

# LEGAL DISSENT: CONSTITUTIONAL PROPOSALS FOR “CAMBIO” IN CUBA

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In January 2009, the Cuban government marked its 50<sup>th</sup> year in power, having survived substantial economic, social, and political challenges. During these 50 years, many dissident groups have challenged the Cuban government, seeking to establish domestic and international support for an alternative national vision (Encinosa 2004). The challenge for both government and dissidents is to build a political project that channels the range of competing desires among Cuba’s interest groups, from those clamoring for political, economic and social reform and renewal (“cambio”) to those invested in systemic continuity and stability. This paper reviews the history, status and potential of the work of one dissident group, the “Movimiento Cristiano Liberación” (MCL), in crafting a competing political vision through means that are legal and legitimate under Cuba’s 1976 Constitution.

## THE EVOLUTION AND CONTEXT OF THE MCL’S CONSTITUTIONAL PROPOSALS

This section reviews the evolution and context of the Varela Project referendum proposal, the subsequent “Todos Cubanos” legislative agenda, derived after the 2004 National Dialog (“Diálogo Nacional”) process, and ongoing efforts to achieve their implementation

through the “Foro Cubano,” “Unidos en la Esperanza,” and the 2009 National Dialog.

### The Varela Project: A Constitutional Citizen Petition for a Legislative Referendum

In 1989, Willy Brandt, the former chancellor of West Germany, visited Cuba. He met with Gustavo Arcos, a key representative of the Cuban Committee for Human Rights, who brought with him a young colleague—Oswaldo Payá. Brandt had negotiated treaties between East and West Germany, laying a key piece of political groundwork for Germany’s eventual unification. Asked how to build support for their movement, Brandt replied, “If you act outside the law, you will never get any international support. However, if you act within the law, and peacefully, then the world will support you—people’s ideas have changed, the world no longer tolerates violence and terrorism as it once did.” (J. Rodríguez, personal communication, June 18, 2007).

It was 1989—twenty years ago—and change was in the air. Payá took this idea of “legal dissent” back to a dialog and reflection group he was a part of, consisting of young Catholic professionals. They pulled out existing laws and a magnifying glass. One of them, 17-year old Regis Iglesias, found the loophole they were

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1. Editor’s Note: This essay was awarded First Prize in the ASCE 2009 Student Prize Competition for graduate students.

searching for: Article 86<sup>2</sup> of the Cuban Constitution of 1976, stating that any citizen petition with 10,000 signatures would be reviewed as a legislative initiative by the National Assembly. This article of the Constitution provided the legal basis for the Varela Project.

This seminal idea of *legal dissidence* as a reform platform grew throughout the 1990s, and fed on the reformist desires of pro-Perestroika sectors of Cuban society (Pérez-Stable 2003: 34). The idea of systemic reform through legal, pluralist and peaceful means animated efforts such as the “Corriente Socialista Democrática” platform (1992), the “Cambio Cubano” effort at dialog with the government (1993), the “Concilio Cubano coalition” (1995–1996), the Congress of the Cuban Communist Party (1997), and the “Mesa de Reflexión de la Oposición Moderada” (1999) (Pérez-Stable 2003: 14, 34, 36).

In the early 1990s, Latin America, Canada, the European Union, the United States, and the United Nations High Commissioner for Human Rights were all pursuing policies of constructive engagement towards Cuba (Pérez-Stable 2003: 14). However, mid-decade, all of these efforts were stymied by the Cuban government’s decision to not engage on issues of civil and political rights, symbolized by their continued repression of dissidents, lack of cooperation with the United Nations special procedures mechanisms, and shooting down in February 1996 of two civilian aircraft, which ultimately (and against the will of President Bill Clinton) led to a tighter U.S. embargo under the Helms-Burton law (Corrales 2004: 54). In this context of government retrenchment, the efforts to graft a common reformist platform onto a viable legal mechanism for mobilizing popular support came to fruition in 1996, when the MCL launched the Varela Project

The Varela Project’s goal was to collect at least 10,000 signatures on a citizen petition, triggering—per the Constitution’s Article 86(g)—a substantive legal duty for Cuba’s legislature to acknowledge and discuss the petition’s proposal: namely, the holding the organization of a national referendum on five key issues: (1) freedom of speech; (2) freedom of association; (3) amnesty for political prisoners; (4) freedom to organize corporations; and (5) a new electoral law (Payá 1998). The MCL, with the support of other opposition organizations, began the arduous task of collecting signatures in 1996. The government’s monopoly on all means of communication in Cuba and active persecution and infiltration by the political police hampered collection efforts, which spread by extraordinary, person-to-person grassroots organizing. Signature collection efforts benefited from the temporary economic reforms of the early 1990s (legalization of dollars, farmers markets, and self-employment) and the temporary relaxation of repression that accompanied Pope John Paul’s 1998 visit (Corrales 2004: 36). On May 10, 2002, Oswaldo Payá, Antonio Díaz and Regis Iglesias of the MCL personally delivered over 11,020 signatures in support of the Varela Project petition to the National Assembly of People’s Power (*BBC World News*).

The delivery of the Varela Project signatures was immediately hailed in international human rights circles. Jimmy Carter, then on a visit to Cuba, spoke of the Varela Project during his appearance on Cuban national television in May 2002—the first time the Project was mentioned in the Cuban media press. Payá was nominated for the Nobel Peace Prize by Czech President Vaclav Havel and received awards from the U.S. government (W. Averell Harriman Prize) and the European Parliament (Andrei Sakharov Prize for Human Rights). The Diaspora’s reaction was mixed. Many

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2. Article 86 of the Cuban Constitution of 1976 reads: “The following have authority to present a legislative initiative: (a) the deputies of the National Assembly of People’s Power; (b) the Council of State; (c) the Council of Ministers; (ch) the Committees of the National Assembly of People’s Power; (d) the National Committee of the Cuban Workers Central, or the National Directorates of other social and mass organizations; (e) the Supreme Popular Tribunal in matters regarding the administration of justice; (f) the Attorney General of the Republic, in matters of its competence; (g) *the citizenry. In this case it is an indispensable requisite that the initiative be exercised by ten thousand citizens, at least, who are members of the electorate.*” Constitution of the [Cuban] Republic (12 July 1992). Ch. X, Art. 86, translated by author, emphasis added. (<http://www.gacetaoficial>). The Constitution was subsequently amended in 2002, but the language highlighted in the clause above remains unmodified. Constitution of the [Cuban] Republic (26 June 2002). Ch. X, Art. 88. ch.4. (<http://www.gacetaoficial.cu/>).

voiced opposition, unhappy with the legitimization of the 1976 Constitution and MCL’s effort to engage the Cuban government (Pérez-Stable 2003: 36). However, a 2003 survey showed that out of 800 South Florida residents polled, two-thirds supported the Varela Project (Bendixen 17).

The Cuban government never acknowledged receiving the properly-delivered signatures (Pérez-Stable 2003: 16). However, its reaction to the Varela Project was swift and negative. The Cuban government regularly casts itself as an underdog, and survivor of the attacks of powerful imperialists (Bustamante and Sweig 2008). Thus, alleging U.S. interference in Cuban sovereignty, it proposed a constitutional amendment, declaring the socialist nature of the Cuban Revolutionary government to be “irrevocable” (Pérez-Stable 2003: 16). By June 2002, over 98% of the Cuban electorate had been mobilized to vote on and approve the amendment, with Fidel Castro himself leading a march of over one million past the U.S. interests section in Havana. Without discussing the Project, the Cuban press denounced the dissidents as mercenary agents; state security pressured signers to retract support and denounce the Project.

Then, on March 17, 2003, as the world focused on the Iraq War, the Cuban government cracked down. Seventy-five activists, mostly Varela Project organizers and many MCL members, were sentenced of 8 to 28 years in prison (Amnesty International 2003). Payá was left isolated. The following month, the government arrested, summarily tried, and executed three young men unrelated to MCL for commandeering a Havana harbor ferry to leave Cuba.

In December 2003, in spite of these conditions, Payá and his wife, Ofelia Acevedo, delivered 14,320 additional Varela Project signatures, bringing the total to 25,340 (Payá 2009). Despite the 2002 constitutional amendment, Article 86g (currently Article 88g) of the Cuban Constitution remains valid national law. To date, the constitutionally-required legislative debate of the Varela Project is still open and pending.

#### **The National Dialog and the “Program for All Cubans”: A Legislative Agenda**

Undeterred, Payá and the MCL launched the “Diálogo Nacional” (National Dialog) initiative in 2004.

Throughout the year, over 11,000 Cubans met in small groups and discussed the essential question of what they wanted their country to look like (Payá 2006). In 2006, four years after the presentation of the Varela Project signatures, the collected results of this process were published as the “Programa Todos Cubanos,” a roadmap for a peaceful transition to democracy (Payá 2006). The Program contains four proposals: (1) a re-drafted Constitution; (2) “Cuba Primero” plan of changes; (3) a re-drafted Electoral Law; and (4) a re-drafted Associations Law. Two laws have also been drafted as complements to the “Programa Todos Cubanos”: (5) an Amnesty Law (Payá 2007b), and (6) a National “Reencuentro” Law (Payá 2007c). Together, these proposals constitute a legislative agenda that reflects an alternative political vision of peaceful and democratic reform through existing laws.

By December 2007, all of these documents had been delivered to the Cuban National Assembly. The Cuban government has not formally reacted to these submissions, instead targeting the MCL for continued repression. Since July 2006, most of the media attention around Cuba has focused on the transfer of power from Fidel to Raúl, on the subsequent yet limited economic reforms, on other dissident proposals (such as the April 2008 U.S.-sponsored “Agenda para la Transición”) (FOCAL 2008), and on the human rights abuses perpetrated against prisoners of conscience. Thus, the Cuban public remains largely unaware of the MCL’s proposals; their existence and content has barely been mentioned in Cuba’s national media (Pérez Roque 2003).

#### **“Foro Cubano,” National Dialog 2009, “Unidos en la Esperanza,” and Varela Project, Revived**

Having developed the core content of a legislative agenda described above, the MCL shifted gears to pursue implementation. In 2007, the MCL launched the “Campaña Foro Cubano,” which seeks to build an organization and infrastructure to implement the proposals of the Varela Project and Todos Cubanos. The Foro has four priority goals: (1) freeing of political prisoners; (2) achieving legislative changes/proposals; (3) holding free elections; and (4) promoting national reconciliation for all Cubans.

For implementation, the Foro Cubano Campaign has a two-pronged structure: (1) establishing a forum for Cuba's civil society by organizing multiple local and one coordinating Civic Dialog and Reconciliation Committees; and (2) organizing a Foro Cubano National Meeting (no date has been fixed) with participation from the civic committees as well as the Cuban government. During 2007, some 400 dialog committees were formed throughout Cuba (J. Hernández, personal communication, June 18, 2007). However, most of them have been systematically disbanded by the efforts of Cuba's internal security forces (J. Hernández, personal communication, June 18, 2007). The proposal, in all of its complexity and sophistication, is proving difficult to disseminate broadly, and the high degree of repression has a chilling effect on the number of people willing to risk participating (J. Hernández, personal communication, August 15, 2008).

In October 2008, the MCL also relaunched the Varela Project, and is currently conducting additional signature collection to further strengthen the project's effective legality (*ACI Press*, 8 October 2008). In January 2009, the MCL launched a second National Dialog, open to all interested participants and involving the hundreds of members in the group's core leadership (Payá 2009). This second National Dialog has yielded the "Unidos en la Esperanza" (United in Hope) declaration, which proposes steps toward change that include freedom without exile for political prisoners, a National Media Commission to ensure free access to the press, a National Electoral Commission to oversee free elections, and a subsequent assembly to review the Constitution (Payá 2009). In both Commissions, the MCL proposes that the government, the democratic opposition, and civil society have seats at the table (Payá 2009). The government's reaction continues to be one of official silence and persecution. Internal security forces are using a "catch and release" strategy to frighten and harass activists, detaining and threatening dissidents instead of jailing them and creating new "prisoner of conscience" figures around whom international networks can rally (Payá 2009; Human Rights Watch 2009).

### Theoretical Basis of the MCL's Legal Dissent Strategy

Thus far, this paper has focused on the history of the MCL's strategy of legal dissent, the content of its legislative proposals, and the ways it seeks to implement them. This section analyzes the theoretical basis of the MCL's legal dissent strategy.

As a domestic civic movement, the MCL is a well-integrated actor in what Keck and Sikkink call "transnational advocacy networks" (TANS), which also include research and advocacy organizations, foundations, media, churches, unions, intellectuals, intergovernmental organizations and members of governments—international and national—all capable of mobilizing collectively around a principle or issue (Keck and Sikkink 1998: 9). For groups such as the MCL, the advocacy and activism of such transnational networks "can amplify the demands of domestic groups, and may pry open space for new issues and then echo back these demands into the domestic arena" (p. 13). Keck and Sikkink (p. 12) refer to this as "the boomerang effect," whereby pressure exerted internationally has a domestic impact. The concept assumes that combined pressure on a government from the inside out (by the domestic civic organization) and the outside in (by the transnational advocacy network) will cause the government to shift its position or change its behavior.

Under the Keck and Sikkink model, external pressure is a major trigger for political will to change or reform. It bears noting, however, that Cuba's political strategy is built around the mythology of internal unity, sacrifice, and resistance to external pressure. Witness the text added to the Constitution in June 2002, just one month after the presentation of the Varela Project signatures:

Socialism and the revolutionary political and social system established in this Constitution and proven through years of heroic resistance in the face of aggression of all types and economic warfare waged by the successive administrations of the most powerful country that has ever existed, and having demonstrated their capacity to transform the country and create an entirely new and just society, are irrevocable; and Cuba will never again return to capitalism. (Ch. I, Art. 3, Cuban Constitution, 26 June 2002)

If the past is precedent in Cuba, the government can effectively interrupt dynamics of international pressure by increasing repression, reversing reforms, slowing the pace of promised reforms, and lowering expectations (Corrales 2004: 47). Despite the perennial existence of political factions in the Cuban government that favor change, during past political crises the hard-liners have triumphed over the reformists (Corrales 2004: 48).

Despite the legal basis and moderate nature of their proposals, the MCL is apparently trying to dialog with a government whose key decision-makers, for the moment, remain “inaccessible or deaf” to claims that the democratic opposition and the issues it represents deserve a space at the table (Keck and Sikkink 1998: 13). If international pressure alone is insufficient to create a space and trigger momentum for reform, the question arises: can domestic pressure make the difference? If so, what kind of domestic pressure can be effective, and what sectors of society must exert it?

During the 1990s, many in Cuba became familiar with Vaclav Havel’s 1985 book *The Power of the Powerless* (Pérez-Stable 2003: 59). Related concepts of strategic non-cooperation animate a more recent work on non-violent social movements, Gene Sharp’s *From Dictatorship to Democracy*:

Dictators require the assistance of the people they rule, without which they cannot secure and maintain the sources of political power. These sources of political power include [authority, human resources, skills and knowledge, intangible factors, material resources, and sanctions to ensure submission]. All of these sources...depend upon acceptance of the regime, on the submission and obedience of the population, and on the cooperation of innumerable people and the many institutions of the society. These are not guaranteed. (Sharp 2002: 17)

The Varela Project, with over 25,000 signatures to date (and counting), is one on-going example of expressed non-consent. The single currency campaign of the Federation of Latin-American Rural Women (Federación Latino Americana de Mujeres Rurales, FLAMUR), which also involves acts of civil disobedience (such as paying for goods priced in CUC with CUP pesos) is another (Anel 2008). A third example of resistance in Cuba designed according to the Sharp model is the “Yo No Coopero” coalition of the Direc-

torio Democrático and key dissidents in Cuba, most prominently Jorge Luis García Pérez, “Antúnez.” The campaign calls on people to withdraw their consent from the government by not participating in violent acts of repression (“Yo No Reprimo”), not informing on their neighbors (“Yo No Chivateo”), and not attending mass meetings (“Yo No Asisto”) (Directorio 2006). This campaign was modified during Cuba’s 2007 elections to include “Yo No Voto”, and claims partial credit for the high number—over 1 million—of voter abstentions (Gershman and Gutiérrez 2009). Compare these numbers with Fidel Castro’s original armed “M-26-7” revolutionary movement, which had at its peak, 3,000 fighters (Pérez-Stable 2003: 26).

Total non-cooperation, ostensibly, would culminate in a spontaneous, magical, TV-ready moment when masses of flag-waving people join each other, joyfully and peacefully in Cuba’s Plaza of the Revolution, to celebrate the achievement of a key freedom or shift that symbolically breaks with the past. Pure non-cooperation, however, is not without its dangers. Recent years have seen popular non-violent uprisings in Ukraine, Lebanon, Georgia, Venezuela, Burma, and Iran beaten back by heightened repression or falling apart in the aftermath due to their relatively weaker political coalitions and subsequent lack of sustainable political leadership. Popular movements without a viable alternative political coalition, project and leadership run a similar risk.

Despite the 2003 crackdown and the government’s subsequent efforts at political isolation, the MCL has been quietly building the foundation of such an alternative political project. Its evolution has been unspectacular and often unheralded, but incremental. Its proposals are rooted in domestic law, relying on the structure of the current Cuban Constitution, and the spirit of the progressive Cuban Constitution of 1940. They also draw on international human rights law, as codified in key canonic documents, including the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant for Economic, Social and Cultural Rights (ICESCR, 1966), the International Covenant on Civil and Political Rights (ICCPR, 1966), instruments for the prevention of torture and inhumane treatment, and regional Latin American hu-

man rights instruments such as Charter of the Organization of American States (OAS) (1997) and the Inter-American Democratic Charter (2001).

Documents relating to its Universal Periodic Review (UPR) before the United Nations Human Rights Council reveal how Cuba's current human rights policy promotes economic, social and cultural rights (food, health, education, sports, music) at the expense of civil and political rights (speech, press, movement) (United Nations 2009). MCL's proposals, in effect, urge the Cuban government to rectify this imbalance, proposing the enforcement of all rights within a unified framework of a pluralist democratic political system guided by a socially progressive ethic.

The MCL has also drawn inspiration from the principles and mechanisms applied by international civil society. The Varela Project draws, methodologically speaking, from the example of the 1988 Chilean Plebiscite, led by a coalition between Christian and Social Democrats, whose strategic goal was ultimately not just to dislocate a dictatorship, but to trigger free and fair elections and a return to democracy (Payá 2009). Similarly, the MCL's emphasis on reconciliation draws on the human rights commission experiences in South Africa, and the Americas. The legal agenda's creative nature reflects the World Social Forum's vision of "Another World is Possible" as well as its process, which aims to create an "autonomous" "parallel space" to focus media attention and create a space to address concerns that are ignored by existing political forums.

International perception, pressure and the boomerang effect are most relevant in that they contribute to the "socialization" of states, pushing them to adopt and institutionalize human rights standards (Risse and Sikkink and 1999: 9). Following the transfer of power from Fidel to Raúl, Cuba signed the International Covenant on Economic, Social and Cultural Rights (ICESR) and the International Covenant on Civil and Political Rights (ICCPR) in February 2008 (Amnesty International 2008); although it highlighted this fact in its UPR before the United Nations Human Rights Council, Cuba has given no indication as to when it will ratify the conventions (United Nations 2009). If Cuba ratifies these treaties, the government acquires

legal obligations for domestic enforcement of treaty obligations and becomes subject to monitoring by treaty bodies that review whether domestic laws and institutions are in compliance said duties.

Ricardo Alarcón, President of Cuba's National Assembly, has stated that Cuba "was not interested" in rejoining the Organization of the American States (OAS), despite the April 2009 revocation of the 1962 Resolution expelling Cuba from that organization (CNN 2009 June 4; OAS 2009, 1961). If Cuba were to rejoin, it would have to subscribe to the OAS Charter, which commits states to "promote and consolidate representative democracy, with due respect for the principle of non-intervention" (OAS 1997: Ch. I Art. 2b). Encouraging the Cuban government to ratify the ICCPR and ICESR treaties and to join the OAS is an important pending task for members of transnational activist human rights networks. The Congress of the Cuban Communist Party, which is overdue since 1997 and which Raúl Castro announced will take place during 2009, is one potential opportunity to raise these issues (Vicent 2009).

However, the core questions relating to the potential success or failure of the MCL's legal dissent agenda in Cuba hinge on the elusive mix of ingredients in the recipe for "effective domestic pressure." Is it top-down political will that is determinative? Bottom-up popular pressure? Or are incremental, middle-out proposals the secret ingredient to change in Cuba? Can the MCL's legal dissent strategy exert sufficient and sustained domestic pressure that successfully challenges the basis for the existing government's established legitimacy? Can its legislative agenda successfully channel popular desires for change such that popular complicity with dictatorship, whether coercively extracted or voluntarily given, is withdrawn or shifted? Can it shift the perception of its current situation as a marginal movement to the framers and disseminators of solutions that go to the heart of resolving the conflicts in Cuba?

Sharp (2002: 19) establishes that the three most important factors that limit a government's power and control are: (1) the population's desire to impose limits on government power; (2) the strength of independent organizations and institutions to collectively

withdraw the aforementioned sources of power; and (3) the population’s ability to “withhold their consent and assistance.” It is with these questions in mind that we move on to the next section, to analyze how popular interests and concerns support the respective positions of the government and the MCL, in order to analyze what possibilities exist in Cuba today for the MCL’s proposals to be implemented.

### GOVERNMENT VS. DISSIDENTS: INTERESTS GROUPS AND THE STRUGGLE FOR POWER

What contributes to the government’s ability to maintain power over its political base, and what possibilities do the MCL’s legal dissent proposals have of appealing to and mobilizing a sufficiently broad population? This section reviews the conflicting claims of the Cuban government and the dissidents, analyzes the range of interest groups and attitudes towards change, presents priority popular concerns reflected by recent surveys, and compares these priorities to the ones expressed in the MCL’s legal dissent proposals.

#### Government v. Dissidents

Cuba’s government and its dissidents offer two competing visions of Cuba. Fidel Castro referred to the competition for global political-ideological allegiances broadly as the “battle of ideas.”<sup>3</sup> The Cuban government’s claim to power is based on the argument that the Revolution, and the reasons for which it was fought, have on-going legitimacy, “mystique,” and popular support (Pérez-Stable 2003: 22). The government and its leaders project a future vision of a victorious socialist Cuba, and they have concentrated power and limited freedom in ways that make this a viable possibility (Freedom House 2008).

The dissidents’ alternative claim is based on the argument that Cuba’s current political and economic

structure is deeply flawed, and cannot be viably maintained without double standards, on-going human and civil rights abuses, and the maintenance of a repressive domestic security apparatus. It projects a vision of an open society, based on universal human rights, fundamental freedoms, plural political participation, and an increase in officially-sanctioned capitalism. The question arises: within Cuba’s population, what is the range of attitudes and who favors which of these visions?

#### Attitudes Towards Change

Broadly speaking, the range of attitudes regarding “change” in Cuba can be broken down into four interest groups: (1) true believers, who are committed to the existing Cuban government system; (2) disaffected stakeholders, whose interests and livelihoods are vested in the system but who support varying degrees of reforms; (3) disengaged parties, whose interests and livelihoods are (to varying degrees) vested in the system but are ideologically neutral or disengaged; and (4) dissidents, who generate active and public opposition—both organized and individual—and are often marginalized by the system (R. Colás, personal communication, April 18, 2006). This section analyzes these four interest groups to determine national attitudes towards change.

While there have been very few surveys conducted by international non-government organizations in Cuba, surveys conducted in recent years<sup>4</sup> have provided useful statistical conclusions that allow us to conceptually extrapolate broad numbers from the island’s total population of slightly over 11.4 million (CIA Factbook 2009). In looking at the two extremes, it is clear where the balance of power currently lies.

3. The origin of the term “batalla de ideas” can be traced to Fidel Castro’s speeches during the immigration and custody battle that centered on Elián González in 2000. Today, the “battle of ideas” has its own museum, run by the Ministry of Culture in Cárdenas, Elián’s home town (<http://www.museobatalladeideas.cult.cu/>).

4. A Freedom House 2008 Special Report cites five surveys conducted by international NGOs: (1) Solidaridad Española con Cuba survey in 2005, with 541 respondents in 13 out of 14 provinces; (2) a Gallup Poll in 2006 with 1,000 residents from Havana and Santiago; (3) the International Republican Institute’s (IRI) September 2007 survey with 584 respondents; (4) IRI’s follow-up survey in April 2008 with 587 respondents from 14 provinces; and (5) Freedom House’s own April 2008 survey with 180 respondents from 5 provinces. With the exception of Gallup, the other three organizations sympathize with the arguments of the dissidents and conducted their surveys clandestinely. See also the work of Directorio Democrático Cubano for a document that reviews the scale of the activities of Cuba’s active dissidents (Amador and Rivero 2008).

**True Believers.** The percentage of “true believers” falls in the range of 20–35% of the Cuban population. Demographically, it is older.<sup>5</sup> Corrales refers to Cuba as having a “small winning coalition” that is currently in political power, consisting of: “the [Communist] party (with a membership in 1997 of 780,000...), the military (with 50,000 troops in 1999), the security apparatus, whose size is unknown,” supported by multi-national companies allied in joint ventures with the government (Corrales 2004: 37, 54).

**Dissidents.** From the other extreme of the power spectrum, the actual number of overt and “active political dissidents” in Cuba constitutes a small but dedicated fraction, under 1% of the total population, who are marginalized from political power. In many cases, the pressure is such that dissidents opt to leave the country. Consider the 25,000 Varela Project signatories, and the 1 million abstentions in the 2007 election. Consider also the peak of 3,322 recorded acts of non-violent civic resistance in 2006, with 2,768 recorded in 2007, one-third of which were in support of the political prisoners (Directorio 2006; Amador and Rivero 2008). The total number of participants in these protest activities (vigils, meetings, fasts, public declarations, opening independent libraries, etc.) is unknown (Directorio 2006).

The totality of active dissidents is subdivided into organizations that reflect perspectives that span the entire political spectrum (FOCAL 2008). A tendency towards fragmentation can be attributed to a natural diversity of opinions, as well as to self-promotional tendencies (“protagonismo”). However, fragmentation is also fed by the often-successful efforts of the Cuban intelligence services to infiltrate organizations

and undermine trust in both long-standing and newly-built collaborative relationships (Payá 2009). Despite the diverse range of political perspectives among Cuba’s many dissident groups, there is broad agreement on basic principles, demonstrated in declarations such as the “Unidad por la Libertad” (2006) declaration, which closely tracks MCL proposals and was signed by leaders from a range of political tendencies.

**Disaggregating the Middle.** Having separated out the “true believers” and the dissidents, we are left with 65%–79% of the population, most of who are under the age of 50 and fall into the middle categories of “disaffected stakeholders” and “disengaged parties.”<sup>6</sup> There is no foolproof way to disaggregate the disaffected from the disengaged, but the degree to which people are economically dependent on and vested in the resources they derive from the government is a helpful indicator. Using state employment, self-employment, and underemployment information as a proxy, we estimate a proportion of three-quarters disaffected and one-quarter disengaged. In 2003, there were 3,104,900 state employees in Cuba, comprising 76.2% of the total employed population of 4,073,900 employees. Additionally, there were 969,000 non-state sector employees in Cuba, comprising 23.8% of the total employed, of which 3.7% are “self-employed” (Pérez-López 2007). These broad statistics do not reflect underemployment, estimated at 20% of the labor force, and which is often drives participation in Cuba’s informal or “black” market (Espinosa Chepe 2007). Table 1 illustrates this breakdown of interest groups *vis a vis* attitudes towards change, or “cambio,” in Cuba.

**Disaffected Stakeholders.** Broadly speaking, “disaffected stakeholders” share some characteristics with

5. “Do you think the present government will succeed in solving Cuba’s major problems?”: 26.9% yes, 70.5% no, N=577. “Would a democratic government, elected by the people, be better suited to resolving the country’s problems in these next years?” 53.3% yes, 42.6% no. Slide 13. “If next week you could vote in free and fair elections and have your choice of different parties, would you vote for the Communist Party candidate?” 61.3% no, 36.1% yes. Breakout of previous question by age of respondent: 70–75% of respondents 18–39 would not vote for a Communist candidate, 48–60% of respondents age 50% would vote for a Communist candidate (IRI 2008).

6. “If you were given the opportunity to vote to change from the current political system to a democratic system—with multi-party elections, freedom of speech and freedom of expression—would you vote in favor of, or against, that change?” Respondents 19–29 years old, 30–39 years old, and 40–49 years old voted 68–69% for “In favor of political changes,” and 18–20% “Against political changes.” Respondents 50–59 years old voted 53% in favor of political change and 23% against political change. Respondents older than 60 voted 43.5% in favor of political change and 47% against political change. These statistics aggregate responses from surveys in October 2007 and April 2008 (IRI 2008).

**Table 1. Range of Cuban Attitudes Toward “Cambio”**

True believers	Disaffected stakeholders	Disengaged parties	Active dissidents
20%-35%	48%-59%	16%-20%	About 1%

the “true believers,” in that they often work for the government, study in government universities, or participate in para-governmental organizations. These persons either still feel or once felt an emotional affinity with the original yet tarnished ideals of the Revolution; they or their parents were supporters of the Revolution in their youth, and they have been educated in its institutions (Pérez-Stable 2003: 22). The degree of “disaffection” and the degree of “cambio” that different “disaffected stakeholders” would advocate varies; some are more deeply disaffected than others.

As a result of their deep involvement in the system, the “disaffected stakeholders” and the “true believers” together are the repository of the professional expertise needed to run the state on a day-to-day basis. One strength of the MCL’s legal dissent agenda is that it is designed to appeal to society’s middle ranks—a key repository of leadership for peaceful change, capable of simultaneously reaching down to the grassroots level and up to higher levels of authority to mobilize the political will and popular support needed for a successful political opposition movement (Lederach 1997: 39).

The “disaffected stakeholders” are the pool of “closeted reformers,” who might be willing to support less orthodox, reformist proposals, perhaps even those fundamental reforms proposed by the dissidents, if there was a perceived window of opportunity with a possibility of success (Corrales 2004: 44). Meanwhile, because their livelihood and future are at stake, they are inclined to “complain and conform” (Freedom House 2008).

Conformity is an understandable survival strategy. Failure to do so could result in a progressive narrowing of avenues for social progress. One recent example is the case of 22-year old Eliécer Ávila, a computer engineering student, who was kicked out of the university after he spoke out about travel restrictions, economic scarcity and the country’s dual currency system at a nationally televised town hall meeting at his university

with National Assembly President Ricardo Alarcón (Méndez Castelló 2008). Another example involves a recent internet video showing a man, “Pánfilo,” who while drunk interrupts an amateur video stating that what Cuba needs is “jama” (food) (America TeVe 3 June 2009). A second video shows him explaining that he has received visits from the Ministry of the Interior and the police, that “no one paid him to say what he said” and that “he does not want to get involved in politics, anywhere” (America TeVe 3 June 2009). He subsequently received a two-year jail sentence. People justifiably fear the consequences of political dissidence—incarceration, exclusion, isolation, harassment, forced exile. The cost of dissent is just too high for most to relinquish the status quo to pursue a crusade against an opponent with overwhelming military, political, and economic advantages.

**Disengaged Parties.** This label characterizes people who have a certain level of economic independence from the political-economic system, through government-authorized independent activities (“cuentapropistas”), employment in joint venture enterprises between the government and foreign investors, self-employment in the black market, or significant remittances from family members overseas. These persons tend to comply with the formalities of the system in order to live with a minimum of negative interference. They expand their activities during periods of tolerance, but live with constant “anxiety,” given the permanent possibility of a crackdown (Corrales 2004: 51).

**A Possible Coalition?** The willingness of the disaffected and the disengaged to continue their tacit support of the true believers’ political project is arguably the major inertial factor in Cuba’s current political, economic and social situation. Given the current balance of power, it is unlikely that any political project from the dissidents can succeed unless it has sufficient government support and popular and participation. In theory, the MCL’s legislative agenda constitutes the basis for a viable reformist political project. Were a coalition to emerge from among disaffected, disengaged, and dissident stakeholders (see Table 1) it could bring together from 65% to 80% of citizens and gain traction as a political movement.

**Table 2. Comparison of Top Priorities of MCL and Surveyed Populations**

Priority	The Varela Project (2002)	Solidaridad Española (2005)	IRI (2007)	IRI (2008)	Freedom House (2008)
1	amnesty for political prisoners	low salaries/cost of living/lack of jobs (30.5%)	low salaries/high cost of life (43.1%)	low salaries/high cost of living (42.5%)	freedom of movement (inside & outside Cuba)
2	freedom of speech	isolation/the embargo (25.9%)	lack of liberty/political system (18.2%)	the country's dual currency (13.1%)	a single currency system
3	freedom of association	food (14.6%)	food shortages (11.6%)	lack of liberty/political system (8.9%)	freedom of expression
4	freedom to organize corporations	transportation (9.6%)	no problem (6.3%)	embargo/isolation (8.5%)	
5	a new electoral law/free elections	housing (6.7%)	embargo/isolation (4.8%)	food shortages (6.8%)	

### A Comparison of Priority Concerns: The Cuban Public and the MCL Proposals

In viewing the interest groups described above as potential constituencies, it is important to know what their underlying priority concerns are, and whether they are reflected in the competing political programs of the Cuban government and the MCL dissidents. Does the vision embodied in the legal dissent proposals match the public's priorities? This section reviews the priority concerns of the Cuban public as reflected in recent surveys, compares them to the MCL's proposals, and analyzes the comparison.

- Solidaridad Española's December 2005 survey took place before the transfer of power from Fidel to Raúl, and indicates that the top five problems in Cuba were (1) low salaries/cost of living/lack of jobs (30.5%); (2) isolation/the embargo (25.9%); (3) food (14.6%); (4) transportation (9.6%); and (5) housing (6.7%).
- Gallup's December 2006 poll of 1,000 respondents indicated that just one in four Cubans was satisfied with political freedom.
- IRI's September 2007 survey indicated that Cuba's top three problems were: (1) low salaries/high cost of living (43.1%); (2) lack of liberty/political system (18.2%); and (3) food shortages (11.6%).
- IRI's April 2008 survey indicated that Cuba's top five problems were: (1) low salaries/high cost of life (42.5%); (2) the country's dual currency (13.1%); (3) lack of liberty/political system (8.9%); (4) the embargo/isolation (8.5%); and (5) food shortages (6.8%).
- Freedom House's September 2008 survey, asking about the types of reforms that Cubans most desire found that the top reforms included (1) freedom of movement (to travel both within Cuba,

and to leave and re-enter the country freely); (2) a single currency system; and (3) freedom of expression.

Table 2 compares the top priorities of the dissidents and the population at large. An analysis of the survey results demonstrates that they are dominated by economic concerns: low salaries, high cost of living, the lack of a single currency system, and even the restrictions on freedom of movement (which curtail the possibility of emigrating in search of better economic horizons). These are classic day-to-day survival issues. The regular and ominous presence and fear of food shortages on the list of concerns reflects the persistent ghost of the "Special Period in Time of Peace," when per capita caloric intake "plummeted from 3,109 calories a day in 1989 to 2,357 by 1996, a dramatic 24 percent drop in the space of a few years" (Corrales 2004: 38). Other areas of concern, such as transportation and housing, require a policy-driven, government-supported solution and substantial amounts of capital. Of the Varela Project's proposals, the most appealing one is likely to be the freedom to organize a company, given its potential impact on individual economic conditions. The appearance in the 2008 Freedom House survey of the "single currency" as a top priority issue reflects the fact that a simple, economic message can make quick inroads because of its immediate daily relevance.

The recurrence in surveys of "economic isolation" has an equally powerful psychological aspect. This perception, bolstered by political rhetoric from both the U.S. and Cuban governments, persists despite the fact that the U.S. embargo today is an imperfect tool. Since the mid-1990s, Cuba trades actively with over 166 countries (Pérez-Stable 2003: 14) and the U.S. is the country's 7<sup>th</sup> largest trading partner (Mesa-Lago 2007). In

recent years the embargo has been felt at a personal level, in the bite on individuals and families of the travel and remittance restrictions that operated between June 2004 and April 2009 (Human Rights Watch 2005; Sullivan 2009: 6).

Strikingly, “lack of political freedom” is listed as a priority only occasionally, and by small percentages of the population. The MCL’s primary focus is on these important yet less popular political issues, from the priority emphasis on the political prisoners, to the emphasis on goals such as free elections, freedom of association, and freedom of expression (Payá 1998). In the surveys, it is freedom of movement and freedom of expression—more personally-oriented freedoms—that resonate most widely. The government has tried to assert itself in the area of freedom of expression, with Raúl Castro calling for “critical debate” (Castro 2007). Some changes have occurred, as Cubans with sufficient money can now purchase computers and cellular phones and can now enter hotels) (*BBC World News* 21 May 2008). However, the initial rush of expectation has been dampened by news that fundamental changes are still being postponed, and that instances of public critique or serious opposition continue to be dealt with heavy-handedly, a tactic reminiscent of the crackdown after hints of reform in the early 1990s (Human Rights Watch 2009; Corrales 2004: 39).

Not surprisingly, the consistently disappointing results of failed past efforts to deliver the key reforms long-sought by reformers and dissidents has fed skepticism and sapped Cuban reserves of hopefulness and optimism with regard to politics, leaving behind a “residue” of pessimism (Lederach 2005: 51). The status quo, dissatisfying though it may be, is a “known evil,” and representative of basic safety and security for the broad population. Democratic political change seems to be associated with an inchoate fear of violence and chaos (Freedom House 2008). Some Cubans on the island fear confrontations over political and social differences, property rights, and the ability of those who stayed to compete against the economic purchasing power of those who left but would choose to return

(Freedom House 2008). Some also fear an increase in violent crime and a decrease in personal safety, similar to the crime wave that is currently gripping the rest of Latin America (IRI 2008).<sup>7</sup> They fear that Cuba would repeat the experiences of post-dictatorial and post-Communist countries, where economic conditions and public order disintegrated once government’s strong arm lost its grip. “A low crime rate” and “the sense of security that you feel in the streets” are among the most valued characteristics of life in Cuba today (Freedom House 2008).

In conclusion, it appears that the bulk of the population continues to support the government’s position, whether by the firm conviction of true believers, or the inertia and fears of the disaffected and disconnected who are focused on surviving and on carving out spaces for personal freedom. Issues relating to immediate economic conditions, safety/stability, and psychological isolation/mobility can penetrate and mobilize the population. Abstract political-ideological issues such as free elections or the fate of dissidents or political prisoners are easily drowned out by the pervasive government propaganda and silenced through repression.

Without a strong coalition that includes current government supporters, and a steady anchor in the basic human needs issues of popular concern, the MCL’s political program cannot successfully compete against the government. However, the legislative agenda and the Varela Project are strong building blocks for such an alternative.

## CONCLUSIONS: THE POTENTIAL OF LEGAL DISSENT

The constructive engagement policies during Pope John Paul II’s 1998 visit to Cuba contributed to the liberation of nearly 300 political prisoners (Pérez-Stable 2003: 78) and opened a political space in which over 25,000 of people were inspired and empowered to take action by signing the Varela Project. The presentation of signatures in 2002 was an undisputed success for the dissidents and their supporters, and even today,

7. Asked “What might get worse if political changes were to occur?”, 34.6% did not answer, 22.8% answered “nothing,” 11.9% responded other, and 11% answered that “Insecurity will increase.” (IRI 2008).

Cuba's legislature has not discharged its constitutional duty to acknowledge and discuss the project.

Since the renewal of the Varela Project, the arduous work of gathering another 10,000 signatures for delivery has been ongoing; despite fierce repression, this task is likely to receive a boost in momentum from the September 2009 Juanes "Peace Without Borders" concert, at which 1,150,000 people — 10% of Cuba's population and a higher proportion of its young people — gathered in the Plaza of the Revolution to sing about peace and change. (J. Hernández, personal communication, October 6, 2009), (Univision.com September 2009). The role of international actors in creating the "boomerang effect," and amplifying the proposals of principled domestic actors such as the MCL is a valuable and legitimate one. This role takes on a concrete importance now that after the Juanes concert, some people are asking "Now what?"

Reality must temper expectations. Spontaneous, bottom up change is unlikely. Surveys show that despite high rates of dissatisfaction, people are focused on issues of day-to-day survival, not deep political restructuring. Top-down transformation is also improbable. Today, Cuba is ruled by the same people who have kept a grip on power for 50 years by repeatedly opting for re-entrenchment and against deep and sustained

reforms (Corrales 2004: 36). As long as the MCL is perceived as threatening these interests or superceding the historical Revolution, it is unlikely that they will be granted the relief from persecution and the domestic public space they require to truly expand.

Still, the MCL has laid important groundwork. To be credible, the legal agenda must be articulated by political leaders who have the authority and skills to successfully implement it. A coalition between MCL dissident leaders and younger government reformers from the ranks of disaffected stakeholders could bring this to fruition. While greater economic development does not necessarily lead to democracy, greater democracy is correlated with greater economic prosperity (Przeworski 2000: 336). The MCL's legal dissent agenda will have succeeded if its contents become a viable platform for a renewed political consensus on the future of a democratic Cuba.

Cuba's new Foreign Relations Minister Bruno Rodríguez Parrilla, in his official press conference, called for Honduras' political parties and National Assembly to "adhere to liberty and their Constitution" (*Granma* 2009 June 28). In a response posted on his website, Oswaldo Payá asked "A Varela Project for Honduras? Why not a[n electoral] referendum for Cuba?" (Payá 2009b).

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