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**The Relationship between Well-Being
and Legislation During Economic
Transition**

A study of Cuba

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The relationship between well-being and legislation during economic transition: a study of Cuba

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Abstract

In 1989, Central and Eastern Europe started its experience with economic transition. Since then, the effects on well-being have been studied in multiple ways. Since 2008, Cuba is attempting to adapt its economy to curb the economic crisis, hence releasing its control on individuals and signing some international agreements. The goal of this paper is to determine the relationship between well-being and legislation in the context of economic transition. This is done by discussing three economic approaches to well-being: revealed preference, capability approach, and quality of life. We find that well-being is more representative with the quality of life approach, because it is an extensive and complete measure. Various approaches to quality of life have been developed, but for well-being to be well represented, the quality of life measurement needs to include as many indicators relevant to the society as possible. The results are that legislation can help improve well-being in areas that are affected by the economic transition, such as employment, human rights, freedoms, income, opportunities. By using legislation, the State can create programmes and make funds available to support citizens whose lives might be negatively affected by the transition. Hence, there is a strong relation between well-being and the use of legislation to improve it.

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Chapter 1

An introduction into transition economy

In November 1989, the world witnessed the fall of the Berlin Wall. This meant the collapse of the socialist states in Central and Eastern Europe (hereinafter referred to as CEE), after which these states would join the European Economic Community, the now European Union (hereinafter referred to as EU). Since its creation, the EU's main objective is to promote an open market between the member states. An important detail regarding the accession to the EU is that the acceding countries need to implement western principles into their own systems, which for CEE triggered a transition in economy. Indeed, a good example that illustrates the difficulties of dealing with transition economies perfectly is that of East Germany. The usual expectation of transition economies is that the transition will occur fluently and that the economic sector will become more efficient, however despite these expectations and goals of the political elite of the time, the transition did not occur as planned, but it rather proved to be a long and very complex procedure (Giulia Faggio, 2001). In the case of East Germany, it found a 'sound legal system, well-defined contract and property rights, an independent judiciary and a stable currency already in place' (Niemiets, 2009, p.2). However, the country and its components were not prepared for such a fast transition, therefore despite adopting what was considered as the Golden West, East Germany adopted high taxes, social security system, and extensive welfare entitlements. This caused a disincentive for people and businesses to deal in East Germany due to high costs (Niemiets, 2009).

Twenty years later, in 2009, it appears that public opinion in East Germany is very negative towards the free market and their attitude is uncritical towards state intervention (Niemiets, 2009). As Niemiets (2009) points out, this means that the mistakes made during the transition process still persist nowadays. Indeed, there is a great divide between ideologies on the subject, where in the East there appears to be a 'strong desire for stability and a weak appreciation of individual liberties' (Niemiets, 2009, p. 1). Since general expectations regarding transition towards a market economy have not been met, the question then is: what went wrong during the transition process? A common idea among public intellectuals is that expectations were too high, and the political elite tried to hurry the transition process, which resulted in disappointment and caused a shock to an unprepared population (Herbiet, 1993; Niemiets, 2009).

As it appeared on BBC News since last September, we could notice that Cuba is currently

going through economic changes, which are similar to those in CEE. For example, Raul Castro has announced his plans to lay off approximately one million state employees, which equals a fifth of the workforce of the country or 85%. Accordingly, the Cuban government has since then been taking steps to ease some of the restrictions on private enterprises and elaborating a new tax system for the self-employed and hired workers. This release on licenses will give the opportunity for Cubans to run their own businesses, rent out rooms, and hire workers. In doing so, Castro wishes to restore the economy, which is heavily burdened by debt and costly social programmes. Next to that, it is well known that Cuba needs to adapt its economic system, create an efficient tax system, and some social programme to ensure that those who are not employed can still fulfil their basic needs. The main differences to point out between the transition in Cuba and the transition in Central and Eastern Europe is that Cuba is not joining another group of countries; therefore it is retaining its current currency, for example. Also, it is important to state that Raul Castro has argued that Cuba would retain as much as possible of its socialistic character, rather than become completely a capitalist state. Basically, the common aspects that are affected during transition economy are, among others, employment, wages, opportunities, and a change in policy.

Objective

The main objective of this research is to discover the effects of transition from planned economy to market economy on the well-being of citizens and on Cuba's legislation. Furthermore, I am interested in the long-term effects and possible solutions to the issues encountered in transition economies. These relate to social indicators such as employment, wages, security, opportunities, human rights, and fundamental rights. The research will start by investigating how well-being fluctuates when indicators are affected, either positively or negatively. The indicators used in this research are employment, human rights, income, and fundamental freedoms. In order to understand the effects that transition has on the national system, previous experiences as lived in CEE during their transition to a market economy will be used to compare and create expectations for Cuba.

The relation between the well-being of citizens and legislation both as the national constitution and regular legislation has not been stressed enough in the literature. Since law is an instrumental concept, I will adopt the view that it should be used in order to organize society in a way to promote and favour the well-being of a nation's citizens. Public intellectuals, such as Noam Chomsky, have addressed this topic in various ways. At his lecture in Amsterdam on March 15th

2011, he asked whether public opinion should be considered in policy making and what would lead to the best end state. Indeed, there exists a close relationship between well-being and the use of international and national legislation, because „the goal of the legal system is to maximize 'social welfare', usually measured by people's revealed preferences, and prescriptive analysis also focuses on how to maximize social welfare.' (Jolls, 1998, pp.1474-1475). The ideal end state would be for Cubans to avoid the resentment Germans felt towards their new economic system. It is important to keep the deeply rooted Cuban 'for the people' idea founding its legislation, which stems from the revolution which gave some dignity back to the people, and make use of their constitution as an instrument to perpetuate the well-being of Cubans.

Structure

In conducting this research, I will make use of literature and theories from different fields, like psychology, economy, law, and so on. This will allow me to understand how the well-being of citizens and the national constitution are influenced by the process, and therefore propose solutions in order to avoid the disappointment experienced in the CEE countries. I will compare the issues that were encountered in CEE during their process to the process in the Cuban regime. Next to that, I will include some provisions of the Cuban constitution, and establish what policies are missing and that should be adopted for long-term happiness to everyone in a market economy, and in the case that it does not, then I will offer proposals on how to adapt its legislation in order to provide the necessary legal foundations.

This thesis will consist of a conjectural analysis based on similar past experiences. It is a conjectural analysis because Cuba is currently going through a partial economic transition, therefore I cannot with utmost certainty claim that its process will develop the same way as it did for the CEE countries, or that the issues that Cuba will face are going to be alike those of CEE. Since the goal of this research is to provide a possible model that will offer strategies for long-term well-being during and after transition, I will adopt a normative stand. The approach to be adopted to evaluate the well-being of Cubans will be discussed in chapter 2. This first part then will present three selected approaches: revealed preferences, capability approach, and quality of life. In chapter 3, I will investigate the most efficient and effective use of legislation that will offer the legal basis for well-being to flourish in the long-term. Chapter 4 will be dedicated to applying the quality of life approach and legislative measures to employment, human rights, income, and opportunities.

Of course, there are certain factors that should be taken into account in studying the different indicators, as they are influenced strongly by culture, history, political views, and so on. Evidently, the morals and values of Cuban society might vary in several aspects from our typical western ideas. Therefore, as used by Robert Sugden (1981), I will be making statements about what is considered as good or bad, right or wrong, and about how society ought to be arranged and about what governments ought to do about it. As it appears, protection for employment and income, for human rights and fundamental freedoms, and the accessibility of opportunities do influence the well-being of citizens. When feelings of insecurity stem from the unemployment rate during the transition period, this negatively affects well-being. If income is not sufficient enough for individuals to fulfil their basic needs, then there is a need for the State to intervene, and create funds for those who are struck by poverty. This is, however, usually a quality that a socialist state already has, hence, it should not be an issue for the Cuban State to provide such programmes. As to human rights and fundamental freedoms, these are some of the most important values to human well-being. As it was seen in the recent past of Cuba, many dissidents have been imprisoned for their views, violating fundamental human rights. This is just one example among many. However, since Raul Castro succeeded his brother, he has signed two international agreements that promote human rights and freedoms, now it must be implemented within the national legal system, and upheld. Finally, opportunities become available because of the various capitals that make up one's life.

Chapter 2

Happiness as a standard measure for well-being

In microeconomic theory, there are two types of well-being measurement: subjective well-being and objective well-being. Objective measurements will take into account quantifiable indices of social, economic, employment, and health indicators (Costanza et al., 2008; UNDP, 1998), whereas subjective well-being constitutes a self-reported level of life satisfaction, happiness, pleasure, expectations, personal fulfilment, and so on (Costanza et al. 2008; Diener and Lucas, 1999; Easterlin, 2003). Despite being the most common measures, objective measures cannot, for the purpose of this study, measure the self-perceived life satisfaction of individuals adequately. Indeed, life satisfaction or happiness adapts, fluctuates, and depends very much on human behaviour within a given space and time, hence it makes it difficult to make proper objective observations. External factors that influence one's well-being are important for this research, therefore subjective well-being will be the measure used.

Subjective well-being, varying according to the approach taken, is determined by indicators such as income, employment, security, fundamental rights, environment, health, opportunities, capabilities, aspirations, et cetera (Costanza et al. 2008). Obviously, the difficulty in policy making is that one's happiness might be another's unhappiness, therefore establishing the optimal happiness of a nation is a difficult task. It becomes even more difficult when policies are directed towards improving citizens' long-term well-being. The reception of these policies will be different depending on each individuals, class, status, and so on. Even though there are many disadvantages to this measure, such as the reliability of self-reported well-being, it remains the most suitable for the purpose at hand since it is most representative of the general happiness influenced by transition from planned economy to market economy. Finally, leaving economic goals aside, I will assume the Pareto efficiency, so the goal is to make at least one person better off, but no one worse off (Cooter & Ulen, 2008) with legislative means to obtain long-term benefits.

Since there are too many theories that can be used to measure well-being, this chapter will be an investigation of three theories: revealed preference, capability approach, and quality of life. The analysis will lead to the selection of one of these approaches, which will be used in the fourth chapter when applied to four social components affected by the economic transition. Evidently, some requirements are to be met by the theory. It is necessary that the theory takes into account

enough of what influences well-being, and it should be compatible with policy-making. It is most important that the theory can be used by the legislature in proposing bills and constitutional amendments that should be in regards to general well-being. Hence, in its calculation, the approach needs to include as many indicators as possible, which will give a clear view on well-being.

Revealed Preference

Revealed preference is a microeconomic approach that looks only at consumer behaviour. Indeed, the consumer acts as the central economic agent and the conclusions are based on his choices. The consumer's decisions represent his optimal choice given his preferences and budget line. It is assumed that consumers always act and make choices that will maximize their utility. Given stable preferences, as the consumer's budget and prices change, the theory assumes that the consumer will always choose the optimal basket (Besanko & Braeutigam, 2005). As Besanko and Braeutigam (2005) presented, the concept of revealed preference explains that when a consumer chooses basket A when basket B costs the same, then we can assume that basket A is preferred just as much as basket B. When a consumer chooses basket C rather than D which is cheaper than basket C, then we know that the consumer greatly prefers basket C over D. Since it is not the purpose of this paper to develop on the mathematics of the revealed preference approach, I will avoid dwelling on the matter. Instead, I will look at the principles behind it.

Economists get a general view of an individual's pattern in choosing baskets from the choices made according to the individual's changing income and the fluctuation in prices (Besanko & Braeutigam, 2005). However, as pointed out by Besanko and Braeutigam (2005), this will not give an exact shape of the consumer's indifference map. It is believed that despite the changes in prices and income, the consumer will not change his underlying preferences. In policy-making, economists or policy-makers should look at the aggregate revealed preference of a country. However, for given prices, economists believe it is enough to look at the income of the people to infer whether their welfare increases or decreases. The question therefore is whether this is really representative, since income might not necessarily follow inflation. Perhaps aggregate preferences would be made easier if distinction would be made according to classes in society. Another focus, perhaps more important, would be to look at resource allocation by individuals to goods and services, and see how their allocation changes with different social policies or social programmes giving benefits to citizens.

This theory becomes relevant when a policy maker wants to evaluate what could happen to consumption when income and prices change. If we assume that individuals will choose the optimal option for them, we should assume that it is in their best interest; therefore it should be assumed that the preferences are in relation to the individuals' well-being. This leads us to consider whether the revealed preference approach really is a reliable indicator of well-being.

One could argue that we can never be completely certain that individuals will act in the most optimal way for themselves. Indeed, some economists assume that individuals, being human beings, are rational and act accordingly. However, it can be argued whether a teenager is rational enough to make the best choices for himself. Many rules exist to prevent people at such young age to take part in decision making, for example the age limitation in taking part of elections, this shows that the belief that human beings are rational is wrong. The same can be seen with individuals who have disabilities, society tends to minimize the validity of their choices. Next to that, the assumption that an individual's preferences do not change is one that is not necessarily true. Individual preferences may change in certain situations, over time, or even if the individual gains new experiences. For example, if a person preferred basket A over basket B because basket B contained an element that the individual yet had not tried, and once tried his preference shifts to basket B. Then the assumption does not hold anymore. This is also expressed in the 'sour grapes' theory. Jon Elster called this 'adaptive preference formation'. This occurs when an individual desires a certain good, but when he realises that he cannot get this good, he will create an aversion to it, hence not desiring the good anymore. However, if we assume that individuals adapt to their new situation over time, perhaps this approach could be reliable. The disadvantage then would be the time required to adapt.

Capability Approach

The capability approach was first introduced by Professor Amartya Sen, the 1998 Memorial Nobel Prize winner. Other authors, like Martha Nussbaum, further developed the theory. This approach is used to investigate individual well-being and social arrangements, for the design of policies and the proposals about social change in society, and dwells upon deprivations in basic freedoms and rights (Robeyns, 2003; Vizard, 2006). It can be used in the fields of development, welfare economics, social policy and political philosophy; to help among others in designing the welfare state and policies (Robeyns, 2003). Its main focus is on what people are capable to do and

to be, hence the focus on capabilities, in the sense of human rights and freedoms (Robeyns, 2003; Vizard, 2006). Next to that, it focuses on equality and the dignity of human beings, as stressed by Rawls, which is understood as the basis of fundamental rights (e.g. access to proper nourishment, adequate living conditions, extended life expectancy, and access to education). According to Robeyns (2003, p.5), 'a focus on people's capabilities in the choice of development policies make a profound theoretical difference, and leads to quite different policies compared to neo-liberalism and utilitarian policy prescriptions'. This framework however is said to be overly narrow when it comes to its informational bases and to the characterization of the means and ends of growth and development (Vizard, 2006). According to Vizard, this means that the instrumental role and values given to human rights and freedoms are neglected. Hence, there is a need to adapt the approach to the necessities stemming from considering human rights and fundamental freedoms in evaluating well-being.

In developing his theory Sen stressed the importance of policies, for which legislators should take into account individuals' capabilities in doing and being (Robeyns, 2003; Vizard, 2006). To this end, we should consider the quality of life or standard of living of citizens. After all, the goal of this approach is to provide possibilities for citizens to exercise their freedoms and choices in living the life they want. Therefore, as some authors previously did, it is important to establish the consistency of well-being. While the revealed preference approach uses stable preferences for a given budget and prices, the capability approach finds the consistency of its indicators among common accepted values and morals. These of course are usually attached to age, sex, culture, religion, and so on. According to Sen, we can calculate starting with living standards, which are characterised as 'personal well-being related to one's own life', and by adding what Vizard calls sympathies or helping others feel better off, we can then measure well-being (Vizard, 2006). For this paper, I would like to assume the state as the agent establishing a system that will make citizens better off after the transition.

When using this approach, one can find the set of individual capabilities in order to choose the proper institutions and social policies that will improve the lives of citizens (Robeyns, 2003). Despite this theory not evaluating well-being directly, we assume that by improving the lives of citizens by means of legislation and fixed rights and freedoms, legislators can expect an increase in happiness. This theory indeed relates more to the concepts of income and utility. The question then is whether regulating income can be used as a means to an end. This will be further developed in

Chapter 4 under the heading Income. Robeyns (2003) points out that by using this approach, policy-makers focus on the ends rather than the means, since the means are barely instrumental. The ends of this approach are most important; hence in order to achieve these ends, the means should take into account the values given to objects, opportunities, freedoms, rights, by individuals.

Finally, in terms of well-being, this approach proposes a fulfilment of individual functioning. Sen enumerated for example work, rest, literacy, health, community membership, and respect as being important in the evaluation of capabilities and well-being. This approach is very much freedom and rights oriented, mostly regarding poverty and development. Can we then apply this approach to the situation in Cuba? Cuba is indeed considered as a poor country and under development, therefore we can affirm that this approach is suitable in the case of Cuba.

Quality of Life

Quality of Life is considered to be a rather recent method to evaluate the well-being in a nation. The indicators that are used in calculating the quality of life are wealth, employment, built environment, physical and mental health, education, recreation and leisure time, social belonging (Costanza et al., 2008). According to Costanza et al. (2008. p.17) 'quality of life is a multiscale, multi-dimensional concept that contains interacting objective and subjective elements, and the approach relates to the opportunities that are provided to meet the human needs in the forms of built, human, social and natural capital (in addition to time) and the policy options that are available to enhance these opportunities'. Is the quality of life approach most suitable in policy-making?

According to the Quality of Life Research Unit of the University of Toronto, quality of life can be defined as 'the degree to which a person enjoys the important possibilities of his or her life'. In their defining the possibilities of an individual's life, the research group determined that they 'result from the opportunities and limitations each person has in his/her life and reflect the interaction of personal and environmental factors. Enjoyment has two components: the experience of satisfaction or the possession or achievement of some characteristic'. For example, if we consider freedoms of individuals, depending on its nature, these can be accompanied by a limitation clause for all individuals to enjoy their freedoms. The Quality of Life Research Unit developed the following conceptual framework with regards to the being of individuals:

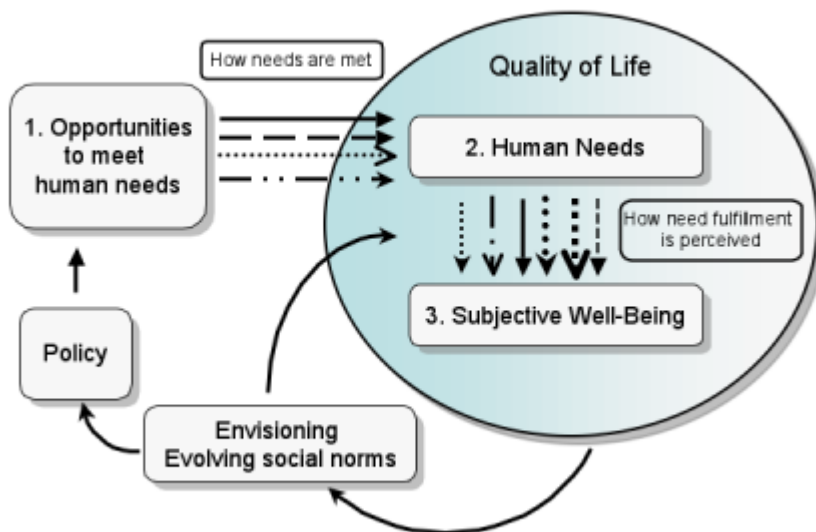
Table 1- Quality of Life Conceptual Framework by the Quality of Life Research Unit

Dimensions	Person's enjoyment
Being	[as] who one is
Physical being	<ul style="list-style-type: none"> • physical health • nutrition • general physical appearance
Psychological being	<ul style="list-style-type: none"> • psychological health and adjustment • feelings • self-esteem, self-concept and self-control
Spiritual being	<ul style="list-style-type: none"> • personal values, morals, and standards • spiritual beliefs
Belonging	[as] connections with one's own environment
Physical belonging	<ul style="list-style-type: none"> • home/workplace/school • neighbourhood/community
Social belonging	<ul style="list-style-type: none"> • family/friends/co-workers • neighbourhood and community
Community belonging	<ul style="list-style-type: none"> • health and social services • employment/adequate income • educational programs • community events and activities
Becoming	[as] achieving personal goals, hopes, and aspirations
Practical becoming	<ul style="list-style-type: none"> • paid work • school or volunteer activities • seeing to health or social needs
Leisure becoming	<ul style="list-style-type: none"> • activities that promote relaxation and stress reduction
Growth becoming	<ul style="list-style-type: none"> • activities that promote the maintenance or improvement of knowledge and skills • adapting to change.

This is a table representing the different needs and capabilities that human beings can expand on in order to live the lives that they wish to live. It also shows a detailed list of what

influences the quality of life. The Quality of Life Research Unit expanded on the idea of meaning and enjoyment of the different dimensions in the table, establishing that quality of life depends on the meaning given to each of the dimensions and the enjoyment that individuals get from each of these dimensions. In their paper, Costanza et al. (2008, p.18) establish that quality of life is 'the extent to which objective human needs are fulfilled in relation to personal or group perceptions of subjective well-being'. The calculation of well-being is based upon the responses given by groups or individuals regarding their perceived happiness, life satisfaction, utility, or welfare (Costanza et al., 2008). Of course, the fulfilment of human needs of individuals, groups, and cultures vary according to time and place. The following figure appears in Costanza et al.'s research. It not only demonstrates the relationship between opportunities and the need to fulfil needs, it also includes the dynamics of policy making and social norms stemming from well-being.

Figure 1 – Integrative Model of QOL by Costanza et al. (2008)



Finally, an obstacle to this method is that individuals might already be adapted to their situation; hence perhaps they cannot distinguish between what they believe to be good and what they could have. However, subjective well-being remains the most complete approach to well-being, and is most reliable in order to create policies, as shown in Figure 1.

To conclude, well-being used to be determined by an individual's GDP, meaning that the more an individual consumes, the happier he/she is. However, recent studies by, among others,

Easterlin, Sen, Putnam, and Nussbaum refute the argument by claiming that there is much more to consider when evaluating a nation's well-being. Indeed, some well-being approaches omit very important variables that should be included in the evaluation of a nation's happiness levels, such as life expectancy, hours worked, inflation, unemployment, securities, health, education, accessibility of opportunities (Di Tella & MacCulloh, 2008). This explains why the revealed preference approach is not suitable for the objective of this paper, since it is based on consumption, given income and prices. Hence, with the requirements as set in the introduction of this chapter, revealed preference is not sufficiently extensive and representative to elaborate on well-being and to adapt the legal system. As will be further investigated in chapter 4, some assumptions are made in economics which would explain how consumption and preferences mirror well-being. However, since legislation cannot simply base itself upon such a narrow approach, it cannot be used in this research.

Next, there is the capability approach. It seems closely related to the quality of life framework, since both include possibilities and choices which are coupled into sets of capabilities. Despite their resemblance, the capability approach does not seem to include as much as the quality of life approach. Indeed, the focus of the capability approach is on the capabilities of people, in regards to human rights in a poverty setting. It moves a bit further away from people's life satisfaction as it does not concentrate so much on income, expenditures, consumption, or basic needs fulfilment (Robeyns, 2003). As for the quality of life approach, the focus is on everything that constitutes an individual's life. It can also adjust easily to changes in time, place, and policies. In fact, it takes into account the possible social policies it could have which will ease the fulfilment of human needs as well as the effects policies would have on individuals' well-being (Costanza, 2008). The question whether the quality of life approach can be applied from a legal perspective is positively answered. Not only is the goal of this approach to make use of policies in order to create opportunities for human needs to be met and to create conditions that increase the likelihood that individuals will grasp the opportunities presenting themselves to them, but it is an integral part of the approach itself (Costanza et al., 2008). Since this approach is extensive and adapts easily to changes in time and circumstances, it is appropriate for economic transition.

Chapter 3

Legislation as instrument to promote long-term happiness

“I want the fundamental law of our republic to be the tribute of Cubans to the full dignity of man.”

Josi Marti

In order to understand the legal background of a country, one needs to understand its development, since it usually finds its justification in history. In 1959, Fidel Castro was at the head of the Cuban Revolution against the control and abuses of the American mafia, which was controlling the country. The rebels vowed to create a „people-centred society based on justice and the socioeconomic principles of reciprocity and equitable wealth distribution" (Taylor Jr. & McGlynn, 2009, p.405). Since February 2008, Fidel Castro has been succeeded by his brother Raul Castro. The Cuban state is known for its success in setting a good education and health system for its citizens. BBC reported that in presenting his plans to reduce the burden of the state, hence causing the layoff of millions of people, Castro promised that 'no-one will be simply left out in the cold'. With Raul Castro at the head of Cuba, it appears that his views might very well lead to Cuba's progress from a communist to a more democratic state, since Cuban policies allow its citizens to be more independent and less reliant on the state. Given this, I would like to assume that Cuba's political goal is to become a social democracy.

There is currently not sufficient literature that describes exactly how legislation might help in promoting well-being for the long-term. However, since there is enough literature about the use of legislation in order to fulfil the legislature's goals, I will make use of this knowledge to evaluate how legislation could be used in the advantage of well-being. Accordingly, I will start from the premise that laws are created to regulate the powers of national authorities, to limit the government in its activities, to protect citizens against the government and each other. The European Commission explained that in CEE, when the centrally planned government transitioned to a democratic, the whole legislative system had to be modified in order to incorporate the democratic principles it should promote. In this respect, the Commission ordered a rapid introduction of a new set of legal and institutional framework, since it argued that this was a necessary step for the establishment of a well-functioning market economy (Herbiet, 1994). Even though Cuba will remain socialistic in nature, hence not introducing democratic principles, its adoption of a market

economy will require a new set of rules that will offer protection for employment, unemployment, income, property, taxation, and so on. Based on societal needs, the legislature will usually take into account the satisfaction of the majority when drafting proposals for a country's legislation, unless a law is necessary for the nation even though it is at the detriment of a certain group (e.g. Harmonisation Act). In this chapter, I will investigate the use of legislation in creating a market economy that takes societal needs seriously. I will start by explaining the legal framework of a market economy in general by simultaneously looking at the changes that are then necessary for Cuba. I will compare acts of government and the constitution in order to find which is most suitable for the purpose at hand: offering protection to citizens. I will conclude this chapter by discussing the necessities of this transition for legislation, and which method will be used for the application to social components.

Legal framework of a market economy

Communist and capitalist states have different legislation, since the state goals are very different. Now that Cuba is changing from a centrally planned state to a socialist market economy, as Castro names it, it is important to have a look at the main differences in order to understand how legislation could be used as an instrument by the Cuban government. As argued by Professor Herbiet (1993), the effects of a transition show that a nation-state needs to adapt its legal system in order to accommodate the newly found freedoms and capabilities, to use Sen's expression. During the transition in Central and Eastern Europe, the Commission rapidly realised that the constitutional aspects behind the economic transition were crucial for the transition to be successful. Indeed, 'the main obstacle for economic development and foreign investment was the lack of an adequate legal and political science' (Scholsem, 1994, pp.7-8). Hence, for Cuba to have a successful market economy, it should not only adapt its economic system, legal system, but also its political system. Law professors often stress the need for some basic legal principles in order for a legal system to be successful. In this respect, the European Commission (1994) stressed that the rule of law is essential to both protect people against governmental abuses and to create a well-functioning economy. Even though this is beyond the scope of this research, it should be taken into consideration when adapting the legal system.

The legal foundations establishing a market economy in comparison to a planned economy are important to understand the effects of economic transition on law. Whereas a planned economy

is characterised by a collective ownership of the means of production by the government and a centralised state planning, a market economy is characterised by a competitive market, where prices of goods are determined freely, and where private ownership is possible. In this regard, Professor Michel Herbiet (1994) reported that governments faced with the transition to a market economy realise that 'this is a process calling for major reforms involving the establishment of a new body of laws designed to facilitate the smooth running of the economy'. Seeing as Cuba is currently changing its type of economy, it is fair to say that it needs to adapt its legal system to support this new economy.

Since market economies allow for, among others, self-employment and private ownership, its legal framework includes the 'recognition and protection of different forms of property', 'the recognition of freedom of economic activity', 'the recognition of freedom of contract', 'principle of free competition both between individuals and individuals and states must be recognised', and 'the freedom of association, which includes the freedom of establish associations, companies, and trade unions' (Herbiet, 1994, pp.11-12). These freedoms and principles are both economic and social in nature, which is important to create a long-term well-functioning market economy, as they require protection for individuals, but it also creates some guarantees and foreseeable obligations for firms. This can easily be recognised within the EU where the recognition of human rights means not only a social advantage for European citizens, but it is also an economic advantage as it recognises equal pay for men and women, no exceptions can be found among the different Member States, hence allowing for fair competition among firms. A state aims at an economically efficient system, but it also wants a socially viable state. The role of the state after transition is very important to determine. As Professor Herbiet (1994, p.13) argues, 'the market economy must be social, in the sense that it operates for the benefit of society as well as individuals. In this way, it allows the taking into account of the interests of all parts of society, in particular employers and employees.' State intervention can then provide a solution to the deficiencies of society as it sets up a social welfare framework and it regulates the economic activities or creates public enterprises to fill the gaps where the market economy is not performing properly (Herbiet, 1994).

Finally, a market economy provides more opportunities for individuals to start a business, employ individuals, own property, be self-employed, and more. This generates legal issues such as contracts, social security in case of unemployment, property ownership. There is an obvious need to incorporate the basic elements of market economy in national legislation (Herbiet 1994). For this

purpose, we find the national constitution and acts of parliament.

Constitution or legislation?

In 2008, Castro signed two international agreements promoting human rights, a first for the Cuban state (McKinley Jr., 2008). The two treaties are the Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. At the national level, we find the constitution and regular legislation. In deciding whether the approach of amending the constitution or implementing new legislation is most suitable for this research, I will investigate what are their implications, since two legislative approaches have different means, efficiency, and applications.

Constitution

The constitution can be seen as the expression of the political community's fundamental legal values. It provides the grounds and limitations for the exercise of power by the government. It is used to protect individuals against governmental abuses and against their peers. Because of their nature, constitutions are difficult to amend. From this stem many legal questions, such as judicial review, and how easily a constitution can be amended. A constitution finds its legal basis especially in case law. It is argued that constitutions necessarily form the basis of a state's legal and economic systems, and so they must safeguard the stability of markets (Herbiet, 1994). The most important function of a constitution is to provide a clear framework, which of course then upholds basic principles of the rule of law (Herbiet, 1993). This explains why constitutions, compared to legislation, need to be phrased in general terms otherwise it loses its general applicability and meaning.

The constitution will mirror the national values accrued over time, since it is meant to protect what nationals believe to be worth protecting. Constitutions typically include what is called traditional or classical rights, and economic and social rights, and in defining what are fundamental rights and freedoms, lawyers will usually refer to those that are found in a constitution or in international treaties (Besselink, 2004; Herbiet, 1994). It is required from the state by classical rights not to impose restrictions on them, since these are our basic rights and freedoms. Rather, classical rights and freedoms impose a prohibition on the behaviour of public authorities (Besselink,

2004). As for economic and social rights, these differ from their classical counterpart since they are relative and contingent, and are often more policy oriented (Herbiet, 1994). As explained by Besselink (2004), economic and social rights actually require public authorities to perform or take action in order to guarantee them. These rights are included in the international treaty signed by Cuba, hence stressing the responsibility of the Cuban state to uphold these rights. Finally, economic and social rights require the state to take positive action and give citizens a right to call on the authorities to act. These rights are 'intended to achieve a transition from *de jure* or formal to *de facto* or real equality' (Herbiet, 1993, p.15).

The constitution can be used in several ways to adapt economic policy goals (Kaufmann, 2007). Policy goals can be defined as freedoms, which can be developed into an institutional commitment to the market economy (Kaufmann, 2007). However, there is a need to define the limits of state intervention in the welfare system. These limits are to be provided for in the constitution, since it is the document used to define the state powers. Now that many citizens have to be self-employed or employed by non-governmental institutions, the Cuban constitution will need to be amended in order to establish labour standards, freedoms, securities, and so on. Cuba is already a member of the International Labour Organisation and is now a signatory of two international treaties. Hence, Cuba needs to establish the hierarchy of the international legal and its own. Indeed, Besselink (2004) gives the example of the Netherlands, in which it states that it is only in accordance with the requirements of Article 93 of the national constitution that a citizen may invoke a right included in international human rights treaties in a national court.

Intellectuals, like Professor Herbiet (1993), ask questions like: 'do constitutions, with their rigid frameworks, offer the most appropriate legal basis for the establishment and functioning of market economies? To what extent is it preferable to leave this task to legislation and government regulation?' Such questions are at the centre of transition economies. Cuba is facing major issues regarding its political, legal, and economic system. Indeed, in 2002, the constitution was amended to make of the socialist system permanent and irrevocable. Such amendments to the constitution should constitute abuse, since this was made as an answer to the rising opposing group. Hence, is the Cuban legislature ready to amend the national constitution in a way that will benefit the citizens? Since Raul Castro came to power, it seems that he is trying to make improvements to the system. Finally, the Council of Europe (1994) pointed out very clearly the limitations of using the constitution for an efficient market economy. A constitution, due to its procedural and institutional limits, is not the ideal instrument that will provide a new economy with a sustainable and efficient

system (Herbiet, 1994).

Legislation

Legislation may be referred to as regular legislation, regulations, acts of Parliament or statutes, and they may have further subdivisions, such as primary and secondary legislation. Legislation lays down the application of the constitution and other rules. It is applicable to everyone or it may in fact be directed towards a specific group. As explained by Professor Herbiet (1994), while constitutions contain the fundamental freedoms and human rights as ensured by the state, it is left to legislation to clarify the extent of these rights, the circumstances in which individuals may claim infringement and request restitution or damages, and the restrictions on certain freedoms and rights. Of course, restrictions may not simply be applied at will, they need a statutory basis, to be justified as necessary for the general interest, and in line with the principles and values as prescribed by the constitution (e.g. democratic principles) (Herbiet, 1994; Besselink, 2004).

By using legislation, as Herbiet (1994) explains, the state may intervene directly or indirectly in its economy. In a direct intervention, the state is directly involved in the functioning of the market. It can act as an entrepreneur, industrialist, trader, and state authorities can even work as an external influence that regulates activities or behaviours by firms. There is also the indirect intervention of state authorities which involves two approaches: repressive and preventive. With the repressive approach, economic activities can develop freely and authorities merely intervene to eliminate excesses and only limited restrictions are necessary regarding fundamental rights and freedoms. With the preventive approach, the exercise of economic activity is registered, requires a license, or is prohibited. This resembles the current approach of the Cuban government to the opening of its market, as businesses and self-employed people require licenses in order to start their activities.

As mentioned earlier, there are economic and social rights, which can be incorporated in the constitution next to classical rights. However, intellectuals such as Herbiet (1994) argue that such rights are rarely incorporated in the constitution, since they might need specifications not suitable for the nature of a constitution. In fact, we sometime assume that the constitution has a stronger value than legislation; however that is not the case. Weight is given just as much for each, hence economic and social rights may be written in the legislation, and individuals will receive just as

much protection from these rights. To illustrate the relationship between the constitution and legislation, following is the situation as was in Central and Eastern Europe. During the economic transition, the Commission voiced that a few economic and social rights should be addressed in the body of a constitution, and in the same form as classical rights, i.e. without being too detailed, and those rights which already have a strong legal framework (Herbiet, 1994). It is necessary to leave room to interpretation by parliament and application in courts.

To conclude, the European Commission already established that in a changing economy, it is important to regulate all the major changes that might affect an individual's rights and opportunities (Herbiet, 1994; Kolokov, 1994), while some authors argue that the availability of such legal conditions are not necessary for a well-functioning market economy, since it can always be left to the state authorities to provide the necessary assistance where required (Geesteranus, 1994). Given that the Cuban State is to remain socialistic in parts, government intervention in the form of laws is necessary to protect citizens. Since constitutions cannot include all provisions regarding various fundamental rights and freedoms, their applications, restrictions, or any other detailed information necessary for the proper establishment of a legal system, because of their general nature, it must be left to legislation to create regulations that will establish the market economy. It is argued that legislation is perfect for a market economy, because it is efficient and easily adaptable (Herbiet, 1994). Actually, as many national courts already established, the constitution should be seen as an instrument that adapts to changes over time within a society. It is left to the Cuban state to organize the state and the transition to a market economy while taking into account its new obligations towards international treaties, the underlying values of the Cuban society, and its citizens. Some principles, which have not been included, should be considered such as the rule of law, legal certainty, and efficiency of both the legal and economic systems. Many examples can be used to show the necessity of legislation rather than the constitution, like for setting the minimum wage, working hours, unemployment benefits, and so on.

Chapter 4

Application of quality of life to indicators of well-being

In the two previous chapters we have looked at some approaches that can be used to evaluate the well-being of citizens and the legislative methods that should be taken in making rules that will improve well-being. In this chapter, four components that strongly influence happiness will be studied in a similar way: employment, human rights, income, and capabilities/opportunities. This is a conjectural research; ideally the well-being of Cuban citizens before and after the transition will be positively affected by the newly found rights, freedoms, increasing income, welfare, life expectancy, and opportunities. However, it cannot be clear how much exactly well-being will be affected, since there is no reliable data. Common results regarding perceived well-being introduce the effects of concepts such as adaptation and comparison (Mentkzakis & Moro, 2008; Pugno, 2009). These concepts have a strong effect in perceived well-being, because individuals tend to compare their situation to others around them. Hence, one's satisfaction with her financial situation will depend on what others' financial situation is. As for adaptation, as mention multiple times before, it is common for individuals to adapt to the new situation, hence stabilizing the happiness level. Starting from the initial conditions in Cuba, considering the exogenous factors that need to be taken into account, as well as the current plans as formulated by the State authority, this will explain the conditions for success during the transition. In order to adopt the appropriate and necessary legislation as regards each component, it is necessary to establish some minimal conditions that have been fulfilled in successful transition economies. Of course, the main goal is to achieve the stabilization of the new economy.

Employment

In a centrally planned economy, most individuals are hired by the State, so this organisation causes wage differences to be limited. The BBC reported that 85% of the official workforce in Cuba is hired by the State, which amounts to roughly 5.1 million people. Because of the weight the economic crisis has had on the Cuban economy, the State has decided to adopt some aspects of a market economy, which led to the lay-off of millions of state-employees. This is meant to encourage individuals to take up self-employment and to start their own businesses, since State control and restrictions have been loosened. This also occurred in the transition of CEE, as well as in the former Soviet Union. It was important for state authorities to develop a system of protection for

individuals because, as Easterlin (2009) explained, unemployment and low incomes increase during transition. This created a need for public policies to prevent citizens to fall in extreme poverty (Cerami, 2008). The BBC reported the labour federation saying: "Job options will be increased and broadened with new forms of non-state employment, among them leasing land, co-operatives, and self-employment, absorbing hundreds of thousands of workers in the coming years". The increase in choices tends to increase happiness; however the unemployment will decrease happiness as it is negatively correlated with happiness (Di Tella and MacCulloh, 2008).

The former employment situation in Cuba offered a limited income possibility for most workers, because the State would officially hire most citizens. Next to that, employment seemed secure since State employment was the main employment agency. With the new found employment opportunities, as well as the corresponding programmes and benefits, we can expect the level of happiness to rise. This will give the possibility for income growth independently of other workers, since their salary will not depend on the State. Also, employment can be directly related to social relations or status, to income, to opportunities and fulfilment of needs, hence employment needs some regulations. New employment opportunities can lead to self-fulfilment and the development of new capabilities, which are indicators of the quality of life, providing an increase in well-being. Even though there is now the opportunity to be self-employed or to own an own enterprise, Castro declared that the State does not intend on providing any sort of assistance for individuals to start their own enterprise. This could have a negative effect on various indicators in the short-term; however as explained by the Sour Grapes metaphor, individuals can experience an increase or decrease in happiness at the changes in indicators and the prospect of achieving a new goal. When individuals realise that something is out of their reach, they will adapt to their current situation, perhaps by finding a replacement, but in the end their happiness level will adjust. This of course might create a feeling of inequality in regards to opportunities or capabilities. The State should consider the establishment of certain programmes, such as described in Table 1.

Regulations needed by the State regarding employment will mostly be through normal legislation, since employment laws are too specific to be incorporated in the constitution. As the Cuban administration retains a lot of influence on new enterprises, it would be in the best interest of its citizens to create legislation that will oversee enterprises. For example, some studies have shown that happiness is affected negatively by the environment, average of hours worked, openness to trade, inflation, and unemployment are being affected (Di Tella and MacCulloh, 2008). It would be

a recommendation for the Cuban State to adopt some rules regarding the disposition of waste or how to handle the environment by enterprises. Of course, other areas that need to be regulated are similar to ones deemed necessary for the transition in both CEE and the former Soviet Union. The governments established rules on employment in order to curb inequalities, facilitate employment, prevent unemployment, and to protect workers (Samorodov, 1992). Obviously, the State has to ensure that it has enough financial resources to fulfil its obligations and to support its social programmes. Being socialist in nature, protection of individuals should remain a priority of the State. This protection will ensure that individuals have the possibility to fulfil their basic needs and live the life they want. The State then takes upon itself to offer benefits for the unemployed. In doing so, the State will take into account the costs of these new programmes and of legislation. Without employment programmes, long-term unemployment can lead to social exclusion as well as other social disturbances which can have a heavy effect on happiness. Since companies can employ for the first time in Cuba, there is a clear need for legislation that will provide norms and standards for employment in order to avoid abuses. Despite it not being efficient from an economics point of view, this research focuses on well-being, hence it is advantageous to establish minimum wage, minimum working age, a maximum number of hours of work per week, possible benefits, and so on.

Human Rights

The findings published under Section 1702 in the Cuban Democracy Act of 1992 by the United States demonstrate that the former government disregarded international standards of human rights and democratic values. It reported that Cubans were prevented from exercising rights such as freedom of speech, of assembly, and of press. Most importantly, these rights are recognized by the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations. Multiple efforts by the Cuban government to suppress any kind of dissent were exercised through intimidation, imprisonment, and exile; methods which only grew in number since the collapse of communism in Europe and the former Soviet Union. It was reported that the Cuban people demonstrated their want for freedoms, as well as an increasing discontentment with the Castro administration, by organizing independent and democratic activities on the territory, and by fleeing the country to reach the United States as well as other countries (US State Department, 1992; Blair, 2008). As a result of the former Castro administration, it caused a decrease in the well-being of the Cuban people. The impression of the international community then was that Castro gave no sign as

to his intent to change his governance. Since 2008, Cuba is under a new administration, that of Raul Castro, and based to his undertakings, we can assume that he has the intention to guide Cuba towards a more socialist democratic State.

Since Castro signed two international treaties regarding human rights, Cubans should gain political rights, freedoms, and labour rights. It is the responsibility of the State to respect and ensure the application of human rights. For its policy making, the Cuban government would best take into account the fluctuations that human rights would bring to Cubans. Referring back to Table 1 and Figure 1, it is obvious that human rights, translated into policies, are there to protect the different indicators and human needs forging the quality of life approach. Since the international community makes it one of its most important goals, we can assume that human rights are so strongly protected and enforced because they are highly valued by individuals. Human rights offer citizens the possibility to live their life as they want, since these policies are the means to meet needs and enjoy opportunities. Of course, social norms require these rights to be restricted in certain situations, since unlimited freedoms and rights could violate the rights and freedoms of others.

Human rights standards as well as fundamental freedoms are usually included in a constitution. The Cuban constitution should be amended so that it establishes the proper recognition and application of international treaties within the Cuban legal order. The general provisions for human rights or classical rights should be provided in the constitution, whereas most economic and social rights should be drafted by normal legislation. In regards to social rights, Kaufmann (2007, p.95) states that their 'constitutional aspect [...] to a large extent determines the legal nature of labour 'standards' by framing them as either individual rights or social policy goals'. It will inevitably lead towards the need to clearly define the procedures and court enforcement of these rights, which will then provide citizens with certainty, confidence, and security. Human rights play an important role when it comes to economic development, as they provide improvement for human conditions; it has a positive effect on well-being (Kaufmann, 2007). Finally, human rights tend to ease the transition and changes within a country, by offering a platform of provisions that will ensure individuals that their basic needs are provided for and protected.

Income

During the transition process, many countries have suffered from income level contractions,

some of which are still persistent, while others stabilized and returned to a positive income growth (Grün & Klasen, n.d., p.2). The issue of income can be seen at multiple levels, two of which will be looked at in this section. First of all, there is the danger in transition of increasing inequality in income. For Cuba, equality among individuals and between men and women, apparently, has been an important value since its revolution. Hence, it would in the best interest of Cuban happiness to have a successful transition that will allow for the stabilization of its economy, without negatively affecting employment and income. Next, there are the declining incomes resulting from the economic transition. The impact of income in one's life can be seen from many perspectives. Indeed, income is a means to an end, for among others, consumption, savings, attaining some needs and opportunities, a means for citizens to live the lives they would want given their income. Since previous experiences have shown that income tends to contract while the country's systems are going through changes, we could assume that income will contract for a certain period of time. Through legislation, the State might be able to prevent states of poverty and establish programmes or services that will help individuals financially.

A common belief among economists regarding income is that when income increases, the happiness of an individual increases as well. This is true in reality, as explained by many authors, since well-being adapts to material goods over time at the same rate as income increases (Mentzakis & Moro, 2008). In theory, each additional goods adds initial pleasure, which contributes to well-being. The newly attained happiness and aspirations of individuals, because of the adaptation concept, will become the new baseline for their perceived well-being. In this regard, the Easterlin Paradox can be considered. This theory shows that happiness remains stationary with a considerable increase in income (Di Tella & MacCulloch, 2008). Since income is directly related to an individual's consumption, it is possible to establish one's economic well-being. Knowing this and that income of State employed individuals was dependent on the State, we can assume that the transition to the market economy will lead to a decrease in income, hence a decrease in happiness due to the restricted possibilities stemming from a lower income. The goal would be for the income level to stabilize as fast as possible.

Even though a higher income is said not to affect happiness in the long-term, since happiness adapts, it might give a higher level of well-being depending on extraneous variables that will affect individuals' choices. However, since income is related to opportunities and capabilities, a higher income level will give access to a higher consumption level, if prices are not affected too much.

More income necessarily means that individuals should have access to more opportunities, and can expand their quality of life. If one looks at Table 1, the possibility to develop the three dimensions should increase with a higher income, or at least with a minimum income, set according to certain basic calculations to provide a minimal economic well-being. We see that paid work, or unemployment benefits, gives the possibility to individuals to achieve their goals, hopes and aspirations by taking part in activities that promote one's becoming. In brief, if we assume that the changes brought to the Cuban economy will affect income, either it will contract for a brief period of time or for a longer period, or given a successful strategy, the least contraction possible.

Opportunities/Capabilities

Opportunities or capabilities are one of the most important categories for happiness, since they pertain to every dimension of a person's life. Many researches (see Pugno, 2009) have demonstrated that social capital is more important than income, for example. If one looks at Table 1, the dimensions *belonging* and *becoming* would be most important here, since *being* is in one's own hands. *Belonging* and *becoming* are two aspects that can be helped by the State by providing the necessary means to fulfil a person's enjoyment. For example, Cuba has made it its responsibility to offer health care and education systems that are considered notorious in Latin America. Such examples demonstrate the means offered to citizens by the State to achieve opportunities or capabilities they might want to reach, which might not have been as successful in any other form. This can be strongly related to human rights, fundamental freedoms, and other aspects like employment and income. Opportunities and capabilities appear to stem from the availability of employment, income, social activities, human rights, freedoms, social services, programmes, and so on.

According to studies made on CEE during and after the transition, high education participation is important for growth performance (Fischer and Sahay, 2000). Given that the Cuban State makes it its responsibility to provide education access for everyone, as provided in the Cuban Constitution. In this respect, we can assume that well-being should remain approximately the same, since education is already accessible to everyone, unless expectations grow higher with new reforms. Next to that, with the loosening of government control on economic activity, citizens gain access to more opportunities. On the one hand, property rights and privatisation are newly acquired opportunities. Previously in the Cuban system, property ownerships were to the state. With the current change from planned economy to a form of market economy, we see a shift in property

rights. Hence, there is a need for the State to create legislation that will offer protection and incentives. The extent of property rights can be limited according to the title of the person (Hirsch, 1999). With the new opportunities to be self-employed, legislation has to be drawn to provide the specifics on property right and entitlement. Indeed, entitlements can be seen in two distinct ways, the first one is beneficial in the case where a government wants to fulfil efficiency or income redistribution and the second view is that entitlements are a natural or fundamental privilege protected by the state (Hirsch, 1999). These entitlements usually find their roots in the constitution, since it are rights that an individual possesses as a birth right in a given society. It is rights that belong to a citizen. Entitlement can be distinguished from property right from the fact that it can include any human right, whereas property rights are a specific category of rights and only relate to physical property (Hirsch, 1999).

Government assistance to help individuals attain their goals and opportunities in order to lead a life they want should be provided by the State. This assistance can be given in the form of public services (health care, education, family assistance, etc.), programmes to help citizens (reintegration, employment, etc.), redistribution, and so on. There should be enough possibilities for citizens to claim the execution of the exercise of their rights and freedoms through efficient, transparent, and impartial courts. Government assistance can be in the form of information made available to citizens. As pertains to the new opportunities of individuals to start their own businesses, Castro announced that the government would not offer any help. However, since it is quite new, it would be a good incentive for individuals to have the knowledge available for them. In the end, opportunities are only appealing if they can be attained and if individuals have incentives, through legal protection and so on, to do so.

Chapter 5

Conclusion

For 40 years, since the beginning of the Castro rule in 1959, Cuba has survived the sanctions imposed by the United States, aimed at dislodging Fidel Castro. Even though the country was depending on Soviet trade, it still survived the Soviet collapse with some financial disruption in Cuba. Fidel Castro exercised control over most aspects Cuban life. Despite human rights and fundamental freedoms being barely existent and violated, Cuba managed to build an efficient health and education system. During the 1990s, control somewhat loosened up on companies and trade. Since 2008, Raul Castro has taken control of the government and has started the transition of the planned Cuban economy to an economy resembling a market economy, while remaining socialist in nature. As we have seen from previous experiences, such as lived in CEE, an economic transition influences the legislative system and the well-being of citizens, among others. In relaying the situation in CEE, the European Commission (1994) argued that the legislative branch was one of the most important to adapt, since it is at the very foundation of the economic order, it stipulates the rights and freedoms, as well as restrictions on both the government and the citizens. Such is necessary for a democratic society, a characteristic that is not yet in the Cuban system, and despite the claims that Cuba will remain socialistic in nature, it seems that it is moving towards a social democracy. Indeed, human rights and fundamental freedoms are starting to be recognized as Castro signed two such international treaties. From our Western experience, we make use of legislation to bind the government and protect citizens, and to ensure that our values are upheld. As explained by the European Commission, CEE experienced a drastic change in its system, which led to a reported negative effect on individuals and businesses (Niemietz, 2009). It was then necessary to develop public policies of social assistance, because many individuals would have ended up in poverty, which is to be avoided in order to improve well-being.

The goal of this paper was to adopt a complete approach to well-being which would provide with a way to establish the well-being of citizens in Cuba, and to see how legislation can be used to improve the well-being by enacting the proper rules. Basically, GDP alone is not a reliable indicator of well-being, since not only does it only cover what we assume to be economic well-being, but economists like Easterlin have demonstrated that contrary to popular belief, individuals do not become happier from a higher income. Rather, we need to convert to indicators such as GNH or a more substantive Happy Planet Index, by measuring well-being using the quality of life approach.

In establishing a moral approach to well-being, rather than an economic one, our moral grounds often come to clash with economic goals, such as efficiency and rapid growth. Indeed, it is usually not advantageous to set up a social assistance programme, because the resources heading for this programme of course reduce the resources available for other projects. However, since this research is directed toward general well-being, economic efficiency and prosperity are not the main concern. Instead, the focus is to improve and create a steady level of well-being, as reported by the quality of life approach, while making use of legislation as an instrument to promote a long-term well-being.

The quality of life approach, rather than the revealed preferences and capability approaches, is most suitable for the task at hand because it is the one approach that includes both objective and subjective measurements, which means that it can incorporate all aspects that is believed to influence one's quality of life. Of course, many approaches to measuring well-being have been studied and some results were given by organisations using for example the Happy Planet Index, the Legatum Prosperity Index, the World Value Survey or the Quarterly Services Survey. Even though they take an interesting approach, the data collected by these organisations is not necessarily reliable in determining well-being, since not all of these indexes include important factors such as human rights and fundamental freedoms, rather it focuses on economic well-being, environmental impact, sustainable development, and so on. Actually, the Legatum Prosperity Index, as indicated on the Legatum Institute website, includes economic and democratic institutions, health, governance, social capital, and more. Their calculations are based on data collected by various international institutes such as the Gallup World Poll, WTO, GDP, World Values Survey, and so on. Although this approach seems to fulfil our quality of life approach, there are no results given for Cuba. Therefore, conducting an analysis of the Cuban well-being would be the next step to take in order to expand this research. To do so, individuals are asked to answer on their quality of life regarding health care, education, income, employment, security, human rights, freedoms, opportunities, environment, and so on. Quality of life is then an obvious approach that looks at a series of factors, and its results can purposefully be used for social policies and social norms. Of course, recurring themes are to be taken into account when analysing well-being. On the one hand, we find that individuals adapt to their situation, hence their happiness might improve or decrease for a short period of time, whereas after a certain period of time it will level again to the initial level of happiness. On the other hand, we find that one's priorities or ambitions will change according to what needs have been fulfilled and what opportunities become available and whether these are attainable or not. In making social policies, the difference between short-term and long-term well-being is to be distinguished.

Therefore, without making anyone worse off in the long-term, the State should nevertheless consider what is best for the general well-being, even if this means that some individuals' well-being will temporarily decrease.

Studying the quality of life approach in more detail, it will give us the basis necessary for further research in determining the well-being in Cuba. Since is used to measure the ability of individuals to satisfy their needs as arising from opportunities that are available to them, based on social, built, human and natural capital (and time), and their satisfaction thereof (Costanza et al., 2008), it is important to first select the indicators that are deemed important for society. These indicators are part of the social, built, human, and natural capital, which also were included in Table 1 produced by the Quality of Life Department of the University of Toronto. Costanza et al. (2008) determined that policy and culture are used to allocate the different types of capital as a means to provide individuals with opportunities, which explains the need for legislation. As was proposed by Layard (2005), the focus of policies should be directed towards the long-term improvement of quality of life. Costanza et al. (2008) proposed a very complete policy tool oriented towards long-term improvement for quality of life, and argue that their approach to quality of life should serve as a guide across time and space. Given the assumption that individuals gain happiness when the different capitals increase and give more opportunities, then policies should be directed toward increasing the opportunities. Of course, sometimes State should provide aid for individuals to reach these opportunities, like employment programmes. This is because individuals who cannot reach some opportunities might experience a decrease in well-being, but given the adaptation assumption, their happiness will return to what it was at first. Basically, in order to calculate the well-being in Cuba, one needs to first know what are the changes occurring in the country due to the transition, how this affects the different capital available to citizens, and then conduct a survey by asking citizens to rate their life satisfaction. Unfortunately, we could not compare previous results to results obtained in a recent survey, since the same survey would never have been done before.

Once quality of life and the access to opportunities are properly recognized, the State can start creating plans and strategies that will follow the trends found in the results regarding Cuban well-being, and what is necessary to improve it. Sugden (1981) studied the choice of end state models by governments, at the cost of ignoring some major public choice problems, which usually leads to discontentment. He also suggested that if a government or any other organization was to inquire about the preferences of citizens, then citizens might misrepresent their perceived well-

being, depending on how they believe the survey will be used. Even though we do not have results from a previous survey, we can make assumption regarding certain needs and aspects of human life, since we could study, in similar situations, how these have been perceived by the citizens. If we take human rights as an example, it is evident, from the importance with attach to them, that individuals gaining such rights, liberties, and dignity will increase their well-being. This should be a long-term gain given that human rights and freedoms are properly respected and enforced. This can be done through not only the signing of international treaties or amending the national constitution, but also through the establishment of efficient and impartial courts. On the other hand, basic needs can be met through a proper economic and social system as provided in national legislation. According to the European Commission (1994), based on the CEE experience, public authorities must develop a framework of social protection which would include among others policies to promote employment, training, and health. To help implement these policies, to create programmes, guidance, and other services, the State should make funds available. Finally, in order to find the proper end state for Cuba, the State should make use of the Pareto propositions, which give weight to the results obtained through the quality of life approach. First, 'each person is the best judge of his own well-being. Second, well-being depends on the welfare of persons in society. Lastly, if an individual's welfare is greater in end state 'x' than in end state 'y', given that no individual's welfare is any less, then it is accurate to say that welfare is greater in end state 'x' than 'y' (Sugden, 1981, pp.36-37).

Of course, since this research is oriented towards the well-being of citizens and how the State can make use of legislative measures to improve and maintain a long-term level of well-being, some aspects that would inevitably be considered when adapting the system have not been taken into account here. For example, the primary objective of the Cuban government for ordering changes in its economy was to propose a solution to the economic crisis. In this light, in building up strategies, it can be important for policy makers to look at the sources of market failure, because when considering the efficiency and future success of a national economy it is important to avoid possibilities at failing, which in turn could affect citizens' well-being. Actually, if the economy is affected negatively by a change in its previous structure and policies, citizens will become unhappy from the various effects on capitals and opportunities. Indeed, this might cause for example high unemployment rate and inflation, which itself creates a feeling of insecurity for individuals. Given that economic fundamentals were not openly discussed in this paper, the results might be different. However, since the Legatum Prosperity Index includes economic fundamentals in its calculation, it could maybe offer the answers that GDP alone would not offer, but in combination with other

indicators.

In the end, since none of the data available regarding well-being in Cuba is appropriate for this research, we can only make the assumption that the perceived behaviour of Cubans can be an appropriate indicator of their satisfaction. Recently, as reported by the BBC news, on May 1st 2011 Cubans marched in the streets of Cuba to show their support for the party congress and the guidelines of the economic and social policy resulting from the country's transition to a slightly more market economy. Since Cubans show support rather than a demonstration against the new strategies and policies of the State, we can assume that individuals are happy and are satisfied with the new prospects the transition is offering them. This show of support demonstrates that Cuba is on the good path to increasing the well-being of its citizens, what is most important now is to make sure that the increase in well-being remains for the long term and that this increase of happiness is not short-lived. Basically, this should demonstrate to the Cuban State that its citizens are thus far satisfied with the moves it is undertaking, meaning that the further the State develops social programmes, accessibility to opportunities, and more, the happier Cuban citizens will become. Experience shows that this increase in happiness might be short-lived since it will level again, but well-being will increase and as long as laws are in place to ensure citizens will be protected and provided with the means to access opportunities, the increase in well-being should remain. Of course, more opportunities mean that individuals will have different aspirations, different goals, other expectations, and all of this will have an effect on the perceived well-being of individuals. The best that the Cuban State can do is to both look at previous experiences and at the reported life satisfaction of citizens, and amend the constitution or create new laws at this effect.

References

- Alkire, S., 2008. The Capability Approach to the Quality of Life, [n.j.], [online]. Available at: <http://www.stiglitz-sen-fitoussi.fr/documents/capability_approach.pdf> [Accessed: 24 April 2011].
- Besselink, L.F.M., 2004. *Constitutional Law of the Netherlands*. Nijmegen: ArsAequi.
- Blair, D., 2008. Castro's Legacy: Some loved him, others fled. *Telegraph*, [online] 19 April. Available at: <<http://www.telegraph.co.uk/news/worldnews/1579156/Castros-legacy-Some-loved-him-others-fled.html>> [Accessed: 28 April 2011].
- Centre for Health Promotion (University of Toronto Research Department), n.d. Quality of Life Model, [online] Available at: <<http://www.utoronto.ca/qol/concepts.htm>> [Accessed: 14 April 2011].
- Cerami, A., 2008. Central Europe in Transition: Emerging Models of Welfare and Social Assistance. *Munich Personal RePEc*, [online] Available at: <<http://mpira.ub.uni-muenchen.de/8377/>> [Accessed: 11 April 2011].
- Cherchye, L. De Rock, B. and Vermeulen, F., 2011. The Revealed Preference Approach to Collective Consumption Behaviour: Testing and Sharing Rule Recovery. *Review of Economic Studies* [e-journal] 78 (1) Available at: <<http://restud.oxfordjournals.org/content/78/1/176.short>> [Accessed: 12 March 2011].
- Cooter, R. and Ulen, T., 2008. *Law and Economics*. 5th ed. Boston: Pearson Addison-Wesley.
- Costanza et al., 2008. An Integrative Approach to Quality of Life Measurement, Research, and Policy. *Sapiens* [online] 1 (1) Available at: <<http://sapiens.revues.org/169>> [Accessed: 13 May 2011].
- Deaton, A., 2008. Income, Health, and Well-Being Around the World: Evidence from the Gallup World Poll, *Journal of Economics*, [online] Available at: <www.gallup.com/Angus%20Deaton%20Gallup%20Poll%20Article.pdf> [Accessed: 1 May 2011].

- Di Tella, R. and MacCulloch, R., 2008. Gross national happiness as an answer to the Easterlin Paradox? *Journal of Development Economics* [e-journal] *Journal of Development Economics* 86, 22-42. Available through Elsevier [Accessed: 16 January 2011].
- Easterlin, R.A., 2008. Lost in Transition: Life satisfaction on the road to capitalism. *Journal of Economic Behavior and Organisation*, [e-journal] 71 (2), 130-145. Available through ScienceDirect. [Accessed: 28 May 2011].
- European Commission for Democracy through Law, 1994. *Constitutional Aspects of the Transition to a Market Economy*. Moscow, Russia 18-19 February. Strasbourg: Council of Europe. Available at: <[http://www.venice.coe.int/docs/1994/CDL-STD\(1994\)008-e.asp](http://www.venice.coe.int/docs/1994/CDL-STD(1994)008-e.asp)> [Accessed: 5 May 2011].
- Gaertner, W. & Xu, Y., 2008. A new class of measures of the standard of living based on functionings. *Economic Theory* [e-journal] 35 (2), 201-215. Available through: Springer Link. [Accessed: 23 February 2011].
- Gauthier, D. & Sugden, R. eds, 1993. *Rationality, Justice and the Social Contract: Themes from Morals by Agreement*. Hertfordshire: Harvester Wheatsheaf.
- Faggio, G., 2001. *Labor Market Adjustment and Enterprise Behavior in Transition*. Ph.D. Katholieke Universiteit Leuven.
- Fischer, S. and Sahay, R., 2000. The Transition Economies After Ten Years. *National Bureau of Economic Research*, [online] Available at: <<http://www.nber.org/papers/w7664>> [Accessed: 23 May 2011].
- Herbiet, M., 1994. The constitutional basis of the economic order during a period of transition from a planned economy to a market economy. In : European Commission for Democracy through Law, *Rule of law and transition to a market economy*. Sofia, Bulgaria 14-16 October 1993. Sofia : Council of Europe. Available at : < [http://www.venice.coe.int/docs/1993/CDL-STD\(1993\)007-e.asp#_Toc90194716](http://www.venice.coe.int/docs/1993/CDL-STD(1993)007-e.asp#_Toc90194716)> [Accessed: 2 June 2011].
- Hill, B., 2007. Three Analysis of Sour Grapes. *Groupe HEC*, [online] Available at: <<http://www.hec.fr/var/fre/storage/original/application/df20a79115a4069bfb333ad2c12257b3.pdf>> [Accessed: 23 March 2011].

Hirsch, W. Z., 1999. *Law and Economics: An introductory analysis*. 3rd ed. San Diego, London: Academic Press.

Jolls, C. Sunstein, C.R. and Thaler, R., 1998. Behavioral approach to law and economics. *Stanford Law Review* [online] Available at : <
http://www.law.harvard.edu/programs/olin_center/papers/pdf/236.pdf> [Accessed: 14 May 2011].

Kaufmann, C., 2007. *Globalisation and Labour Rights: The Conflict between Core Labour Rights and International Economic Law*. Oxford and Oregon: Hart Publishing.

Maas Geesteranus, G. W., 1994. The legal problems of restitution. In: European Commission for Democracy through Law, *Constitutional aspects of the transition to a market economy*. Moscow, Russia 18-19 February. Strasbourg: Council of Europe. Available at:
 <[http://www.venice.coe.int/docs/1994/CDL-STD\(1994\)008-e.asp](http://www.venice.coe.int/docs/1994/CDL-STD(1994)008-e.asp)> [Accessed: 5 May 2011].

Legatum Institute, 2010. *Prosperiscope*, [online] Available at:
 <<http://www.prosperity.com/prosperiscope/>> [Accessed: 27 May 2011].

McKinley Jr. and James C., 2008. Cuba Signs two Human Rights Treaties. *The New York Times*, [online] 29 February. Available at: <<http://www.nytimes.com/2008/02/29/world/americas/29iht-cuba.4.10589148.html>> [Accessed: 15 May 2011].

MEDICC (Medical Education In Cooperation with Cuba), 2011. Cuban Health System: The Cuban Approach to Health Care: Origins, Results, and Current Challenges. Accessible at:
 <<http://www.medicc.org/ns/index.php?s=11&p=0>> [Accessed: 21 May 2011].

Mentzakis, E. and Moro, M., 2009. The poor, the rich and the happy: Exploring the link between income and subjective well-being. *The Journal of Socio-Economics*, [e-journal] 38, 147-158. Available through ScienceDirect. [Accessed: 25 January 2011].

Milanovic, B., 1998. Explaining the Increases in Inequality During the Transition. *Policy Research Working*, [e-journal] 1935 Available through: World Bank eLibrary. [Accessed: 12 May 2011].

Miranda, Jorge. The Constitutional Basis of the Economic Order. In: European Commission for Democracy through Law, *Constitutional Aspects of the Transition to a Market Economy*. Moscow, Russia 18-19 February. Strasbourg: Council of Europe. Available at:

<[http://www.venice.coe.int/docs/1994/CDL-STD\(1994\)008-e.asp](http://www.venice.coe.int/docs/1994/CDL-STD(1994)008-e.asp)> [Accessed: 6 May 2011].

NEF, 2009. *About the Happy Planet Index*. [online] Available at:

<<http://www.happyplanetindex.org/learn/>> [Accessed: 26 May 2011].

Niemietz, K., 2009. 20 Years After: The Fall and Rise of Socialism in East Germany. *Economic Affairs*, [e-journal] 29 (2) 71-73. Available through: Wiley Online Library [Accessed: 12 May 2011].

Lobe, J., 2001. Learn from Cuba, says World Bank. *SUNS*, [online]. 30 April. Available at:

<<http://www.twinside.org.sg/title/learn.htm>> [Accessed: 29 April 2011]

Perkins, W. C., 2010. An Introduction to the Economic Method. *American Economist*, [online] 55 (1). Available through: ABI/INFORM Global.

Pugno, M., 2009. The Easterlin paradox and the decline of social capital: An integrated explanation. *The Journal of Socio-Economics*, [e-journal] 38, 590-600. Available through ScienceDirect [Accessed: 20 January 2011].

Robeyns, I., 2003. *The Capability Approach: An Interdisciplinary Introduction*. Amsterdam: University of Amsterdam Press. Available at:

<<http://www.capabilityapproach.com/pubs/323CAtraining20031209.pdf>> [Accessed: 16 April 2011].

Samorodov, A., 1992. *Labour Market Analysis and Employment Planning: The Labour Market, Social Policy and Industrial Relations in the Soviet Union under Transition*. International Labour Organisation, WEP 2-43/Working Paper no.55.

State Department of the United States of America, 1992. *Cuban Democracy Act of 1992*. [online]

Available at: <http://www.state.gov/www/regions/wha/cuba/democ_act_1992.html> [Accessed: 22 May 2011].

Stevenson, B. and Wolfers, J. Economic Growth and Subjective Well-Being: Reassessing the Easterlin Paradox. Brookings Paper on Economic Activity. 2008. Available at: <<http://bpp.wharton.upenn.edu/jwolfers/Papers/EasterlinParadox.pdf>> [Accessed: 24 April 2011].

Sugden, R., 1981. *The Political Economy of Public Choice: An Introduction to Welfare Economics*. Oxford: Martin Robertson.

Taylor Jr., H.L. and McGlynn, L., 2009. International tourism in Cuba: Can capitalism be used to save socialism? *Elsevier*. 41 405-413. Available through Elsevier. [Accessed: 25 January 2011].

United Nations ECLAC, 2011. Caribbean Knowledge Management Centre. *Cuba Development Profile*. Available at: <http://www.eclacpos.org/profile/profileByCountry.aspxcountry_id=7&country_name=CUBA> [Accessed: 24 April 2011].

USAID (United States Agency for International Development), 2004. *Cuba*. Available at: <http://www.usaid.gov/locations/latin_america_caribbean/country/cuba/index.html> [Accessed: 20 January 2011].

Vizard, P., 2005. The Contributions of Professor Amartya Sen in the Field of Human Rights. *Centre for Analysis of Social Exclusion*, [online] Available at: <http://eprints.lse.ac.uk/6273/1/The_Contributions_of_Professor_Amartya_Sen_in_the_Field_of_Human_Rights.pdf> [Accessed: 23 May 2011].