

## **Special Jurisdictions as Laboratories of Governance**

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### **Abstract:**

Special jurisdictions—areas where different laws apply than those that prevail more generally—introduce a new way to put political reforms to the test. In echo of the “laboratories of democracy” label attached to states in the United States, special jurisdictions provide laboratories of governance. They have already proven their worth in teaching policymakers what works and what fails. Special economic zones in China, for instance, demonstrated how market-friendly reforms can drive economic development. Worldwide surveys of special economic zones have also demonstrated what doesn’t work: giving politicians direct control over the location, design, and operation of a zone. More successful zone programs delegate such decisions to private firms. The experiments have grown more bold of late, with special jurisdictions trying new approaches to the common law, fintech regulation, and government itself. Limits apply, of course; humans should not be treated like lab rats, forced to suffer unwelcome treatment. On that count, too, privately planned and run special jurisdictions fare better than public ones. Despite widespread discontent with traditional governments, systemic change remains difficult, risky, and ethically suspect. Special jurisdictions offer another approach, bringing the power of science to bear on the problems of governance.

**Keywords:** special jurisdiction, special economic zones, SEZs, competitive governance, experimental science, political science, fintech.

### **Resumen:**

Las jurisdicciones especiales (áreas donde se aplican leyes diferentes a las que prevalecen en general) introducen una nueva forma de poner a prueba las reformas políticas. Haciendo eco de la etiqueta de “laboratorios de democracia” que se les atribuye a los estados de Estados Unidos, las jurisdicciones especiales proporcionan laboratorios de gobernanza. Ya han demostrado su valía a la hora de enseñar a los responsables de la formulación de políticas qué funciona y qué fracasa. Las zonas económicas especiales de China, por ejemplo, demostraron cómo las reformas favorables al mercado pueden impulsar el desarrollo económico. Los estudios mundiales sobre zonas económicas especiales también han demostrado lo que no funciona: dar a los políticos control directo sobre la ubicación, el diseño y el funcionamiento de una zona. Los programas zonales más exitosos delegan tales decisiones a empresas privadas. Los experimentos se han vuelto más audaces últimamente, con jurisdicciones especiales probando nuevos enfoques para el derecho consuetudinario, la regulación de las fintech y el propio gobierno. Por supuesto, se aplican límites; Los humanos no deberían ser tratados como ratas de laboratorio, obligados a sufrir un trato no deseado. También en ese sentido, las jurisdicciones especiales planificadas y administradas de forma privada obtienen mejores resultados que las públicas. A pesar del descontento generalizado con los gobiernos tradicionales, el cambio sistémico sigue siendo difícil, arriesgado y éticamente sospechoso. Las jurisdicciones especiales ofrecen otro enfoque, al aplicar el poder de la ciencia a los problemas de gobernanza.

**Palabras clave:** jurisdicción especial, zonas económicas especiales, ZEE, gobernanza competitiva, ciencia experimental, ciencia política, fintech.

## 1. Introduction: New Laboratories for Political Science

Supreme Court Justice Louis Brandeis famously characterized the individual states that make up the United States as laboratories of democracy. He opined, in the 1932 case of *New State Ice. Co. v. Liebemann*, “It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country” (Id. p. 311). Brandeis aptly described the functional effect of the autonomy that states enjoy in the federal system: it liberates them to seek new and better laws, discovering political reforms that other states can emulate. This paper explains how special jurisdictions can provide the same function in the search for new and better forms of government.

It bears noting that Brandeis spoke his famous lines in dissent. *New State Ice. Co. v. Liebemann* raised the question of whether the Oklahoma legislature could, consistent with the 14<sup>th</sup> Amendment, license and regulate ice manufacturers like public utilities. A majority of the Supreme Court found that the state could not. Brandeis, in contrast, argued that the Oklahoma’s regulation should be upheld unless the Court found them clearly arbitrary, capricious, or unreasonable (Id. p. 285). On that count, Justice Brandeis claimed, “We cannot say that the Legislature of Oklahoma acted arbitrarily in declaring that ice is an article of primary necessity, in industry and agriculture as well as in the household, partaking of the fundamental character of electricity, gas, water, transportation, and communication” (Id. p. 289).

It might seem a ridiculous claim today, when cooling systems have replaced most of ice’s former uses and small, relatively inexpensive appliances meet the remaining demand for frozen water. In 1925, however, ice manufacturing remained vitally important, irreplaceable, technically challenging, and expensive. Brandeis thus had some reason to want to leave states free to try new approaches to regulating its production. More to the point for present purposes, *New State Ice. Co. v. Liebemann* offers a signal example of balancing the benefits of political experimentation against the risks of political mistakes.

Although the United States federal system leaves states considerable autonomy, it keeps their legal experimentation within constitutional boundaries. As *New State Ice. Co. v. Liebemann* demonstrates, states cannot violate rights that their residents enjoy as citizens of the United States.

A majority of the court found that the 14<sup>th</sup> Amendment protected the right to engage in trade, liberating markets in ice production from Oklahoma's attempt to try out a novel regulatory power. States face other Constitutional limits, too. The Constitution limits states from tinkering overmuch with democracy itself, for example, by requiring each to preserve a republican form of government (U.S. Const., Art. IV, Sec. 4).

That approach to managing laboratories of governance seems to have worked reasonably well for the United States, which approaches its 250<sup>th</sup> birthday as the planet's preeminent economic, military, and cultural power. It plainly will not work everywhere, though. How can other countries discover new forms of political community while also respecting human rights?

Special jurisdictions offer a platform for conducting limited, controlled, and ethical experiments in governance. They come in many types, ranging from individual factories, to freeports, to county-sized special economic zones (SEZs), to semi-autonomous city-states. All, however, represent areas where the applicable law differs from the law prevailing more generally in the host country (Akinci and Crittle 2008, p. 23). Special jurisdictions have flourished in recent decades, expanding in range, size, complexity, and diversity (Bell 2018). That has created an environment rich in lessons for students of government.

Policymakers have not brought about this happy condition by design, granted. They instead regard special jurisdictions as particular solutions to particular problems, as when a trade ministry seeks to liberate international trade from the impediments of customs and duties by sheltering it within a free port. In the aggregate, however, policymakers implementing special jurisdictions have created the preconditions for a new era in political science (a term here used broadly enough to include economics, law, sociology, anthropology, and other disciplines studying human governance). Each special jurisdiction tests the effect of a set of public policies different from those that formerly prevailed within its limits and still prevail immediately outside them. Each freeport demonstrates the effects of eliminating customs and duties, for instance. Unintentionally or not, therefore, policymakers have created a massive data set for political scientists curious about the economic and social effects of different forms of governance.

In echo of the "laboratories of democracy" label that Justice Brandeis applied to states in the United States, special jurisdictions provide laboratories of governance. They have already proven their worth in demonstrating what works and what does not. This paper reviews the record

of special jurisdictions to-date, surveys some ongoing and upcoming experiments of note, and outlines the practical and ethical limits of doing empirical political science on a city-sized scale.

Following this introduction, section 2 quickly recaps the long and rich history of special jurisdictions, a story that culminates in their present, burgeoning abundance. Section 3 discusses some preliminary results from early experiments in governance, focusing on the sweeping reforms enabled by Chinese SEZs, the comparative failure of zones run by (as opposed to merely supervised by) politicians, and the breakout success of common-law-based trade centers in the United Arab Emirates. Section 4 reviews some recently launched and planned experiments in governance. The discussion turns from facts to theory in section 5, which considers what special jurisdictions can do, cannot do, and should not do in their role as laboratories searching for the next and best forms of political organization. The paper concludes that special jurisdictions can provide fresh answers to old questions about human governance while respecting fundamental human rights.

## **2. The Long History and Recent Flourishing of Special Jurisdictions**

Humans have been creating special jurisdictions nearly as long, it seems, as they have been creating ordinary ones. The idea dates at least as far back as ancient Rome, which in 167 BCE designated the island of Delos as a free port in order to encourage imports to the holy sanctuary (Farole 2011, p. 31). Subsequent variations on the theme have occurred throughout history, including such examples as medieval charter cities and European colonial trading posts like Hong Kong and Singapore (Id. p. 32).

Those early special jurisdictions focused on liberating international trade from otherwise applicable duties and customs. More recent ones have added manufacturing to the mix. Most scholars date the first of these export processing zones (EPZs) to the Shannon Free Zone in Ireland, created in 1958. It established a model widely replicated throughout the developing world: a fenced-in territory of industrial land, situated outside the host country's customs area, benefitting from government incentives, and supported by simplified administrative procedures. Though initially focused on producing goods for export, EPZs have evolved to encompass a wide range of commercial activities. (Id. p. 28).

Survey data indicates that special jurisdictions of all types have soared in number and distribution over the last several decades. Their number has risen from the single digits in the mid-twentieth century to between 4,000 and 10,000, depending on whether the count includes single-factory zones, in the first decades of the twenty-first century (Bell 2018, p. 24, fig. 1.2-3). They have spread from a few countries to about 75% of them in the same period (Id. p. 23 fig. 1.2-2).

Special jurisdictions have moreover in recent decades grown in size and complexity. From mere freeports, they have grown into “multiuse developments, encompassing industrial, commercial, residential, and even tourism activities” (Farole & Akinci 2011, p. 6). Consider Neom, an ongoing project by Saudi Arabia to develop 26,500 square kilometers (10,200 square miles) of its northwest coast into a set of cities, each dedicated to not simply to different industries but to different lifestyles (Neom 2023).

Neom remains for now little more than a construction site. Up-and-running examples of special jurisdictions demonstrating the trend toward larger and more comprehensive zones include Shenzhen and other Chinese SEZs, the Dubai International Financial Centre, and the Honduran Zonas de Empleo y Desarrollo Económico (Zones of Employment and Economic Development or ZEDE). Those and other special jurisdictions receive closer consideration in the sections that follow.

### **3. Preliminary Results from Experiments within Special Jurisdictions**

Growth in the last few decades in the number, distribution, and diversity of special jurisdictions has generated a wealth of data about their performance. Most special jurisdictions have been credited for driving local economic growth, a fact to which their widespread and growing popularity testifies. Not all zones have succeeded, however. Ukraine’s initial attempt at creating SEZs foundered under the influence of political favoritism, for instance (Liashenko et al. 2021, p. 88). So far as political experimental science cares, both the successes and the failures provide good fodder for analysis. Special jurisdictions have thus taught policymakers a great deal about governance.

The empirical evidence supports one proposition above all: special jurisdictions do best when the public sector delegates to the private sector decisions about the location, design, and operation of zones. The World Bank, summarizing the available data, said it “suggests that private

zones are less expensive to develop and operate than their public counterparts (from the perspective of the host country) and yield better economic results” (Akinci and Crittle 2008, p. 4). The reason is not hard to divine: public officials lack both the information available to private actors responding to market signals and the incentives to take the information into account (Moberg 2017, pp. 41-45, 55-57).

It bears noting on that count that purely private zones do not exist; all special jurisdictions require active support from their host countries and as such always qualify as public-private partnerships of one sort or another. The public/private distinction drawn by the World Bank and other commentators thus turns on who decides where to locate special jurisdictions, what specific industries they should serve, and how they should be run. When politicians make those decisions, unsurprisingly, politics dictate the results. When in contrast they delegate those decisions to private parties, reserving only broad supervisory oversight, the incentives align for economic growth.

That good advice for policymakers has so far had only limited application. So-called private zones as yet remain relatively small compared to special jurisdictions the size of cities, counties, or states. Unsurprisingly, politics has played a leading role in creating the world’s largest special jurisdictions. Whether thanks to that influence or in spite of it, and as a mere consequence of their larger scale, the world’s largest special jurisdictions have generated the world’s greatest economic growth.

Consider the experiments in governance conducted by the People’s Republic of China starting in 1980. These began with Shenzhen, Zhuhai, and Shantou SEZs in Guangdong and Xiamen SEZ in Fujian (Coase & Wang 2012, p. 63). After those began generating encouraging results, zones spread throughout China. SEZ of one sort or another now cover by far the bulk of the country (Wang 2013). By one calculation, all but about 3.2 percent of China’s more than 1.3 billion residents live in SEZs. (Bell 2018, p. 19, n. 19).

Two decades before China’s SEZ experiment began, the economic chaos induced by Mao’s Great Leap Forward starved to death 30 to 40 million people (Coase & Wang 2012, p. 7). At the time the first SEZ launched, things were not considerably better. China had a per capita GDP of only US\$139 in 1980—lower than that of Bangladesh, Chad, or Malawi and still insufficient to ensure that average food consumption would satisfy basic nutritional standards. Thirty-five years after it launched its SEZ experiment, China had become the world’s largest exporter and its second-

largest economy. By 2012, its per capital GDP had increased to US\$6091—over thirty times the 1980 figure (Ang 2016, pp. 5-6).

SEZs have transformed not just China’s economy but its urban landscape. Shenzhen, for example, grew from a sleepy fishing town of less than 30,000 to the fastest growing city in China, now with over 14 million residents (Coase & Wang 2012, p. 63). They have transformed Chinese politics, too, turning a nominally communist regime into a functionally capitalist one. Remarkably, for a government not known for its especially gentle ways, these changes have come without revolutionary violence. Even though Shenzhen SEZ grew to encompass neighboring villages, for instance, they subsisted as chengzhongcun, or “urban villages”, wherein the residents continued to enjoy their former privileges and indeed ended up profiting nicely from the development (Castle-Miller 2022). That is hardly to say that the Chinese experiment in government has gone without a hitch and without criticism, of course. Government reform, especially at large scale, always leaves bruises, and too often leaves carnage.

As the Chinese example shows, special jurisdictions typically aim at encouraging economic growth and do so by offering rules more friendly to commercial activity than the ordinarily prevailing ones. In the aggregate and on net, that has resulted in an international trend towards governance that supports private enterprise (Bell & Moberg 2023). Some commentators might celebrate that outcome; some might rue it. For present purposes, it suffices to observe that we can thank special jurisdictions for revealing what the market for governing services evidently demands.

That private enterprises like rules that favor them should come as no surprise. Policymakers evidently follow suit in order to encourage local economic growth. They might create special jurisdictions for purposes other purposes, of course. Indeed, one might fairly characterize a war zone as a sort of special jurisdictions, albeit one where the rules have been changed to promote wrathful destruction instead of peaceful creation. It stands as a testament to human nature and cause for hope that special jurisdictions instead tend to aim at encouraging economic growth.

In recent decades, the search for economic growth has driven the evolution of special jurisdiction that go beyond merely easing international trade to creating legal environments optimized for a wide range of commercial transactions. The Chinese SEZs, which included reforms to laws concerning property and contracts, exemplify that trend. More recently, and on a smaller

and more focused scale, the United Arab Emirates (UAE) has come to host two special jurisdictions offering common law rules and adjudication: The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM).

In 2004, the UAE amended its constitution and passed legislation allowing its member emirates to create Financial Free Zones enjoying considerable autonomy in banking, stock trading, insurance, and other financial services. (UAE Federal Law No. 8 of 2004). The emirate of Dubai exercised its newfound power immediately, launching the DIFC that same year. (Law of the DIFC 2004). The DIFC proved such a success that it inspired the ADGM, which launched in 2015 (ADGM Founding Law 2013).

Both of those UAE-based zones offer legal, regulatory, and adjudicatory systems more friendly to international commerce than locally prevailing Sharia law. The DIFC relies for the most part on its own laws and regulations, which run at length and in detail (DIFC n.d.). Some of these borrow heavily from statutes originally passed in the United Kingdom; others show the influence of legislation from the United States (Horigan 2009, p. 10). Those rules control most transactions in the zone. Only if they leave matters unresolved, the parties have not contracted to have other law apply, and nothing seems better fitted to the facts and the parties, might a court fall back on the common law of England and Wales (DIFC Law No. 3 of 2004, Art. 8(2)). That arrangement seems unlikely to give the common law much purchase. Perhaps to greater practical effect, the DIFC hired experienced common law judges to run its courts (Krishnan & Purohit, 2014, pp. 523-54).

The ADGM similarly puts common law at the bottom of a hierarchy of locally applicable rules, placing it beneath the laws of Abu Dhabi or other zone ordinances (ADGM Application of English Law Regulations of 2015, § 1). In contrast to the DIFC before it or the Astana International Financial Centre afterward, the ADGM's rules make reference only to English common law, eschewing that of Wales. The ADGM also differs from those zones in expressly giving immediate effect to changes wrought by English courts (*id.* § 1(1)), a form of dependency on foreign adjudication that commentators describe with the euphemism's "evergreen" (Reynolds 2017) and "ambulatory" (Russell & Bogner 2017).

Those precedents from the UAE inspired the Republic of Kazakhstan to create the Astana International Financial Centre (AIFC), which officially opened in 2018 (AIFC 2019, p. 24). All

three of the zones—the DIFC, ADGM, and AIFC--offer common law rules and adjudication in some form or another. The last of these remains somewhat in the trial stage, though, and so receives continued discussion in the next section, where the focus turns from established zones to newer and still-developing ones.

#### **4. Ongoing Experiments in Governance**

Whereas the prior section reviewed some prior experiments in governance conducted through special jurisdictions, this section reviews some ongoing and future ones. Common law zones bridge the recent past and immediate future in this review. The DIFC and ADGM’s successes in the United Arab Emirates presaged both a roughly similar competitor—the Astana International Financial Centre in Kazakhstan—and two zones that take a very different approach—Próspera ZEDE in Honduras and the Catawba Digital Economic Zone in the United States. The last of these also represents one of a burgeoning number of experiments in fintech-friendly governance, a development not much older than the Bitcoin, blockchain, and related technologies that inspire them. After surveying those, the most recently evolved kinds of special jurisdiction, this section concludes with a glimpse at zones still only planned.

##### **4.1. Common Law Zones**

Competition between special jurisdictions to offer forms of government attractive to investors and residents has led to a proliferation of zones offering some form of the common law. Why the common law? It has seen long and widespread use by countries known for their peace and prosperity, making it a relatively safe bet. Adopting the common law calms worries about a zone adopting a radical new form of government and also eases the transition for businesses and people moving from such places as the United States, England, and Singapore.

The modern trend toward common law zones began with the DIFC and ADGM, discussed in the prior section. Those two inspired another common law zone, the AIFC, in the Republic of Kazakhstan. It officially opened for business on July 5, 2018, promising low taxes, streamlined treatment of foreign commerce, and a bespoke legal system informed by the common law (Asian News International, 2018). The zone requires that judicial appointees to the AIFC’s courts have “significant knowledge of the common law and experience as a lawyer or judge in a common law

system” and that they take guidance from decisions issued in common law jurisdictions (AIFC Court Regulations, 2017, Articles 12(6)(b), 12(7)(b), & 29(2)). Those nonbinding mandates leave the AIFC less committed to importing the common law than the DIFC and ADGM (Bell 2021, pp. 77-78). Though it remains a mere fledgling, comparatively speaking, the AIFC recently boasted of attracting more than US\$6.6 billion in investments, registering more than 1,400 companies, and deciding more than a thousand cases. (Satubaldina 2022). Those look like impressive numbers but it remains one of the youngest common law zones in the world.

Still younger: the common law zones of Próspera ZEDE, on the island of Roatán in Honduras, and the Catawba Digital Economic Zone (CDEZ), in the Carolinas of the United States. The former launched in the spring of 2020 (Lutter 2020); the latter, in the fall of 2022 (Bell 2023). These however get their common law through means different from their predecessors in the United Arab Emirates and Kazakhstan—not by invoking the decisions of English or Welsh courts but by incorporating by reference select common law Restatements published by the private American Law Institute. In this, both Próspera ZEDE and the CDEZ drew on the standard set by Ulex, an open source legal system (ulex-opensource, 2022).

In the statute through which it authorized ZEDEs, Honduras expressly invited them to import foreign legal systems to that traditionally civil law country (Ley Orgánica de las ZEDE, art. 14). Próspera, the first ZEDE, responded with the Roatán Common Law Code (Próspera ZEDE 2018). That code, following Ulex’s example, gets its common law by way of the American Law Institute’s Restatements, which conveniently summarize and organize what would otherwise remain a vast quantity of caselaw, scattered across dozens of jurisdictions and stretching across many decades. In this way, Próspera offers something of a midpoint between the civil law system native to Honduras and the common law system in its original form.

How that experiment in the common law will fare remains an open question. The ZEDE system has suffered political attacks by the administration of Honduran President Xiomara Castro, who came to power in 2022 (U.S. Dept. of State 2022) Though that has discouraged the creation of new zones, existing ZEDEs have weathered the heated political rhetoric. They doubtless take comfort in the fact that local and international law would make it very costly for Honduras to try to back out of its commitments (Brimen et al., p. 157). Próspera recently commenced proceedings under the Investment Chapter of the Dominican Republic-Central America-United States Free

Trade Agreement in defense of its rights, in which the ZEDE claims prospective damages of US\$10.8 billion (Moody 2022).

The CDEZ, like Próspera, gets its common law from Ulex via the Restatements. Unlike Próspera, however, the CDEZ is surrounded by legacy common law jurisdictions. One might thus wonder why the CDEZ did not follow the simple expedient of adopting the law of one of its much larger neighbors, the states of North or South Carolina. Doing so would after all follow the example set by the DIFC, ADGM, and AIFC, all of which in some way or another import the laws of England (and sometimes Wales). It seems however that the Catawba Indian Nation values its sovereignty more than did those earlier common law zones, which after all make no pretense of being independent of their hosts, Dubai, Abu Dhabi, and Kazakhstan, respectively. For the CDEZ, the Restatements offered a flag-free source of the common law, neatly organized and curated by expert lawyers, judges, and academics.

#### **4.2. Fintech-Friendly Zones**

Legacy legal systems have struggled to deal with such new-fangled commercial technologies as cryptocurrencies, non-fungible tokens, and other fintech assets. Like mammals running between the legs of dinosaurs, small, nimble, and ambitious special jurisdictions, have seized this competitive opportunity. The evolution of fintech-friendly zones began in 2018 with the launch of the Cagayan Economic Zone in the Philippines, which markets itself to offshore virtual currency and digital token businesses (Cagayan Economic Zone Authority 2018). Belarus launched its Hi-Tech Park around the same time, offering special regulatory treatment to fintech companies located in the zone physically or virtually, having a physical location elsewhere in the country (Hi-Tech Park Belarus 2022).

Other countries, including Switzerland, Russia, Georgia, Armenia, and Iran, have also announced plans to create fintech-friendly special jurisdictions (Bell 2022, p. 27). Not to be left out, existing all-purpose special jurisdictions have entered the fray. The Abu Dhabi Global Market has launched a special regulatory regime for fintech and one has been proposed for the DIFC (Abu Dhabi Global Market 2019; Dubai Financial Services Authority 2022). Próspera ZEDE recently proclaimed itself home of the world's first AML-KYC compliant Bitcoin Bonds (Honduras Próspera, Inc. 2022).

Native American tribes in the United States have joined the competition to offer fintech-friendly special jurisdictions through the Catawba Digital Economic Zone (CDEZ). Created by the Catawba Nation, a small tribe based in the piedmont region of the Carolinas, the CDEZ offers an entirely virtual jurisdiction catering to businesses that seek clear, fair, and up-to-date rules for commerce in cryptocurrencies, non-fungible tokens, e-banking, and other digital assets and services. Though launched in 2022, the CDEZ has already issued several new regulations and announced the creation of the first Native American bank the United States has ever seen (Bell 2023).

These fintech-friendly zones typify how special jurisdictions allow risk averse sovereigns to give new rules a test run within safely circumscribed areas. As with scientific experiments, these experiments in governance do not always go as planned. The Cagayan Economic Zone, for instance, has struggled to address accusations of a corrupt leadership (ABS-CBN News 2022). That still represents success of a sort, though, demonstrating how a special jurisdiction can keep a failed policy within manageable limits while teaching the wider world about how to govern better.

### **4.3 Zuzalu and Beyond**

While it does not quite qualify as a special jurisdiction itself, the Zuzalu experiment demonstrates the latest development in experimental governance. Vitalik Buterin, co-founder of Bitcoin magazine, inventor of the Ethereum protocol, and public intellectual, founded Zuzalu with the aim to “create a pop-up mini-city that houses two hundred people, and lasts for two whole months” (Buterin 2023). Far from merely an extended party, Zuzalu self-consciously served as testing ground for theories designed ultimately to create a distributed sovereign community. In this, it drew inspiration from Balaji Srinivasan’s 1729 Project (Srinivasan 2022). Whereas Srinivasan’s plan to move from a virtual to an actual community remains for now only a plan, Zuzalu can claim to have put its ideas into practice—albeit in a form that for now lacks any political autonomy.

Still in the works: the Free Society project, an effort to create the most comprehensive special jurisdiction of recent times. Founded by crypto-entrepreneurs Olivier Janssens and Roger Vers, Free Society aspires to enter into a treaty with an existing nation state to win territory and international recognition as a peer sovereign. It claims to have entered into preliminary talks with as-yet unnamed prospective hosts (Free Society Ltd. 2021). The appeal of its pitch is not hard to

imagine. If successful, Free Society would create from scratch something like a new Monaco or Lichtenstein. Those micronations evidently offer considerable benefits to their neighbors, which despite possessing overwhelmingly greater military power treat their diminutive fellow sovereigns with respect and even, if we can pretend nations states capable of such things, affection.

Free Society gives every evidence of planning an experiment not just in economic rules or the common law but in the totality of government, from top-to-bottom. Its founders say,

We plan to establish a rule of law based on libertarian principles and free markets. We don't see the need to recreate traditional government structures. ... Enforcement [of the law] will happen through private arbitration, competing court systems and private law enforcement (Free Society, Ltd. 2021).

Further to the experimentation theme, Free Society aims its bold attempt at a new form of government to educate the world, saying, "It is important to establish a proper rule of law, as our project will set an example for the industry and create an important precedent with governments and the world" (Id.).

## **5. Limits to Special Jurisdictions as Laboratories**

Whether as a force for good or evil, government matters immensely to human wellbeing. No student of history, nor even a casual reader of today's headlines, can doubt the claim. For quantitative proof, consider the World Bank's estimate that the rule of law counts as the most valuable asset in the world (World Bank 2006, p. VII). At 44% of all wealth, the rule of law counts for more than one and half times the second largest source of wealth--education, at 28%--and almost two and half times the value of all buildings, goods, stocks, and other things that humans make—together, only 18% of all wealth (World Bank 2006, pp. 26, 96). Anyone who wants to improve the human condition therefore has good reason to try to improve human governance.

The case for finding better forms of political organization sounds not only in terms of the good to be had but also in terms of the evil to be avoided. To belabor what any historian can with regret confirm, governments count among not only the greatest threats to wealth but also the greatest threats to human life. Even the best run countries suffer political crises, occasioning

expropriation and abuse of human rights. The worst run countries deploy those tactics as matter of routine policy.

The world thus cries out for better government. To discern “better” in this context is no easy task, though. A great deal of ink, and far too much blood, has been spilled in the pursuit of solutions. The size, complexity, and persistence of the problem should inspire humility. Instead it inspires unwarranted certainty and passionate differences of opinion. To discover better forms of government requires something more than guesswork, partisanship, and violent revolution; it requires the best available tools for finding the truth.

So goes the case for applying the scientific method to the problem of political reform. Governments present a special case for experimentation, though. Nobody should pretend that the sorts of tests run by special jurisdictions approach the rigor of those run by physicists. Nor should anyone ignore the moral questions raised by running experiments that affect human wellbeing intimately and profoundly. Despite the case for applying the scientific method to the problem of political reform, therefore, epistemological and ethical limits apply.

First, and to belabor the obvious, special jurisdictions cannot offer the sort of tightly regulated conditions that characterize experiments in physics, chemistry, and the other hard sciences. An experiment ideally isolates control and dependent variables, such as Galileo (allegedly) did in his (probably apocryphal) experiments isolating mass from falling velocity (Crease 2003). Special jurisdictions, as communities immersed in the hubbub of human social life, defy so precise an analysis. External factors such as general economic and political conditions can swamp the effects of a zone’s own peculiar governance. Researchers will have to take great care to separate correlation from causation before they attempt to draw lessons from policymakers’ experiments with special jurisdictions.

Special jurisdictions nonetheless offer great value as something like what social scientists call “natural experiments”—i.e., experiments created by happenstance in the real world versus by a scientist in the lab. Thus, for instance, might an epidemiologist study public records to discern the correlation between travel and viral infection. (Craig et al. 2017). In contrast to true natural experiments, however, special jurisdictions are hardly created by accident. Deng Xiaoping, for instance, urged lower government officials creating SEZs in China: “[B]e bolder than before in conducting reform and opening to the outside and have the courage to experiment.” (Coase &

Wang, p. 116). In that, he gave voice to a policy that deliberately transformed the country from the inside out as policymakers deliberately created, studied, and copied SEZs.

In some cases, as with Chinese SEZs, policymakers have created zones with the express intent of finding modes of governance more conducive to economic growth. Honduran policymakers voiced the same goal, but in addition aspired for their ZEDES to find new ways to protect civil liberties and improve local governance in their country. In furtherance of that goal, they left the development of ZEDES in private hands and set them in competition. Three ZEDES were created, each based on a different legal framework (Fencl 2022). The ZEDES' efforts to attract investment and residents has already introduced two-round electoral voting to the Honduras, correcting the prevailing tendency for candidates supported by less than a majority of the electorate to wield power (Colindres 2022). In further testament to the spirit of experimentation, Próspera ZEDE allows interested parties to create special districts in which, subject to protections against the abuse of power, they can further tinker with governance (Brimen et al., pp. 168-69).

Whether created primarily for economic reasons or also for broader social ones, we might fairly call such special jurisdictions political experiments. Laboratory experiments offer carefully planned and precisely regulated conditions. Natural experiments offer completely accidental conditions. Between those extremes in the degree to which human intent drives the experimental setup fall political experiments like the Chinese SEZ and Honduran ZEDES.

Second, and to belabor another point, humans are not laboratory rats. The ethical status of running experiments on rodents and other living things remains contested. The morality of treating humans the same way does not. Perhaps, as with the participants who suffered electric shocks in Milgrim's experiments on the power of obedience to override inhibitions on inflicting pain (Milgram 1963), human subjects can ethically agree to suffer for the good of science. Even that remains a controversial claim. (Herrera 2001). But by no means could that standard justify subjecting the population of a special jurisdiction to an experiment in governance without their consent.

Honduran ZEDES have shown particular solicitude to that concern. The Honduran Constitution and the authorizing statute requires that ZEDES proposed in developed areas win the approval of voters through a referendum, and that a ZEDE give voters a chance to repeal the regime when its population exceeds 100,000 (Colindres 2021, p.20). Próspera ZEDE has committed to

winning the express consent of all its residents to a mutually binding Agreement of Coexistence (Brimen et al. 2021, p. 162). It furthermore gives residents a fallback safeguard against government abuse in the form of a power to veto by popular vote the passage of an objectionable new rule (Id., p. 166). In these measures, Próspera goes beyond conventional polities in protecting those subject to its laws from unwelcomed experimentation. Further to that policy, both of the Próspera and Morazán ZEDEs have committed to not exercise even those limited powers of expropriation allowed under Honduran law (Id., p. 169; Mason et al. 2021, p. 136).

## **6. Conclusion: Political Science with Clear Eyes**

Political science for the most part relies on observations of its subject rather than experimentation. In this, political scientists resemble geologists more than physicists. Small scale experiments can of course reveal important fundamental principles of political and legal systems; consider for example Stanley Milgram's revelations about the power of obedience to authority (Milgram 1963) or the various tests of property rights run at Vernon Smith's Economic Sciences Institute (Chapman University 2022). Political scientists have not failed to generate (rather than merely observe) empirical data (McDermott 2002). But they have not been able to squeeze entire governments into their laboratories any more than geologists have been able to squeeze mountains into theirs.

Special jurisdictions have now made governments more numerous and small, reducing them from the size of mountains to the size of molehills, metaphorically speaking. This has created new opportunities for political scientists of all kinds, including economists, legal scholars, sociologists, and others, to learn how governments work and how governments fail. The stakes could hardly be higher. Governments wield the power to lift entire populations out of poverty or to cast the planet into nuclear winter.

Special jurisdictions have already proven their worth in helping policymakers upgrade the code that runs governments. The legal reforms that transformed China from market-adverse to market-friendly, one SEZ at a time, exemplify the phenomenon. Special jurisdictions have more recently shown how governments that would otherwise operate under Sharia, post-Soviet, civil, or tribal law can try out the common law within safely confined zones (Bell 2021). Special jurisdictions have begun to test entire governments, complete with their own legislative, executive,

and judicial functions. In the works: manifold new governments, small, distributed, and connected in a network of quasi-sovereign nodes. Some will doubtless fail. Some may succeed, however, and reveal new ways to govern better.

As experiments in governance, special jurisdictions offer us clear eyed political science twice over. First, because they sharpen our perceptions by providing contrasting examples of the effects of different rules. Second, because special jurisdictions can give us these insights without tearful conquest, revolution, or even just painfully radical reform.

Running controlled experiments in governance gives policymakers improved information about what works and what fails, reducing the suffering caused by well-meaning but clumsy reform. Special jurisdictions limit the scope of the changes, too, containing their potentially harmful effects (Moberg 2017, pp. 72-73). When they discover something that works, as when Chinese SEZs revealed the growth occasioned by improvements to property and contract law, the new policy can be rolled out incrementally, easing the inevitable shocks caused by even the most beneficial of legal reforms.

Keeping experiments in governance relatively small also makes it easier to conduct them without violating the rights of those who end up living under new rules. In the ideal case, most easily realized in relatively small privately planned and operated zones, the experiment in government affects only those who opt into it. Larger zones, created around existing populations, heighten the ethical risks of forcing reforms on unwilling people. As China's Shenzhen SEZ demonstrates, respecting the autonomy of existing communities and counting on migration to supply most of the new population can ease those risks (Castle-Miller 2022). Zones financed, designed, and run by private parties, created on greenfield sites, populated by migrants, and expanded only by the consent of joining property owners offer a gold standard for the ethical treatment of experimental subjects. On at least one account, the Honduran ZEDE system hews closely to best practices in that respect (Constantino Colindres 2022).

It is not easy to reform government. Despite widespread discontent with existing political communities, no consensus exists about how to improve them. System-wide changes risk making things worse for everyone. Special jurisdictions, by offering laboratories for small-scale experiments, offer an effective and ethical approach to government reform.

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