. Nevertheless, this article suggests that the *Tarea* demonstrates Cuba’s creeping acquiescence to market forces long repudiated by the Cuban government.

I. Cuba’s Economic Isolation in the World Order 548
 A. Macroeconomic Norming..... 548
 B. Evolution and Entropy in the Cuban Economy 550
II. Structural Adjustment Cuban-Style 552
 A. Implementation 552
 B. Proximate Cause and Transition-Denial..... 555
III. Dueling Registers: Exile-Speak and Island-Speak 557

* José Gabilondo, Professor of Law, Florida International University (FIU) College of Law, Miami, Florida, gabilond@fiu.edu or jmg2183@gmail.com, (305) 710-5656.

¹ Decreto-Ley No. 17 De la Implementación del Proceso de Ordenamiento Monetario [Decree-Law 17 On the Implementation of the Monetary Regulation Process], Dec. 10, 2020, 68 GACETA OFICIAL 512 (Cuba) [hereinafter Decree 17].

² *Tarea Ordenamiento* is short for *Tarea Ordenamiento Monetario*.

³ This article was presented at the Thirty-Second Annual Conference of the Association for the Study of the Cuban Economy (ASCE) at Florida International University College of Law on September 15–17, 2022. See generally Karla Rivas, *Association for the Study of the Cuban Economy (ASCE) Thirty-Second Annual Conference: Introduction*, 17 FIU L. REV. 479 (2023).

I. CUBA'S ECONOMIC ISOLATION IN THE WORLD ORDER

Structural adjustment programs became a common policy tool as part of the global trading order that took shape after World War II.

A. Macroeconomic Norming

After World War II, the rules of the game for international trade changed. Delegates from the Allied forces met at Bretton Woods, New Hampshire in 1944 to establish two multilateral agencies that would work in concert: the International Bank for Reconstruction and Development ("World Bank") and the International Monetary Fund ("IMF").⁴ How individual countries managed their fiscal policy, monetary arrangements, and the resulting balance of payments became matters of global concern.⁵ The IMF monitored country compliance with macroeconomic norms that affected government spending, taxation, monetary policy, exchange rate regimes, sovereign borrowing, central bank governance, credit markets, and trade.⁶

A threshold issue was the extent to which open markets should establish the exchange rates that related the value of their currency to foreign currencies. In an open market, the relative supply of and demand for a currency determined a currency's exchange rate against another currency. However, governments could inhibit these market forces through regulation or direct intervention in foreign exchange markets. To limit government control, the United States pushed for the gold standard, which limited a country's money supply to its gold holdings, which would serve as commodity collateral to back the value of the currency.⁷ The gold standard promoted stability at the expense of a country's flexibility over monetary policy. The United States wanted to make the dollar into the new global standard. Under the compromise that was finally adopted, the dollar was pegged to gold (the gold standard) and other currencies were pegged to the dollar (the gold exchange standard).

To that end, the IMF oversaw the operation of a world system of fixed exchange rates in which a country would target the value of its national

⁴ Michael D. Bordo & Harold James, *The International Monetary Fund: Its Present Role in Historical Perspective* 13–14 (Nat'l Bureau of Econ. Rsch., Working Paper No. 7724, 2000).

⁵ The balance of payments measures a country's economic relationships with other countries as reflected in the current, capital, and financing accounts. *See generally* IMF, *Balance of Payments and International Investment Position Manual* (6th ed. 2009), <https://www.imf.org/external/pubs/ft/bop/2007/bopman6.htm>.

⁶ *See* Bordo & James, *supra* note 4.

⁷ Sandra Blanco & Enrique Carrasco, *The Functions of the IMF and the World Bank*, 9 *TRANSNAT'L L. & CONTEMP. PROBS.* 67, 68 (1999).

currency time against a foreign currency and then seek to enforce that rate through trading. It worked for about twenty years, during which the U.S. dollar became the reserve currency of choice used by other countries to manage their foreign exchange reserves. In 1971, President Richard Nixon took the United States off the gold standard (which had already been being phased out). This had the effect of devaluing the dollar, which was now backed only by the conviction that U.S. economy was strong enough to affirm the ongoing value of its currency. The IMF began to promote a menu of monetary arrangements, including floating and fixed rates.⁸ In a floating rate system, a currency's foreign exchange value adjusted based on changes in the relative supply and demand for currencies.

After surviving this fundamental change in global monetary arrangements, the IMF widened its activities to monitor macroeconomic imbalances that could presage downturns in the economy. In the 1980s, the IMF promoted liberalizing the transnational movement of capital, goods, and people—globalizing markets that crossed national boundaries. In Latin America, many countries followed the Washington Consensus, a set of policy nostrums that became a neoliberal catechism for foreign economic policy.⁹ Viewed as bloated parasites, interventionist states were pushed to cede power over their national economies to market mechanisms.

In this system, structural adjustment programs functioned as a way to conform particular countries to the overall economic logic of global trade. The IMF coordinated these programs in dozens of developing countries, providing them with financial support in exchange for their commitment to make the difficult changes required of austerity. These changes could involve wholesale privatization of state enterprises, currency devaluation, stimulating exports, the elimination of subsidies to state entities and companies, and massive cuts in entitlement spending, such as education, health, and pensions.¹⁰ These programs tend to involve substantial hardship and sacrifice today for the sake of a possible, but by no means certain, benefit tomorrow. Cuba withdrew from the IMF after the Revolution; hence the island did not undergo the conventional forms of structural adjustment.

Going on a diet, stopping smoking, giving up alcohol, starting intense daily weight training, working more hours, cutting back on social media, reducing spending today to fund your retirement, and renouncing commercial outlines because you have decided to do *all* the reading for your classes can

⁸ See, e.g., Francesco Caramazza & Jahangir Aziz, *Fixed or Flexible? Getting the Exchange Rate Right in the 1990s*, 13 IMF ECON. ISSUES (1998).

⁹ John Williamson, *The Strange History of the Washington Consensus*, 27 J. POST KEYNESIAN ECON. 195, 195–206 (2004–2005).

¹⁰ See generally Jason Orringer & Carol Welch, *Structural Adjustment Programs*, INST. FOR POL'Y STUDS. (Apr. 1, 1998), https://ips-dc.org/structural_adjustment_programs/.

each be hard for an individual. Try doing all of these at once. Your future self may thank you, but your current self can be pretty unhappy. Imagine an entire country deciding to do all of those at once and you begin to get a sense of why structural adjustment is unpopular. Usually, a country will do it only as a last resort when forced to by other countries and multilateral organizations, in particular the IMF, which often operates as the world's lender of last resort.

B. Evolution and Entropy in the Cuban Economy

The most important determinant of the Cuban economy has long been its relationship with the United States. Before the Cuban Revolution in 1959, Cuba formed part of a regional economy that orbited around the United States. After Cuba's independence from Spain in 1898, the United States occupied Cuba twice, leaving only on the condition that the Cuban Constitution give the United States the power to intervene in Cuba's internal affairs so as to further U.S. interests, a set of much and rightly despised provisions called the Platt Amendment. It was removed in the 1930s, but Cuban economy remained integrated into that of the United States. This changed with the Revolution, which began a process of progressive economic and political estrangement between Cuba and the United States. After Cuba expropriated the property of U.S. nationals and corporations, U.S. presidents and Congress began imposing a complex set of economic and travel sanctions on Cuba.

The Cold War framed the estrangement between the United States and Cuba because it became integrated into the Soviet trading bloc, the Council for Mutual Economic Assistance ("CMEA"). The terms of trade with CMEA partners helped Cuba, which sold exports at a premium over market prices and bought imports at a discount over market prices. That spread between two administrative prices subsidized Cuba and reinforced the peso's purchasing power. The Cuban economy became deformed as the island shuttled between the United States, gatekeeper to the island's natural markets, and the Soviet Union, which demanded fealty in exchange for subsidies.¹¹ The Cuban Communist Party ("Party") assumed growing control over the national economy.

In 1991, the system fell apart after the dissolution of the Soviet Union, which destabilized the island, eliminated Cuba's export markets, and robbed the peso of its purchasing power. This led to a painful period of adjustment to a world economy that had changed around the island during the thirty years

¹¹ See José Gabilondo, *Economic Coercion and the Limits of Sovereignty: Cuba's Embargo Claims Against the United States*, 20 HARV. LATINX L. REV. 51, 60 n. 37-97 (2017).

after the Revolution. It began the *Período Especial*, a time of austerity and painful adjustment by people on the island. Between 1989 and 1993, Cuba's gross domestic product shrank by over one-third, fuel consumption was cut in half, and foreign trade declined by eighty percent, leaving Cuba without the hard currency needed to finance imports.¹² Cubans experienced their lowest standard of living after the Revolution as the island underwent structural adjustment without the financial support provided by the IMF to member countries to cushion austerity programs.

One of the challenges during the *Período Especial* was ensuring that the island had a workable form of its own money became more difficult. The Cuban government had an ambivalent relationship to the U.S. dollar. The government needed dollars to purchase imports, but the dollar came with major costs because it remained subject to U.S. jurisdiction. To discourage foreign banks from working with Cuba, the U.S. Treasury's Office of Foreign Assets Control imposed fines on foreign banks that provided banking services to the Cuban government. Although the Cuban government needed the dollar, it sought to contain the visible manifestations of dollarization while letting the U.S. dollar function as money.

The dissolution of the Soviet bloc forced the Party to consider new ways of getting the foreign exchange needed to finance imports. At the Fourth Congress in 1991, delegates voted to promote foreign investment and tourism, sources of hard currency, though few major changes were made.¹³ The government decriminalized the holding of dollars, removing obstacles to receiving remittances from the United States. As tourism to the island increased, the economy split into the peso sector (where most people earned and spent money) and the dollar sector linked to tourism.

The government introduced the convertible peso. Pegged to the dollar, the convertible peso absorbed excess peso liquidity in a more politically correct way. The convertible peso helped to segment the economy into a soft currency sector (denominated in pesos) and a hard currency sector (denominated in convertible pesos or dollars). This led to inequality because holders of hard currency had access to goods and services unavailable to the majority of Cubans. It also impoverished the island's human capital base as people left professions such as medicine, teaching, and engineering (soft currency jobs) for more remunerative though less technical work in tourism.

Cuba ended up with three circulating currencies—the peso, the convertible peso, and the dollar. Two were legal tender, two were hard

¹² Jorge I. Domínguez, *The Cuban Economy at the Start of the Twenty-First Century: An Introductory Analysis*, in *THE CUBAN ECONOMY AT THE START OF THE TWENTY-FIRST CENTURY* 1, 3 (Jorge I. Domínguez et al. eds., 2004).

¹³ GAIL REED, *ISLAND IN THE STORM: THE CUBAN COMMUNIST PARTY'S FOURTH CONGRESS* 132–35 (1992).

currency, but none could function as money. The national peso was the official currency, but both the dollar and the convertible peso (a local proxy for the dollar) were more popular. The government also used myriad exchange rates that overvalued the peso and fragmented the economy, a system that economists called *monetary* and *exchange rate dualism*. These arrangements contributed to an increasingly troubled economy that could not produce reliable prices, thereby discouraged meaningful decision-making by the state, private sector, and individuals.

II. STRUCTURAL ADJUSTMENT CUBAN-STYLE

The *Tarea* is the economic centerpiece of post-Castro reforms that seek to update the island's socialist model.

A. Implementation

After Fidel Castro stepped down as President in 2008, Cuba began experimenting with its political economy. At its Sixth Congress in 2011, the Cuban Communist Party conceded that market forces were needed to renew the socialist model. The Party adopted a white paper on future changes to the island's economy and political structure—the *Lineamientos*.¹⁴ This white paper paved the way for formal structural adjustment, albeit without the support that IMF member countries usually receive to ameliorate the harshness of austerity initiatives. One of the central goals was to make the national peso function as money. This required retiring the convertible peso through a conversion to national pesos, devaluing the peso against the dollar, unifying the country's multiple internal exchange rates, and disrupting attitudes about entitlements. They have the potential to be the most significant reform of the national economy since the expropriations conducted after the Cuban Revolution.

In 2014, Cuba and the United States resumed diplomatic relations. In 2019, a major constitutional reform took place.¹⁵ In August 2020, the Cuban Central Bank began to explain the reform, without saying when it would begin. On December 10, 2020, President Díaz-Canel announced that the *Tarea* would begin on January 1, 2021, and that the peso-dollar rate going

¹⁴ Lineamientos de la Política Económica y Social del Partido y La Revolución [Guidelines on the Political and Social Economy of the Party and the Revolution], VI Congreso del Partido Comunista de Cuba (adopted Apr. 18, 2011).

¹⁵ José Gabilondo, *Whither the Revolution? Framing Political Animosities Between Sexual Minorities and Churches in Cuba's New Constitution*, 23 HARV. LATINX L. REV. 43, 43–72 (2020).

forward would be 24:1.¹⁶ That same day, the Official Gazette published over one hundred decrees, pronouncements, and statutes, which together, set up the legal framework for the *Tarea*.¹⁷

The *Tarea* continues the adjustment policies that Cuban began to experiment with in 1991 after the dissolution of the Soviet trading bloc. The *Tarea* involved four sets of measures. First, the government adopted a single fixed exchange rate of the peso (and, therefore, the convertible peso) against the dollar, eliminating the multiple internal exchange rates in the state sector. Second, outstanding convertible pesos were converted to national pesos. Third, the government changed the distribution of subsidies for consumption by introducing more means-testing rather than subsidizing a product in general. Finally, salaries, pensions, and other social services were increased to help Cubans adapt to the new pricing system.

Most of the major initiatives of the *Tarea* address the price system so that future prices can do a better job of signaling the balance of supply and demand, that way providing better incentives for consumers, businesses, and the state. In a more open market, a price reflects the efforts of a willing buyer trying to pay the least and a willing seller trying to get the highest price. This is an open-ended process, subject to competition, and highly dependent on the quality of the item. It is called *price discovery* because it is an intendedly contingent process that self-adjusts based on changes in supply and demand. In Cuba's model, a price is too important a policy instrument to leave to self-adjusting markets to discover. Instead, Cuban officials use administrative prices to balance competing interests and constraints, a practice that is consistent with a command economy.

Until recently, the leading spokesman for the *Tarea* was Marino Murillo Jorge, a socialist technocrat who spearheaded the design and implementation of these reforms, in particular as head of the committee charged with implementing the *Lineamientos*. The laws published in the *Gaceta Oficial* establish the textual framework of the *Tarea*, but these laws make sense only by listening to Mr. Murillo's comments, which are the most lucid synthesis of what the government wants to accomplish through these changes.

He regularly invokes the ability of market prices to self-adjust based on supply and demand, free of any political will to the contrary. Mr. Murillo has revealed the concessions made by the *Tarea* (in theory and practice) to market forces long anathematized in the Revolution's economic doctrine. As

¹⁶ René Tamayo León, *Informa Presidente Cubano Inicio de la Tarea Ordenamiento a Partir del 1ro. de Enero* [Cuban President Informs Start of the Ordinance Task from the 1st of January], JUVENTUD REBELDE (Dec. 10, 2021), <http://www.juventudrebelde.cu/cuba/2020-12-10/en-vivo-comparecen-raul-y-diaz-canel-en-cadena-nacional-de-radio-y-television>.

¹⁷ Decree 17 of 2020 establishes the legal authority for most of these laws. Decree 17, *supra* note 1.

Mr. Murillo has pointed out, “[t]he market exists independently of our will,” a departure from the rigid orthodoxy associated with Castro-era economic planning and ideology.¹⁸ He has admitted that the state intermediates too much in the economy, a declaration against interest in a command economy. He has also stressed the link between better quality and higher prices, normalizing a kind of product differentiation ignored by previous attempts to emphasize equality of consumption.

He has endorsed the idea that differential contributions through work can be compensated at different rates, sanctioning a legitimate basis for the kind of inequality long repudiated by the Revolution. Radical equality has always been central to the stated goals of the Revolution. The traditional form of equality was a feature of the system as a whole, without taking into account differences between the abilities of individuals. Not anymore. When officials discuss the *Tarea*, they emphasize that those who contribute more should receive more.¹⁹ This rationale for inequality based on merit represents an enormous change in underlying ideology. In keeping with that value, officials have emphasized that by ending general subsidies, more people will be motivated to seek employment.

Instead of whitewashing the negative results of the *Tarea*, these interviews also feature ordinary Cubans poignantly expressing fears about how to survive in this new environment, a welcome change from the manicured style that was once the norm on Cuban television. During the initial implementation of the *Tarea* (especially with Mr. Murillo at the helm), Cuban officials candidly acknowledged their policy mistakes without pointing the finger at U.S. policy. It was a noteworthy example of focusing solely on factors under one’s control. Unfortunately, this changed over the course of 2021 as Mr. Murillo resumed the conventional focus on external causes as the primary sources of Cuba’s economic problems.

The inflation resulting from the *Tarea* has been worse, even than expected. Official estimates of inflation beginning in 2021 have been as high as 100%. Other measures of inflation in Cuba since the *Tarea* have ranged from 130% to over 1000%.²⁰ Whatever the statistical number, the daily

¹⁸ Interview by Mesa Redonda with Marino Murillo Jorge (Oct. 14, 2020).

¹⁹ Both President Miguel Díaz-Canel and Marino Murillo Jorge have repeatedly said that one of the central goals of the *Tarea* is “to distribute according to *the socialist principle*: the one who contributes the most, the one who works the most, the one who works the most efficiently, will earn more and be better off.” (emphasis added). See Cubadebate, *Cuál es Nuestra Definición de la Tarea Ordenamiento?* [What is Our Definition of the Sorting Task?], YOUTUBE (Mar. 6, 2021), https://www.youtube.com/watch?v=JBL0tIDkRIw&ab_channel=Cubadebate (interview with President Miguel Díaz-Canel).

²⁰ *La inflación en Cuba es ya la Segunda Mayor del Mundo* [Inflation in Cuba is Already the Second Highest in the World], DIARIO DE CUBA (Aug. 22, 2022), https://diariodecuba.com/economia/1661195557_41754.html.

reality of economic life for Cubans is harrowing. Shortages of staples has become routine. Many are reduced to a subsistence standard of living. The loss of over twenty percent in generating capacity means that blackouts have become common. To find out the blackouts scheduled for an area, one can check a daily schedule.²¹

Street protests against these economic conditions have increased, by some accounts in excess of those during July 2021, which led the government to arrest and detain hundreds of protesters.

B. Proximate Cause and Transition-Denial

Who is to blame for the mixed results to date of the *Tarea*? Most complex outcomes are over-determined because they have more than one plausible cause. Figuring out how to assign responsibility between concurrent causes is one of the main functions served by legal institution because, generally, liability follows causation. On this score, the law of torts distinguishes between cause-in-fact and proximate cause, often taught through a famous opinion of Learned Hand.²² Cause-in-fact sets up a field of possible answers to the question “who or what is to blame?” Proximate cause resolves this ambiguity by picking one cause and ruling out the others.

The *Tarea* has at least two major causes that can be blamed for its limited success to date. The first, of course, is the Cuban government itself, which used its freedom of action and its resources to design these initiatives. At its best, the *Tarea* signals an eclectic brand of Cuban socialism that clears away three decades of tried and failed economic doctrines, drawing a new fiscal border around state enterprises, nodding to market realities, and preparing the island for greater insertion into the world economy. The *Tarea* has value as a record of growing commitment—albeit unrealized—to move away from the most orthodox forms of socialist economic management. In this sense, the *Tarea* may serve more as a placeholder for future changes.

A consensus among economists has long recognized that Cuba needed to reform its monetary structure, though when and how these reforms would happen was not known. Symposium participants that have commented on the *Tarea* have uniformly panned it as a poorly designed and ineffective policy that is doomed to fail. These criticisms of the *Tarea* form part of a pattern of transition-denial on the part of economists, academics, lawyers, and policymakers outside of Cuba who insist that none of what the Cuban

²¹ *Horarios de Apagones en Cuba Hoy por Provincias* [Blackout Schedules in Cuba Today by Provinces], DIRECTORIO CUBANO, <https://www.directoriocubano.info/horarios-apagones-cuba/>.

²² *United States v. Carroll Towing Co.*, 159 F.2d 169, 173–74 (2d Cir. 1947).

government has done since the retirement of Fidel Castro amounts to material changes.

Nevertheless, participants also noted some changes on the island that seem important: a pervasive acceptance of criticism by individuals and civil society of the actions of the Cuban government; the reversal by appellate courts of several trial decisions, which may signal incipient trends of judicial independence; and a focus on the part of *Comites para la Defensa de la Revolución* on practical questions of daily economy rather than on political surveillance of citizens.²³ Interestingly, Professor Dominguez increased “evidentiary convergence” between the official statements of the Cuban government and those of individuals and civil society on the outside.²⁴ Implicit in some of these criticisms is the idea that only the complete capitulation of the Cuban government to a market economy built in the image of the United States will count as a reform measure.

I assign proximate cause for the shortcomings of the *Tarea* (and to the persistence generally of Cuba’s economic malaise) the U.S. policy of economic containment and regime changes pursued through sanctions. These sanctions limit the island’s access to its natural markets as well as the ability of third parties from other countries to participate in the Cuban economy as they would in an unsanctioned country. It may seem like an obvious point, but mainstream accounts of the Cuban economy play down the effect of U.S. sanctions, denying or “assuming away” the deleterious effect of these sanctions. For example, Professor Mesa-Largo identified six causes of Cuba’s current economic conditions, half of them attributable to the Cuban government.²⁵ Only one of the six factors referred to U.S. sanctions, and then only their escalation in 2017 during the presidential administration of Donald Trump. Implicitly, the previous half-century of U.S. sanctions was taken for granted as a baseline condition of the Cuban economy, against which change could be measured.

The economic deprivation and social unrest in Cuba come close to the disruption intended by U.S. sanctions. Their premise is that by starving the island and contributing to widespread economic deprivation, sanctions will detonate a popular rise that, finally, topples the Cuban government. When evaluating U.S. policy, one must give the Devil his due. U.S. sanctions have succeeded in the first part of that formula—widespread deprivation and the

²³ Professor Jorge Dominquez noted some of these details in his presentation on *Whatever It Takes: The Cuban Leadership’s Regime Stabilizing Strategies*. Jorge I. Dominguez, Harvard University (retired), Presentation at 2022 Annual Conference of the Association for the Study of the Cuban Economy: *Whatever It Takes: The Cuban Leadership’s Regime Stabilizing Strategies, 2020–2022* (Sept. 15, 2022).

²⁴ *Id.*

²⁵ Carmelo Mesa-Largo, Distinguished Service Professor Emeritus, University of Pittsburgh, Presentation at 2022 Annual Conference of the Association for the Study of the Cuban Economy: *La Economía Cubana en 2020–2022* (Sept. 15, 2022).

resulting desperation among the Cuban people. However, the second part of the plan has never occurred, perhaps because an economically isolated, debilitated people are unlikely to rise up against a government that has stood the test of time.

This is not to suggest that U.S. sanctions shield the Cuban government from being subject to a critical assessment of how it deploys its limited resources. The goal should be to put any policy assessment of the *Tarea* in the larger context of U.S. actions that limit the Cuban government's freedom of action. What would the Cuban economy look like without U.S. sanctions? It is impossible to know for sure what a counterfactual would be, but there is universal recognition that Cuba's natural export and import markets are those of the United States.

III. DUELING REGISTERS: EXILE-SPEAK AND ISLAND-SPEAK

I am delighted that the law review is hosting this year's annual conference of the Association for the Study of the Cuban Economy ("ASCE").²⁶ Cuba, Cubans, and Cuban-Americans have a special significance for the University and the law school. FIU has the largest population of Cuban and Cuban-American students, faculty, and staff, making this the closest thing there is to a Cuban-American university.²⁷ The law school exists because Cuban-American legislators (state and federal) joined forces with African-American legislators to persuade the Florida Legislature to establish the law school and another at FAMU. The law school building is named after Rafael Diaz-Balart, a prominent Cuban statesman. The law school clinic is funded to a certain extent by frozen Cuban assets awarded to relatives of two of the Brothers to the Rescue whose death led to the Helms-Burton Act.²⁸

Cuba is a country that split in two after the Cuban Revolution: *Cuba-island* and *Cuba-diaspora*, both of which have legitimate interests in the island's future. Like many other Cuban-Americans, I walk around with the unfinished task of nation reconciliation of these two parts. I encourage the members of the law school to think about what they might have at stake—in terms of identity, values, life projects, and nation-building—in these issues.

²⁶ See generally Karla Rivas, *Association for the Study of the Cuban Economy (ASCE) Thirty-Second Annual Conference: Introduction*, 17 FIU L. REV. 479 (2023).

²⁷ The University's Cuban Research Institute and its annual Cuba and Cuban-American studies conference are world famous. Many faculty have focused on Cuba and Cuban-Americans. Two noteworthy ones are Uva de Aragon's work on preserving Cuban history and Marifeli Pérez-Stable's leadership in the Cuban National Reconciliation.

²⁸ *Cuba Told to Pay for Downing Planes*, TAMPA BAY TIMES (Oct. 2, 2005), <https://www.tampabay.com/archive/1997/12/18/cuba-told-to-pay-for-downing-planes/>.

In this context, ASCE serves as a placeholder for the future because it brings together economists, academic jurists, practicing lawyers, and other policy professionals with an interest in Cuba.²⁹

Part of the challenge of doing this is the polarization between two antithetical perspectives on the Cuban Revolution, Cuba, and its relationship to the United States—*exile-speak* and *island-speak*. Each one is a register of concepts and vocabulary that forms part of a coherent system, as shown in *Figure 1* below. Both show up in their purest and most coherent way in the official statements of sovereigns. Exile-speak shows up in its most comprehensive and coherent form in U.S. law and policy. Island-speak exists in its most comprehensive and coherent form in the Cuban state's official discourses. Of course, the opinions of many (perhaps most) people will not fit squarely into either one of these reductionist perspectives; but I see value in trying to understand each of these perspectives as systems of meaning-making. Just using a word from one of them does not mean that one adopts the perspective as a whole. Most of us probably combine elements of the two registers, shuttling between the systems as people shuttle between Miami and Havana.

²⁹ Cuba has produced many economists (some still on the island, some elsewhere) who focus on the Cuban economy, including Pedro Monreal, Omar Everleny, Juan Triana, Tamarys Bahamonde, Pavel Vidal, Antonio Romero, Mauricio de Miranda, Lázaro Peña, and Elías Amor Bravo. Noted Cuban jurists include Narciso Cobo, Rafael Andrés Velázquez Pérez, Rolando Anillo-Bádia, and Rodolfo Dávalos.

Figure 1

Exile-Speak	Island-Speak
Exile	Diaspora
Embargo	Blockade
Human rights in Cuba	Internal subversion financed by U.S. (USAID); Socialist legality
Transition (now succession); Regime change	Updating of the Socialist model; Plattist interference (referring to Platt Amendment to the Cuban Constitution).
Democracy promotion; Rule of law	Socialist legality; Internal affairs
Brothers to the Rescue (1996): ‘massacre of innocents’	Territorial integrity; Violations of Cuban airspace; sovereign self-defense

A threshold difference between these two perspectives is how one sees U.S. policy on Cuba.

As I see it, U.S. sanctions involve a civil war between Cuba-island and Cuba-diaspora—even though the nation is physically distributed across different countries. To a large extent, U.S. policy on Cuba codifies the worldview of a particular group of Cuban-Americans and their political

representatives. In this view, Cuba is a defective sovereign because the Revolution and what has followed does not actually embody the political will from which sovereignty flows. Instead, Cuba is a predatory state that does not recognize its citizens' basic human rights, especially those involving speech, freedom of religion, property, and association. Cuba's violations of human rights are severe enough to justify U.S. attempts at regime change. Cuba has not paid for the property of U.S. nationals and corporations confiscated after the Revolution Cuba took property from U.S. nationals and corporations. The United States serves as trustee for the Cuban people, who, at the moment, lack political power and want the United States to come to their rescue.

If you think that this policy is legal or morally acceptable, then you tend to refer to sanctions as an *embargo*, suggesting that they are a lawful exercise because countries enjoy the power to sanction individuals, corporations, and, in this case, entire countries based on sovereign interests. In the U.S. view, Cuba does not have a government; it has a *regime* whose sovereignty is defective, incomplete, or suspect. It falls to the United States to step in, reject the current government, and install a government acceptable to Cuban-Americans, one that meets the preconditions in the Helms-Burton Act for an acceptable government.

In Cuba's view, the standard against which Cuba's government should be judged is socialist legality, which is quite different from the rights-based liberalism of a constitutional republic, such as the United States. Cuba views many democracy-promotion programs as U.S.-financed subversion of the island's internal affairs. If, as I do, you believe that sanctions violate universal notions of law, fair play, and morality, you see sanctions as a *blockade*, much as sovereigns in an earlier age sent warships to surround a nation that had not paid its debts.³⁰ When President Barack Obama resumed diplomatic relations with Cuba in 2014, he began, but did not complete, the process of making a blockade into an embargo. At times I may use *embargo* for style but doing so does not mean that I consider these sanctions legal or moral.

Another basic difference shows up in the language used to describe Cubans who left the island. In Miami and elsewhere, many people in this situation consider themselves *exiles*, a word that suggests that one left one's country involuntarily to some degree. In contrast, the word *diaspora* is less

³⁰ See RODOLFO DÁVALOS FERNÁNDEZ, ¿EMBARGO O BLOQUEO? LA INSTRUMENTACIÓN DE UN CRIMEN CONTRA CUBA [EMBARGO OR BLOCKADE? THE INSTRUMENTATION OF A CRIME AGAINST CUBA] (2012). See also C. Narciso Cobo Roura, "Bloqueo" o "Embargo": No Solo Palabras ["Blockade" or "Embargo": Not Just Words], 30 REVISTA CUBANA DE DERECHO 16, 16–23 (2007). I spent most of my life using *embargo*, but after two decades of research and reflection I now see U.S. sanctions on Cuba as a blockade because of their extraterritoriality and their interference with the sovereign prerogatives of other countries.

committal about the circumstances of one's departure. Those in exile certainly form part of a country's diaspora, which refers to its people living abroad; but so too do those who left Cuba voluntarily. So, diaspora leaves open a conclusion about why one left.

The U.S. embargo against Cuba limits the ability of U.S. citizens and residents generally to form their own opinions about Cuba, but these constraints are especially relevant for one group in particular, i.e., the U.S. born children of Cuban refugees. I think of it as the Cuban-American Oedipal conflict.³¹ All children have to negotiate their independence from parents and the larger family, but for some Cuban-Americans U.S. foreign policy and Cuban sovereignty become the theatre for this process.

In diaspora, the family can become a placeholder for the psychic, financial, and existential losses incurred by leaving Cuba, losing a nation, an identity, and a way of life. Many of us know firsthand the rich oral history of Cuba and the move to the United States. These are poignant stories. Filial piety for family losses—as remembered and preserved in oral history—can be a strong influence on one's political views as an adult. So, children of Cuban refugees may be reluctant to visit Cuba, sometimes because parents have objected, but sometimes just out of an implicit sense of taboo. This is not to trivialize these family losses, nor to doubt the sincerity of these accounts. I just encourage people in this situation to consider revisiting their conclusions in light of the passage of time and changed circumstances.

Thank you.

³¹ For a more detailed exploration of competing truth claims about Cuba, see José Gabilondo, *Cuban Claims: Embargoed Identities and the Cuban-American Oedipal Conflict (El Grito de La Yuma)*, 9 RUTGERS RACE & L. REV. 335, 335–63 (2008).