

2015

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Recommended Citation

Dan Epstein, "Privacy In Cuba," Law School International Immersion Program Papers, No. 5 (2015).

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PRIVACY IN CUBA

D. Epstein

Some have suggested that recent technological advancement—in particular, the creation and proliferation of the Internet and its appendage applications—has made the world “flatter;” making it feasible for people a world away to interact for the first time.¹ That technological advancement is both the result and driver of economic growth. It is improving people’s lives in extremely significant ways.

But there are also suggestions that those same technological advancements have detracted from welfare in ways that are more difficult to quantify. A paradigmatic case is that of the natural environment. Some argue that technological advancement is spurring economic growth, which is driving increased levels of consumption and environmentally unsustainable practices.² For those who advocate this perspective, the policy prescription can be extreme: retreat from modernity as we know it.³ As support for this prescription, advocates sometimes point to Cuba as an example of how such a

¹ Thomas Friedman, *The World is Flat* (2005).

² Cuba: The Accidental Eden, A Brief Environmental History, <http://www.pbs.org/wnet/nature/cuba-the-accidental-eden-a-brief-environmental-history/5830/>.

³ Bryan Walsh, *Extreme Green: Living Off the Grid*, *Time*, <http://content.time.com/time/health/article/0,8599,1857835,00.html>.

retreat could yield positive results as it relates to the natural environment and its long-term viability.⁴

Cuba is, in some ways, a time capsule. Fidel Castro's Marxist-Leninist regime allied itself with the Soviet Union. The Soviet Union was engaged in conflict against the United States of America in what we now call the Cold War—but which at the time seemed poised to turn hot at any moment. In the 1960s, the United States placed ballistic missiles in Italy and Turkey—nations within striking range of the Soviet Union.⁵ The United States also staged the Bay of Pigs Invasion of Cuba in an attempt to overthrow the regime.⁶ In response, the Soviet Union moved ballistic missiles into Cuba.⁷ This set off one of the tensest stand-offs in history. Some even said that the fate of the human species hung in the balance.⁸

The missiles were withdrawn, but the United States expanded an embargo and blockade against Cuba.⁹ The combination of failed domestic economic policy, and the embargo and blockade was so severe that Cuba was, in some senses, frozen in time. Commerce ground to a near halt, and many new products were stopped from entering the country. For example, even today, many of the cars in operation are the same ones that were in operation

⁴ Cuba: The Accidental Eden.

⁵ Cuban Missile Crisis, http://en.wikipedia.org/wiki/Cuban_Missile_Crisis.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ United States embargo against Cuba, http://en.wikipedia.org/wiki/Cuban_Missile_Crisis.

when the embargo began. They have been repaired haphazardly in many cases, but there are still many of the original parts simply because new products are not very available in Cuba.

In any case, because Cuba's economic development effectively froze in the 1960s, they did not progress economically or technologically to any appreciable degree.¹⁰ And it is no coincidence that Cuba's natural environment is so well preserved. Indeed, they argue that it is exactly the economic depression that has saved the environment in Cuba.¹¹

That made me wonder: where else might this kind of theory apply? Where else might economic depression actually preserve value?

One such place might be in the domain of privacy. Like the natural environment, there is an argument that economic development and technological advancement directly detracts from privacy. After all, the biggest alleged incursions into personal privacy in recent memory have been enabled by advanced technology. Consider, for example, the government programs disclosed by Edward Snowden, such as PRISM and XKEYSCORE, which allegedly collect and track huge amounts of personal information.¹² Those programs were only effective thanks to advanced technology and

¹⁰ Holly Fearing, *The Cuban Experiment: An Economy in a Time Capsule*, *Credit Union Times*, <http://www.cutimes.com/2015/03/25/the-cuban-experiment-an-economy-in-a-time-capsule>.

¹¹ Cuba: The Accidental Eden.

¹² *NSA Files: Verizon, PRISM, Boundless Informant, FISA 702, XKEYSCORE (+ Whistleblower Edward Snowden Interview)*, [LeakSource](http://leaksource.info/2013/06/13/nsa-files-verizon-prism-boundless-informant-fisa-702-xkeyscore-whistleblower-edward-snowden-interview/), <http://leaksource.info/2013/06/13/nsa-files-verizon-prism-boundless-informant-fisa-702-xkeyscore-whistleblower-edward-snowden-interview/>.

proliferation of the Internet. Consider also the hacking of Target Corporation, which exposed private personal information from millions of personal credit and debit accounts.¹³ This was enabled not only by the Internet, but also by the proliferation of personal banking.

Could the lack of economic development and technological advancement then protect privacy? Where there is virtually no Internet and no personal banking infrastructure, could there be better privacy? Perhaps we can look to Cuba to get a sense as to whether there is any merit to the thought. With that in mind, this paper looks at privacy in Cuba.

In researching this paper, I wanted to find answers to some of the following questions: What is the state allowed to ask? What is the state allowed to investigate? What is the state allowed to know? What knowledge is the state allowed to act upon? What doors can the state open without permission? What doors can the state never open? When is a citizen obligated to provide information to the state? What information is public? What relationships trump the relationship between the citizen and the state? Who is listening? Who owns information?

I discovered answers to some of these questions. But, perhaps more importantly, I gained insight into the lack of information that helps perpetuate a police state, and that the answers to those questions are much

¹³ Natasha Bertrand, *Here's What Happened To Your Target Data That Was Hacked*, Business Insider, <http://www.businessinsider.com/heres-what-happened-to-your-target-data-that-was-hacked-2014-10>.

less important in a place where state action is perceived as so ever-present that individualized conduct is extremely chilled.

MISINFORMATION

In order to visit Cuba, I had to submit an application and do an interview with administrators. One of the interviewers' questions was: What about Cuba do you want to study? I responded that I wanted to study about privacy in Cuba. The interviewer warned me about the difficulty of the topic when she told me that people in Cuba are reserved and may not be very willing to talk about issues related to privacy.¹⁴ I responded by saying that, "I think I can learn a lot about what people *won't* say, in addition to what they will say." What I did not anticipate was how difficult it would be to learn about privacy when people said exactly contradictory things.

For example, we met with jurists who would point to constitutional protections that limited the use of government power against its citizens. But we also met with dissidents who explained that these protections were nonexistent in their experience. Without some sort of reliable empirical analysis it is hard to tell which version is true (or where in the middle of the two the truth exists). But, of course, reliable empirical analyses are extremely hard to come by, since the ruling regime has a monopoly on the collection, analysis, and distribution of state information.¹⁵

¹⁴ On this point, she was correct.

¹⁵ Professor Erwin Epstein warned of this exact problem in his papers and in person when he presented to the group about Cuba's education system.

So, all this is to say that—not surprisingly—reliable information about privacy in Cuba is hard to come by. But, despite these difficulties, there is some valuable evidence worth reporting.

CRIME AND POLICING

In the United States, privacy is protected via multiple provisions. In the context of crime and policing, the Fourth Amendment of the Constitution protects against unreasonable searches and seizures, and requires warrants to be issued based on probable cause.¹⁶ This protects “persons, houses, papers, and effects.” The Fifth Amendment guarantees due process.¹⁷ These provisions limit the discretionary power of government agents to intrude upon the private lives of citizens.

In theory, Cubans enjoy similar rights. Nominally, police need a warrant before they can enter someone’s house. Articles 56, 57, and 58 of the Cuban Constitution read as follows:

“ARTICLE 56

The home is inviolable. Nobody can enter the home of another against his will, except in those cases foreseen by law.

ARTICLE 57

Mail is inviolable. It can only be seized, opened and examined in cases prescribed by law.

¹⁶ U.S. Const. amend. IV.

¹⁷ U.S. Const. amend. V.

Secrecy is maintained on matters other than those which led to the examination.

The same principle is to be applied in the case of cable, telegraph and telephone communication.

ARTICLE 58

Freedom and inviolability of persons is assured to all those who live in the country.

Nobody can be arrested, except in the manner, with the guarantees and in the cases indicated by law.

The person who has been arrested or [who is a] prisoner is inviolable in his personal integrity.”¹⁸

These provisions seem to clearly provide some privacy protection. At least in the home.¹⁹ But, according to Human Rights Watch, “Cuba often disregards the constitutional right to freedom from arbitrary arrest and search, and the privacy of correspondence and telephone communications. Cuba's utter lack of judicial and prosecutorial independence contributes to these abuses.”²⁰

¹⁸ Cuban Const. art. 56–8.

¹⁹ Although it does not relate to crime and policing, it is interesting to note that in a meeting with dissident bloggers, one of the dissidents said that his home is the only place he feels like he has any privacy. He, unlike many Cubans, lived alone. It is typical for Cubans to have multiple generations living under one roof. Privacy can be an issue in those households as well.

²⁰ *III. Impediments to Human Rights in Cuban Law*, Human Rights Watch, http://www.hrw.org/reports/1999/cuba/Cuba996-03.htm#P621_87226.

A second glance at the Cuban Constitution reveals a significant weakness in the construction: each provision has an ambiguous exception that provides a way for authorities to enter and have authority over homes, mail, and people. Cuba, of course, is not unique in that its constitution has ambiguities. The United States' constitution suffers from the same lack of clarity. And, just like in the United States, we cannot look to the text of the Cuban constitution to know the extent to which those ambiguities are exploited. Future research might attempt to get a sense of how much protection the Cuban constitution actually provides by looking at Cuban court cases to see how many are challenged on grounds that police violated Article 56, 57, or 58.

One thing is clear, which is that police are affirmatively used for surveillance—as opposed to merely being used reactively. The clearest example of this is outside of the U.S. Interests Section in Havana. There are guard posts and patrolling police. However, they are not American troops there to guard the building. They are Cuban police, there to monitor who goes in and out of the building. Police are used to monitor—and perhaps to chill—political and civic life in Cuba.

POLITICAL AND CIVIC LIFE

Political engagement and civic expression are significantly limited in Cuba. At first glance, Article 53 of the Cuban constitution seems to protect

speech:

“Citizens have freedom of speech and of the press in keeping with the objectives of socialist society. Material conditions for the exercise of that right are provided by the fact that the press, radio, television, movies and other organs of the mass media are State or social property and can never be private property. This assures their use at the exclusive service of the working people and in the interest of society.

The law regulates the exercise of these freedoms.”²¹

But closer inspection reveals that the text has vulnerabilities that weaken the freedom of speech. Citizens only have freedom of speech and of the press when it is “in keeping with the objectives of socialist society.” In other words, Cubans are free to speak so long as it is not against the ruling regime. And, just to make that clear, the second paragraph puts citizens on notice that, although the first paragraph may seem to protect their speech, sub-constitutional rules will regulate that speech; carving away at the little protection offered by the first paragraph.

So how do these limitations on speech bear on privacy in Cuba? Through the existence, or perceived existence, of ever-present enforcement.

²¹ Cuban Const. art. 56.

The Cubans that we met—both officials and random laypeople—believed there to be plainclothes police everywhere. They thought that the state was always listening. In one instance, a random layperson, Ronaldo, and his girlfriend, Claudia, took us to his neighborhood in Havana; away from what he considered the areas where tourists frequent. We sat inside at a bar and got to talking. Ronaldo was trying to explain that Cubans and Americans should get along. He said, “The people don’t have problems. Our governments have problems. But things will get better. Obama is good. Raul Castro is . . . “ he made air quotes with his fingers and adopted a sarcastic tone . . . ‘good.’” Even though the bar was nearly empty and Ronaldo’s criticism was about as mild as could be, Claudia hit him lightly, told him to keep quiet, and gestured around to indicate that someone might hear him. This was one of several such experiences which were emblematic of how little faith Cubans have in the extent to which their constitution protects their right to speak freely.

Cubans’ perception that they cannot speak freely bears heavily on privacy because—according to U.S. diplomat, Justin Davis—they also have a history of being obligated to “snitch” or face jail themselves. That includes having to snitch on their own family members. That means that the government has turned not only laypeople into enforcers, but neighbors, friends, and family members. Controversial private thoughts cannot even be expressed in the privacy of one’s home. They are confined to one’s own mind. In short, the chilling effect is extreme.

Even professors may have to watch what they say. According to Justin Davis, there was recently an incident in which a university professor was “ostracized” for mentioning the lack of black Cubans at university. It is not clear how significant this ostracism was, but it seemed to grind against values like academic freedom, which most universities in the United States hold up as a prized value.

Restrictions extend to assembly and protestation as well. In a meeting with dissident bloggers from the group Somos+ (“Somos Mas”), organization leader, Eliecer Avila, informed us that a gathering of more than twelve Cubans was illegal. And, moreover, that he and his compatriots were repeatedly arrested for such conduct.

At the home of artist Jose Rodriguez Fuster, there was even a mosaic dedicated to a joke about this law. The mosaic showed thirteen Cubans around a table. The joke poked fun at the restriction on assembly, waxing that any time twelve Cubans would gather, a Cuban inspector would come to monitor the gathering, but he would be the thirteenth Cuban, and would therefore arrest all participants, including himself.

In a later instance, two members of our student group went to visit a dissident artist. The students had to meet the artist secretly. He had been arrested in the past for producing anti-regime art. He also told the students that a fellow member of the dissident artist community was arrested months prior and had yet to be charged or see an attorney. The knowledge of his

colleague's fate made him extremely wary of displaying art, or even letting the students buy his art. His apartment was filled with undisplayed art, and he ultimately chose to sell the students some of his works that were only extremely vaguely counterrevolutionary. He was a dissident who had to delicately negotiate the chilling effect of an authoritarian regime with his conscience. His balance was in keeping his most significant art hidden away in the privacy of his own home. Perhaps never to be seen by others.

All this is to say that the restrictions on basic freedoms and the enforcement of these restrictions go hand in hand with severe chilling effects and limitations on privacy.

EDUCATION

Information regarding privacy in Cuba's educational domain is also hard to come by. According to our tour guide at la Universidad de Habana, grades are private, but students share them freely. According to *HavanaTimes.org*, however, grades are listed openly next to students' names. But also that there is no stigma surrounding the results.²² It is not clear which practice is the true standard. In any case, there was no mention of anything that sounded analogous to the United States' Family Education Rights and Privacy Act (FERPA). That does not mean it does not exist, but

²² Graham Sowa, *US Privacy vs. Cuba's Socialization*, [HavanaTimes.org](http://www.havanatimes.org/?p=48623), <http://www.havanatimes.org/?p=48623>.

when asked about privacy rules in the educational sphere, no specific prohibitions or guidelines came to the lips of our presenters.

LEGAL PRACTICE

Privacy also has a place within legal practice. In the United States, attorneys and clients enjoy the attorney-client privilege. The privilege protects attorneys from being coerced into disclosing private conversations with their clients. According to the judges with whom we spoke, attorney-client privilege also exists in Cuba.

In the United States, court records are usually *not* private. According to the judges, the same applies in Cuba. Records from court proceedings are presumed to be public record.

MEDICINE

In the United States, privacy within the domain of medicine is perhaps the most famous (and controversial) form of privacy. In *Roe v. Wade*, the Supreme Court famously rested its ruling on an implicit right to privacy as undergirding the right for women to undergo abortions without interference from the government.²³ In Cuba, abortion is legal, accessible, and—according to some—uncontroversial.²⁴

²³ *Roe v. Wade*, 410 U.S. 113 (1973).

²⁴ *Abortion and Infanticide in Cuba*, Population Research Institute, <http://pop.org/content/abortion-and-infanticide-in-cuba-1089>.

According to the doctors at the clinic that we visited, in Cuba, like in the United States, “doctor-patient confidentiality is [a] . . . basic principle[.]” Additionally, people cannot be quarantined or forcedly committed against their will due to mental health problems. That includes when those people are considered dangers to themselves or others.²⁵

Other sources, however, say that the exact opposite is true. That there is “no right to privacy in the physician-patient relationship in Cuba, no patients’ right of informed consent, no right to refuse treatment, and no right to protest or sue for malpractice.”^{26,27} Again, it is hard to know what the real truth is, when it comes to Cuba.

DATA

In the United States, we are firmly in the era of “big data.” Modern life necessarily means creating and sharing data, and having that data tracked. That is the default. Varying from that default is a lifestyle choice with a name: “off the grid.” It is reserved for those who spurn modernity. For those who embrace modernity, we also live with the knowledge that sensitive

²⁵ According to the clinicians, family support plays a large role in the care of the mentally ill.

²⁶ Katherine Hirschfeld, *Re-examining the Cuban Health Care System: Towards a Qualitative Critique*, Cuban Affairs, Quarterly Electronic Journal, <https://romancatholicworld.files.wordpress.com/2013/09/re-examining-the-cuban-health-care-system-towards-a-qualitative-critique-katherine-hirschfeld.pdf>.

²⁷ Katherine Hirschfeld, Health, Politics, and Revolution in Cuba Since 1898, <http://books.google.com/books?id=Y70Deg4E0-MC&q=privacy#v=snippet&q=privacy&f=false>.

information is vulnerable to government snooping and hacking. In Cuba, data privacy is essentially nonexistent. Not because the regime is extremely intrusive, but because creating a tracking data is beyond the capacity or needs of a nation with a four percent Internet penetration rate.

Even financial tracking is slim, since banking infrastructure is essentially nonexistent. One theory is that Cuba's banking system has not proliferated because of restrictions related to residential real estate. Until the last few years, in Cuba, people have not been able to alienate residential real estate.²⁸ As such, there has been no need for financial instruments like mortgages. Additionally, even if there were a need, it is not clear that they could be offered. In Cuba, people cannot be evicted. As such, housing cannot serve as a security interest to support a mortgage. Without the security interest, it is not clear that a mortgage could be viable. Mortgages are one of the most basic financial instruments, and without them, there has been less of a need for banking infrastructure, and therefore less of a need for financial and credit tracking. As such, there may be more privacy for Cubans in this domain.

CONCLUSION

Cuba is a mysterious place. It is extremely difficult to get reliable information on anything. Whether that is because there is actually a strong

²⁸ Paul Haven, *Cubans allowed to buy, sell homes*, [Philly.com](http://articles.philly.com/2011-11-04/news/30359903_1_cuban-exiles-free-education-and-health-president-raul-castro), http://articles.philly.com/2011-11-04/news/30359903_1_cuban-exiles-free-education-and-health-president-raul-castro.

central government that exerts its control, or because Cubans are chilled by the perception that there is a strong central government that exerts its control ruthlessly, either way, reliable information is hard to come by.

So it really is not clear whether Cuba's time capsule-like state has preserved privacy for its citizens. The answer is most likely that it has preserved it in some ways—like data privacy—but not in others—like medical privacy. More research is necessary to get a sense of how the combination of economic stagnancy and an authoritarian rule has influence privacy in Cuba.