

“THE REVENGE OF THE JEALOUS BUREAUCRAT”: A CRITICAL ANALYSIS OF CUBA’S NEW RULES FOR *CUENTAPROPISTAS*¹

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The quantitative expansion of self-employment from 150,000 to nearly 600,000 licensed *cuentapropistas* between 2010 and 2018 during the presidency of Raúl Castro can be celebrated given its expansion of economic freedom, the provision of job opportunities, greater productivity and efficiency, and a markedly higher quality of goods and services for those who can afford them.² However, it is also curious that the Cuban government has embraced the micro-enterprise sector historically only during times of economic crisis when it could no longer provide enough jobs, goods, or services for the people (Mesa-Lago and Pérez-López 2013).

Indeed, this is one of the mantras most commonly repeated in the official press when justifying the downsizing of the state sector and the expansion of *cuentapropismo* (i.e., self-employment or literally “on-your-ownism”): The state must “lighten its load” so it can focus on the fundamental sectors of the economy. Given such a context, Cuban workers can be forgiven for concluding that Castro’s much trumpeted economic “updating,” constant calls for greater productivity and efficiency, and sharp criticisms of Cuba’s “inflated state payrolls, bulky social spending,

undue gratuities, and excessive subsidies” (2010) are simply fancy words for the state’s abandonment of its historic commitment to them under the Revolution.

Indeed, entrepreneurship has an elastic history in revolutionary Cuba and has undergone oscillating phases of relevance, vigilance, legality, and illegitimacy. In that context, Cuba’s successful *cuentapropistas* (the island term that lumps individual freelancers, together with private business owners and their employees, without giving formal, legal recognition to Cuba’s emergent small- and medium-sized enterprises, SMEs) have often found themselves in the frustrating position of being counted on to supplement the moribund state enterprise sector by providing private employment, high quality goods and services, and economic productivity and efficiency, while simultaneously doing without any legal personality or legal standing (*personalidad jurídica*) as true business enterprises. This restriction prevents them from opening bank accounts, signing contracts, importing needed inputs, or exporting their goods or services abroad. That is, while Cuba’s *cuentapropistas* may be individually licensed to operate as freelancers (i.e., *personas naturales*), “Cuban law does not recognize

1. My title comes from Richard Feinberg and Claudia Padrón Cueto 2018, where they write: “The extensive, highly detailed regulations, which go into effect in December, read like ‘the revenge of the jealous bureaucrat.’” Moreover, the Spanish language title of Mimi Whitefield’s August 2, *Miami Herald* article (cited in the references) is “La venganza del burócrata: nuevas medidas asfixian la iniciativa privada en Cuba” [The revenge of the bureaucrat: new measures asfixiate private initiative in Cuba], *El Nuevo Herald*, August 7, 2018.

2. In some cases, the expansion of the private sector has also driven down prices. However, because of extensive subsidies and price controls in the state sector, combined with chronic material scarcity and a dual currency system where a good portion of the private sector operates in hard “convertible” currency, prices for most goods and services available in Cuba’s private sector are very high relative to the state sector.

private enterprise [itself] as a legal entity” (Betancourt 2014: 5).³

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The on-again, off-again history of state policy toward private enterprise has taken a particularly negative turn since mid-2017 when a series of ominous signs, public declarations, and legal decrees froze in place Cuba’s private sector, pouring a veritable bucket of cold water over the island’s expectant but always wary entrepreneurial class.

First, in July 2017, just weeks after Cuba’s National Assembly approved the Communist Party’s decision to move forward on granting SMEs a legal personality, President Castro made headlines by openly criticizing the “irregularities” commonly found among private enterprises and Cuba’s new crop of non-agricultural cooperatives (Hernández 2017; Gámez Torres 2017a). Indeed, in his speech to Cuba’s National Assembly in late-July 2017, he expressed his displeasure with the supposedly high-flying lifestyle of some successful private business owners. “Criminal acts have been committed,” Castro declared. “There are reports of cases where the same person has two, three, four, and as many as five restaurants. ... Someone who has travelled abroad more than thirty times. Where did he get the money? How did he do it?” (Rodríguez 2018; Ferreira 2018).⁴

Then, on August 1, Cuba’s Ministry of Labor and Social Security (MTSS) published Resolution No. 22 freezing the issuance of new licenses in 27 occupational categories, justifying the measure with the ar-

gument that the existing self-employment regulations were insufficient and the sector required “better order and control.” Until that was achieved, new licenses in many of the most popular and lucrative private sector occupations would be unavailable. These included licenses for bed and breakfasts, private *pala-dar* restaurants and cafeterias, real estate and rental agents, auto repair shops, as well as party planners, shoemakers, private language and music teachers, and computer programmers. While the “freezing” of licenses for these occupations would be temporary, the resolution also included a list of five other occupations (such as wholesale and retail sale of produce, pushcart produce sales, and CD-DVD sales) for which it would no longer be possible to apply for licenses at all, though existing license-holders in these occupations would be allowed to continue to operate (Gaceta Oficial 2017; Puig Meneses 2017; Gámez Torres 2017b).

On top of this significant legal “pause” in the growth and consolidation of Cuba’s private sector, during the summer of 2017 a number of well-known and highly successful private businesses were raided, shuttered, and their inventory seized for carrying out economic activities beyond the scope allowed by their licenses. This coincided with the release of a video of a private meeting of Cuban Communist Party officials in which then-First Vice President (and now President) Miguel Díaz-Canel ominously railed against the supposedly counter-revolutionary orientation of Cuba’s private sector, the independent digital media, and the normalization of relations with the United

3. Summary documents published a month following the Seventh Party Congress, which took place on April 2016, indicated that “micro-, small-, and medium-sized private enterprises” (SMEs) would be “recognized as legal entities” (*personas jurídicas*) (Concepción 2016: 32). However, it took Cuba’s National Assembly more than a year to actually approve this decision, which it finally did on June 1, 2017 (Gómez Armas 2017). It remains to be seen exactly whether, when, and how this change will be implemented in practice (with no indication of movement toward such a legal implementation by September 2018), despite the issuance of major new self-employment regulations on July 10, 2018, which will take effect on December 7, 2018 (*Gaceta Oficial* 2018).

4. One of the ironic things about this statement is that it stands in such stark contrast to one Castro made to the same body in late-2010, just as he was relaunching *cuentapropismo* and trying to get his cadres in the Party and government to change their mentality toward it and its practitioners. At that time he said: “If self-employment constitutes another alternative of employment [...] what the Party and government should do in response is first of all facilitate its management and generate neither stigmas nor prejudices toward [*cuentapropistas*], much less demonize them. This is why it is fundamental to modify the negative existing assessment many of us have toward this kind of private work. [...] The steps that we have been taking and will continue to take in the opening and flexibilization of self-employment are the fruit of profound reflections and analysis and we can assure you that this time there will be no going back” (López 2011; Rodríguez 2016).

States, reminding his listeners that the U.S. continued to plot the “political and economic conquest” of the Revolution.

Dashing the hopes of some that Díaz-Canel had only been pandering to old guard regime hard-liners as he anticipated succeeding Castro as President (which he did in April 2018), the December 2017 National Assembly meetings ratified the need for tighter regulations on Cuba's private sector. It was announced that henceforth, private entrepreneurs would no longer be allowed to hold more than one license and that cooperatives would be limited to operating only within their home province. This effectively gutted the innovative business strategies of some entrepreneurs, who had simultaneously run *paladares* and/or bars together with bed and breakfasts under the same roof and others who had replicated the same operations across multiple provinces. Salaries for cooperative leaders would also be capped and contracts between state tourism enterprises, such as Havana Tours and private *paladares* (where they often take tourists for meals), would be limited to a total value of \$75,000 per year (LeoGrande 2017; The Economist 2017; Frank 2017; Recio 2018).

Then, in the closing days of February, 2018 *Reuters'* Cuba correspondent Sarah Marsh published an exclusive scoop describing a 166-page internal government report drafted the previous summer by a special economic reform commission that aimed, according to Marsh, to “increase state control over the private sector and curtail private enterprise” (Marsh 2018). These measures would go significantly beyond the freeze that had been implemented the previous August and would add detail to the measures announced by economic reform czar Marino Murillo at the National Assembly meetings in December. Dated August 3, 2017, and signed by Marcia Fernández Andreu, deputy chief of the secretariat of Cuba's Council of Ministers,” the detailed report recommended the elimination of the loophole that had allowed some successful restaurateurs to skirt the limit of just 50 seats per establishment by obtaining more than a single *paladar* license. In the future, each individual or household would be limited to a single license. More broadly, Marsh reported that “the docu-

ment calls for a new division under the Ministry of Labour to administer and control self-employed work.” It is also expected that the current list of 201 private sector occupations will be given a major overhaul with the new number of occupational categories falling below 125 (Marsh 2018; *El Toque* 2018).

“WE WANT TO BE HEARD AND TAKEN INTO ACCOUNT”

Sensing that the “new rules” supposedly aimed at “perfecting the exercise of self-employment” being drawn up in secret by the government would likely do more harm than good in terms of the flexibility and prosperity enjoyed by Cuba's emergent entrepreneurial sector, a group of 43 licensed *cuentapropistas* delivered a private letter on August 21, 2017 addressed to the Minister of Labor and Social Security, Margarita Marlene González Fernández, seeking to initiate a dialogue where they could share their concerns. While they agreed among themselves to keep the letter itself private so as to increase the chances of actually being heard by the Minister, the group's informal spokesperson, Oniel Díaz Castellanos, eventually summarized the contents of the letter in a Facebook post on December 14 of that year, as more than 70 days had passed without any word from the Ministry despite the fact that 60 days is the legal limit in Cuba for an official response to a citizen petition (Recio 2017). “We want to be heard and taken into account,” Díaz wrote. “We will continue insisting” (Díaz Castellanos 2017).

Díaz's group hoped to discuss the following topics with the Minister so they could participate in formulating policies that would overcome the main bottlenecks that hamper the optimal development of Cuba's entrepreneurial sector:

1. facilitate access to inputs from wholesale channels;
2. allow commercial imports;
3. overhaul the tax system so it better reflects the actual conditions of the national economy;
4. replace the long and exceedingly specific list of permitted self-employment activities with a much shorter “negative list” of prohibited activities based on “national, political, economic, or environmental interests;”

5. create a formal mechanism to allow ongoing dialogue between policymakers and *cuentapropistas*; and
6. implement a legal framework for SMEs in Cuba—that is, provide private businesses with a path to obtaining a legal personality (*personalidad jurídica*) (Díaz Castellanos 2017; Recio 2017).

Amazingly, just over two weeks later, in early January 2018, Díaz reported the good news that he and Marta Deus, another leading private entrepreneur, had had a two-hour meeting with high-ranking MTSS officials on December 28 where they were able to raise all their concerns. He considered it a successful meeting where “both sides spoke with transparency and listened with interest; an encounter of agreements and disagreements.” He ended his post with the promise: This is “a space we intend to enlarge and defend” (Díaz Castellanos 2018a; Recio 2018).⁵

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Six months later, on July 9, 2018, the official party newspaper *Granma* announced that the government had finally concluded its deliberations and would issue a new 129-page draft of self-employment regulations the next morning in the *Gaceta Oficial* (based largely on the earlier privately-circulated 166-page draft (Consejo de Ministros 2017)). It did so with the explicit claim that “the contents of the norms respond ... to requests from self-employed workers themselves” (*Granma* 2018; Castro Morales 2018). However, this justification (Orwellian in itself given the actual content of the regulations described below) was mixed with the unmistakable message that the government’s idea of “*perfeccionamiento*” remained much more about bureaucratic order and control than the facilitation, integration, and support envisioned by Díaz’s list of six proposals.

Those searching for good news within the new regulations could celebrate the fact that new licenses in 27 previously frozen, high-end occupations would be reactivated—but only after another 5 months of waiting (the change was to be effective on December 7, 2018) in order, in the words of *Granma*, “to permit the creation of conditions to carry out an effective ordering [of the rollout], with total adherence to the law” (*Granma* 2018). *Granma* also reported that as of the end of May 2018, the total number of licensed *cuentapropistas* had reached a record 591,456 (13% of the island’s labor force), up from 157,371 in October 2010, when the revitalization of the sector began. The new law also includes strong anti-discrimination language aimed at protecting vulnerable groups in the private sector (women, racial and ethnic minorities, etc.), requires that the hiring of private sector employees must now include a labor contract between parties, and allows the owners of private homes to rent them out to legal entities, such as state enterprises or agencies. Moreover, *cuentapropistas* will also be allowed to increase business expenses before calculating their taxes (*Gaceta Oficial* 2018; Auge 2018; Weinstein and Rodríguez 2018).

However, the new rules are totally silent on the most urgent concerns of Cuba’s *cuentapropistas*. That is, nothing is said about expanding access to inputs or making the available at wholesale prices, on the right of entrepreneurs to import commercial inputs or export their goods and services, on converting the exceedingly complex and detailed list of allowable occupations into a simpler “off-limits” list of banned ones, on allowing professionals to work in the private sector in their professions, on soliciting further feedback from or dialogue with *cuentapropistas*, or on legislation that would finally grant legal personality to private Cuban SMEs (*Gaceta Oficial* 2018; Auge 2018; Feinberg and Padrón Cueto 2018).

5. On August 21, 2018, the one-year anniversary of the delivery of their original letter to the Minister, Díaz noted wryly on Facebook that his group’s six proposals, issued “with the spirit of truly perfecting self-employment, [...] continue to be a pending matter. [They are] absent in the new regulations.” Moreover, he added that the chronic problems affecting self-employment will not be solved by the government’s law and order approach. “The problems,” he argued, “will continue to reproduce themselves if their real causes are not addressed” (Díaz Castellanos 2018c).

The government's silence on all these key issues was not lost on Díaz, who penned a scathing op-ed in the independent digital newspaper *OnCuba*, in which he blasted state bureaucrats for missing the forest of "private sector support and incorporation" due to its overriding paranoia about the trees of "limiting and repressing the growth" of an entrepreneurial sector that might contribute to social inequality, the private concentration of wealth and property, or the empowerment of a fledging middle class. "The authorities have insisted that they are satisfying some of the requests of *cuentapropistas* themselves," he writes. "However, those [measures] asked for with shouts and which would have a greater impact, continue to shine by their absence."⁶

Entitled, "New Regulations for Private Sector: More No's Than Yes's," the essay also points out that while the word "no" appears a total of 243 times in the regulations (almost two times per page!), state regulators missed a golden opportunity to change their philosophy from trying to micromanage the private sector with ever more layers of red tape to announcing a clear, structural shift toward the dynamic support for and engaged dialogue with the private sector. To wit, Díaz quips that they could have started by saying "no" by dropping the list of allowable occupations (that makes all others illegal by default) and replacing it with a "negative list" that would "give free reign to Cubans' creativity and drive to resolve their economic problems and contribute with products, services, and greater tax revenue to the nation" (Díaz Castellanos 2018b).

Perhaps the most telling assessment of the government's "massive compendium of tough new regulations" for the private sector came from Brookings Institution Cuba watcher Richard Feinberg and Cuban journalist Claudia Padrón Cueto who summarized them simply as "the revenge of the jealous bureaucrat" (Feinberg and Padrón Cueto 2018; Whitefield

2018). More concerned with restricting private wealth accumulation and controlling successful competition from innovative and newly prosperous *cuentapropistas* than with poverty alleviation, investment stimulation, or job creation, the bureaucrats behind the new rules seem motivated by the selfish desire to protect the moribund monopolistic state enterprise sector and the eminently political aim to prevent the rise of a moneyed middle class. Indeed, "the very ministries that stand to lose market shares," they note, "are [now] in charge of approving licenses in their sector."

The new regulations explicitly ban a number of already common *cuentapropista* practices and increase taxes as well as legal punishments for violations of the law, including the definitive loss of license and the seizure of place of business (usually the owner's residence) for the most severe violations (*Gaceta Oficial* 2018; Auge 2018). Some of the innovative diversification strategies that would now be off-limits to Cuban entrepreneurs include holding more than one license (for a single person or a single household) mainly to prevent violations of the absurd 50-chair limit at *paladares*; doing business with foreign entities (as private B&Bs commonly do with international tourism companies or individual Cuban programmers do with foreign tech firms); having a relative or friend stand-in as the nominal business owner (known colloquially as a *testaferro* in Cuba) to permit the development of brands, chains, and franchises; or running private schools, academies, or full fledged real estate agencies under the guise of self-employment (Díaz Castellanos 2018b; Muñoz Lima 2018; Rodríguez 2018; Frank 2018).

Still saddled with a mentality that sees the emergent entrepreneurial class as fundamentally at odds with its vision of *cuentapropistas* as marginal, survival-oriented, family-based freelancers, Cuban government bureaucrats insist that overly ambitious entrepre-

6. In the article, Díaz also laments that the likely result of the new measures would be to simply push a greater portion of Cuba's struggling *cuentapropistas* out of business or into *clandestinidad* (Cuba's extensive black market and informal economic sector). To underline this, via Facebook he shared an ingenious graphic penned years earlier by Cuban cartoonist René de la Nuez that depicted a brief conversation between a pair of Cubans. The first man whispers to the second, "Pues yo voy a pasar a la clandestinidad" (Well, I'm going underground). Prompting the second man to respond, "¿Política?" (The political underground?). Frustrated, the first man retorts: "No, hombre, económica" (No, man, the economic underground) (De la Nuez 2018).

neers are violating the “essence and spirit of self-employment, that consist in [individual] workers daily exercising the activity for which they are authorized.” Indeed, Cuba’s Vice-Minister of Labor and Social Security, Marta Elena Feitó Cabrera, explicitly argues: “There are workers who have a café and at the same time have a license as a manicurist or for an auto repair shop, or to make and sell shoes. This is not possible. In practice, it is a single owner who has many businesses” not what was intended for a *cuentapropista* (Gámez Torres 2018; Castro Morales 2018).

In order to properly prevent such violations of *cuentapropismo*’s “essence and spirit,” the draft regulations published in the *Gaceta Oficial* also announced that a new licensing procedure would take effect on December 7, requiring a detailed written application, a visit by inspectors to the proposed place of business, and a sworn declaration attesting to the licit origin of all business equipment and financing for the venture. Moreover, higher-end *cuentapropistas* will henceforth be required to set up business accounts at state banks, which they will have to use for all business-related transactions and which must carry a minimum balance of the equivalent of three monthly tax payments. The employment tax exemption that had existed for an enterprise’s first five employees will be eliminated and on top of that, Cuba will become one of the few countries on earth to impose a progressively onerous pay scale on businesses based on the more workers they hire (Torres 2018a). That is, any business with between 11–20 employees will have to pay those workers three times the average wage, a rate that increases to six times the average wage for more than 20 workers (*Gaceta Oficial* 2018; Castro Morales 2018; Auge 2018).

To this is added an especially invasive and censorious Ministry of Culture regulation (Decree No. 349) that aims to ensure the “proper application of the cultural policy of the revolution” in the private sector (Auge 2018; *Gaceta Oficial* 2018). This measure will ban independent artists and musicians from performing in private venues such as restaurants, bars, or night clubs without prior approval, licensing, and oversight by the state entity to which they “belong.”

The Decree also applies to authors, painters, and other artists who formerly sold their work without prior state authorization and outlines punishments for artists who use “violent, sexist, vulgar, or obscene language,” who violate copyright, and even for those who play their music too loudly (Gámez Torres 2018; Feinberg and Padrón Cueto 2018).

A POST-CASTRO CUBA? NOT SO FAST...

This major pushback against the liberalization of self-employment and growth of the private sector in Cuba is quite ironic given that it has come to a head just as Raúl Castro—the driving political force behind the opening to micro-enterprise since 2008—stepped aside as President. In fact, while it is quite common to hear Cuban entrepreneurs privately complain that Raúl Castro’s entrepreneurial reforms did not go far or fast enough (much more “*pausa*” than “*prisa*”), this new counter-reform suggests that at least some of the other powerful members of Cuba’s governing elite—apparently also including the new 58-year-old President Miguel Díaz-Canel—fear that Raúl’s market-oriented reforms went too far, too fast (Álvarez 2018; Torres 2018a). Indeed, while many had expected that pro-market reforms would deepen with the presidential succession into a “post-Castro” era, perhaps a retrenchment is in store instead.

It is worth noting that a quick scan through the 20-odd legal resolutions and decrees included in the compendium of new self-employment laws published in the *Gaceta Oficial* on July 10 reveals that the five central Decree-Laws issued by the Council of State were in fact signed, sealed, and delivered (behind closed doors) by then President Raúl Castro in February and March *before* Miguel Díaz-Canel succeeded him in April. Díaz-Canel signed only one of the 20 instruments, Decree No. 349 that requires private artists to respect Cuba’s “cultural policy” described above. This indicates, first, that Raúl Castro has been both the architect of an unprecedented opening toward self-employment *and* a “law-and-order” General-President who values order and control above all else. It also reminds us that grand pronouncements about Cuba finally entering any post-Castro era may be quite premature.

The economic logic of reform has run up against the political and ideological logic of the status quo. Government officials likely feel that the uncontrolled growth of the private sector directly threatens their bureaucratic and political power regardless of how much it contributes to the growth of the economy (*Estado de Sats* 2018). This is the conclusion reached in various published analyses of the government's entrepreneurial rollback by Ricardo Torres, a leading young economist at the University of Havana's Center for the Study of the Cuban Economy (Torres 2018a, 2018b). "It's no longer an ideological prejudice," he has said, "here we have a political calcula-

tion of not empowering certain sectors within the country which one day could question the reigning political power" (Muñoz Lima 2018).

Others within the government likely view the pockets of undeniable prosperity generated by successful private enterprises not with a capitalist's satisfaction but with a socialist's disapproval as it paves the way for (or simply reveals) Cuba's rising inequality (Frank 2018). To this legitimate worry, one sharp-tongued observer has retorted: "I strongly believe that socialism should fear poverty more than it fears wealth" (Ferreira 2018).

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