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Editorial Team

Journal of Special Jurisdictions

The Journal of Special Jurisdictions is an international peer-reviewed journal founded to advance knowledge of Special Economic Zones and other special jurisdictions. It publishes original papers on the theory, history, regulations and development of special jurisdictions. Research published here can be used to inform policymakers and developers about special jurisdictions. The Journal maintains a nonpartisanship approach to its topic. It is led by the team at the Institute for Competitive Governance, the research arm of the Startup Societies Foundation.

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Letter from the Publisher

Joseph McKinney

Startup Societies Foundation &
Institute for Decentralized Governance

Dear Builders,

I'm extraordinarily proud that the Journal of Special Jurisdictions has consistently been published for four years. We were simply wonky, niche, and often theoretical when we started. Now, with the implementation of many next-generation Special Economic Zones and the emergence of different classes of projects, like Network States, the space is progressively maturing.

Partnering with prestigious organizations like the American Institute for Economic Research, one of the oldest think tanks in the United States, makes perfect sense. Their interest in special jurisdiction indicates a wider interest from academia in this subject. As the field grows, we help establish firm foundations with high standards to elevate discourse on the emerging field.

This year, we ventured into uncharted territories, further exploring the dynamics of non-territorial governance in the digital realm and the transformative potential of private cities. The issue further discusses how the digitization of governance can impact citizenship.

The articles presented in this journal are not mere academic exercises; they are blueprints for a future where governance transcends traditional boundaries and adapts to our ever-evolving societal needs. For instance, some of our papers explore the practical application of Complexity science for private developers looking to achieve new startup societies.

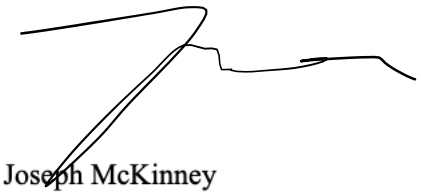
Our vision is bold: a world where special jurisdictions serve as laboratories for governance, experimenting with more agile, efficient, and inclusive models. This vision challenges us to rethink our approach to societal organization and inspires us to imagine a future where these innovative models influence broader structures.

As we approach our upcoming journal issue, I am encouraged to know that our authors will have more data to analyze due to the progress of projects worldwide. I am likewise heartened to know that practitioners in special jurisdictions can rely on our authors' analysis to create projects guided by best practices, ensuring best practices and safeguarding against preventable missteps.

I would also like to thank all who contributed to the journal, including our reviewers: Yevgeniy Vinokurov, David Friedman, Robertas Bakula, Sanford Ikeda, Alex Tabarrok, Alexander Schaffer, Cameron Tilly, Jeffrey Mason, Sebastian Grell, Brad Taylor,

Ryan Hagemann, Andrew Morris, Patrick Lamson-Hall, and Claudio Dijssey.

I also extend a heartfelt thanks to our editorial staff, including Ryan Yonk, our guest editor from AIER. As we move into 2024, I raise a glass to all launching this field from obscurity to genuine impact and rigor.



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Letter from the Editor

Nathalie Mezza-Garcia, PhD

Startup Societies Foundation &
Institute for Decentralized Governance

This issue is perfect for anyone wanting to know where the future of Startup Societies, Special Jurisdictions, Special Economic Zones, and governance in general is heading. The first paper is by Professor Tom W—Bell from Chapman University. Professor Bell's paper focuses on the value of Special Jurisdictions for social scientists. By analyzing the results of implementing specific policies, they can study, with real-world data, which policies work or not. Bell mentions interesting examples of Startup Societies with unique policies from which lessons will be drawn for the future. Among them, he discusses Common Law Zones, like the UAE; Fintech-Friendly Zone, like the Catawba Digital Economic Zone; and the Pop-Up City, Zuzalu. In his own words, these testbeds create a new era of governance and, therefore, provide "the preconditions for a new era in political science".

The second paper comes from Dr. Nathalie Mezza-Garcia, affiliated with the Institute for Decentralized Governance and Seaphia. Dr. Mezza-Garcia's work shows the regulatory frameworks entrepreneurs of new private jurisdictions must navigate or untangle to create one. Using the Floating Island Project in French Polynesia as a case study and a complex governance framework, the author examines the regulatory networks within which new jurisdictions are established or "nested." The paper discusses the nested institutional structure and corresponding regulatory framework that the Floating Island's SeaZone Authority needed to create exemptions to –including those related to blockchain, health, infrastructure, and immigration. The paper highlights the challenges entrepreneurs face in navigating and potentially untangling these complex regulations. It stresses the importance of thoroughly understanding and engaging with the complete nested hierarchy of pre-existing institutions and regulations for successful autonomous new jurisdiction creation. It also explains that this process is challenging and requires Startup Society entrepreneurs to deal with legacy systems practically. The paper suggests that these systems cannot be ignored, especially if the Startup Society aims for legal extraterritoriality.

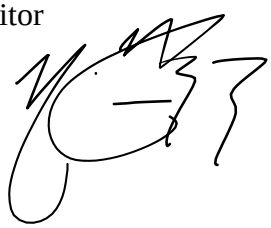
Along these lines, our third paper focuses more on the virtual realm, the Metaverse, which the author describes as a "realm of permissionless innovation", a space that does not have to deal with the legal hurdles mentioned in the previous paper. The paper is authored by Vera Kichanova from Kings College London. Throughout it, the author cites examples of private governance worldwide, such as Gurugram in India and Celebration, Florida She acknowledges the

feasibility of private cities and discusses the "city as a hotel" concept's benefits. In this model, private developers manage a city as a business, potentially yielding profits for decades. An example she highlights is Irvine, California's master-planned city. But Kichanova realistically addresses the challenges in establishing such cities, citing the examples of the Honduran Charter Cities and Google's SmartCity, Sidewalk Lab. Indeed, the paper notes the substantial costs involved in building a city from scratch, including navigating bureaucracy, engaging with regulators, obtaining permits, democracy, and managing political backlash. Therefore, the author suggests instead the creation of private cities in the Metaverse, as an alternative to bypass these hurdles. The Metaverse for Kichanova combines the spontaneity of physical cities with the ability to unite people from different nations in one virtual world.

Our fourth paper, by Juan D. Estevez from Goethe University Frankfurt, explores the future of citizenship in a world where residency, following the topic of the previous paper, is less tied to one's place of origin and more to personal choice. Estevez points out that the current global landscape is already redefining traditional country-linked citizenship. He presents examples of city-based residency, where non-state entities offer residency through contracts with individuals. Estevez uses the Próspera ZEDEs in Honduras, offering Estonia-type eResidence, as an example. Próspera allows people to engage in their city's democratic processes even if they are not from Honduras. The author states this may not replace nationality-based citizenship. However, it demonstrates that nation-states are no longer the sole providers of citizenship or residency. In Estevez's words, "new forms of governance and economic integration are challenging the sovereignty and legitimacy of nation-states."

Lastly, our fifth paper in this issue is by Ryan Yonk from the American Institute for Economic Research (AIER) and Randy T. Simons from Utah State University. This paper delves into alternative local-level governance resolution mechanisms for dispute resolution, including public law, private law, and civil society. Yonk and Simons weigh the pros and cons of each. For example, they critique public law for its restrictions of unnecessary things and note that private entities administering public law typically follow traditional governance approaches. They argue that this hinders the creativity and progress fostered by private law, civil society, and exchange. Ultimately, the authors favor solving issues via a fourth method: exchanges–mutually beneficial trades. This method, they suggest, addresses many issues that local governments often undertake unnecessarily. Unlike the examples in previous papers, it does not require a private contract among neighbors, a Special Economic Zone framework, no metaverse glasses, or an eResidence. In it, individuals find solutions to their problems and exchange them with others based on their interests. The paper reminds us that if "public officials [or private for that matter] told people to solve their problems themselves, most real problems would be solved without the force of regulation."

Dr. Nathalie Mezza-Garcia, PhD.
Managing Editor



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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. For instance, special economic zones in China 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 14th 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 Brandies 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. Brandies 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 14th 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 250th 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 Saudia 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 & Bognar 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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The Complex Legal Frameworks Where Special Jurisdictions Nest[1]

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Abstract:

For the last seven years within the Startup Societies movement, there has been a surge in entrepreneurs, developers, and online communities, including Network States, that intend to create autonomous special jurisdictions. However, understanding how to create a jurisdiction, especially an autonomous one, is very different from wanting to create one. Among Startup Society types, Special Economic Zones (SEZs) are one of the models private developers seek the most. SEZs enjoy autonomy, and their jurisdictional arbitrage has led to significant economic and social transformations in some parts of the world. But getting there is hard. Zones are not created in institutional and legal isolation. This paper shows the institutional and legal frameworks Startup Society entrepreneurs need to navigate and untangle to create new jurisdictions. To achieve this, the paper uses the complex governance concept of "nestedness." I argue that establishing a new jurisdiction necessarily entails dealing with existing, nested complex governance structures–both regulatory and institutional–which is inherently difficult. I use complexity to show why and how. The findings are extracted from research I conducted between 2017 and 2019 on an attempted Maritime Special Economic Zone (SeaZone) called the Floating Island Project in French Polynesia, based on ethnographic research methods, namely participatory observation and document analysis. This paper synthesizes multiple nested regulatory frameworks concerning immigration, real estate, taxes, blockchain, and infrastructure. These were all aspects that the SeaZone founders needed to untangle to create a globally competitive framework. This paper makes a significant contribution to the field of special jurisdictions by highlighting the challenges and complexities involved in establishing Zones characterized by autonomous governance, legal, physical, and digital extraterritoriality. It highlights the importance of approaching Zone and Startup Society creation with a practical mindset.

Keywords: Complex governance, Floating Island Project, French Polynesia, legal structures, nestedness, Special Economic Zones, SeaZone, Startup Societies.

Resumen:

Durante los últimos siete años, dentro del movimiento de las Sociedades Startup (Startup Societies), ha habido un aumento de emprendedores, desarrolladores y comunidades en línea, incluidos los Estados de la red, que intentan crear jurisdicciones especiales autónomas. Pero desear crear una jurisdicción, especialmente una autónoma, es muy

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diferente a saber cómo crearla. Dentro de las Startup Societies, las Zonas Económicas Especiales (ZEE) son uno de los modelos más buscados por los desarrolladores y/o promotores privados. Después de todo, éstas disfrutan de autonomía y su arbitraje jurisdiccional ha llevado a importantes transformaciones económicas y sociales en algunas partes del mundo. Pero llegar allí es difícil. Las zonas no se crean en aislamiento institucional y legal. Este artículo muestra los marcos institucionales y legales que los emprendedores de Startup Societies y ZEE necesitan navegar y desenredar para crear nuevas jurisdicciones. Para ello, el artículo utiliza el concepto de gobernanza compleja de "sistemas anidados". Mi argumento es que establecer una nueva jurisdicción implica necesariamente abordar estructuras de gobernanza complejas y anidadas existentes, tanto regulatorias como institucionales, y que hacerlo es difícil. Utilizo la complejidad para mostrar por qué y cómo. Los hallazgos son extraídos de una investigación que realicé entre 2017 y 2019 sobre un intento de Zona Económica Especial Marítima (SeaZone) llamada el Proyecto de Isla Flotante en la Polinesia Francesa. En ella utilicé métodos de investigación etnográfica, incluyendo observación participativa y análisis de documentos. Este artículo sintetiza los marcos regulatorios anidados relacionados con legislación de inmigración, bienes raíces, impuestos, blockchain e infraestructura que los creadores de la Isla Flotante necesitaban desenredar para crear un marco globalmente competitivo. Este documento hace una contribución significativa al campo de las jurisdicciones especiales al resaltar los desafíos y complejidades involucradas en el establecimiento de Zonas caracterizadas por una gobernanza autónoma y extraterritorialidades legal, física y digital. El artículo concluye enfatizando la importancia de un ser prácticos en el proceso de creación de las Zonas.

Palabras clave: gobernanza compleja, proyecto de Isla Flotante en la Polinesia Francesa, estructuras legales, anidamiento, zonas económicas especiales, zona marítima, empresa emergente.

1. Introduction

Special Economic Zones (SEZs) are a type of special jurisdiction[3] or Startup Society[4]. Typically, these are small territorial areas with experimental forms of governance (Frazier & McKinney, 2019) or different regulations from the surrounding host Nation (Startup Societies, ND, 2019). This means that SEZs often have legal and physical extraterritoriality. Having legal extraterritoriality means having a parallel, supra, or distinct set of regulations to those applicable in existing Nations or States. The Moon and outer space (UNOOSA, 1979; Virgilu, 2009), Antarctica (SAT, 1959), international waters (UN, 1947), and the International Space Station all have this type of extraterritoriality. They have different regulations than those applied within state borders. However, extraterritoriality can also mean having a different regulatory regime from a physically surrounding nation. This entails being within a Nation's boundaries but not necessarily obeying its legal regime–or only partially. When legal and physical extraterritoriality coexist, places are enclaves. While not all Startup Societies have their own legal framework, Special Economic Zones (SEZs) tend to fall into this category. Not only do they operate with distinct regulations to their host Nation, but they do so while physically being inside their sovereign boundaries.

[3]Special Jurisdictions are areas that have a different legal framework from their host Nation. This framework is often to implement new laws, transitional legal frameworks, or ensure business competitiveness (IDG, 2023).
[4]Startup Societies are small areas with experimental forms of governance (Startup Societies, ND).

Traditionally, SEZs' success is due to their distinct legal framework, which allows for flexibility in fiscal, customs, and labor policies thanks to their customer incentives, ranging from duty-free imports and simplified customs processes to more lax regulatory frameworks than the host government (FIAS, 2008:2). Their competitiveness is enhanced by their nimbleness, which can be attributed to them being geographic areas being administered by a single entity (FIAS, 2008). In many cases, this combination has boosted traditional Zones' exports and local and national economic growth (Moberg, 2015a; 2015b). In 2016, for instance, Zones contributed to global exports exceeding 200 billion USD (Khanna, 2016). Zone's rapid growth has led scholars, such as Easterling (2014), to argue that Zones will be the future dominant governance system. This scenario is already visible with Dubai, Shenzhen, and Singapore's international positioning and Zones being powerful economic global expansion drivers, particularly in late-developing nations (Defever et al., 2018).

While many Zones are state-owned or operated, evidence suggests that the most economically successful and environmentally sustainable ones tend to be privately managed (FIAS, 2008). There are various methods for establishing such Zones. These include government designation, application to a country's National Zone Authority, or, as illustrated in this case study, attempting to negotiate a new, de novo, next-generation legal framework directly with a government. As Mezza-Garcia (2020) shows, and as I argue here, the latter approach is the most difficult.

There are more SEZ types than ways to create them: Foreign Trade Zones, Export Processing Zones, Digital Economic Zones, and broader next-generation SEZs, such as the Catawba Digital Economic Zone (CDEZ, ND; Zone Authority, ND) and Próspera[5]. However, there is one type no one, to date, has succeeded in creating, although there are places like the Maldives, Saudi Arabia, Busan (South Korea), and Venezuela working on similar models: floating or buoyant Special Economic Zones[6]– also called SeaZones.

SeaZones are SEZs located within a host nation's territorial waters and can have water and land areas (Bell, 2017a). Like land-based Zones, 'SeaZone' encompasses the physical space and its regulatory framework (Bell, 2017a). This paper delves into a specific SeaZone known as the Floating Island Project (FIP), which aimed to establish a Buoyant Zone within the territorial waters of French Polynesia. The term 'SeaZone' here refers to both the intended floating platforms within French Polynesia's territorial waters and the legal framework that would govern them.

[5] "Next Generation SEZs" is a broad term that refers to zones with incentives that go beyond taxes. These incentives are regulatory in nature and include jurisdictional arbitrage on business aspects, typically in spearhead industries such as blockchain, banking, medical, or criminal law.

[6] I use the term Buoyant to make the distinction between floating on the water from floating in Zero-Gravity, like the International Space Station, which is a special jurisdiction that already exists and floats (in space).

The Floating Island Project was influenced by anarcho-capitalist principles (Friedman, 1989; 2002; Steinberg et al., 2012) and represents a category of Startup Societies focused on economic, personal, and political freedom. It derives from the concept of *seasteads*, envisioned as politically autonomous human settlements in international waters. These settlements, often mistakenly called 'new countries,' are based on the benefits of having floating, mobile residences and buildings. The underlying idea is that buoyant homes enable better governance by allowing residents to move away if dissatisfied with a place's governance. This concept is known as dynamic geography. Proponents believe this mobility encourages governmental competition, leading to improved governance and innovative community designs, ranging from neighborhoods to nation-states (Blue Frontiers, 2018e:2). Behind dynamic geography is the idea of 'foot voting,' which suggests that residents express their approval of a government by either staying or relocating (Friedman, 2002; 2009; Friedman & Taylor, 2011). The idea is that by creating multiple seasteads with unique governance models, future governments in international waters would compete as service providers for residents (Friedman & Gramlich, 2009), just as internet companies compete for customers today.

The term seasteading merges "sea" and "homesteading" (Oxford, 2017b) and was coined in a report by the Stratton Group, a commission established via an Act of the U.S. Congress to develop leasing systems for non-extractive seabed activities (Christie, 1969:72). However, the term became popular through the work of The Seasteading Institute (TSI) (TSI, 2015a, 2015b), and from the idea of "homesteading the high seas" (Friedman and Taylor, 2011b:13), a concept traced back to Locke's (2013) 1689 treaties, associating land ownership with land cultivation. Before this, some US policymakers used Locke's concept as a pretext to, ironically, displace thousands of Native Americans from their ancestral property. Yet, with this framework of colonizing the seas, key figures from The Seasteading Institute, Friedman and Taylor (2010:223), defined seasteading as "the act of forming permanent, autonomous oceanic communities." The Oxford Dictionary added the word in 2017, defining seasteading as "establishing enduring habitats on oceanic structures outside any nation's jurisdiction" (Oxford Dictionary, 2017a, 2017b). Blue Frontiers, the operating company behind the Floating Island, described seasteads as permanent aquatic residences crafted for indefinite ocean occupancy, which are designed to allow for easy movement and modularity with other seasteads, facilitating jurisdictional arbitrage through dynamic geography (Blue Frontiers, 2018e). Before the term's popularization by The Seasteading Institute in 2008, several authors linked seasteading with the practicalities of self-reliant sea living (Gramlich, 1998) or simply living on a boat (Neumeyer, 1981; FitzGerald, 2006). However, the interpretation of seasteading that inspired the Floating Island SeaZone revolved around pioneering offshore floating communities with their own governance structure.

The extraterritoriality of international waters is a relevant aspect of seasteads because, for many, the ocean's extraterritoriality is thought to enable or make more accessible some things prohibited, too regulated, or poorly regulated on land, such as human stem cell treatments. Thus, the high seas are seen as a tabula rasa, the last frontier for human habitation and autonomous governance experimentation (Friedman & Gramlich, 2009; Friedman & Taylor, 2011a, 2011b). Mischaracterized as a blank canvas and far away from the influence of legacy governance[7] systems, floating settlements in international waters are considered the ideal place to start new forms of governance where "there is none" (see: Friedman & Gramlich, 2009). However, this dogmatic adherence to reimagining governance structures to maximize individual freedom and autonomy outside legacy systems is why successful, scalable seasteading has not materialized. The reasons for this will soon become clear: no place exists in complete isolation. Similarly, international waters are not a blank legal slate. Multiple international rules and conventions apply in these waters, including the International Convention for the Safety of Life at Sea (SOLAS, 1974), the International Convention on Salvage (IMO, 1989), as noted by Gónzalez (2015:12), and the United Nations Convention on the Law of the Sea (Galea, 2009).

After years of trying to create seasteads in international waters, researchers from TSI identified that international waters are full of legal constraints (Mutabdzija & Borders, 2011a:5, 2011b). Thus, the Institute decided it would be easier to partner with a host government and create a floating settlement within a host country instead of trying to create a new country from scratch (TSI, 2014). With it, seasteaders would achieve their vision of freedom, and the host country would benefit from technology transfer.[8] SeaZones would have to be established near existing cities or within the 12 nautical mile limit that defines a state's maritime territory. This proximity would ease coastal trade and protect from other nations and pirates (Mutabdzija and Borders, 2011a, 2011b). Most importantly, being part of an existing Nation's institutionally also meant more legal protections (TSI, 2014), even if this required a compromise between total independence and what existing institutions would allow. This is how the idea of a SeaZone was born.

SeaZones would, therefore, merge the legal aspect of SEZs–having different regulations or exceptions of their host Nation–and the spatial and political attributes of seasteads: communities floating on water. Seasteading supporters stated that this Zone strategy would prevent the Floating Island from

[7] Legacy systems is a term borrowed from software technologies. It refers to an outdated information system that organizations or individuals continue to use despite their obsolescence. In the context of governance, the term refers to traditional or established systems of hierarchy, top-down power, domination, centralization, and authority.

[8] Technology transfer is the process of sharing technology, knowledge, and skills between organizations, communities, universities, businesses, countries, or governments to advance and apply scientific developments for broader societal benefit.

ending like previous, unsuccessful seasteading attempts (Balloun 2012; Mutabdzija and Borders, 2011)[9]– in which individuals declared sovereignty over a coral reef or abandoned offshore platform and a navy gunboat followed[10].

After searching for host nations open to the idea, on January 13th, 2017, the Seasteading Institute and the French Polynesian government signed a Memorandum of Understanding (MOU) in California to create a floating special economic zone called Floating Island. The Polynesian government signed the MOU for it acknowledged that floating islands could be an eco-friendly, innovative technology for Small Island States in the Pacific, with islands that will disappear due to sea level rise (MOU, 2017:7; Weeman & Lynch, 2018)[11].

At the end of 2017, The Seasteading Institute submitted a legal feasibility study for government evaluation to study the viability of the Floating Island Project. The Polynesian Assembly was to assess this in conjunction with economic, environmental, and location studies to determine the potential benefits for French Polynesia.[12] If approved, the SeaZone regulations would be contained in a series of Acts from the Polynesian Assembly. While the SeaZone was never established, various documents speak about its intended regulatory framework. It would cover immigration, infrastructure, labor, customs, and residency, among other aspects.

These regulations would apply to the total project area. The built environment would include 12 floating platforms, ranging from 14 to 50m2 each (EMSI, 2017), spanning 75,000 m2 (7.5 hectares) of mixed-used spaces (Blue Frontiers, 2017e). They would initially house around 300 people. These platforms would be governed through a cryptographic token called Varyon, although the project ended before its exact mechanism became clear.

This project was uniquely complex. The SeaZone's special legal status, parallel to French Polynesian regulations, granted it legal extraterritoriality. Its unique location —a floating island enclave

[9] It did not. The reasons are extensively discussed by Mezza-Garcia (2020).
[10] Some examples of this occurring are Operation Atlantis, Sea City Taluga, Operation Minerva, and Ocean Builders.
[11] Research has suggested that most flat islands (atolls), especially in the Pacific, will be uninhabitable by 2100 (Storlazzi et al., 2018). Small Island States will suffer the most (Lister & Muk-Pavic, 2015:2), despite their minimal contribution to climate change (Polynesians-Leaders-Group, 2015). The vulnerability of many Pacific islands stems from their flat topography. Caron and Henry (2004) highlight fears of these islands submerging due to sea-level rise. French Polynesia is among the Pacific nations facing extreme vulnerability (SPREP, 2016). As a response, some Pacific governments, such as Kiribati's, are exploring sustainable floating islands as potential land replacements (Kiribati, 2012). Historically, Pacific islanders, like those in the Solomon Islands and Micronesia, have also contemplated artificial islands to reclaim submerged territories (Bryant-Tokalau, 2018:28), and they have even purchased land in Fiji so their Nation has a place to go when this happens.
[12] Despite timely submission of the documents to the Assembly never formally reviewed this. However, this is not the focus of this paper; the reasons have already been discussed by Mezza-Garcia (2020).

within a lagoon created by a coral reef surrounding Tahiti– added its spatial extraterritoriality. Moreover, implementing blockchain governance infused a digital dimension to its extraterritorial nature.

Innovations in specialized projects, such as the SeaZone, *complexify* setting them up. Each novel element where a jurisdiction considers innovating and that is added to the design or operation amplifies its complexity and demands careful consideration and planning.

The Island's complexity was why I chose a complex systems research lens. As Gerrits (2012) discusses in Punching Clouds, complex systems cannot be neatly boxed into simple cause-and-effect relationships. Instead, complex systems are characterized by interdependencies, feedback loops, and emergent properties, like clouds' unpredictable and ever-changing forms. Thus, their study requires the right frames of analysis. In this case, concepts of complex governance.

That being said, in this paper, I present the results of a document analysis I conducted while doing ethnographic research with participatory observation in the Floating Island Project in French Polynesia as part of the completion of my doctorate degree at the University of Warwick in the UK.[13] The discussion of complexity in the paper adds value to both fields, complexity and Special Economic Zones. It allows for a deeper understanding of the multifaceted and interconnected nature of legal and institutional structures preceding and/or influencing Zones. By applying complexity theory, the paper highlights the intricate challenges and considerations involved in establishing new jurisdictions. Specifically, the complex governance concept of nestedness helps see the governance framework surrounding the Floating Island. It helps with my argument that establishing new Zones and special jurisdictions requires dealing with the complex, nested regulatory systems already in place, and doing so is challenging and inescapable. As obvious as this may sound, as a practitioner, I have encountered more instances than I can count where projects, groups, developers, government regulators, entrepreneurs, founders, investors, or Startup Society aficionados think otherwise.

This paper is split into five sections. The next section describes the theoretical framework of complex governance. It is followed by the methodology employed. Next, I discuss regulatory aspects of the Floating Island, including immigration, real estate, free zones, floating and crypto regulations. A discussion aimed at practitioners working with SEZs follows at the end. Readers interested solely in the legal framework and not in this research's methodological or theoretical aspect can jump to Section 4.

[13] I became involved with Blue Frontiers, the project's managing company, approximately eighteen months into the PhD. I first volunteered for the project for 8 months, and later transitioned to staff, becoming the Project's podcast host and international (not local) spokesperson/communicator under the title of *Seavangelesse* or evangelist of the Sea. From mid-2017 to mid-2018, I traveled to 5 continents and attended and organized conferences, workshops, and project events around the world. I also lived in the same Tahitian villa for 3 months with the project founders.

2. Theoretical Framework: Complexity Theory & Complex Governance

This paper utilizes concepts from complex governance, a field that applies complexity science to understand governance systems, to analyze the SeaZone's pre-existing legal framework or structure[14] from where it would have branched out. Understanding governance as complex comes in handy because, as we shall see, SEZ's legal frameworks are embedded into a tangled web of regulations and institutions. Complex systems theory has developed frames of analysis to study these kinds of systems. Note that complexity is not a synonym of complicated but a particular property of complex systems, as described below.

The idea that governance is complex is not new. The social sciences, especially political science, increasingly acknowledge that human social systems are complex (Mitleton-Kelly, 2003a, 2003b; Sawyer, 2005; Sanderson, 2009; and others), and this has led to more scholars incorporating a complexity framework into social science disciplines (see: Castellani and Hafferty, 2009; Omerod, 2012; Mitleton-Kelly, 2003b; Byrne & Uprichard, 2012; Byrne and Callaghan, 2013; Gerrits, 2012; Batty, 2013; Walby, 2003a, 2003b), despite complexity studies' origin in more "hard sciences".[15] This science, the science of complexity, therefore, as tautological as it may sound, focuses on studying systems that are complex.

Complex systems are described as having numerous, nonlinearly interacting elements. They are diverse, interdependent, self-evolving, and influenced by their histories (Cilliers, 1998; Gerrits, 2012; Mitchell, 2011; Rescher, 1998; Wolfram, 2002; Walby, 2003a, 2003b). Order and structures within these systems emerge through local interactions and without centralized control (Holland, 1995; Nicolis & Nicolis, 2012). However, local interactions in complex systems can denote physical or informational proximity. This means that remotely located elements or even far away elements can maintain direct connections.[16] This is in part because boundaries with their environment are open, because the levels of a complex system can be blurry. After all, there is cross-level influence and exchange of energy, matter, and/or information, leading to interaction, influence and communication throughout all levels of the system. Many, if not most, animal social systems, including human social systems and their legal systems, exhibit properties of complex systems.

[14] Structure and framework are here used interchangeably.
[15] Hard science is the term used to define natural and physical sciences that study the universe through theories, hypotheses and experiments. The subjects that are included in this category are physics, math, chemistry, biology, anatomy, and astronomy, to name a few.
[16] This is exemplified in complex digital systems such as internet networks.

Legal systems like the ones I discuss here are considered complex systems because, although they may originate from central entities (governments), they evolve over time through the interactions of numerous participants, including lawmakers, judicial systems, enforcement agencies, private companies, interest groups, and the public. These interactions often occur nonlinearly and are influenced by various social, political, and economic factors, leading to emergent behaviors and outcomes that are not always predictable or directly controlled by the central entity. Additionally, the interpretation and application of laws can vary, adding further complexity to the system. An easy-to-understand example of a complex governance system is the European Union. Countries and their parties are their underlying elements, and politics drives the information flows. Interests from one country can travel the EU network and scale up in the EU legal hierarchy. They can become general policies that affect other members even if these do not share borders with the original proponent. This shows the complex, nonlocal, yet local, information flows in complex legal systems. This nonphysical travel of information leads to complex systems emergent structures. Like the regulatory frameworks I present here, many are tangled webs with networked topologies (see: Solé, 2009)[17].

In the last two decades, the literature studying complexity in governance has surged. Like with complexity, complex governance is a field and an adjective. Something is complex, but complexity (sometimes called complexity theory, science or simply complexity) is the science of studying complex phenomena (Maldonado & Gomez-Cruz, 2010). Likewise, complex governance is governance with features of complex systems, but it is also a field of research studying these types of systems and behaviors.

As a field, Morçöl (2014) defines complex governance as an amalgamation of governance, network, and complexity studies. As a concept, complex governance is described as governance that spans multiple dimensions, stakeholders, and scales (Vella & Baresi, 2017). Other similar perspectives focus more on the network nature of the latter, as opposed to the elements themselves. Jessop's (1997) definition of complex governance is closer to my approach. He describes it as "the art of steering multiple agencies, institutions, and systems that are both operationally autonomous from one another and structurally coupled through various forms of reciprocal interdependence." This becomes a useful definition to comprehend why private SEZ developers need to engage with existing governance structures, and why I focus on what are

[17] Complex systems properties were originally identified and systematically understood in biological and chemical systems (Prigogine, 1977; 1978; Gell-Man, 1995; Nicolis, G & Prigogine, 1977, Nicolis & Nicolis, 2012) as well as in physical systems (Prigogine & Stengers, 1983, Turing, 1990). However, complex systems do not exclusively belong to these realms. The study of complex systems spans a wide array of subjects, encompassing phenomena as diverse as ant colonies (Gordon, 2010), fungi networks (Babikova et al., 2013), large infrastructure projects (Gerrits and Verweij, 2018), cities (Sassen, 1994; Batty, 2018), human societies (Bar-Yam, 1997), the internet (Barabasi, 2014; Solé, 2009), biological organisms (Solé and Goodwin, 2000), and life-like systems (Bedau, 2007; Iordache, 2012).

the regulations that were in place for the topics the SeaZone sought. Despite how useful complexity can be for Zones, Zones, only a handful of publications use a complexity perspective to discuss them.[18] The number of academic publications discussing Special Economic Zones and the concept I use here–nestedness–is even more limited, despite how resourceful it is.

Nestedness is a property of complex systems that can be defined as a hierarchy of systems encapsulated within one another (Simon, 1962), similar to Matryoshkas (Russian Dolls). Nestedness is visible across biological systems (Oltvai and Barabási, 2002), societies (Simon, 1962; Cilliers, 1998), and even the construction of digital spaces like the internet (Barabasi and Bonabeau, 2003) or what Bratton (2016) calls The Stack[19]. From cells to tissues, organs, and organisms to the overarching biosphere, complex systems are organized through levels and hierarchical organization. Nestedness in governance, thus, refers to the encapsulation of multiple institutions and layers within each other, constructing intricate governance frameworks (Vella and Baresi, 2017; Gómez Lee and Maxfield, 2017; Haarstad, 2016; Zia and Koliba, 2011; Hamilton and Lubell, 2017; Lubell et al., 2017).

That being said, it is important to distinguish nested systems from multi-level structures. In nested systems, while higher levels encapsulate and may constrain lower ones, lower ones can also influence higher ones. For example, a successful SEZ can lead to national reforms (Moberg, 2015). The point I am alluding to is that while nested systems are hierarchically organized in levels, information exchange does not necessarily follow the top-down hierarchy. Information can flow bottom-up, stay in place, go elsewhere, etc. This is one reason why Zones, as the "smallest" level of governance in a system of institutional

[18] Most Zone publications that appear on online searches surface because of the colloquial use of complexity as a misused synonym of complicated. That being said, there are authors (Devadas and Gupta (2011) and Cooke and Fangzhu (2012) do look at Zones, specifically Chinese Zones and urban Zones using notions of complex systems such as a lack of centralized control and a systems dynamic methodology. Others, such as Lagendijk et al. (2009), center on the interplay of various types of governments in Zones. Likewise, Man & Chen (2020) investigate the urban growth patterns of the Shenzhen SEZs through the lens of fractal dimensions analysis and models including sigmoid functions. Mezza-Garcia (2019) uses complexity's self-organization concept to discuss governance of the Floating Island Project, and Fragkias & Seto (2009) explore urban evolution in the Pearl River Delta's metropolitan areas where many SEZs are located—Shenzhen, Foshan, and Guangzhou—by employing a multidisciplinary approach that incorporates various concepts from complexity theory, such as emergent phenomena, nonlinear dynamics, interconnectivity, self-organization, and scale-free patterns. They do so to study the evolution and sustainable development of urban forms in Chinese metropolitan areas. Similarly, Gomez-Zaldivar et al. (2019) use the theory of economic complexity developed by renowned complexity authors to assess how the establishment of Mexican SEZs might encourage diversification and sophisticated production within the states where these zones are located. In a similar way, Zihao & Wenting (2019) look at network effects and proximity to analyze the influence of Special Economic Zones in Chinese exports. Lastly, Gomez-Zaldivar & Molina-Perez (2020) also use the economic complexity methodology to investigate how Special Economic Zones (SEZs) could catalyze productive capabilities and potential for structural change in the less developed southern states of Mexico.

[19] The system formed by: user-interface-address-city-cloud-Earth

hierarchies, can have autonomy. Similarly, SEZ developers can negotiate with a host Nation, even though the host Nation is higher in the hierarchy.

In nested systems, information processing occurs through network interactions at various scales involving many structural parts (Eberbach et al., 2004; Goldin et al., 2006; Dodig-Crnkovic, 2011; Schneider, 2012; Burgin & Dodig-Crnkovic, 2013). Unlike multi-level systems, cross-level interactions are characteristic in nested systems. Thus, nestedness in complex systems makes it difficult to segregate them into micro and macro scales (Gerrits, 2012; Gell-Man, 1995). When establishing a new Special Economic Zone (SEZ) or similar framework, it's essential, therefore, to engage with all parts of the structure, considering their non-linear dynamics. While simplifying existing governance systems is part of creating SEZ legal frameworks, the complexity, and multitude of elements present challenges and require time.

In the context of creating new jurisdiction with legal extraterritory, such as an SEZ, engaging in this process knowing it is challenging has higher success chances than working as if assuming that there are no structures in place, as some seasteading projects that have taken the post-anarchist route have done[20, 21]. The results also contrast with the beliefs and actions of those who think establishing a jurisdiction is as simple as finding a nation willing to trade its land and/or sovereignty for a few million dollars or less.[22] In this context, my definition of legal nestedness refers to a jurisdiction's hierarchical institutional structure and its interconnected regulatory network. Each jurisdiction is embedded within a larger one, operating with a degree of autonomy while being part of a broader, interconnected network. This structure allows for mutual influence between different levels of the system. Entrepreneurs establishing new legal jurisdictions must navigate and untangle this complex structure.

In complex governance literature, the concept of "tangled" appears often associated with nestedness. Parts of a nested system are tangled because they are interconnected within a network where all levels can influence each other (Brenner, 2001; Rowe and Bavinton, 2011; Clarke, 2007). My example above of the European Union illustrates this "networked togetherness." In the context of creating new legal jurisdictions (SEZs), the fact that nested systems are tangled is key as it highlights the complexities SEZ entrepreneurs face in creating new jurisdictions. They must untangle pre-existing relations, institutions, and

[20] Post-anarchism refers to acting as if governance structures were not in place. In this context, an example is Ocean Builder's Thai floating home placed in Thailand's exclusive economic zone and claiming sovereignty in 2019 (Wikipedia Contributors, ND).

[21] I expressly say "in this context" because there are many instances where the post anarchist route is more justified and produces part of the desired results, such as the actions of the Animal Liberation movement. Unfortunately even for that case, the individuals who conduct the acts are many times prosecuted due to the existing structures in place.

[22] Yet, there are projects that do take the post-anarchism route taken by some previous seasteading attempts or by projects that think that the right strategy is to first create the legal framework, and only after to find a Nation willing to concede to it.

regulations, which is challenging given that many zones are established with exceptions to existing rules. That a Zone's starting point is tangled makes an already difficult process even more so.

3. Research Methodology

The main research method for this paper was document analysis. This document analysis took place while conducting ethnographic-like research through participatory observation (see: Herbert, 2000). Participatory observation is a research method consisting of a systematic observation by the researcher while actively engaging within the community (Guber, 2001), and where the researcher integrates into the community she is part of, but never fully becoming one of them. Indeed, to conduct this research, I had two distinct roles: I was a doctoral candidate researching the Floating Island (external), and later a company contractor working as the project's international (not local) spokesperson (internal). This was *ouvert* research, meaning that everyone I interacted with openly knew of my researcher role.

Throughout the data collection process, data was initially gathered from weekly project meetings, calls, and marketing documents. Besides weekly meetings, the research's most important data collection method was document analysis, which involved systematically analyzing and evaluating marketing and legal documents (Bowen, 2009). These served as "stable" reference points, which is useful when researching an ongoing project, as Merriam (1988) notes—like the Floating Island.

Participatory observation comes with dual roles, and this often leads to epistemological tensions (Hammersley and Atkinson, 1995; Guber, 2001:61). This paper focuses exclusively on existing regulations and documentation rather than on my experiences as a participant. Therefore, this tension was excluded as much as possible from the information presented here. That being said, participating in the Floating Island did enrich my legal comprehension of the Project. It helped me discern the validity of some biased media representations and facilitated access to confidential information, which I was given permission to use afterward, such as the legal feasibility study (Thevenot, 2017; GB2A, 2017). This study outlined the aspects in which the Floating Island could obtain legal exemptions or need extra help in creating a new regulatory framework.

The research was done while under a Non-Disclosure Agreement. Therefore, this paper does not disclose the specific SeaZone concessions considered in the legal framework. However, I do reference public sources by Blue Frontiers and others, including the MOU, that speak to the Island's regulatory aspirations. For additional precautions and in compliance with the non-disclosure agreement, I consulted and received previous approval from the Company and shared with its representative the excerpts referencing the legal study.

However, the main documents that informed this research were other first-hand documents publicly available through Blue Frontiers' website and the French Polynesian government's online archive of regulations. I also consulted French Polynesian legal professionals. Besides these regulations, I meticulously examined the Project's environmental, economic, and location studies (Blue21, 2017; EMSI, 2017; Blue Frontiers and Blue21, 2017ls), and delved into reports focusing on energy, water, waste (Blue Frontiers, 2017e), and food (Blue Frontiers, 2017f) drafted in late 2017 by volunteer and staff groups. The project's cryptocurrency white paper also offered key insights (Blue Frontiers, 2018e), and so did the Company's Medium blog and various Seasteading Institute publications.

Another key document from which information was extracted is the Memorandum of Understanding signed between the private developers and the French Polynesian president. This document stated that the SeaZone regulations would address topics such as governance, labor, customs duties, international relations, flag and registration, immigration entry, and residence permits (MOU, 2017). I discuss the legal structure of each of these aspects to make my claim that a) it is difficult to create a new jurisdiction and b) when creating it, it is inescapable not to deal with existing governance systems; c) the structure of these systems is nested.

4. Complex Legal Framework in the Floating Island Project

The Floating Island Project offers a quintessential example of complex governance theory in practice. This section shows how nestedness, a fundamental property of complex systems, manifests in the project's multifaceted legal framework. What I present here is the Project's starting point, from which SeaZone's legal framework would have been created or departed. Seeing this legal framework is helpful insofar as it paints a clear picture of the complex systems Startup Society entrepreneurs must navigate.

The legal framework of French Polynesia predating the Floating Island was complex because it had multiple institutions, entangled regulations and cross-jurisdictions. Trying to create the Island's legal framework entailed navigating complexity because it meant carving a space within these overlapping institutions, jurisdictions, and rules so that the final product was competitive and autonomous.

To understand the complex governance framework of the Floating Island, it is important to realize that French Polynesia is institutionally nested within French institutions due to its history. To this date, France has an ongoing colonial relationship with Polynesia. French Polynesia is an overseas collectivity of France (Const. Fr, Art 74). This means its autonomy is similar to that of French regions (Const., Art 72). However, unlike French regions, for French laws to be applicable in French Polynesia, they have to specifically mention collectivities (Loi No. 2004-192: Art. 7). When France does mention Collectivities

within legislation, the Polynesian Assembly can spell out rules for their specific application (Loi No. 2004-192, Art. 11). However, for French Polynesia to modify its political relationship with France, it needs the French Constitutional Council's (Const., Art 46) and the French Prime Minister's approval. French Polynesia's Autonomy Statute, which granted Polynesia autonomy (Loi 2004-194: Art 47)–not independence–shows France's control in vital Polynesian sectors. Graphic 1 illustrates this.

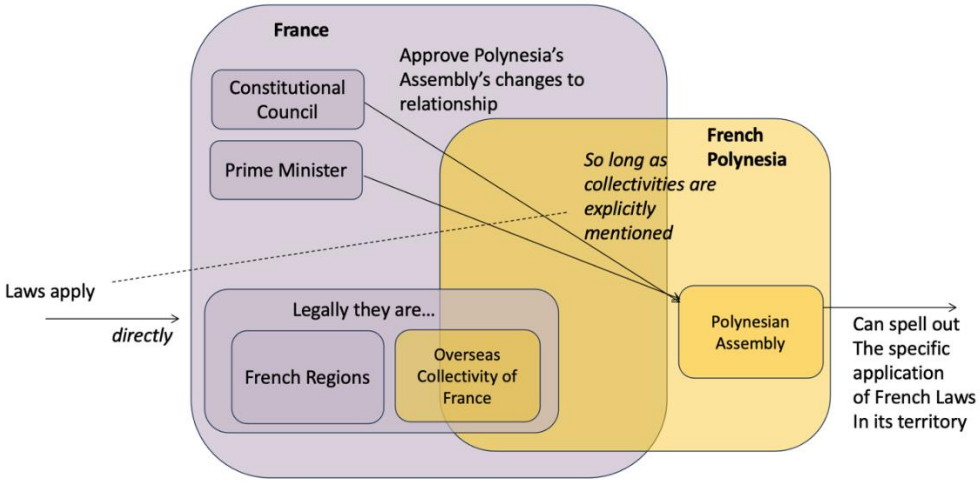


Figure 1. French Polynesia's nested structure

To have autonomy in its policy-making, the SeaZone developers sought to govern the island through one single private entity, at the most local level of this nested structure. This institution would have been called the SeaZone Authority. Had the project implementation succeeded, and the developers achieved the autonomy they wanted, the SeaZone Authority would govern the Floating Island's operations, from design to rule-setting (Blue Frontiers (2018e:28). It would mediate disputes and control the Island's desired and sole accepted currency, the Varyon (Blue Frontiers, 2018n). As for Blue Frontiers, the private company, it would supply utilities, infrastructure, and financial services (Blue Frontiers, 2018e). The following graph summarizes the roles.

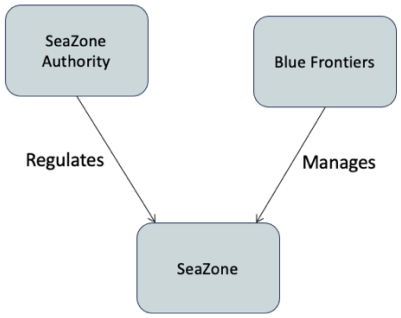
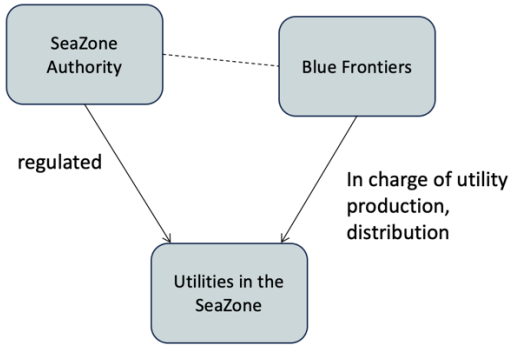


Figure 2. Sought legal and operating structure

Each concession the SeaZone sought would have a similar structure: the Zone Authority regulated and Blue Frontiers operated. For example, the Floating Island aimed to be autonomous in energy production (solar), desalinating water, harnessing rainwater, implementing closed-loop utility cycles, including composting toilets, allowing for water recycling (Blue Frontiers, 2017c; 2018c), and other off-the-grid solutions, as the following graphic show.



However, to manage waste, energy and water production, the SeaZone Authority needed to be given autonomy to regulate utilities. One of the local entities that need to opt-out from its regulations extending to the SeaZone's nested institutional framework would have been French Polynesia's Office of the Environment, which enforces regulations as per the Environmental Code (CDE, 2017)–a document that is itself influenced by and borrows from French regulations. Had this autonomy not been given, SeaZone's utility framework would have ended up looking like the simplified figure below.

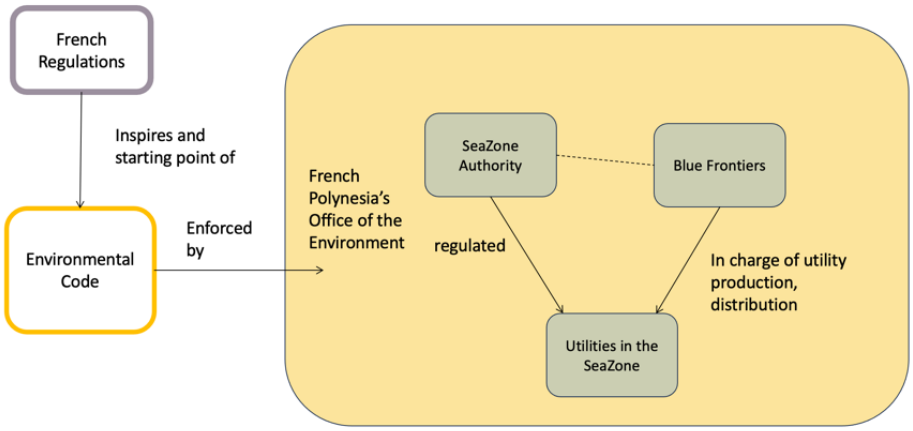


Figure 3. SeaZone utility nestedness

The nested framework was more complex for immigration matters. Located far from major global financial centers, SeaZone's regulatory framework needed to have competitive benefits (tax, finance, or otherwise) that would motivate prospective tenants.[23] One of the benefits could have been immigration reform. The developers wanted easy visa processing for their target market: Digital Nomads. After all, the biggest seasteading survey to date (TSI, 2014) characterized the seasteading demographic as being between 18 and 29 years old; 70% were unmarried; 20% had no children; 60% needed excellent WIFI where they lived; most were in engineering, software development, consultancy, entrepreneurship, and marketing fields; and 82% said they would be comfortable living in a 27m2 apartment. These results and my ethnographic research confirmed a need to seek a solid residence permit legal framework. This would have meant untangling existing French immigration regulations (Loi 2004-193).

Today, many citizens from around the globe can visit French Polynesia without a visa for up to three months. For most, staying longer depends on employment or being accepted into a local education institution. The Council of Ministers of French Polynesia approves work permits, following regulations from Polynesia's Autonomy Statute (Loi 2004-192, Art. 91) and the Labour Code (CM, 2011b; PM, 2010). This suggests that the Project needed National endorsement. However, due to Polynesia's status as an

[23] This is referring to the concept of jurisdictional arbitrage. In the context of businesses, this is done either by structuring transactions, locating assets, or organizing operations in a way to take advantage of more favorable laws, regulations, or tax regimes in one jurisdiction over another. In the context of seasteading, jurisdictional advantage consists of choosing to move your floating house away to a jurisdiction with a political system or regime closer to your liking.

overseas collectivity of France, the High Commissioner of the Republic (France) in French Polynesia (HCRFP) is generally the entity responsible for issuing residence permits.

Moreover, French Polynesia's Autonomy law states that immigration remains under the purview of the French State. Specifically, this means that: 1) France retains legislative authority over Polynesian immigration laws concerning entry and stay of foreigners, 2) Polynesia's foundational policies and laws related to immigration are typically established by France; 3) France has to approve any proposed local adjustments or changes to immigration-related matters; 4) immigration enforcement is carried out under the authority of the French State; and 5) France negotiates international immigration agreements on behalf of French Polynesia. So even if French Polynesia's Council of Ministers deals with work permits locally, this is done under French jurisdiction. In a nutshell, because Polynesia is not entirely sovereign[24], creating a legal framework with exceptions or new rules for the Maritime Special Zone in question entailed negotiating with institutions at multiple levels. Obtaining this regulatory exception would have been key for the project's objective to evolve from a 300-person platform to a much larger floating city. Most physical cities, with exceptions such as Burning Man or the nascent Zuzalu, require a semi-permanent population. Another problem was that many digital nomads work as freelancers, and therefore, they do not work for one single company that can back their residence application. So, untangling immigration rules was crucial for the Zone. The graph below shows the institutions I have mentioned and their regulations. Note how the SeaZone Authority is at the "smallest" level of the nested structure. Without an autonomous immigration framework, this is the framework under which the SeaZone Authority would operate for immigration rules.

[24] Note the distinction between autonomy and sovereignty here.

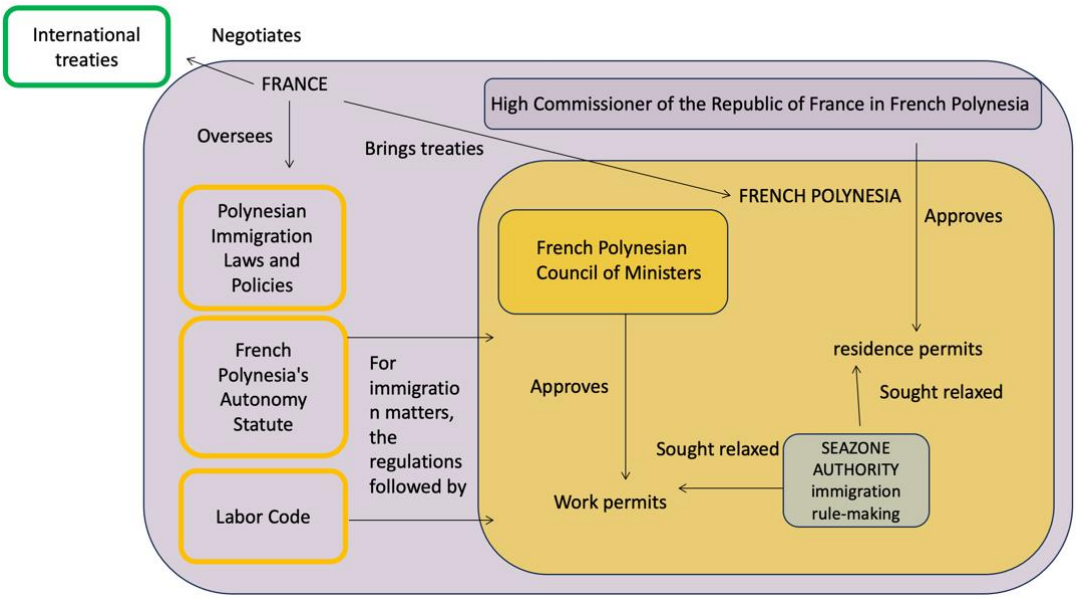


Figure 4. SeaZone Authority nested in immigration institutions and regulations.

The situation would have been similar for real estate investors. French territories offer various types of investor visas and permits, which allow foreign nationals to get a residence or citizenship if they make a significant financial investment in its islands. Many of these investors tend to be real estate investors. But regulations state that foreign individuals aiming to acquire property on the islands of Polynesia are obliged to obtain approval from the Presidency (APF, 1996; CM, 2011a), and many of the French institutions involved in regular work permits form part of this process too, including the High Commissioner of the Republic in French Polynesia. Graphic 4 illustrates this nested structure and the institutional overlapping.

Another important aspect for the project developers was governing the Island via its own cryptographic token, Varyon (Blue Frontiers, 2018h), used to fundraise. This nested framework included not only France but also the United States and China. The United States was part of the structure because at least 55% of the expected Project supporters were United States citizens (TSI, 2014). At the time the United States Securities and Exchange Commission (SEC) was prosecuting tokens crowdfunding through Initial Coin Offerings regardless of their place of issuance. The SEC argued it had jurisdiction when US citizens were involved or participated (SEC, 2013; Securities Act of 1933). While Varyon was a utility token, not a security, Blue Frontiers took the safer and less financially beneficial route: only US accredited investors were allowed to buy Varyon[25], since in the United States only accredited investors are permitted to purchase securities via private placements.

[25] A US accredited investor must have an annual income exceeding $200,000 USD or $300,000 USD together with their spouse, or their net worth must exceed $1,000,000 USD.

Chinese citizens could not buy the token either (Blue Frontiers, 2018e:13, 36). In 2018 China passed strict blockchain regulations (CAC, 2019). The government had control over blockchain content, including the ability to delete, ban, and prosecute, aligning with its strict anti-anonymity policies. Graphic 10 illustrates the institutions that framed the Floating Island's decisions and whose regulations it needed to navigate.

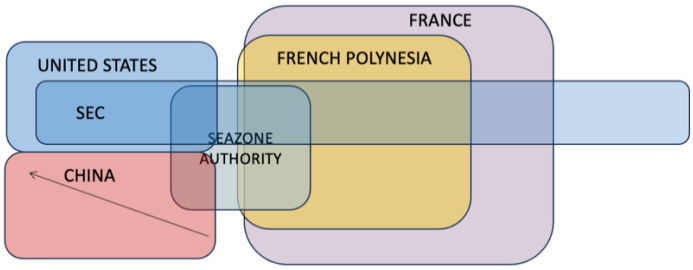


Figure 5. SeaZone Legal framework for Blockchain, Cryptocurrency, and Initial Coin Offerings and their regulations

Having a good tax framework is another topic relevant for the traditional seasteading demographic and people moving for jurisdictional arbitrage reasons. Special tax regulations were included in marketing materials of the FP (Blue Frontiers, 2017c) and in the Memorandum of Understanding with the French Polynesian government. It is not uncommon for Zones to offer tax exemptions or reductions to their tenants or residents–even if successful Zones aren't solely dependent on tax benefits (FIAS, 2008; Moberg, 2015a; Frazier and McKinney, 2019b). Yet, taxes are what attracts tenant companies and residents in traditional Zones. To offer the minimum that other Zones around the globe offer, the SeaZone needed to provide relief from contributions to the host Nation, which in French Polynesia often go to salary, wage, pension funds, maternity leave, and unemployment programs (APF, 1994; APF, 2012a; CGI, 2019).

The legal study noted existing tax exemptions (see CGI, Art 211) for real estate purchase (see CGI, 2019; APF, 2012b), income (CDI, Art. 178), and certain productive investments in economic development or the Nation's priority economic sectors (Loi 2003-660; Loi 86-824, 1986; CDI, Art 112). These sectors included tourism and hotels (Loi 2004-192; Loi 2014-12). Because tourism is Polynesia's primary revenue source, French Polynesian attorney and scholar Lallemant-Moe (2017) stated that the Floating Island could try to get similar tax concessions and subsidies to those given today to hotels (see: APF, 1995). To secure the them, the FIP needed to untangle nested legal and institutional frameworks. Specifically, it required the ratification of French Polynesia's Council of Ministers (CGI, Arts. 911-913), whose decisions on the matter largely conform to the French Tax Code (CGI, 2019a24:Art. 199; Loi 2004-192:Art. 7-8). Overall, the SeaZone Authority's jurisdiction of taxes could have ended up as a nested structure with it at the center

surrounded by French Polynesian institutions and France, which in turn adheres to European Union regulations (EU, 2012:26:Art. 198). Figure 6 synthesizes this idea.

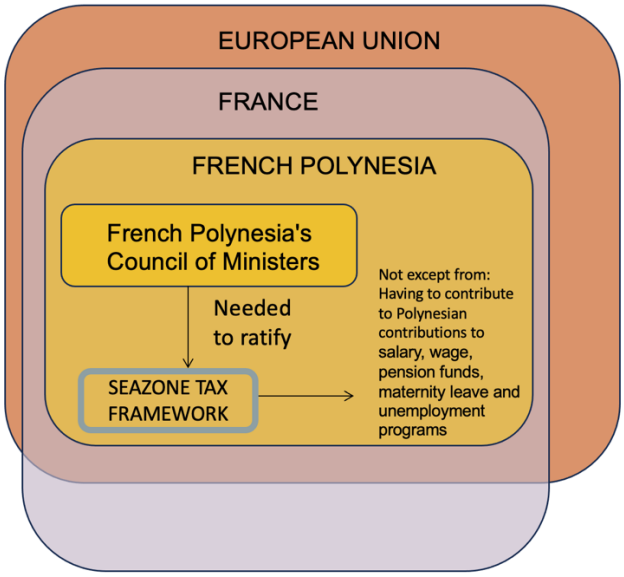


Figure 6. SeaZone tax framework if no untangling took place

In contrast, Figure 7 shows how the SeaZone framework would have been if the SeaZone Authority had full autonomy in tax regulations.

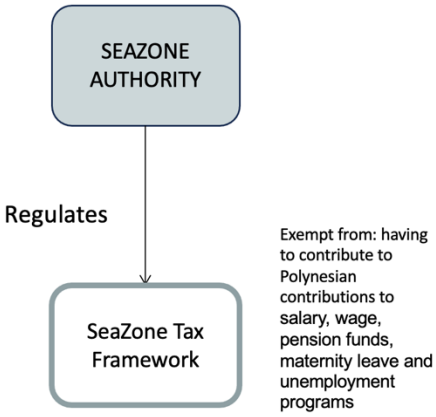


Figure 7. Autonomous SeaZone tax framework after untangling

Lallemant-Moe (2017a) also mentioned an existing regulatory framework for Free Zones that could make things easier for the SeaZone. He argued that the Polynesian Assembly could apply the existing Free Zone

framework and add more lenient labor regulations. Likewise, the legal study outlined that the SeaZone could have what Free Zones currently have plus more streamlined customs regulations (CDD, Art 286). Lallemant-Moe explained that because it is Polynesia, not France, who approves Free Zones (CCD: Art 2), it would have been easy to find autonomy within the nested framework, and untangling the regulations in that nested structure. Graphic 6 shows how the SeaZone Authority nested within the existing free Zone regime.

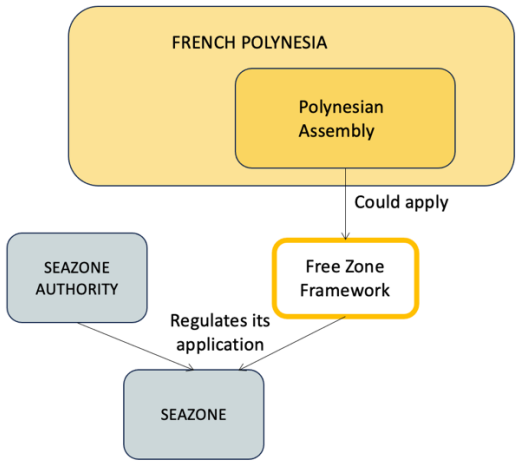


Figure 8. A simple application of an existing Free Zone framework

One aspect where Polynesia already had helpful legal precedent involved floating infrastructure. That the island floated was key. After all, without a floating component, the Project would essentially resemble conventional land-based zones (Steinberg et al., 2012:1543). As Stopnitzky et al. (2011) argued, without a distinct regulatory framework, there's little incentive to position a seastead within territorial waters. Thankfully for the project, French Polynesia is known for beautiful overwater bungalows, and it already has specific regulations governing floating dwellings. Legally speaking, these include structures or vessels designed for habitation, such as houseboats (Vice-président, 1983, Art. 2). Initially, floating dwellings in Polynesia were prohibited in 1983 (Vice-président, 1983). However, permissions were granted in islands like Bora Bora in 1985 (CM, 1985c), so long as owners were environmentally responsible and preserved the flora and fauna. In July 1994, French Polynesia issued an order claiming that establishing floating dwellings would entail a temporary occupation of public domain, and violators were subjected to fines. Later, the legal Bora Bora were extended to the Touamotu archipelago in 1987 and then to others.

This regulatory change hinted at the possibility of crafting governmental orders, permitting structures like the Floating Island, which are similar to villas on stilts. The ideal framework is pictured in the figure below.

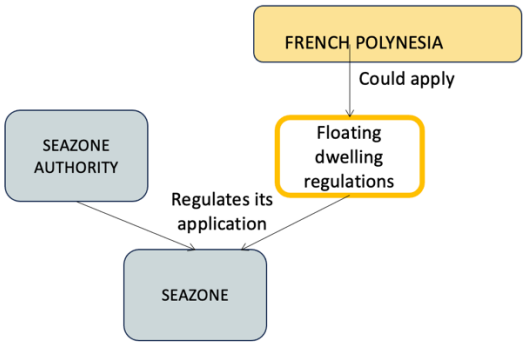


Figure 9. A simple legal framework for floating homes in French Polynesia

Lallemant-Moe (2017a), however, indicated this would not be as straightforward as it may seem. This is because, even if French Polynesia decided to allow completely floating homes, the FIP's desired location in Atimaono was not zoned for that use, and French Polynesia's Management Plan of Maritime Space does not include lagoons.[26] Moreover, French Polynesia's ocean belongs to the public domain (Loi 2004-192:Art. 47; Loi 94-631; CC, 1994; APF, 2014), the Nation ratified UNCLOS (Loi 95-1311, 1995) and private ownership of the public domain is restricted (Lallemant-Moe, 2017a). Even if the Assembly could, in principle, regulate this space and authorize leasing models in it (see: Loi 2004-192, Art, 91; CM, 2015s8: Arts. 4-5), it was not the only entity with jurisdiction over it. As the legal study noted, the location selection of the Project required approval from the commune's mayor and the Ministry overseeing finances and the public maritime domain (Loi 2004, 192, Art. 50). Also, the legal study indicated that, due to the SeaZone's environmental impact, it required endorsement from a government commission, including officials from land affairs, urban planning, and the environment department (CM, 2015; Loi 2004-192: Art. 6). In terms of specific regulations, the Environmental Code of French Polynesia would apply (Loi 2017-25; CDE, 2017; CM, 2018), and thus approval would have also been needed from entities like the Council of Ministers of FP, responsible for the Code's adherence and environmental protection. Hence, for the project developers, untangling meant negotiating with several of the entities present in Figure 10, their members, egos, policies, etc., until the SeaZone achieved a floating, autonomous framework for the specific location.

The nested institutional framework might have included not only domestic or national institutions. International treaties also needed to be navigated, including laws about common heritage spaces and the public domain, which state that these spaces cannot be owned by private parties. These international

[26] A lagoon is an often shallow body of water separated from the larger sea by a coral reef, barrier islands, or a sandbar.

considerations influencing local decisions alone demonstrate the unlikelihood of escaping existing governance systems.

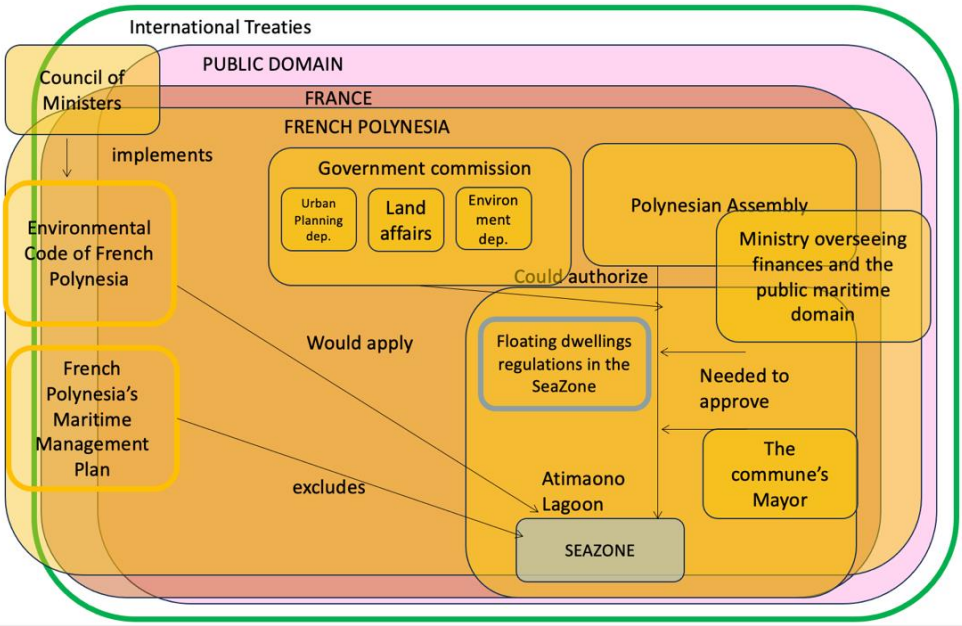


Figure 10. Framework concerning general maritime aspects of the SeaZone

That making a SeaZone is hard does not mean, however, that The Seasteading Institute's strategy of creating a SeaZone instead of seasteading was not reasonable, since building autonomous floating platforms in international waters presents its own issues. Creating seasteads in International waters is difficult, among other reasons, due to the absence of a clear definition for seasteads in international law or on the Law of the Sea (UNCLOS, 1982), which regulates international waters. Authors such as Galea (2009) and Lallemant-Moe (2017) suggest that seasteads might fall under vessels or artificial island classifications. This could be convenient given that several small Pacific island states are looking at artificial islands as a way to extend their territory in the wake of the rise in sea level. However, Lallemant-Moe (2017a, 2017b) argues that artificial islands are not a lawful remedy for nations at risk of disappearing or being submerged since artificial islands do not possess the same legal recognition as natural islands. According to the United Nations Convention of the Law of the Sea (UNCLOS, 1982: Art. 60), the creation of artificial islands doesn't change the territorial sea boundaries or impact the Exclusive Economic Zone of nations. This indicates that even if artificial ones replace natural islands, it won't safeguard the maritime jurisdictions linked to vanishing land (Lallemant-Moe, 2017a).

That being said, according to UNCLOS, coastal states can sanction artificial island construction within their Exclusive Economic Zone (UNCLOS, 1984: Art 56) and designate safety zones around them, restricting other state vessels (UNCLOS, 1984: Art 60). While these islands can possess a degree of autonomy, the state retains overarching jurisdiction, including over issues like immigration and safety (UNCLOS:Art. 56 and 1984:Art. 60). This state control opposes seasteading's autonomy objectives. However, the main issue continues to be a lack of artificial island classification in international waters, something Mutabdzija and Borders (2011a:24) previously noted.

Galea (2009:19) suggests that while artificial islands often correlate with permanent structures, floating platforms may have more temporary characteristics (Galea, 2009:53). She further clarifies that the UNCLOS explicitly excludes artificial islands from 'natural islands,' placing them in a unique international legal category. Lallemant-Moe (2017a), referencing Pancracio (2016), emphasizes that permanency in international waters can be deemed as an illegal occupation. Likewise, the Law of the Sea (UNCLOS, 1984: Art. 80, 87) restricts the installation of such islands in international waters by private entities. Lallemant-Moe (2017a) notes that states cannot claim sovereignty over these islands in international waters due to the common heritage principle (UNCLOS, Art. 89). This means that French Polynesia could not back the team seeking to create floating islands in the public domain, under that definition.

But what if these islands could be considered ships? The distinction between ships and vessels remains ambiguous, particularly in relation to seasteads (Bell, 2017b; Lallemant-Moe, 2017). Mutabdzija and Borders (2011a:23) highlight this ambiguity, citing the United States Code (title 47), which broadly defines a ship or vessel as any watercraft, excluding aircraft, used or potentially used for water transportation, regardless of its buoyancy status. Another section, Title 18, characterizes a ship as any watercraft not fixed to the seabed. However, Lallemant-Moe (2017a; b) emphasizes that ships are inherently designed for navigation. Ships also operate under a country's flag per UNCLOS (1982: Art. 91). Thus, the classification of this type of project presents its issues. If seasteads are considered ships or vessels, they must bear a flag from a recognized state, defining their nationality and establishing their adherence to that state's regulations and the international maritime law–which could, indeed, maybe be under an SEZ framework. But the implications of being classified as a ship mean that, for example, customs agents can, at any time, board people’s residences (CC, 2013). The Zone could have also used a Flag of Convenience.

The idea of a 'flag of convenience' arises from the practice of registering ships under the flag of a country with lenient regulations, often unrelated to the ship's actual operations or ownership. While this allows for operational advantages, such as reduced regulatory burdens or lower costs, Lallemant-Moe (2017) and Bell (2017) argue that using this approach might yield a different autonomy. After all, even a

Flag of Convenience for a floating project would be subject to some level of oversight and regulation by the flag state. This requirement stems from the principle in the Law of the Sea that calls for a genuine link between a ship and the state under whose flag it sails. Back in 2012, this issue influenced The Seasteading Institute's reconsideration of its approach to establishing seasteads in international waters and led to the strategy of creating Maritime special economic zones or SeaZones. This tension demonstrates that regardless of whether the floating platform exists in the high seas or closer to coasts, existing institutions and regulations apply. The task of Startup Society entrepreneurs is to try to untangle and navigate them instead.

A similar untangling, albeit more local, needed to happen for the project's terrestrial area or Anchor Zone. As noted by Bell (2017b), Anchor Areas or Zones would be integral parts of floating Zones. They would serve physical and legal transition areas from land to water and from the host nation's rules to SeaZone Authority's. As shown by the Project's marketing materials and location scan, the Project's Anchor Zone would have been the land of the Atimaono lagoon, in the Atimaono commune, in the Teva I Uta municipality. This would have led to a physical and legal nested structure: Teva I Uta is nested in Tahiti, which is in French Polynesia, where France has jurisdiction, which is part of the European Union, which oversees treaties France signs, many of which apply in Polynesia. Figure 11 merges physical and legal jurisdictions and territories to show this Matryoshka-like institutional and regulatory structure.

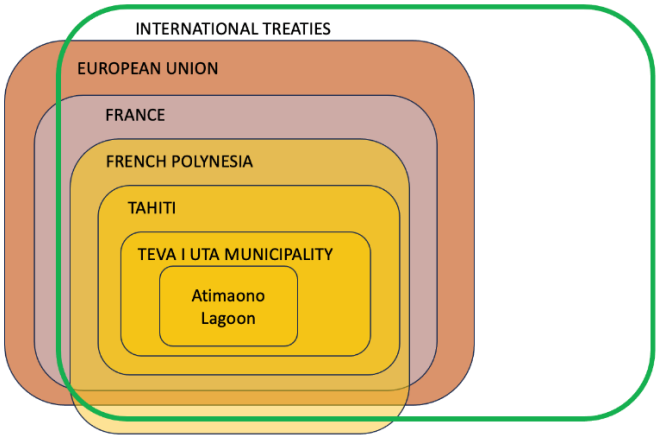


Figure 11. The SeaZone's location legal and physical nestedness

At the time of this research, Atimaono was zoned to spur Polynesia's economic development (Loi 2014-32). Former Blue Frontiers managing director Collins Chen, who founded a competing company while the Company was working on the SeaZone, argued on Polynesia's national television that the Floating Island Project aligned with Polynesia's economic objectives (TNTV, 2018). In reality, its regulations rendered

Atimaono incompatible. Atimaono's zoning was limited to leisure, golf, archaeology, tourism, and small commerce (MPF, 2018; CM, 2009a)–not residential or financial. Establishing a different zoning framework meant creating new regulations or exceptions to current ones that prohibit significant alterations to the landscape (CM, 2010: CM, 2019: 114). For this aspect, the institutions in the nested structure included all those mentioned above, plus Teva I Uta municipality's Institution for Management and Planning and the Office of Agriculture. The nested structure also included personnel; Namely, Polynesia's Vice President Teva Rotfritch, who at the time was Minister of Economy, Finances, Large Projects, and the Blue Economy (APF, 1985; CM, 2014).

And last, had the SeaZone pursued an autonomous framework for health regulations, the legal study identified that for human medications, trade, illness prevention, and cross-border threats, EU regulations would have applied (see: EU, ND). World Health Organization regulations would also have been applicable by proxy (WHO, 2017, 2019). And because of France's endorsement of various global health treaties, the SeaZone developers would have been forced to navigate UN conventions, such as the 1961 Convention on Narcotic Drugs and the 1997 Oviedo Convention. Figure 12 shows the simplified version of this nested health institutional framework the project needed to deal with, depart from, navigate, and/or untangle.

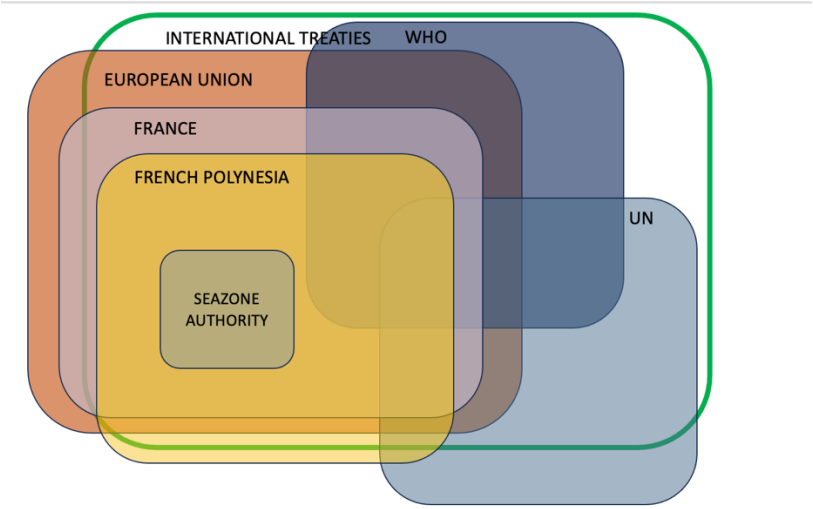


Figure 12. Existing health nested institutional framework

Through the above examples, I demonstrate that SeaZone Authority's regulatory framework for the Floating Island necessitated the endorsement of multiple institutions or required exceptions from their rules. The Zone would have also had to try to find a comfortable place of exception within larger international institutions and, most importantly, a place in harmony with local systems such as the municipality and other

local government bodies. Without this, Polynesia and even France's support would have been inconsequential.

These observations about preexisting, surrounding systems that needed to be considered when creating a Zone or similar demonstrate complexity theory in a practical setting. They also provide a good understanding of the legal landscapes Startup Society entrepreneurs must navigate.

As a generalizable lesson, Startup Society entrepreneurs must be creative in finding ways of making a competitive legal framework based on the level of authority possible given the nested structure. Whether this is fully untangling or just navigating the complex governance structures can simply not be ignored.

5. Conclusion

Examples of Startup Societies that are legal and physical extraterritories, such as Special Economic Zones or Special Administrative Regions, are becoming more common worldwide. Several are on the cutting edge of what Startup Societies can be. SpaceX, for instance, is advancing in its mission of the establishment of human settlements with spatial extraterritoriality on Mars. While their legal frameworks do not exist yet, they are an undeniable future reality. And while the Floating Island did not materialize, for reasons discussed in Mezza-Garcia (2020), analyzing its legal framework and legal context is useful for special jurisdiction and Startup Societies developers and/or entrepreneurs–whether these are traditional, land based SEZs, water-based, or even in outer space.

But, as shown above, these complex systems are not created in a legal vacuum, and it is not easy to make existing legal structures less complex or to escape existing ones, when creating a new jurisdiction. To this date, legacy Systems continue to play a key role in defining the boundaries of special jurisdiction autonomy. Thus, entrepreneurs must undergo a comprehensive examination of the complexity involved in forming extraterritorial systems, and the role played by these legacy systems, such as Nation-states and even political parties, in their creation.

Extraterritoriality only amplifies the need for alignment with these traditional governance structures. Ignoring this requirement is unrealistic and often more expensive. As complexity scientists know, complexity cannot be successfully ignored. And while the scientific meaning of complexity is not a synonym for complicated, it often does make things harder. At the same time, the process of navigating regulations, untangling them, and establishing a new framework must be done delicately. If done incorrectly, it usually only increases complexity and costs and can lead a project to failure, like with the Floating Island. Even a project like the FIP, which stated its main goal was to decentralize governance (Blue Frontiers, 2018h), could not escape from centralized institutions. Although trust, local stakeholders,

colonization, history, economic, cultural, political ideology, reputation, strategy (or lack of) and historical issues were more responsible for the Floating Island's demise than the complexity (Mezza-Garcia, 2020) the important point is that no location exists in a legal vacuum, not even locations that are in an actual physical vacuum of some sort, like those in space.

Thus, by examining the unique case of a floating Special Economic Zone called Floating Island and grappling with its intended framework's nested institutions and tangled regulations, my aim was to highlight the legal scenario Startup Society entrepreneurs must navigate to establish a new jurisdiction's desired rules and, most importantly, their exemptions.

Knowing this is important because it helps to know that the autonomy of special jurisdictions is contingent upon the permissions and constraints set by the institutions that precede it in their nested structure. And therefore, navigating complexity to strive for autonomy requires a balanced and practical approach, which entails intertwining the new jurisdiction within existing structures. While ease of doing business, technological advancement, and innovative industries are what will drive Next Generation Startup Societies' growth, the legal nestedness will define what is possible.

As demonstrated in the paper, founding a startup society is like climbing a multi-story building filled with a knotted rope. A developer must scurry up and down the stairs, identifying and untying a knot on the 12 floor in order to address a knot on the 3rd. All of this must be planned while the rope is moving, the clock is ticking, and the bank is draining. While risking stating the obvious, through this paper I sought to show creating new jurisdictions is complex. And while complexity does not always mean "complicated" or "hard", in the case of new jurisdictions, it certainly does.

Only by acknowledging this complexity, its corresponding difficultness, and proceeding accordingly, can new jurisdiction entrepreneurs and developers create one successfully.

Disclaimer

The author had a small equity participation in the Floating Island, and participated in the creation of some of the documents mentioned here, such as the complementary studies done by volunteers and staff. She is also part of the founding team of the Catawba Digital Economic Zone, where she now serves as acts as Chief Operating Officer.

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Private Cities, the Metaverse and the Future of Non-Territorial Governance

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Abstract:

This paper investigates the potential of non-territorial governance, specifically virtual jurisdictions enabled by the metaverse, for lowering transaction costs of institutional experimentation. It is separated into two parts: in the first one, the author argues that more competition is needed in the sphere of governance and that emergence of cities-as-firms could accelerate evolution in governance. The paper establishes the Coasian case for private cities and provides real-life examples of "almost private" cities demonstrating that the idea of private governance is gaining momentum. The paper then outlines three types of obstacles–economic, regulatory, and political–that undermine the development of private and semi-private cities today, slowing down the quest for more optimal governance models. The second part is dedicated to non-territorial governance as a shortcut that private cities can use to circumvent the above-mentioned obstacles. Finally, the author explains how the metaverse–an emerging virtual realm that enables the peaceful coexistence of multiple societies–can act as a platform for unconstrained testing of new rules, strategies, and technologies. The paper ends by discussing the instruments that the metaverse grants to institutional entrepreneurs and the possible directions of the sector's evolution in the coming years.

Keywords: special jurisdiction, private city, transaction costs, non-territorial governance, metaverse.

Resumen:

Este artículo investiga el potencial de la gobernanza no territorial, específicamente las jurisdicciones virtuales habilitadas por el metaverso, para reducir los costos de transacción de la experimentación institucional. El artículo se divide en dos partes: en la primera, la autora sostiene que se necesita más competencia en el ámbito de la gobernanza y que la aparición de ciudades-como-empresas podría acelerar la evolución en la gobernanza. El artículo establece el caso coasiano para las ciudades privadas y proporciona ejemplos de la vida real de ciudades "casi privadas" que demuestran que la idea de la gobernanza privada está cobrando impulso. Luego, el artículo describe tres tipos de obstáculos—económicos, regulatorios y políticos—que socavan el desarrollo de ciudades privadas y semi-privadas en la actualidad, frenando la búsqueda de modelos de gobernanza más óptimos. La segunda parte está dedicada a la gobernanza no territorial como un atajo que las ciudades privadas pueden utilizar para sortear los obstáculos mencionados anteriormente. Finalmente, la autora explica cómo el metaverso—un reino virtual emergente que permite la coexistencia pacífica de múltiples sociedades—puede actuar como una plataforma para probar sin restricciones nuevas reglas, estrategias y tecnologías. El artículo concluye discutiendo los instrumentos que el metaverso otorga a los emprendedores institucionales y las posibles direcciones de la evolución del sector en los próximos años.

Palabras clave: jurisdicción especial, ciudad privada, costos de transacción, gobernanza no territorial, metaverso.

1. Introduction

History has seen many attempts to create enclaves of freedom to boost economic progress. The need to obtain permission from the host country, however, has always remained the main bottleneck. Barriers are generally higher in countries suffering from the weak rule of law — which, in turn, are precisely the same countries that would benefit most from such projects. With that in mind, institutional entrepreneurs explore the possibilities of non-territorial governance. Unconstrained by location, virtual jurisdictions could move from ideation to action radically faster than their less agile physical counterparts. That would allow institutional entrepreneurs to test-drive new governance models without cutting through red tape, complying with democratic procedures, or reaching a critical number of residents. Later, models that prove their workability in the laboratory, so to say, could be implemented in real-life jurisdictions, eventually challenging — and changing — public institutions. Apart from being laboratories to test new rules, such entities could become legitimate parallel economies unconstrained by the multiplicity of barriers present in the brick-and-mortar economy. The tectonic lifestyle changes of recent years have made physical location less relevant, while the growing interest in the metaverse environment opens new opportunities for virtual jurisdictions.

Part I — The quest for institutional competition

1.1. Cities-as-firms: Hayek, Coase, and the case for private governance

A full-scale war at the gates of Europe, the lingering effects of the global pandemic, the global political instability–an unfortunate combination of all those–has prompted Collins Dictionary to choose ‘permacrisis’ as the word of the year 2022. The phenomenon is defined as “an extended period of instability and insecurity, especially one resulting from a series of catastrophic events” (Collins Dictionary, 2022). Historically, every major crisis has the power to accelerate the discovery of novel approaches to human action–new ways of collaboration and communication, conducting businesses and governing societies. Both the public and the private sectors are involved in this discovery process, yet the different set of incentives faced by government employees versus private agents creates different dynamics, leading to effectively different results.

Back in 1945, having just witnessed another global crisis, Austrian economist Friedrich von Hayek, the future Nobel laureate, demonstrated the power of prices to convey crucial information about the ever-changing societal preferences. “In a system in which the knowledge of the relevant facts is dispersed among many people, prices can act to coordinate the separate actions of different people”, he wrote in The Use of

Knowledge in Society (1945). This ability of market price signals to accumulate dispersed knowledge is particularly vital at times of uncertainty when changes are happening at such a pace that no single planner is able to keep track of them. Neither elections and polls nor even the most sophisticated and pervasive web-based tools of today can capture these changes as efficiently as the profit-and-loss mechanism would.

This gap between the governments' rigidity and the private enterprises' agility has prompted some thinkers and practitioners to investigate whether governance can be privatized as well so that municipalities would face incentives similar to those faced by market agents. A number of scholars, including Foldvary (1994), Beito (2002), Tabarrok (2002), Pennington (2004; 2014), Cox and Gordon (2007), Andersson and Moroni (2014), Bertaud (2018) and others, have examined the potential of private agents to provide municipal services — something that is traditionally placed within the state's domain. Privatising public goods on the local level would facilitate knowledge-sharing, aligning the goals of producers and consumers of urban goods and services, eventually leaving both better off. On the other hand, the fragmentation of urban canvas between numerous competing firms comes with a cost. Even the advocates of private governance (e.g., Rajagopalan & Tabarrok, 2014; Andersson & Moroni, 2014) admit that such piecemeal privatisation of a cityscape may result in higher transaction costs.

To solve this apparent dilemma, we can look at private governance through the lens of the theory of the firm developed by another Nobel-winning economist, Ronald Coase. One of his key insights considered the economic rationale behind firms. The Coasian theory states that, although the market is generally more efficient in allocating resources, sometimes market agents choose to unite into hierarchically governed firms— "little planned societies" —to minimise transaction costs inevitable in the process of market exchange (1937). The prevalence of transaction costs in municipal governance suggests a market opportunity for entire private cities similar to the Coasian firms.

A growing number of authors (e.g., Rajagopalan & Tabarrok, 2014; Lu, 2016; Quirk and Friedman, 2017; Gebel, 2018; Beyer, 2022; Lutter, 2021; Kichanova, 2022) argue that to be subject to the same market dynamics as for-profit companies, entire cities could be developed and governed privately. Like employees in the Coasian model, residents of such cities would voluntarily delegate some of their decision-making power to the private developer/governor for the sake of convenience and efficiency. Developers, in turn, would be incentivised to satisfy the residents' desire for good governance. As a result, the developer's goal — to make a profit — would be aligned with the resident's goal: to live in a safe, comfortable, and wealthy city. Should a resident be unsatisfied, she can choose to move to another city, thus reducing the developer's revenue. Such foot-voting, in the spirit of Charles Tiebout (1956), subjects municipalities to the same market forces that private entrepreneurs deal with, allowing for real-time fine-grain adjustments to the ever-changing societal preferences.

The emergence of the market for private governance would create a profit opportunity for developers, a wider choice of rules of cohabitation for citizens, and an accelerated institutional evolution for the benefit of the whole society. Notably, that would also encourage "competition between incumbent and potential governments" (MacDonald, 2015), eventually forcing conventional municipalities to evolve as well. While such cities-as-firms remain largely a theoretical concept so far, there are signs that the idea of private governance is gaining popularity.

1.2. Almost private: Cities-as firms and where to find them

While a 'pure' private city[1] is practically a non-existing phenomenon, there are real-life projects that share certain crucial aspects with hypothetical private cities. Such semi-private cities are rare, but they do exist, providing valuable insights into how 'pure' private cities may function. Those cities may be privately developed but not necessarily privately governed — the classic example is Gurugram (formerly Gurgaon) in India, a booming financial hub just outside Delhi (Rajagopalan and Tabarrok, 2014). Alternatively, they may be publicly developed but privately governed — such was, until recently, the city of Sandy Springs, Georgia, in the U.S. (Porter, 2014). Yet another strand of semi-private cities are developed, managed, and governed by private firms yet stand on public land, remaining subject to national laws. To some extent, they resemble homeownership associations, yet the scale makes them stand out. Examples are found in such diverse regimes as Guatemala (Cayalá), Pakistan (Bahria Town), and the United Arab Emirates (Dubai Sustainable City). Another layer of complexity is added when cities like that obtain the status of special jurisdiction and a partial exemption from national law. Honduran emerging 'charter cities', such as Próspera and Morazán, fall into this category, coming arguably as close to a 'pure' private city as possible in the given circumstances.

The gradual erosion of the nation-state dominance (Bell, 2018; MacDonald, 2019) under the pressure of globalization and the rising political, economic, and cultural status of big cities (Florida, 2005; Glaeser, 2011), coupled with an increasing ability of people to vote with their feet, altogether amplify the pressure for more agile, competitive, and innovative governance models. National governments can foster this competition by establishing special economic zones (SEZs) — geographically demarcated areas with relatively relaxed regulations to attract foreign direct investment (Farole & Akinci, 2011). Privately-run SEZs demonstrate better results than conventional, publicly governed ones (Moberg, 2015). All these

[1] Hereby I define private city as a (1) permanent and densely settled place (2) with administratively defined boundaries, (3) whose members work primarily on non-agricultural tasks, (4) which is owned, managed, and governed by a private entity, and (5) is not subject to public authority. I provide the justification of this definition in my doctoral thesis titled *Cities as Firms: The Coasian Case for Private Urban Development* (2022).

factors explain the rising interest in private cities not just among libertarian visionaries (e.g., Gebel, 2018; Castle-Miller, 2018; Bell, 2021) but even among mainstream institutions such as the World Bank (Li and Rama, 2022).

1.3. Catch-22 for private cities: Stability versus flexibility

The market demand for private governance is growing in developed and developing countries alike. The number of people willing to live in privately developed neighbourhoods is on the rise both in the U.S. (Webster, 2021), where over half of the owner-occupied homes are managed by homeownership associations, and, for example, in India (Kumar, Chaudhry, Chachan, & Gupta, 2021), where rapid urbanisation exacerbates urban ills found in conventional cities. For developing countries, where the rule of law is a critical issue, the demand for better governance is driven not so much by the desire to have cleaner streets and better-maintained lawns as by the quest for security and fundamental rights. It shouldn't come as a surprise then that it was Honduras — the country with one of the highest murder rates in the world (World Bank, 2021) — which gave the green light to the most innovative experiment in private governance to date.

Less stability, more flexibility: Próspera, Honduras

The idea of "charter cities" has been circulating among Honduran intellectuals and politicians since at least the 1980s. The topic, however, is extremely politically divisive in the country — a range of left-wing activist groups vocally opposed it as "unconstitutional" and "neo-colonial" (e.g., Amavilah, 2011; Van de Sand, 2019; Cao, 2019) — so the first attempt to establish charter cities in 2011 was aborted following a political campaign. In 2013, Congress made another try and enabled the creation of ZEDEs (a Spanish acronym for the "Zones for Employment and Economic Development") — special jurisdictions with an extraordinary degree of autonomy. Most governmental functions within ZEDEs, from tax collection to land zoning, can be outsourced to private firms. On top of that, ZEDEs can pass their monetary policy, introduce private security systems, and even adopt foreign legal regimes (Bell, 2021). In other words, to effectively establish their own private jurisdictions. All of this gives ZEDEs unmatched freedom and incentives for institutional experimentation.

Located on the Island of Roatán, ZEDE Próspera embodies the developers' firm belief in the power of an unconstrained market to generate prosperity. Some elements of Próspera's business are relatively conventional, such as real estate, yet the main product Próspera sells to investors is its outstandingly business-friendly environment. The first residents were the low-skilled workers delivering homes and infrastructure for the brand-new city, followed by 'digital nomads' for whom relocation is less of a problem.

In parallel, the team is working on increasing the number of 'e-citizens' —a system similar to Estonia's e-residency programme that allows a person based anywhere in the world to register a company and hire employees in Próspera. That element brings Próspera closer to a non-territorial jurisdiction— not tied to the land of Roátan, hence potentially less vulnerable to political shocks, which occur in Honduras every once in a while.

For ZEDEs, the national election in November 2021 came as a shock. The ruling National Party lost both the Congress and the presidential seat to the left-wing Libre Party, which soon repealed the ZEDE Law. Because that scenario had never been entirely ruled out, ZEDE promoters had pre-emptively introduced several layers of legal protection against such a course of events, some ingrained in the constitution and others relying on international investment treaties[2]. The congressional vote, therefore, does not mean the end for Próspera and other ZEDEs (Cueto et al., 2022). The Próspera team continues development against all odds, hoping that as soon as they start generating jobs, the economic rationale will trump political populism. But ultimately, in a country as fragile as Honduras, the government's compliance with investment treaties and its own laws is far from guaranteed.

The story of Honduran "charter cities" is very illustrative — it demonstrates both the hypothetical possibility of private cities and the obstacles that make them unlikely to emerge. In today's political reality, innovators willing to establish a private alternative to suboptimal governance models have to rely on the same flawed institutions that are responsible for their failure. Próspera is not putting all eggs in one basket and, besides building seaside villas, invests in creating a platform for the virtual economy. Some of the first corporate residents are academic institutions teaching remotely, fintech startups, and software developers — those who register in Próspera without ever visiting Roatán not for its stunning sunsets but for the ease of doing business. Because there is a demand for platforms facilitating remote work, even if the political climate in Honduras becomes extremely unfavourable, ZEDEs can potentially survive as prosperity hubs by moving their activities entirely into the virtual realm — such as the metaverse.

More stability, less flexibility: Irvine, U.S.

On the other side of the spectrum lie projects such as Irvine, California, or Celebration, Florida — both successful examples of privately developed cities in the west. Benefitting from the stable and predictable rules in the U.S., their developers had incentives to adopt a long-range planning horizon. Unlike municipal governments, re-elected every four or five years, private developers are interested in creating a business model that would continue to generate profits decades into the future — a "city as a hotel" model whereby

[2] Treaties with Kuwait, the United States, and the Dominican Republic — Central American Free Trade Agreement had Honduras explicitly promising not to revoke the ZEDE law for the next 50 years.

good governance is part of the same package as maintaining shared spaces and enforcing the design code (McCallum, 1997; Stringham, Miller, & Clark, 2010).

The Irvine Company, which single-handedly developed the city in the 1960s, still owns a sizable share of its urban land, earning revenues from selling real estate. From the start, the developer had made several strategic decisions that limited their short-term profits in favour of long-term ones. Most importantly, to keep the population growing, in 1971, the Irvine Company made a counterintuitive decision to introduce democratic governance — which limited their control over the city but raised the land value. Today, with a population of 300,000, Irvine is ranked among the top ten safest (FBI, 2019), happiest (McCann, 2022), healthiest (Patch et al., 2021), and greenest (Chapman et al., 2021) cities in the U.S.

The largest master-planned city in the U.S., Irvine, can be an excellent illustration of the fact that, in the presence of stable institutions, the "city as a hotel" model brings tangible results — that socially desirable outcomes can be delivered via market institutions. That said, Irvine cannot be considered a private city anymore — since its incorporation in 1971, it has been governed as a conventional municipality. Here lies what I call the Catch-22 of private cities: the inevitable trade-off between stability and flexibility. It is the deficit of stable and predictable rules which creates a market for private alternatives to existing governments, yet it is the same deficit of good rules which discourages innovators from addressing this problem. In institutionally fragile countries like Honduras, private cities' promoters may find more opportunities for experimentation with innovative governance but less stability when executing their plans. In countries like the U.S., where the rule of law is well-protected, large-scale private developers feel relatively secure about the safety of their investment, however, the space for experimentation is limited. This dilemma explains, to a large extent, why private cities' projects are so rare.

1.4. Private cities and transaction costs

Private cities can be viewed as the Coasian answer to transaction costs prevalent in urban governance. To become a viable — and profitable — alternative to existing cities, they need to address three types of transaction costs: economic, regulatory, and political. The first type includes conventional transaction costs related to land assembly, master planning, infrastructure provision, etc. Building a whole city from scratch so that it is both liveable and economically sustainable is an incredibly complex challenge. Unsurprisingly, history has seen more failed attempts than successful ones. Architect and businessman Raymond Watson, who was the mastermind behind Irvine, attributed it to "one very simple reason: it's an extremely risky business" (Watson, 2003). On the other hand, economic costs are the easiest to calculate. After all, there is no shortage in large-scale private developments per se, and it is not the shortage of cement — or developable land for that matter — that explains the practical absence of private cities. Attracting the population to a

new city is a challenge of its own. Yet, the number of people jumping into the unknown — like the tens of thousands of Honduran immigrants each year (Burnett, 2021) — suggests that, for many, good institutions are worth the price of relocation. Add to this the rise of remote work following the Covid-19 pandemic, which has made talent more mobile than ever, and the idea of foot-voting will look much less ephemeral.

The second group of obstacles refers to the costs of cutting through red tape — negotiating with regulators, complying with democratic procedures, obtaining necessary documentation, etc. Any profound experimentation in the sphere of governance is impossible absent a special jurisdiction, a special law that grants a future private city at least partial exemption from national laws and enables the developer to test-drive unconventional governance models. This second category represents a bigger challenge, yet the need to consider the regulatory environment is also not unique to urban projects (Flyvbjerg, 2017). Private cities have a lot to learn from infrastructure providers — oil and gas pipelines, railroads, and power plants are all examples of 'immovable' property, which is fixed to the ground and cannot be promptly relocated to another jurisdiction if the rules of the game suddenly change (Kaznacheev, 2017).

Keeping that in mind, transnational corporations continue building megaprojects on institutionally shaky ground. And while not all decisions by multinationals are based solely on economic rationale (besides, their investment decisions are not always well-informed), the scale and commitment involved in developing immovable infrastructure often imply a significant expectation of return on investment. Enforcement of contracts between the investor and the host country remains an Achilles' heel of all such initiatives, and yet a range of leverages are being used by multinationals — and can be used by private cities — to make their public counterparts stick to the agreement (Bell, 2021). Delving deep into the stories of private urban initiatives, we discover that it is the third type of obstacles — the political ones — that usually become an ultimate roadblock.

1.5. Private cities and their enemies

Contemporary scholars engaging with the Coasian theory prefer viewing transaction costs not as a basis for a market but rather as a sign of a market opportunity (Candela & Geloso, 2019). By addressing the economic and regulatory costs outlined above, private developers can count on rewards in the form of profit. But the third group of obstacles to private cities is much harder to quantify and account for, as it has less to do with economics and more with such an intangible thing as ideology. Ideological animosity and political backlash can severely delay or stall projects that they consider inimical. A vivid example of that is Lavasa, a private city in India. The developer, Lavasa Corporation Limited, successfully got most of the indigenous population on their side but fell victim to a countrywide populist movement fighting against what they

dubbed “Special Exploitation Zones” (Parikh, 2015). It took a ten-year-long advocacy campaign on behalf of local villagers to revive the project (Kichanova, 2022).

Political campaigns have the power to severely delay private cities’ development. Based on experience, it is the third category — political obstacles — that represents an ultimate roadblock to projects of that kind. Even developers who successfully overcome economic and legal costs risk having their projects stalled by politically motivated campaigns. One would expect such an outcome to be more likely in countries where the rule of law is not in its best state. However, stories similar to Lavasa can be found in rich, developed, and institutionally stable countries. One such example comes from Canada, where Sidewalk Labs, a sister company to Google LLC, had to shut down its ‘smart city’ venture following grassroots protests. The highly ambitious project earned much excitement from urbanists across the world. Developers envisioned self-driving cars, smart traffic management, and a network of sensors to collect and analyse big data — all the innovative solutions that the company later planned to replicate in other cities in Canada and beyond. All in all, 50 million dollars were allocated towards the project. The goal, in the words of former Google CEO Eric Schmitt, was to test-drive “all the things we could do if someone would just give us a city and put us in charge” (Hook, 2017).

Google is known to be exceptionally successful in providing services in the digital realm. However, their brick-and-mortar initiative was unable to withstand the political backlash. The project was heavily criticised over data privacy concerns (Fussell, 2018), lack of accountability, transparency, and democratic participation (Bliss, 2019; Pearson, 2019), and the general idea that a private firm can be trusted with providing public goods (Sadowski, 2017; Wylie, 2020). As a result, Sidewalk Labs had to significantly scale down its plan in 2020 and later abandon the project altogether (Doctoroff, 2020). With its immense market power, a corporation like Google still couldn’t leverage the unquantifiable risks of ideological hostility.

1.6. The precautionary principle: The fear of all things new

As opposed to conventional interest groups, ideologically motivated movements are seldom open to bargaining and negotiations. They rise against private cities not because they expect to be personally affected but because they inherently reject the very idea that public goods can be outsourced to profit-making firms. This anti-development sentiment that permeates contemporary societies (Niemetz, 2021) is part of a bigger picture — the one demonstrating suspicion of private agents addressing societal problems in principle. This suspicion only grows when big corporations propose solutions to global issues universally considered to be the state’s responsibility, such as climate, healthcare, or urbanisation. It is indicative that in a recent Oscar-nominated Netflix hit “Don’t Look Up”, an apocalyptic satire about the comet on its way

to hit the Earth, the role of the main villain belongs not to the self-centred politicians turning a blind eye to the upcoming disaster but to the visionary billionaire who proposes a private remedy.

At the heart of this anti-innovation, anti-capitalist sentiment lies what Virginia Postrel called the "stasis" mentality. In The Future and Its Enemies (1998), she demonstrates how in the post-Cold War world the traditional left-right ideological divide has been replaced by the "stasis" versus "dynamism" as the two poles of the debate. The "dynamists" welcome "a world of constant creation, discovery, and competition", while the "stasists" prefer "a regulated, engineered world and view mistakes as disasters rather than inevitable by-products of progress. Building upon her insights, Adam Thierer in Permissionless Innovation shows how the "stasis-minded" crowd is guided by the precautionary principle — an instinctive fear of new ideas and technologies and the demand for policymakers to limit or control such ideas and their authors (Thierer, 2014). The precautionary principle transcends ideologies: the right wish to limit technological progress "for the sake of order, security, tradition, institutions, and so on", while the left demand it "in the name of justice, equality, privacy, and other assorted values" (ibid.). Both are found among the opponents of private cities — Lavasa, for instance, was simultaneously blamed for destroying the traditional Indian lifestyle and fuelling inequality. And while developers may try hard to secure support on the ground and morally disarm their opponents, genuinely pushing the pendulum in the opposite direction requires reshaping the debate at a higher level.

In an intellectually and institutionally hostile environment, the road between an idea and its implementation may take decades. Originally, the idea of charter cities as prosperity engines for Latin America was conceived in the Francisco Marroquín University in Guatemala, the regional epicentre for free market thought founded in 1971. The first charter city, Próspera, didn't emerge until 2021 — it took half a decade between assembling a team of intellectuals and seeing their ideas cast in brick and mortar. These dynamics illustrate Hayek's famous theory of social change: ideas originate among academics to become later adopted by intellectuals, then pave their way into the masses, and, finally, catch the attention of policymakers. While investing efforts into changing the intellectual climate is a noble goal, discovering a shortcut, which would allow testing innovative governance models here and now, could bring immediate results: financial reward for innovators, freedom and prosperity for citizens, and institutional evolution for the rest of us. Non-territorial governance can be used as a shortcut of that kind, and the metaverse is the space to test whether it is truly the case.

Part II — Non-territorial governance as a game-changer

2.1. Non-territorial governance: Unbundling land and laws

Próspera's developer remains carefully optimistic despite the change in the political climate and even the revocation of the ZEDE law. The team hopes that, as soon as the new private city starts generating economic benefits for an average Honduran, it will become politically unfeasible for the ruling party to disrupt the project. By making locals immediate beneficiaries, developers ensure that the NIMBY ("Not In My Backyard") movements are balanced by YIMBYs ("Yes In My Backyard") — interest groups that vocally support the development. In the case of Lavasa, it was the persistent bottom-up campaign that finally revived the project. By getting the local population on their side — through establishing genuine alliances with grassroots activists, launching community-oriented initiatives, investing in local infrastructure etc. — entrepreneurs hope to create a vocal YIMBY movement in support of their initiatives.

The critical problem comes with the fact that, at the early stage of the project, when it is particularly vulnerable to ideological attacks, there are no YIMBYs on site yet to voice their support. The number of potential beneficiaries of institutional experimentation — directly or through the spillover effect — may be massive. Still, at a given moment, they are not yet aware that they will become winners. McKinsey estimated that the establishment of just a few ZEDEs could potentially create 600,000 new jobs for Hondurans (Economist, 2017) — that exceeds by orders of magnitude the number of those actively protesting against ZEDEs. If there was a way to test-drive a new governance model in vitro without cutting through red tape first; to gather a critical mass of volunteers willing to be part of an experiment without physically relocating them to one place; to reap economic benefits without engaging in political fights — that would be a great step forward for private cities.

Innovative projects like Próspera are already testing this approach. What Próspera sells to its residents is something intangible, something that cannot be taken by force in a police raid: a set of rules for cohabitation. Its e-governance platform allows residents to register companies and enjoy ZEDE's business-friendly regulatory environment remotely, without physically relocating to Roatán Island. This feature brings Próspera one step closer to the concept of non-territorial governance — a practice of unbundling political jurisdiction and territory, allowing people to move between jurisdictions without changing geographic location (MacDonald, 2015; MacDonald, 2019; Tucker & de Bellis, 2015; Friedman & Taylor, 2021).

The rise of non-territorial governance can drastically reduce barriers to entering the market for private governance, making switching between competing jurisdictions as easy as switching from one operating system to another on one's smartphone. While this may sound merely a theoretical concept, some aspects of non-territorial governance have been part of the world economy for ages— consider low-taxation jurisdictions like Jersey or the Cayman Islands, where tens of hundreds of companies are registered remotely. But doing business is just one aspect of human action that can accelerate innovation and

competition as long as people can congregate in virtual city-states without physically gathering in one place. Technological progress is already shifting the balance from activities and organisations tied to a particular territory to the hybrid physical-virtual way of living. The advent of the metaverse can significantly accelerate this process.

2.2. Metaverse: An incubator for cities of the future

The term "metaverse" originates from the science fiction novel Snow Crash by Neal Stephenson (1992), but in recent years the concept has come to represent more than merely a fictional setting. Nowadays, the name refers to an archipelago of three-dimensional virtual worlds enabled by virtual and augmented reality technologies, each with its own societal structure (Clark, 2021; Ravenscraft, 2021; Robertson & Peters, 2021). Fernandez and Hui (2022) describe the metaverse as "a microcosmos of our physical reality" where "users can interact with other virtual assets and avatars" and, potentially, a platform for "global collaboration and coordination". What just a few years ago sounded a little more than a vague cryptoanarchist dream has finally grabbed the attention of investors, scholars, and the broader public. Urbanists, too, have been showing interest — to them, the metaverse looks like a convenient space to test-drive the different models of the so-called smart cities.

There is no universal agreement on the definition of a smart city. A McKinsey Global Institute report on smart cities, for instance, talks about cities that "put data and digital technology to work with the goal of improving the quality of life" (Woetzel et al., 2018). Among technologies that make cities smart, researchers typically mention real-time data collection and processing, Internet of Things (IoT), and GIS-based tools (Cosgrave, Doody, & Walt, 2015; Walcroft & Chiasson, 2018; Matta, Fritz, & Kim, 2020). It is also commonly accepted that smart cities should not exist for the sake of technology itself but have to be "citizen-centric" — to put technologies to the service of humanity by addressing societal problems. Sidewalk Labs' project in Canada was trying to do exactly that: build a place more efficient, sustainable, and liveable than an average city with the help of the most advanced technologies available. Google, which backed the initiative, was not the only company whose ambitions stretch into the field. Megacorporations, including Alibaba, Amazon, Cisco, General Electric, Google, Huawei, IBM, Microsoft, Nokia, and Siemens, are all involved, in one way or another, in various smart city projects. It is only natural that companies that are most experienced in operating massive amounts of data — social network giants, leading software developers, online commerce platforms — feel confident enough to join the quest for smart cities.

The main problem, as evident from the case of Sidewalk Labs, is that private players cannot implement their urban visions without public support. Metaverse, on the other hand, is a realm of permissionless innovation — a space where visionaries can test-drive their ideas of what a future city may

look like. Allam et al. (2022) believe that metaverse "has the potential to redefine city designing activities and service provisioning towards increasing urban efficiencies, accountabilities, and quality performance". Unsurprisingly, companies including Apple and Microsoft are already exploring this new virtual world for possibilities. Many companies pioneering the metaverse market come from the video games industry — Roblox, Epic Games, PlayStation, and others (Moy, 2022). This explains why the first snapshots of virtual worlds resemble a computer game setting — and, to some extent, justifies the scepticism of those suspecting that the metaverse is just another gamified environment. Evangelists, nevertheless, believe the metaverse will be more than a constellation of game-like bubbles. They envision a convergence between the physical and the virtual, whereby digital versions of offline spaces, be it conference halls or entire cities, will augment their 'real' counterparts. While fashion brands launch virtual showrooms and corporations develop 'digital twins' of their offices, private governance advocates explore the metaverse as a testing ground for non-territorial jurisdictions.

2.3. Liberland, a virtual private city-state

In 2015, a group of libertarians led by Czech activist Vít Jedlička proclaimed the Free Republic of Liberland on an unpopulated piece of disputed land (terra nullius) between Croatia and Serbia. The following week, the self-proclaimed micronation reportedly received over 200,000 citizenship applications. The project has moved significantly since then in terms of gaining support, yet the 7-square-metre piece of land on the floodplain of River Danube remains uninhabited. Claiming an actual, physical parcel of land has always been part of Liberland's promotional strategy — and has undoubtedly contributed to its media visibility. At the same time, de facto Liberland has always remained, practically, a non-territorial jurisdiction. Despite continuous media presence, a global network of ambassadors, and over 7,000 e-citizens (and reportedly some 780,000 on the waiting list), the self-proclaimed republic has so far failed to achieve diplomatic recognition from any recognised nation. Adding insult to injury, several attempts to physically settle down on its territory ended with the Croatian police arresting frontiersmen. Consequently, thousands of those who consider themselves Liberlanders have never received a chance to meet each other. Should they be able to commence the development today, thousands of e-citizens could constitute that YIMBY movement that Próspera and Sidewalk Labs lacked when attacked by NIMBYs.

Unwilling to remain trapped in the bottleneck typical for projects of that sort, Liberlanders placed their hopes into the metaverse, which they believe will allow them to test-drive their model of private jurisdiction. In April 2022, Liberland launched a digital copy of the city-state in the metaverse realm. Zaha Hadid Architects (the same company that provides architectural services to Próspera) has developed a master plan for the virtual space, which accurately reflects the topographical features of the parcel claimed

by the Republic of Liberland. Should the window of opportunity open one day, the renders are detailed enough to guide the development of a physical city. For the time being, the Metaverse Liberland is open for guests to explore virtual spaces, including a city hall, co-working zones, and a gallery for displaying digital art, and interact with each other using personalised avatars. Patrik Schumacher, Principle of Zaha Hadid Architects, views the role of the project as twofold: as a prototype for "the development of Liberland as libertarian micronation" and simultaneously "as free standing virtual reality realm with the ambition to become the go-to-site for networking and collaboration" (Schumacher, 2022). The latter role effectively establishes the Metaverse Liberland as a non-territorial private jurisdiction — and, more specifically, as a virtual private city.

If following Bertaud (2018), we regard cities as, first and foremost, labour markets, then the absence of physical infrastructure should not stop us from seeing virtual spaces as cities as long as they enable people to assemble and engage in economic transactions. The metaverse domain allows for registering companies, providing various services, buying, and developing virtual land, introducing new digital currencies, solving disputes, implementing and testing different tools for collective decision-making, and performing other forms of voluntary transactions. One crucial feature of real-life cities that makes them incubators of innovation is their ability to encourage serendipitous encounters between people with different expertise and different worldviews, enabling the exchange of ideas (Jacobs, 1961; Florida, 2002; Glaeser, 2011). The Internet as we know it today lacks this feature, but the metaverse cities hold the potential to combine the best of both worlds — the spontaneity of brick-and-mortar cities and the ability of people from different countries to assemble regardless of national borders. The benefits of clusterisation, famously outlined in Richard Florida's The Rise of the Creative Class (2002), explain why the market for 'unreal estate' is "not dissimilar from [that for] real estate in a large city such as London, with prices based on location, and property buyers wanting to be part of a vibrant ecosystem" (Trieu & Nguyen, 2022).

This creates an opportunity to use the metaverse as a platform for testing unconventional land-use policies — something that would accelerate experimentation in urban governance for the benefit of existing 'real' cities. The Metaverse Liberland, for example, implements the combination of three planning regimes all potentially applicable in real-life cities: (1) the central hub will be developed in a top-down manner ("curated"), (2) the surrounding districts will emerge as a result of co-production facilitated by democratic tools, and (3) the remaining zones will allow for entirely spontaneous market-based development "via a free-wheeling discovery process" (Schumacher, 2020). In the physical world, institutional experimentation of that scale and ambition would require getting a green light from municipal authorities and approval from residents. The metaverse environment eliminates the need to negotiate with both the government and the public. "To revolutionize the mature societies takes too long. We want and need more freedom now, and

this can only be achieved by starting fresh with a coalition of enthusiasts and without infringing on incumbent interests," writes Schumacher (ibid.). The "crypto-metaverse" seems a perfect realm for start-ups of that kind.

2.4. The Liberal Archipelago of the virtual worlds

Entrepreneurs operating in the metaverse can avoid the three types of transaction costs — economic, regulatory, and political — that hinder the development of private cities in the physical world. Virtual cities are spared the necessity of obtaining a special jurisdiction status, cutting through red tape, and dealing with politicians and grassroots opposition. In the absence of all these barriers, metaverse developers get a chance to move from concepts to implementation in a matter of months, not decades, as was the case for Honduran charter cities. Because the metaverse has no pre-existing jurisdictions, virtual start-up societies can be built upon explicit consent, and rules will emerge from voluntary agreement and market competition. At the next stage, governance models that outcompete others in the virtual environment can be transferred to real-life cities, eventually challenging — and changing — public institutions.

These digital realms offer an unprecedented sandbox for testing innovative governance models, free from the physical and bureaucratic constraints of the physical world. In these virtual environments, a diverse array of governance structures can be rapidly implemented, adapted, and evaluated, providing valuable insights into their efficacy and societal impact. This experimentation in the digital sphere has the potential for significant osmotic effects on real-world governing institutions. By observing the successes and failures of various governance models in these virtual societies, political theorists and practitioners can pick strategies that are applicable to real-life communities. This cross-pollination of ideas can lead to the evolution towards more adaptable, efficient, and inclusive governance systems in the physical world, benefiting from the innovative trial-and-error processes undertaken in their digital counterparts. Thus, the metaverse holds the promise not only of expanding our digital horizons but also of refining and revolutionising the way we govern our physical societies.

That said, metaverse private cities will not operate as merely digital twins to brick-and-mortar cities. In addition to being laboratories for social experimentation (based on explicit consent), metaverse cities may simultaneously function as independent parallel societies, as private non-territorial jurisdictions free from many constraints faced by real-life private cities' projects. The creation and peaceful coexistence of multiple non-territorial jurisdictions in the metaverse — in the spirit of Chandran Kukathas's Liberal Archipelago (2003) — would accelerate experimentation, competition, and discovery in the field of governance, potentially eliminating that disparity between rapid adaptation of the private sector and the rigidity of the public one.

This scenario, of course, is tentative, and the sector is still in its infancy stage. That said, the market for 'unreal estate' hit $500 million in 2021 (Bidar & Patterson, 2022) and is projected to surpass $1 billion in 2022 (Tzanidis, 2022). There are four major platforms in the metaverse at the moment — The Sandbox, Decentraland, Cryptovoxels and Somnium Space — jointly offering 268,645 parcels of land. The majority of transactions, however, occur on the secondary market platforms like OpenSea and Rarible. Metaverse real estate brokers like Metaverse REIT help buyers to purchase desirable parcels of land, and TerraZeroTechnologies provides the first-ever metaverse mortgage. Metaverse landowners can profit from renting out their parcels for others to design their own games, host events such as musical concerts and fashion shows, and create virtual showrooms and meeting spaces. Facebook's decision to reinvent itself as Meta and focus its efforts on exploring the possibilities of the metaverse (Meta, 2021) further increased the market's appetite for exploring the virtual world.

Following the trend, even the public sector is now investing in the metaverse realm. For instance, the Seoul Metropolitan Government has unveiled a metaverse twin for the Korean capital city (Gaubert, 2021), while Barbados opened an embassy in Decentraland, one of the major platforms for creating virtual worlds (Wyss, 2021). While it is reasonable to take such initiatives with a grain of salt — in an unregulated environment such as the metaverse, bureaucracies are likely to achieve humble results compared to private innovators—these are clear signs that the metaverse is gaining momentum. We, therefore, may expect, in the near-to-medium future, an increasing number of people becoming citizens of virtual private cities—and appreciating the opportunities brought about by non-territorial jurisdictions. Sidewalks Lab will, at last, receive a chance to implement its smart city project in its original scale, charter cities will find it easier to demonstrate to Hondurans that the ZEDE regime brings economic progress, and hundreds of other similar projects will get an opportunity to kick off without asking for anyone's permission.

3. Conclusion

Recent years have once again highlighted the agility of the private sector in adapting to change, along with the failure of government institutions to catch up. Creating the market for private cities, cities-as-firms, would introduce price-based incentives into urban governance and accelerate the quest for better ways of cohabitation. A growing number of privately developed cities demonstrates both the supply and demand for such alternatives. Yet, many projects of that kind never get a chance to be built — economic, regulatory, and, most importantly, political obstacles become roadblocks. The need to ask for the government's permission plus ideological animosity manifested through NIMBY-like campaigns (NIMBYs in the broad sense — opposing not a particular road extension but all things unconventional) stand in the way of private cities.

A vocal YIMBY movement — people voluntarily opting to become part of a daring experiment — could shift the balance. Today, enthusiasts of private governance are dispersed throughout the world and separated by national borders, but the virtualisation of our daily life makes distances and borders less relevant. The concept of non-territorial governance, whereby laws are detached from land, allows entrepreneurs to circumvent existing blocks and start building virtual societies without lobbying bureaucrats or physically congregating in one place. The platform where this process is already happening is the metaverse. A realm of permissionless innovation, the metaverse allows visionaries to test-drive their ideas of what a city of the future should be without cutting through red tape or confronting opposition. One of the pioneering projects is the Liberland Metaverse, both the digital twin of an eponymous self-proclaimed libertarian micronation and a free-standing virtual society. As the market for 'unreal estate' and other metaverse-enabled goods and services is expanding, incentives to enter the race increase, and Liberland should expect to see competitors soon. The advocates of private governance should pay more attention to the window of opportunity opened by the advent of this 'Liberal Archipelago 3.0', as the metaverse can become a place where next big steps in institutional evolution will take place.

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The Future of Citizenship: State, Democracy & Participation in the ZEDEs

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Abstract:

This paper examines the evolving concept of citizenship and the contemporary challenges it encounters by employing insights from contemporary citizenship theories. Over recent decades, the characteristics of the state, alongside the definition of citizenship, have undergone notable transformations. The dynamics of globalization and increased cross-border mobility have introduced novel challenges in our comprehension of citizenship and the role of the state. One example are the Zones for Employment and Economic Development (ZEDEs), which provide new forms of governance that transcend or bypass the traditional boundaries and functions of the nation-state. This paper discusses the emerging challenges posed by these zones, particularly in the context of democratic principles, political participation and citizenship. New Special Administrative Regions like the ZEDEs may change the way in which we understand and analyse modern citizenship – particularly the notion of nation-states as the sole providers of rights and duties towards their citizens.

Keywords: Special Economic Zones, SEZ, Free Zones, ZEDE, Citizenship, Honduras, Political Theory, Democracy, Theories of Citizenship, Próspera.

Resumen:

Este artículo examina el concepto en evolución de la ciudadanía y los desafíos contemporáneos que enfrenta mediante la aplicación de perspectivas de las teorías contemporáneas de la ciudadanía. En las últimas décadas, las características del Estado, junto con la definición de ciudadanía, han experimentado transformaciones significativas. Las dinámicas de la globalización y la creciente movilidad transfronteriza han introducido nuevos desafíos en nuestra comprensión de la ciudadanía y el papel del Estado. Un ejemplo de ello son las Zonas de Empleo y Desarrollo Económico (ZEDE), que ofrecen nuevas formas de gobernanza que trascienden o eluden los límites y funciones tradicionales del Estado-nación. Este artículo analiza los desafíos emergentes planteados por estas zonas, especialmente en el contexto de los principios democráticos, la participación política y la ciudadanía. Nuevas Regiones Administrativas Especiales como las ZEDE pueden cambiar la manera en que comprendemos y analizamos la ciudadanía moderna, en particular la noción de los Estados-nación como los únicos proveedores de derechos y deberes hacia sus ciudadanos.

Palabras clave: Zonas Económicas Especiales, ZEE, Zonas Francas, ZEDE, Ciudadanía, Honduras, Teoría Política, Democracia, Teorías de la Ciudadanía, Próspera.

1. Introduction

How do we define who gets to be or become a citizen? What differentiates a citizen from a non-citizen? Which rights should be reserved only to citizens, and which rights should be given to the others? For centuries, the definition of citizenship and its role within society and democracy has been a subject of ongoing debate. Aristotle explored virtues and responsibilities of citizenship in Politics, while John Locke, in Two Treatises of Government, offered a framework rooted in the social contract and natural rights – still influential today. In The Social Contract, Jean-Jacques Rousseau wrote about the general will and popular sovereignty; Immanuel Kant wrote about cosmopolitanism and universal human rights in Perpetual Peace. These works–which would be considered the fundamentals for any undergrad student of political science–have provided a fructiferous ground in which modern academics analyse the role of the state and citizenship.

These historical examples illustrate the enduring nature of discussions in political philosophy. However, in recent decades, the nature of the state and the definition of citizenship have undergone significant transformations. Globalization, mobility across borders, and modern technologies provide new challenges to the ongoing discussion. The process of globalization has brought about significant challenges to the current way in which we analyse and perceive the links between citizenship and the state. Among them, is the emergence of new forms of governance that transcend or bypass the traditional boundaries and functions of the nation-state. One such example are the Zones for Employment and Economic Development (Spanish: Zonas de empleo y desarrollo económico, or ZEDEs) – a project approved by the Honduras Parliament in the year 2013. While Special Administrative Regions (including Special Economic Zones) are not something new or revolutionary, the ZEDE framework provides even broader autonomy to these regions. ZEDEs are governed by their own set of laws and regulations, separate from the rest of the country (with some exceptions). Different from the nation-states which were the centre of discussion in the past, ZEDEs do not need to be controlled by a state but may be controlled by private companies that have the incentive to attract investment and promote economic growth. With the decoupling or delegation of the state power over its region to a private company, new questions in political philosophy arise.

The emergence of ZEDEs marks a departure from theoretical discussions, bringing such projects and ideas into practical existence. In Honduras, three ZEDEs already exist; two of them, Próspera and Morazán, are already accepting new residents. Both have different business models, target groups, and goals. This enables them to experiment and establish new tools and platforms for political participation in their territories. With the potential that these projects expand and other countries implement similar frameworks, we should take into consideration the alternatives and possibilities for political participation. ZEDEs may challenge the idea that citizenship and democracy are intimately linked, as they provide new forms of governance that are not based on traditional nation-state institutions.

ZEDEs also bring great challenges to the current notion of citizenship, they blur the traditional boundary between the state and the market process, as well as between domestic and international affairs. This shift challenges the traditional role of the state as the primary provider of rights and duties. Moreover, this new conception of citizenship prompts a reconsideration of the delicate balance between global and local interests. This paper is organized as follows.

The second section of this paper provides an overview of the state of research around citizenship and the role of globalization in the current academic discourse. It also identifies some gaps or limitations in the current debate regarding the new ZEDE framework that this paper will (try to) seek to address. Section three provides a short but concise overview of the ZEDE framework and its inspiration, evolution, and differences from other SEZs. In this section, we also lay the foundations of the political structure in the Próspera ZEDE. After creating a robust framework for discussion, in section four, we discuss the links between the ZEDEs, the Honduran state and its residents, the role of the nation-state as the sole provider of rights and duties towards its citizens and we also discuss the commodification of citizenship and the boundaries between the nation-states and the market process.

2. State of research

Given the ubiquity of the term 'globalization' in both academic and public discourse, a concise definition is necessary. Gilpin succinctly defines it as the "increasing interdependence of national economies in trade, finance and macroeconomic policies." (1987: 389) Zajda and Majhanovich write:

> The globalization process is characterized by the acceptance of 'unified global time', the increase in the number of international corporations and institutions, the ever-increasing global forms of communication, the development of global competitions, and, above all, the acceptance of global notions of citizenship, equality, human rights, and justice […] Globalization as a phenomenon, is a multi-dimensional cultural construct, reflecting the necessary interdependence and connections of all core facets of culture: the economy, politics, ideology, languages, education, consumer goods, travel, modes of communication, technology, and the people around the world." (2021: 2)

Traditionally, citizenship has been perceived as a legal status conferring rights and duties upon individuals within a political community, typically a nation-state. We have come to see the image of the virtuous republic in which "the citizen is regarded as accountable to the community." (Hindess 1993: 33) National identity, embodying shared historical events, values, beliefs, customs, conventions, habits, languages, practices, myths, symbols, and traditions, serves as a representation of cultural communities (Zajda/ Majhanovich 2021: 6). Some argue that globalization not only fails to provide a global identity, but it even

intensifies national feelings (ibid).

Yet, in the context of globalization, the concept of citizenship has grown more intricate and contested. New forms of governance and economic integration are challenging the sovereignty and legitimacy of nation-states. Works analyzing the new role of globalization in academic discussions are playing an increasing role in social sciences. Urry argues that "across much of the globe over the past decade two of the most powerful organizing processes have been those of 'citizenship' and 'globalization'. They have swept much else before them, reconstituting social and political life." (1999: 311) The way in which we came to understand citizenship has changed over the years – and it seems that the older definitions can't provide a sufficient explanation for globalization and modern migration. Although nation-states typically have clear rules about citizenship, political philosophy raises the question of whether this conventional approach aligns with contemporary challenges. Once the discussion focused on cultural boundaries, later was a question of the relevance of territorial and political boundaries. However, in a time where individuals are mobile, which questions should we now address?

Typically, the conception of citizenship involves four key dimensions: a) legal status, b) rights, c) political participation, and d) a sense of belonging. These dimensions may complement each other or may stand in tension with each other. They encompass the relationship between individuals and the state (Bloemraad et al. 2008: 156). However, with the creation of the ZEDEs, it seems that a new tension between c), d) and the nation-state may arise, and it seems that the relation between the individual and the state is cut out of the frame.

Following World War II, T.H. Marshall argued that social citizenship was crucial for integrating the working class into civil society, empowering civil and political rights – and thus justifying the creation of the welfare state (1950). In his work, the four dimensions of citizenship are reflected. However, this approach didn't provide an answer on how to integrate a "culturally divided" society (Bauböck 2020: 2). To face the challenges of cultural diversity, Kymlicka argued that minorities needed to be provided with differentiated rights, special recognition and territorial self-government – Kymlicka thought that such an approach would unite rather than divide culturally diverse societies (1995). However, both approaches rely heavily on the action of the nation-state. It is the state, the one that needs to come into action and guarantee these rights, either to minorities or to disadvantaged classes. Bauböck argues that the analysis of citizenship should still rely on the previous work of Marshall and Kymlicka;

> "[the] narrative […] must take sides and embrace the open society side of the globalization divide, just like Marshall's story focused on the benefits for those deprived of substantive citizenship through market inequalities and just like Kymlicka's focused on the benefits for disadvantaged cultural minorities. And this means that an attractive vision of urban citizenship must be at the core

> of the new story since it is in the big cities that mobile populations find their homes while their voices and votes remain all too often unheard and undercounted in national arenas." (2020: 2)

Bauböck introduces a new aspect to the discussion by recognizing that power does not solely rely on the state; he acknowledges the importance of cities. However, he argues against the emancipation of urban citizenship from nationality. While he acknowledges the role of local democracy and defends citizenship based on ius domicilii, he still accepts that local citizenship will not be able to replace national citizenship (ibid: 4). Although individuals of an urban center gain the status of residents, they remain bound to their nationality and have the right to return to their country of nationality. He argues that "we need therefore […] an urban citizenship that is derived from residence rather than nationality and that complements national citizenship instead of replacing it." (ibid: 5) Bauböck's arguments resonate with the present circumstances of the ZEDEs. As we will discuss further in sections three and four, ZEDEs may provide a type of proto-urban citizenship – including an array of rights and duties exerted by a city. While Bauböck's approach still considers the state as the one to provide these rights and duties (and his arguments are clearly rooted in republican ideas), in the case of the ZEDEs, the institution that guarantees them is a private company and a resident contract.

As we can see, various works have identified the challenges that immigration and globalization bring with them– however, all the approaches rely heavily on a central apparatus (nation-state) that ought to offer a solution to the problem. The pre-conception that the nation-state is the one that should enforce and guard one's rights and duties influences even the more polycentric solutions to the challenges of globalization and immigration. As we will argue throughout this paper, the nation-state is not the only one that can provide such things anymore. However, having a non-state institution providing these on the basis of a resident contract between them and the resident itself brings new questions regarding the four dimensions of citizenship.

Prior to the hegemony of the nation-states, alternative structures of governance like free and imperial cities or privately run cities were not uncommon. For example, the Hanseatic League may be considered one of the most influential city-leagues. It "emerged as an alternative institutional solution to the sovereign state and performed many functions that elsewhere were carried out by sovereign monarchy." (Spruyt 1994: 109) Meanwhile, in Italy a different structure arose; the city-state. Different to the Hanseatic League, city-states "did define authority by territorial boundaries." (ibid.: 149) City-states justified their authority as autonomous entities and were resistant to relinquishing their independence to join any kind of federation with other cities (ibid. 146). Some of the most dominant city-states were Milan, Venice, and Florence – the latter being heavily developed by the Medici family (Elam 1978).

Moreover, such cities are unthinkable in the modern world of nation-states – at least for now. Given the

novelty of ZEDEs, academic discourse on their role in shaping the current discussion on citizenship, including political participation, is notably scarce.

3. A history of acronyms: SEZs, ZEDEs

Special Economic Zones (SEZs) are not a recent or revolutionary phenomenon. Countries all around the world have implemented such zones to attract investment, export and import goods. Typically, these zones feature distinct taxation policies compared to the broader country, often accompanied by streamlined and more efficient bureaucratic processes. However, these zones do not possess their own regulatory framework nor have their own civil law. SEZs follow the laws and regulations of their country, although they enjoy some exemptions and incentives as a free trade zone (Bell 2016: 962). The term SEZ encompasses a wide range of zones. According to the World Bank, there are three primary types: "[a)] Free trade zones, ranging in size from single factories to larger areas; [b)] Export processing zones (EPZs), again ranging from single factories to larger areas; and [c)] Hybrid EPZ freeports or wide-area SEZs, typically large and sometimes city-sized." (ibid: 964)

The SEZs in the People's Republic of China (PRC) are particularly noteworthy due to their remarkable success. The first zones were part of the political and economic restructuring pushed by Deng Xiaoping and were established in 1978 as "a test of the controlled restructuring of the entire economy through the introduction of capitalism and foreign investment, after more than 30 years of economic and political isolation." (Baissac 2011: 36) Today the PRC has over 200 zones of various types (ibid). However, the SEZs in the PRC have always stayed public affairs. Just like in other countries, from the 1950s till the 1970s governments planned, promulgated, regulated and administered these zones.

However, during the 1990s, primarily in Latin America, new zones were developed by the private sector. The first projects (known as maquiladoras) were industrial parks focused on value-added services. Either new zones were created, or existing ones were privatised – for example, Colombia, as of today, no longer operates any public economic zones. After Latin America, countries like Thailand, the Philippines, and Vietnam followed up. Today, private zones are not only found all around the globe, but they are becoming the norm. In the 1980s, 25 per cent of the world's total economic zones were owned by private companies – in 2018 it was 62 per cent (ibid: 39).

Recently, new types of Special Administrative Regions have emerged, breaking away from the SEZ framework and allowing for a greater level of autonomy. However, the focus of such structures still relies on the provision of public goods and urbanization through private actors (Yue/Rama 2023). Examples of such regions include projects like Waterfall City in South Africa, the Konza Technology City and the Tatu City in Kenya, or the Appolonia City of Light in Ghana (Ablo 2023: 2). In response to the rapid

population increase in India, some projects focus on the urbanization aspect, such as the private city of Gurgaon (Rajagopalan/Tabarrok 2014) or the private city of Lavasa (Parikh 2015).

As discussed in the next section, ZEDEs go beyond the conventional concept of privately owned industrial parks, providing more than just advantages for the export and import of goods. Their structures offer more possibilities, and they expand to the political realm of their residents. ZEDEs are not merely economic or urbanization projects – but also political ones. Unlike conventional SEZs, which primarily focus on economic aspects, ZEDEs harbour a more comprehensive objective. Some might perceive ZEDEs as new enclaves akin to Hong Kong or Macau. However, as explored later, it's crucial to note that ZEDEs do not seek sovereignty independent of their host nations. They are an integral part of Honduras and the Honduran constitution.

3.1. The ZEDE Framework

In succinct terms, ZEDEs can be defined as "a new political subdivision of the State of Honduras with a constitutionally granted autonomy to adopt their own governance structure and laws." (Colindres 2021: 9) In 2013, the National Congress amended the constitution and enacted the Legislative Decree No. 236-2012. Alongside municipalities and departments, Honduras got a new form of territorial subdivision. ZEDEs can be established in two ways: Local communities in high-density zones can initiate one through a public referendum, requiring a two-thirds majority. Alternatively, private developers, known as Promoter and Organiser, can seek to establish one in low-density areas "authorized by Congress, through an administrative procedure before the Committee for the Adoption of Best Practices (CAMP)." (ibid: 18) "Under the ZEDE framework, developers have the authority to establish a new local government, endowed with "constitutionally granted autonomy to exert legislative and taxing powers, design its governance structure, administer public registries, authorize international ports, provide public services, and establish local police, crime prosecution, and penitentiary system, among others." (ibid: 20)

Despite their significant autonomy, ZEDEs are exempt from a majority of national legislation. However, they remain obligated to adhere to the Honduran constitution, international treaties, the ZEDE Organic Law[1], national criminal law, and other pertinent legislation. ZEDEs are free to create and develop their own public governance structure. According to Article 329 of the Honduran constitution, ZEDEs

[1] The ZEDE Organic Law, officially known as the Organic Law of Areas of Employment and Economic Development, approved by the National Congress of Honduras in 2013, grants ZEDEs legal personality, autonomy in policymaking, and the authority to establish their own regulations. It outlines the diverse purposes for which ZEDEs can be created, ranging from financial and logistic centres to special economic and agro-industrial areas. Importantly, the law authorises ZEDEs to create their budgets, collect and manage taxes, and operate under an independent fiscal regime (Legislative Decree Nr. 120-2013).

possess “functional and administrative autonomy which must include the functions, powers, and duties that the Constitution and the laws confer to Municipalities.” (Decreto No. 236-2012) Hence, “when performing their exclusive functions, and provided they do not contravene the law, municipalities – and ZEDEs by extension – shall be independent of the Powers of the State and shall be accountable to the courts for abuses.” (Colindres 2021: 20)

The political structure of the ZEDEs sets them apart significantly from other cities and jurisdictions, particularly when compared to traditional Honduran cities. In contrast to conventional municipalities, ZEDEs, as outlined in their unique framework, possess a distinct form of territorial autonomy granted by the Honduran constitution. This autonomy allows ZEDEs to adopt their own governance structures, legislative powers, and laws, setting them apart from other jurisdictions within Honduras. While traditional cities follow the established political norms and regulations of the country, ZEDEs operate within a framework that grants them constitutional autonomy to shape their governance.

In examining the political structure and citizenship/residency dynamics in Honduras, a stark contrast emerges when compared to the innovative model of ZEDEs. Honduras, historically shaped by traditional citizenship based on birthright and descent, has traditionally adhered to established governance structures. In contrast, ZEDEs introduce a paradigm shift by granting residents a unique form of political participation and legal status – without the necessity of Honduran citizenship. Unlike conventional citizenship models tied to nation-states, ZEDEs provide a distinct framework that challenges the norm.

In 2017 the CAMP authorised the Próspera ZEDE on the island of Roatán. Two years later the CAMP authorised the ZEDE Morazán (Ciudad Morazán) near the city of Choloma. A third one, ZEDE Orquídea, was authorised shortly after.

3.2. Political Structure in Próspera

Among all three ZEDEs, Próspera stands out as the one making the most significant advances. With a total investment of USD 100 million as of 2023, Próspera holds the distinction of being the ZEDE with the largest investment (Próspera 2023). In contrast to Ciudad Morazán, which focuses solely on 'attracting industrial development and Honduran residents' (Mason et al. 2021: 137), Próspera distinguishes itself with an international focus, specifically targeting knowledge-based economic activities (ibid.). Moreover, Próspera not only aspires to operate on Honduran soil but also aims to implement its ecosystem in other countries in the future, exploring avenues such as e-residency and digital platforms (ePróspera 2023). The prospect of a network of cities connected through the Próspera platform creates the potential of a residency which does not solely rely on geographical boundaries – which, again, brings new discussions on the role of citizenship, residency and political participation. Considering the potential for scalability and expansion

to other territories, and its consequential impact on the topics discussed in this paper, we will concentrate on the political structure of Próspera rather than that of the other two ZEDEs.

In this section, we will provide an overview of the structure in Próspera and in the next sections, we will rely mostly on this structure when talking about ZEDEs. However, it is important to mention that other ZEDEs (including future ones) do not necessarily need to be structured like Próspera – the idea of the ZEDEs is that different models and ideas compete with each other.

The case of Próspera is particularly interesting for political philosophy since the ZEDE offers a full-fledged application of the contract theory of government. Every person who wants to become a resident needs to accept the so-called Agreement of Coexistence (AoC) where they explicitly consent to a.o. the Charter of Próspera (which is the jurisdiction's highest-ranking local norm). This written contract lays out and guarantees the duties and rights of the resident. For example, it guarantees that every resident has the right and opportunity to vote and to be elected to the Próspera Council – in this case, the nationality of the resident does not play a role. The Próspera Council is composed of a Technical Secretary,

> "[…] who is the highest-ranking executive officer of a ZEDE, analogous to the mayor of a municipal government, and eight other Council Trustees. Initially, the Promoter and Organizer elects four seats in the Council, the physical residents elect three seats, and landowners elect two seats; however, the democratic power of physical residents will increase progressively, in accordance with population growth." (Colindres 2021: 24)

The Technical Secretary, who is elected for a seven-year term, is the sole political position that can be held only by a Honduran by birth. Other positions are open for every resident – independent of their nationality.

Once Próspera reaches 1.000 residents, the CAMP will appoint an Ombudsman. Their role is to oversee and file legal claims of unlawful acts by Próspera before the arbitration tribunals. Residents have the right to replace them through a referendum. When Próspera reaches 10,000 residents every rule enacted by the ZEDE can be subject to repeal by a majority of votes – previously adopted rules can be repealed by a two-thirds majority. Residents are able to propose their own measures (authorised and within the framework of the AoC) if they reach five per cent of the signatures of all persons eligible to vote in the ZEDE (ibid).

Once Próspera reaches Urban Population Density (meaning 6.000 residents per square kilometre), physical residents will elect five of the nine Council Trustees. The Próspera Council is the jurisdiction's representative legislative body and holds the power that residents have consented to delegate to it through the AoC. Furthermore, a referendum for residents to amend the Charter of Próspera will be held if authorised by a two-thirds vote of the Próspera Council (ibid: 25). However, all the rules enacted by the

council are subject to the approval of the CAMP – meaning that the legislative power of the ZEDE relies both on the Próspera Council and the CAMP. By doing so, all stakeholders, including the Honduran national government, are included in the juridical oversight of the ZEDE. Besides, the "most relevant powers of the Próspera Council require a two-thirds majority vote, such as the promulgation, amendment, or repeal of Statutes, Regulations, Ordinances, and Resolutions; the selection of the Council Secretary; the removal or suspension of Council Trustees; presenting a request to the CAMP for the removal of the Technical Secretary; authorizing a referendum through which residents may amend the Charter provisions regarding the Próspera Council; and the termination of certain contracts." (ibid: 28)

What makes the contract theory approach of Próspera interesting, is its 'exit clause'. The ZEDE's duties and power over its residents and their property are derived from a real and physical contract (AoC). The agreement allows residents to opt out of Próspera by following the agreed-upon conditions (ibid: 34-35). Furthermore, every resident has the possibility to enforce their civil and political rights against the ZEDE through a court of law or arbitration proceeding (including property, contractual, and labour matters).

4. Numerous challenges but some opportunities, too

In the Western tradition, a fundamental tension exists between inclusion and exclusion. Originating in the Athenian city-state, citizenship was a participatory model for the public sphere, limited to males. This design inherently restricted, or rather, excluded women, those without property, slaves, and newcomers. In contrast, an alternative Western tradition, originating from the Roman Empire, conceived citizenship as a "juridical concept of legal status, in which the citizen is a subject of a state." (Bloemraad et al. 2008: 155). During the Enlightenment era, the justification of subjecthood led to the emergence of Lockean ideas of consent and contract. This development laid the foundation for the language of individual rights, a central tenet of modern-day citizenship rooted in liberal ideas. In the 20th century, the language of rights expanded, giving rise to the concept of inalienable human rights. Yet, as revealed in Arendt's examination of stateless individuals in her 1951 work, the guarantee of the right to have rights is contingent upon the state's power and institutional framework (ibid).

4.1. The State, the ZEDEs, & the Citizens

It is important to note that residency in Próspera and other ZEDEs does not equate to citizenship, a distinction further explored in the next subsection. However, due to the delegation of powers from Honduras to the ZEDEs, it seems that they can fulfil at a certain level the four main dimensions of citizenship discussed in section two. Residents enter into a contractual agreement with Próspera, clearly outlining their rights and obligations – even if in the future the Charter of Próspera might be amended through a

referendum, the AoC at its core, remains untouched (Article IV of the AoC). In case of the change of a rule or set of rules by a democratic resident referendum, each resident will still have the possibility to consent (or not) to the new challenges, meaning that if desired, any resident can stick to the AoC they agreed the first time. Neither Próspera nor other residents are able to coerce them to accept any changes. This gives all residents of Próspera a legal status within the ZEDE and also provides them with a high level of security. Since the AoC can't be changed unilaterally, residents have known since the beginning what their duties and rights are and can plan their lives accordingly. Within nation-states, the government can change such rules and processes unilaterally, even if it is "written" differently somewhere else. Laws about visas, naturalisation and deportation can be changed and implemented without the necessity of hearing the opinion of the broader society and even less if the affected don't have the possibility to partake in the political process. If the resident has not broken any of the points set by the AoC, not even Honduras has the power to ask for their "extradition" to the rest of the country – within a ZEDE Honduran police force is not allowed to enter. Should Próspera break any of its duties towards a resident, the resident is able to bring Próspera to an arbitration centre and ask for just compensation.

The second main dimension is rights. As we have seen in section 3.1., ZEDEs– particularly Próspera– challenge the idea of the nation-state as the sole provider of rights and duties to its citizens. The fact that everyone around the globe has the possibility to join the ZEDEs and they have almost the same rights as other residents that are Honduras-born citizens, presupposes a new challenge to current citizenship discussions. Birthright through ius soli and/or ius sanguinis, play a lesser role – now a citizen contract and ius domicilii are new elements to take into account (Bauböck 2020: 4). The obligations of the resident are set up in Article II of the AoC, the obligations of Próspera in Article III. Próspera can't refuse or deny the resident any of their rights or obligations. The resident, on the other side, refrains from violating other residents' liberties and rights previously agreed upon in the AoC. Furthermore, the resident consents to maintain general liability insurance during the term of their residence.

Article XXII of the Charter of Próspera, the Resident Bill of Rights, displays the rights of each Próspera resident. What makes this Bill of Rights distinctive, is the fact that it is part of the AOC, a binding contract – if Próspera denies these rights, it can be held accountable. Through the Bill of Rights, Próspera accepts that the ZEDE shall not under colour of law a) deny the right to life, b) violate the right to property, c) burden freedom of thought, speech, conscience and religion, d) deny freedom of contract, e) deny the right to procedural due process, f) infringe on freedom from ex post facto laws, g) infringe on the right to security in privacy and h) infringe on the presumption of liberty.

And what about political participation, the third main dimension? As we have seen in section 3.1., all residents have the possibility to be part of political participation, even if they are not born in Honduras

(with only the exception of being elected Technical Secretary). One could argue that the ZEDEs provide a radical interpretation of post-national urban citizenship since it clearly severs the relationship between the city (in this case the ZEDE) and the state. Nevertheless, the AoC includes an exit clause that could offer residents an opt-in or exit-based political system. Some researchers perceive this as an obstacle rather than a solution. For De Filippi, for example, this can be dangerous since such a system eliminates the notion of politics because it removes the need for compromise and consensus (2018: 275). But do not forget that ZEDEs are not normal cities or states, they can be for-profit projects if managed by a private company. Although residents have the option to opt-out, their vested interest in the ZEDE's continued functioning serves as an incentive for active participation. If the ZEDE goes out of business or if a number of bad decisions are made, the ZEDE risks closing down and hence the status of the residents is jeopardised. With residents having a stake in the game, there exists a significant incentive for their active participation in the political process, contrary to what De Filippi might assume. Among nation-states, the chances of political participation for its residents depend on their nationality.

For example, in the European Union, EU citizens might be able to elect local authorities in their urban centres, however, non-EU citizens don't have this right. This has been the result of reciprocity among EU states which are closely bonded. Moreover, in the case of the ZEDEs, we could argue that there is a higher level of fairness since all residents are able to participate in the political process independent of their nationality. However, the situation for every resident is still attached at a certain level to their nationality. They will have an unconditional right to return to their home countries and depending on their nationality they are able to move freely between other countries (Bauböck 2018: 5).

Transitioning to our final dimension, let's explore the sense of belonging in the ZEDEs. It can be argued that the availability of political participation in the ZEDEs plays a pivotal role in establishing a sense of belonging. For example, new residents in a city-state like Monaco do not have the right to vote on issues that might affect them – getting citizenship seems almost improbable. Referring to the core idea of republican citizenship, Bauböck describes citizenship as not merely a legal status and a bundle of rights.

"It connects individuals who differ profoundly in their interests, identities and beliefs into a self-governing political community. The tie that connects them is not a cultural, but a political one: they are equal as subjects who live under common political authorities and laws and they are equally represented in the election of these authorities and the making of these laws." (2009: 105)

By having the option to engage in the political process through ius domicilli, residents share the same possibility to participate in the political ties described by Bauböck. Moreover, one could argue that in a globalised world, migrants often relocate to countries aligned with their values and principles. Although, in this case, other factors may play a crucial role, like the welfare state or tax structure. For new residents

in the ZEDEs, it can be argued that their voluntary agreement to the AoC, outlining expectations and duties, establishes a value-based connection rather than one rooted in culture. If residents don't accept or seem to break the agreement, the ZEDE has no duty towards retaining them on its territory.

4.2. Discussing boundaries: the State & the Market Process

To those with a superficial understanding of ZEDEs, the project may appear as a neoliberal haven catering to affluent individuals. However, it's important to note that affluent individuals may likely favour destinations like Monaco, Dubai, or Switzerland over a developing town on a Honduran island. Additionally, it's worth noting that nation-states have long been involved in the commercialisation of passports and residences. The Maltese Parliament has openly put a price on Maltese passports, meaning that it is money that decides if one may or may not get access to a passport. In the case of the ZEDEs, a clear, written AoC determines who may or may not be able to become a resident. Moreover, concerning Malta, there is a legitimate question about the incentives for new citizens to integrate and participate in civic society and the political process. While the Maltese passport works as a key to free movement (due to EU citizenship), residency in the ZEDEs offers a robust framework for co-existence. Notably, the process of obtaining residency in Próspera is more transparent than Golden Visa or Citizenship-by-investment programs, making it accessible even to those with limited financial means.

Transparency is a key factor differentiating ZEDEs from traditional Golden Visa programs. The lack of operational integrity in the governance of schemes like the Golden Visa has been a significant concern globally. Audits in several countries have revealed serious deficiencies, such as corruption, money laundering, and influence peddling. For instance, Portugal's Golden Visa program faced allegations of corruption, leading to government officials' detention. The Hungarian scheme was suspended due to revelations of awarding rights without a public procurement process, raising questions about transparency and due diligence. Such instances highlight the operational opaqueness and risks associated with traditional residency programs. In contrast, the ZEDEs, with their clear AoC and contractual agreements, provide a more transparent process by explicitly outlining the rights and obligations of residents. This transparency extends to the criteria for obtaining residency, ensuring a clearer and more accountable system compared to the opacity observed in traditional Golden Visa programs (Transparency International 2018). While criticisms of the commodification of citizenship are valid, it's crucial to recognise that the AoC and ZEDEs actively address potential tensions between individual residents and their host states.

Moreover, Bauböck critiques the potential impact of cities on global collective problems (2020: 5). In this context, ZEDEs emerge as potential solutions to address such challenges, while Próspera ZEDEs is confined to Honduras territory, the platform is not bound to any physical realm. In the scenario where other

countries adopt similar projects, Próspera could potentially expand to other territories, giving rise to new forms of global networked cities. These would be governed by the same AoC, incentivised to coordinate among themselves – forming a new kind of Network State.

4.3. State as the main provider of rights and duties?

Nation-states are already engaging in the sale of passports. While some may attribute this to neoliberalism or other factors, it remains a fact that countries are willingly commodifying their citizenship. While one may argue that doing so follows the same logic as with different schemes for high-skilled immigrants, it "contradicts the very recent efforts of states to re-substantiate citizenship through tests and integration requirements." (Barbulescu 2018: 30) The selective waiving of these requirements for the wealthy raises questions about the expectations that nation-states have for their new citizens.

In nations with already unstable institutions, ZEDEs could present an opportunity to implement and experiment with new processes and ideas. By delegating or outsourcing their power to outsiders, countries with fragile institutions and low trust can find an alternative to developing and trying new democratic processes. Eliminating democracy in ZEDEs would contradict the purpose of these zones. Democracy serves as a valuable feedback mechanism for residents, enabling continual adaptation and improvement. Abolishing this mechanism would be counterproductive. This even means that ZEDEs have a special incentive to renew and improve democratic mechanisms in order to better respond to the demands of their residents. Hence, these projects can be viewed as research laboratories for enhancing democracy. Innovative concepts such as blockchain governance or polycentric democracy may face challenges in implementation within existing structures, particularly in countries grappling with internal issues.

ZEDEs provide the opportunity to test and experiment with these improvements on a smaller scale. All existing projects have as a core element the co-determination of their inhabitants. ZEDEs would then have the possibility to go beyond the classic form of democracy in which majorities decide. This is because, in ZEDEs, the consent of each individual is decisive: each resident concludes a contract with the ZEDE. This contract clearly defines the rights and obligations of both parties. As a result, ZEDEs are even much more constrained than typical governments. By explicitly contracting with residents, ZEDEs are concretely obligated to uphold the rights of each individual – more so than classical democracies do.

Emphasising the significance of individual consent in ZEDEs diminishes the influence of monetary factors. The political process in classical democracies is prone to nepotism and corruption. Influential groups can use the state for their particular interests. One example is the huge bailouts after the global financial crisis of 2008, in which taxpayers' money was used to rescue banks. This was possible precisely because the state measures did not require the consent of every citizen. In modern states, the danger that

decisions are made with the wallet is unfortunately great (ie. mercantilism, lack of transparency, lobbyism, and corruption). ZEDEs offer an alternative for individuals seeking to escape political instability in their home countries while also desiring a say in the development of their new community and residence, notably through political participation.

Bauböck discusses the possibility of abandoning ius sanguinis in favour of ius soli and adopting a principle of ius domicilii – immigrants should then be naturalised ex-lege as soon as their residence is deemed permanent (2009: 108). With the framework of ZEDEs, it is possible to create a democratic polity as a territorial association without the need to rethink or reform citizenship in Honduras or the countries of Próspera's residents. What Bauböck describes as utopian may be possible at a certain level within the framework of the ZEDEs.

5. Conclusion

This paper has provided a short overview of some important discussion points regarding ZEDEs, state sovereignty and citizenship. Although there are currently only three ZEDEs, all in Honduras, the discussion around these topics remains crucial for understanding their theoretical and normative implications. But maybe because ZEDEs and similar ideas are so new, we need to discuss and talk about them. Anticipating the potential emergence of similar projects worldwide, it is essential to discuss their effects, prepare for collective reactions, and identify challenges that may arise. The evolution of Special Administrative Regions necessitates our awareness of the associated challenges. Understanding these challenges can contribute to developing a more nuanced framework for their exploration.

This paper has delved into the four primary dimensions of citizenship—legal status, rights, political participation, and a sense of belonging – while also scrutinizing their connection to the contemporary nation-state. Furthermore, we have provided some arguments that may show that these four dimensions don't need to be provided by a nation-state alone and have explored some ideas of how ZEDEs, run by private companies, may be able to fulfil some of these aspects. ZEDEs and future similar projects implicate that the nation-states are not the only ones providing or securing the rights and duties of citizens. Even though Próspera exclusively provides residency, not citizenship, one could perceive it as a form of proto-urban citizenship founded on the concept of ius domicilii.

These zones offer a comparatively more transparent process than existing Golden Visa or citizenship-by-investment programs. The written agreement and the opportunity for political participation may elevate the sense of belonging and identification with the zone, fostering a deeper engagement with the community due to the residents having a stake in the game. Although the ZEDEs are integral to Honduras and do not pursue any form of sovereignty, it is plausible that in the future, and with other

projects, tensions between the host nation and the SARs could arise – especially in instances where non-extradition pacts are in place. Moreover, ZEDEs and analogous projects hold the potential to fortify democratic institutions in their host nations by serving as research laboratories for innovative alternatives on a smaller scale.

Encouraging further academic inquiry into this topic would enrich the ongoing discourse. ZEDEs might pave the way for a comprehensive discussion, where the interplay of globalization, technology, and immigration becomes pivotal. This discussion involves the delegation of power by nation-states to privately owned institutions without compromising their democratic essence.[2]

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Beyond the Public Law: A Taxonomy of Approaches to Alternative Governing

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Abstract:

Among the most problematic realities of living together in groups larger than families and small bands is the problem of how to deal with the "bad neighbor." In this paper we identify four approaches to bad neighbor problems and suggest that planning decisions can look beyond the traditional regulatory approaches. Zoning law and other prohibitions on human activities may make societies less rich than they could be otherwise. By "rich" we are not primarily concerned with money, but with the richness of human relations. We believe that if public officials told people to solve their problems themselves, most real problems would be solved without the force of regulation.

Keywords: Urban Planning, Planning Theory, Regulation.

Resumen:

Entre las realidades más problemáticas de vivir juntos en grupos más grandes que familias y grupos pequeños está el problema de cómo lidiar con el "mal vecino". En este artículo identificamos cuatro enfoques para los problemas del mal vecino y sugerimos que las decisiones de planificación pueden ir más allá de los enfoques regulatorios tradicionales. Las leyes de zonificación y otras prohibiciones de las actividades humanas pueden hacer que las sociedades sean menos ricas de lo que podrían ser de otro modo. Cuando decimos "ricos" no nos preocupa principalmente el dinero, sino la riqueza de las relaciones humanas. Creemos que si los funcionarios públicos dijeran a la gente que resolviera sus problemas por sí misma, la mayoría de los problemas reales se resolverían sin la fuerza de la regulación.

Palabras clave: Planificación Urbana, Teoría de la Planificación, Regulación.

1. Introduction

Alternate systems of providing governance have long been discussed, and experiments in their application have been relatively widespread historically. Despite this reality we have seen relatively little development of theoretical foundations that are not premised on traditional notions of how governance is provided and the mechanisms that can provide the results we desire. As a

result, most of the experiments that have been attempted have followed the pattern of the of the traditional regulation and planning model, albeit provided privately.

While this approach widens the sphere and creates competition between jurisdictions and would almost certainly lead to innovation, the development of a strong theoretic alternatives to the traditional patterns is necessary. This approach also leaves much of the potential for better quality of life and fewer restrictions unrealized, replacing government with a private enforcer.

In this paper we explore four approaches to governance and planning that might be used in such alternative systems and suggest that consideration of the alternative approaches would be productive for those establishing alternative jurisdictions. These approaches are certainly not exhaustive in their examination but rather are a useful approach for considering alternative approaches to governance in practice.

For those interested in alternative governance or special jurisdictions at the local level especially if they are to function beyond special economic zones creating a system capable of engaging with the common problems that most local governments undertake to solve them is necessary. Unfortunately, the most common alternatives have primarily taken the same approach as traditional governance and applied in the private context.

2. The Problems of Local Governing

Among the most problematic realities of living together in groups larger than families and small bands is the problem of how to deal with the "bad neighbor." It is easy to conjure up images of the bad neighbor both from personal experience and from popular culture. The impacts of "bad neighbors" often dominate discussions of cities, and communities, and occasionally state legislatures.

When the Utah State Legislature, introduced a bill to prohibit political subdivisions (cities, counties, special districts) from regulating beekeeping.(e.utah.gov, n.d.) An advocacy group comprised, in part, of hobby beekeepers and urban farmers who wanted to keep bees in their backyards promoted it. The text of the bill says: "A political subdivision may not adopt an ordinance, rule, regulation, or resolution prohibiting a property owner from establishing or maintaining an apiary on the owner's property."

We are part of a local government list-serve whose membership is primarily city planners and attorneys. When this bill was listed online, we sent the following tongue-in-cheek email to the list serve manager, who is the division director for regional planning and transportation of Salt Lake County: "Down with the state! Beekeepers unite and rise up against your municipal overlords." He responded with, "I wanna hear what you have to say when your neighbor puts his beehive right on his fence line next to your swimming pool!" The exchange got more serious when one of us responded:

Pesticides can drift... I am not defenseless. In all seriousness, can't nuisance law solve such problems? Surely there is a large body of common law that applies. What about nuisance cases? The legislature can control cities but have a harder time in the courts. I would inform a neighbor that I deal with trespass with pesticides if his bees were a problem for me. It turns out there are many beehives around my property because I built near some orchards. The owner brings me honey and honey wine vinegar every Christmas.

The City Planner responded, "I agree that many situations get overblown, but sometimes you do just happen to get disagreeable neighbors. Whether nuisance law would be adequate to handle such a situation, I don't know. Now magnify what reactions may be if the person who owns the swimming pool has a child who is allergic to bee stings! Rare instances, you say, right? And that's true, but in my career, it has been amazing how often such situations arise!"

He added later, "My best example, [you] cannot make this stuff up, was in Salt Lake City when a small beer bar that catered to gay people wanted to upgrade to a full-service bar, which required getting a conditional use permit from the city. The neighbors adjacent to the bar were a group of very conservative, very staunch polygamists. The planning commission meeting, where supporters and opponents from these two various communities showed up, cannot be duplicated, or even believed if it were written as a sitcom script! But it happened!"

In the case of the gay bar, it isn't immediately clear who the bad neighbor is, but both may well have been the bad neighbor to the other. Our planner friend raised significant issues that led us to more carefully consider how the bad neighbor problem might be addressed. In doing so we develop a taxonomy of approaches to solving bad neighbor problems and attempt to work through pros and cons of approach. At the core of our analysis is the question "why allow planners to do what they do?" Which is quickly followed by, "what are the implications of each approach for promoting free, yet responsible neighborhoods and society?"

As we considered these questions, we found ourselves asking if there was a way outside of the traditional approaches that could address the question, we found ourselves asking. As we discussed these questions, we began to see four distinct possible approaches. Only one of which seemed to primarily be the realm of publicly provided government or something like it, while the others could easily be used by alternative jurisdictions that attempted an alternative form of governance.

A Taxonomy of Approaches

Our discussion resulted in a taxonomy of the various ways we identified as being possible to solve the problems that had emerged as we examined what local governments in particular were trying to do. Our taxonomy has come to include four approaches: Public Law, Private Law, Civil Society, and Exchange.

Our Taxonomy while useful for categorizing and considering different approaches does not suggest that the use of approaches from one category necessarily forecloses using approaches from any of the others. Instead, the taxonomy provides a way of thinking about different approaches and asking is an approach from this category the only way to accomplish our governance goals.

2.1. Public Law

Public law is the law of relationships between individuals and the government. The public law can prohibit certain actions and require others. Under the public law, beekeeping can be prohibited or not, gay bars can be permitted or not and can be allowed to expand or not. Pigs and chickens can be allowed or prohibited in urban settings. The process for determining the rules is a legislative one often complete with hearings and public comment.

The standard civics explanation of public law is that it somehow reflects the will of the people because a public body, using democratic processes, complete with citizen input, undertakes it. Our practical experience and formal training show this view of government to be painfully naïve and romantic. Consider city councils. Their primary business is providing infrastructure—water, sewer, roads—and public health and safety, yet the primary activity of city councils is making land use decisions. City councils spend most of their time debating what can be built where, how close buildings may be to the street and property lines on side and back yards, minimum lot sizes, minimum and maximum building sizes, maximum building heights, whether street trees are

required and of what species and size, allowable plantings between curbs and sidewalks, whether curbs and sidewalks are required, whether basketball standards are allowed in the driveway, how many pets a family may have, what animals are considered pets, how many unrelated people living together are considered a family, and on and on. One way to understand these governmental activities is to recognize they are cases of person A wanting something owned by person B. Lot sizes, planting, building heights, etc. all affect what choices B can make with his property. They are ways of granting A some of B's property rights. (Simmons, 2012)

2.1.1. Problems in the Public Law

Hiding one's true purposes in seeking government restrictions on neighbors is what we call policy arbitrage. It is the byproduct of attempting to resolve bad neighbor problems legislatively. Policy arbitrage is the process of exploiting law to achieve results that may not have been intended by the law, but which the law makes possible. Consider the polygamist families arguing at a public hearing that the gay bar should not be allowed to expand. They were able to couch their arguments in the language of noise ordinances, excessive traffic, and incompatible uses. all of which are covered by the ordinances of the city. Although those may have been legitimate concerns, the unstated purposes were simply that they were opposed to gay lifestyles in general, gay people in particular, and of being in close proximity to that which they find morally objectionable. The irony that they were living an illegal lifestyle was entertaining to observers but was not discussed in the hearing. What is particularly interesting is that in cities across the state of Utah limitations on occupancy, home size, and cohabitation have all been used to keep what some neighbors viewed as the immoral polygamists from moving in.

Other examples abound, parking regulations that claim to prevent street parking congestion are used to keep single-family neighborhoods from changing. Facade regulations that claim to preserve the historic look and feel of downtowns limit franchise restaurants from opening in cities. What is common among these and most examples of using the public law is that the public rules focused on attempting to correct the "bad neighbor" problem open up the opportunity for policy entrepreneurs to arbitrage the rules and arrive at their, often unrelated, preferred outcome.

Bruce Yandle's (1983) parable of bootleggers and Baptists describes how much of Public Law is made. Yandle described the bootlegger-and-Baptist model bason on his experience as a U.S. regulatory economist. Bootlegger and Baptist are terms he uses to identify members of a

coalition of seemingly opposed groups who need each other in order to gain the acceptance of a policy proposal. He takes this model from the observation that groups may work toward the same end even though their interests in that end may diverge wildly. Bootleggers benefit from bans on Sunday liquor sales or from designation of an entire county as "dry." The Baptists provide the moral cover for the bootleggers' interests. Baptists are opposed to bootlegging, but they are more opposed to legal beer and liquor sales. They provide, in Yandle's words, "vital and vocal endorsement" for banning alcohol sales. The bootleggers work in less obvious ways to lubricate the political machinery. (Yandle, n.d.)

The bad neighbor problem can bring together seemingly disparate groups to seek a Public Law solution. Professional beekeepers, for example, would not be likely to lobby against home beekeepers based on competition in the honey market, but on public health and safety issues. In fact, they would likely play the Bootlegger role by staying in the background while encouraging the Baptists (planners and other local officials) to oppose the urban beekeepers. Because bootleggers prefer to operate in the background, the bad neighbor problem offers them room for "backroom" or "underground" negotiations that lead to zoning being adapted in ways some authors describe as favoritism or corruption. (Ryan, n.d.)

2.1.1.1. Prohibiting Change

One use of public law is to use zoning laws to prohibit change. For some commentators that is a feature. For others it is a bug. The purpose of many zoning laws is to keep things as they are—to freeze the status quo through time. It will, supposedly, keep out unwanted uses and neighbors.

A downside to stifling change is that it stifles innovation by outlawing anything but the status quo. A typical innovation-stifling rule in the United States is to restrict "granny flats" on a lot with an existing house or tiny homes on small lots. The general argument is that such changes in density will change neighborhood characteristics in negative ways. The family trying to care for an elderly relative while giving him or her a measure of independence would view the change as a hugely positive one. Or the young couple attempting to build a home without what they view as crippling debt would view the opportunity to start with a tiny home a positive outcome.

2.1.1.2. Ex Ante Rules

Another feature of the public law is that it is an ex-ante approach to bad neighbors. Again, some view that as a feature and others view it as a bug. Stopping bad neighbors before they arrive gives a measure of security and permanence to existing neighborhood arrangements. Part of the trick, however, is to "correctly" anticipate bad neighbors. Does your neighbor raising chickens in her backyard make her a bad neighbor? What about putting a basketball hoop in her driveway, so her teenagers and their friends play ball in the driveway? What about planting vegetables in the park strip between the sidewalk and curb? Prohibiting your neighbors from making these and other choices might make your neighborhood a sterile place. Unintended results are a necessary feature of ex ante rules.

2.2. Private Law

The second approach to is the use of Private Law. Private law is the law regulating relationships between individuals. The tools it provides for dealing with the bad neighbor problem are the laws of torts and nuisance. Whereas public law provides ex ante protections or regulations, private law is applied ex post. Once a tort or nuisance is identified and proven, the person who is proved to have caused a harm or nuisance can be enjoined legally from continuing to create the harm or nuisance and can be required to pay damages.

There are several potential negative features to the use of private law. The most obvious is that it is applied only after a harm has been created. Thus, your neighbor can install her beehives and essentially dare you file suit if and when his bees sting your children. A second negative feature is that is often costlier to hire an attorney than it is to lobby for a new law or ordinance. In fact, the potential costs of fighting a nuisance may actually encourage the overproduction of nuisances because those harmed cannot afford costs. Finally, taking your neighbor to court erodes the social capital that may have been built among neighbors.

Applying a rule ex post may be more powerful than commonly understood. One example it the lawsuit against McDonald's for a person being burned when she spilled coffee she had just purchased in a McDonald's drive-through in her lap and suffered third-degree burns from the 180-190°. A jury awarded her $2.6 million, which the trial judge reduced to $640,000. She and McDonald's settled for an undisclosed amount during the appeal process. Many used this case to argue that tort law was spawning frivolous lawsuits. But restaurants everywhere in the United States immediately reduced their coffee temperature to 158°. In this case, tort law effectively

internalized externalities, even for people not a party to the lawsuit. (Liebeck v. Mcdonald's Restaurants, 1994)

Besides determining the appropriate temperature for coffee, tort law is useful for determining the difference between being offended and being harmed. Although it may offend your neighbor if you wear a paisley shirt with striped pants, your attire is not a tort. You may have committed a sartorial offense, but not a tortious one. As a result, those wishing to control the colors neighbors paint their houses must find a means different than tort law--zoning, shaming, or buying paint for the neighbor, for example.

If you are actually harmed by your neighbor, rather than just offended, tort and nuisance law offer solutions. If the gay bar played music so loudly the neighbors could not sleep, then the loud music could be declared a nuisance. If your neighbor's bees sting his friends during an outdoor party, he has committed a tort, especially if one of the stung guests is allergic to bee stings and ends up in the hospital or, worse yet, dead.

Private law avoids one of the main problems with public law—it is adaptive and creative and is far less able to be captured by the political process. It limits effects to those actually harmed and to those causing the harm. Oddly enough, it turns out that it is used relatively seldom in the United States as a way to deal with bad neighbors. In one nationwide sample of adults, only two-thirds had ever used an attorney and half of them had only used an attorney once. (Curran, 1977) Apparently, people use private law very little as a means of dealing with bad neighbors. Two possible reasons are that the public law is easier to use or, and more likely, that the basic rules that govern how we deal with each other are not legal ones; they are embedded in the fabric of civil society. (Ellickson, 1987)

2.3. Civil Society

Beyond the strict legal approaches lay approaches that a premised not in the use of legal power to curtail bad behavior but rather in the relationship between individuals to do so. In 2009, Elinor Ostrom was awarded the Nobel Memorial Prize in Economic Sciences for her "analysis of economic governance, especially the commons." Ostrom's work, along with that of her husband Vincent Ostrom, examined how people make agreements in situations that economic theory has predicted would be very difficult; specifically, outside the rule of public or private law.

The Ostroms' were interested in discovering how governance operates without the "sword" of an external enforcer, usually government. The standard approach among political scientists, economists, and planners to solving conflict in social systems is to introduce legal enforcement or rules or agreements. Indeed, Hobbes argued that "Covenants without the sword are but words." The Ostrom research program showed that, at least within smaller communities, "individuals are willing to monitor and sanction one another to ensure that their covenants are sustained. Elinor Ostrom pointed out that, "Many of these agreements have survived wars, pestilence, floods, and major political upheavals" (Ostrom, 1993).

In the same article as the quotation above, Elinor Ostrom asserted that, "The key question is can self-governing arrangements survive the ideas that have come to dominate the thinking of many academics." She calls the idea that people living in their local communities need the government to fix community problems a "distorted view." Such a view suggests that local people are "helpless and incapable." Thus, the idea that a community needs to legally regulate beehives, gay bars, street side plantings, or chickens assumes a narrow view of people and their ability to solve problems by themselves. It also ignores the roles that local norms play in regulating behavior. There is, in fact, a wide range of extralegal regulation that neighbors use to manage their relationships with each other.

A large literature has emerged that addresses the issues of conflict, law, and informal social control. In addition, a large literature has developed on the parallel concept of social capital defined generally as "the network of social connections that exist between people, and their shared values and norms of behavior, which enable and encourage mutually advantageous social cooperation." (Putnam, 2000)We combine these ideas under the heading of civil society.

People's everyday behavior is regulated not by public and private law, but by the norms they share about rewards, punishments, and a shared understanding of what it means to be part of a society. These norms or shared understandings extend beyond families and even local neighborhoods. They are what makes possible living peacefully together as opposed to being in a state of constant conflict. They are the antithesis of public hearings and legislative committee hearings. One problem is that the sword of government easily replaces them.

While one of the authors, was mayor of a small community, he regularly received calls in which citizens would complain about their neighbor's dog barking. When he asked if they had talked with the neighbor, they responded that they did not want to offend the neighbor. Instead,

they wanted to use the power of government to solve the bad neighbor problem. As one of our colleagues asked in a recent conversation, "Whatever happened to just talking to each other?" What happened is the ease of using government. One result is that instead of a civil society based on mutual understanding and conciliation, we get a faux civil society that is based on coercion and power.

Again, an example. His new neighbor's barking dog annoyed one person we know. The dog would bark for hours. Finally, he asked the new neighbors to do something about their dog's barking. They replied that they did not know what to do but would try. Their solution was to yell at the dog when it barked but yelling had little effect. Finally, the annoyed neighbor purchased a dog bark collar and gave it to the new neighbors on the condition they put it on the dog. The collar sends a warning sound when the dog barks and if the barking continues, applies a low-voltage electric shock. The barking ended that night. The annoyed neighbor could have called the city to send an animal control officer. Instead, he talked to the neighbor and worked out a solution that did not require the power of government.

Reliance on the use of civil society to regulate behavior is not without problems. Problems that arise from bad actors may not be solved simply because we are neighbors, they will almost certainly instead require substantial effort. Carl Sandburg's admonition to "Love your neighbor as yourself; but don't take down the fence" (Sandburg, 1970) is a nice illustration of that reality. Boundaries between neighbors are actually useful for being good neighbors. One reason is that, without boundaries, kindness can be taken for granted and then exploited. As one etiquette advisor explained,

> But a good neighbor has limits and needs to set them. Remember - kindness becomes a chore when it is taken for granted. You and your neighbors will exist together more harmoniously when you know and respect each other's boundaries. (Candace Smith Etiquette, n.d.)

Another reason is that autonomy is important to most people. Being able to make choices about what is yours allows you to decide when to invite your neighbor to your home and when not to. That is, it allows you to invoke property rules, which are necessary for exchange to be used as a way to solve problems between neighbors.

The major question that is nearly always raised when civil society is suggested as a mechanism for governance is what happens when that civil society fails, breaks down, or simply isn't up to the job of resolving conflict or providing governance. Our response is much like that of Ostrom's, despite these risks among small communities with strong social ties civil society is surprisingly robust. Simply put Ostrom's examinations of small communities of interest gives much reason for optimism about the potential for the working of such governance. Further to those skeptical of such potential we would point to our final category "Exchange" as mechanism for reinforcing civil society between groups and when community size increases beyond the capacity of every member to know every other member.

2.4 Exchange

Our final approach is that of exchange. For us exchange just means using market approaches to resolve problems. A simple example is the right to a view, as a typical neighbor dispute is the view from one's property. In the United States there are generally no rights in the public or private law to a protected view. Property owners can, however, find legal and extralegal ways to protect a view. The legal ways are market transactions. The most formal is to purchase a view easement from a neighbor. That easement is attached to the title of the property and can prohibit any structures or even trees from blocking the view. An easement turns the view into a protected right. Another way is to purchase the adjacent property, which is a choice often made by property owners who build on slopes. They purchase the property immediately downhill from them. The extralegal or civil society way is to just talk with the neighbor and work out informal agreements about structures and trees.

Another example from the term as mayor illustrates this well. A retiree called to talk about the home being built next to his. He lived on the hillside on one side of our valley and had an exceptional view of the mountains twenty miles away. From his deck, with the exceptional view of the mountains, he pointed to the house being built just below his. He explained that the roof on that house was going to block part of his view and that a realtor told him the lost view was worth $80,000. He asked for the city to stop the builder from building the house so high. Because he did not own a right to the view, there was no solution in the private law because losing the view was not a tort. Neither was there a solution in the public law since the new home met all zoning regulations. When asked if he had a request to the builder that he build a house that did not infringe

on his view, he said he did not want to cause problems. The family building the home seemed like nice people and he did not want to upset them. But it was apparently fine for the mayor to upset them. With no protections in public or private law and having rejected a civil society approach, he was left with the possibility of exchange--he could purchase a view easement so the neighbors would find it in their interest change the home design in order to protect the view. It turned out that rather than negotiate and come to a deal, he really wanted the mayor to use government power to stop them.

Notice that one of the costs of using exchange is that the offended neighbor has to talk to the offending one and see if they can come to an agreement. The costs of reaching that agreement, including the interpersonal costs, are known as transaction costs. One of the core arguments in Coase's "The Problem of Social Cost," is that transaction costs can prevent agreements from being reached. (Coase, n.d.)

Zoning ordinances are generally viewed as a response to the transaction costs problem. In fact, Justice Sutherland, writing for the Supreme Court in the seminal zoning case in the United States, Village of Euclid v. Ambler Realty Co., can be understood as arguing that transaction costs make using nuisance law far too difficult. He said that zoning minimizes the number of conflicts that could occur when a city does not have planned development. (Village of Euclid v. Amber Realty, [1926])

One of the best-known discussions of transaction costs is from David Hume in 1749. He was talking about common property rather than private property but his claim sheds light on the transaction cost problem:

"Two neighbors may agree to drain a meadow, which they possess in common, because 'tis easy for them to know each other's mind; and each must perceive that the immediate consequence of his failing in his part is the abandoning of the whole project. But 'tis very difficult, and indeed impossible, that a thousand persons should agree in any such action… Political society easily remedies … these inconveniences. Thus, bridges are built; harbors opened; ramparts raised; canals formed; fleets equipped; and armies disciplined everywhere by the care of government, which, though composed of men subject to all human infirmities, becomes, by one of the finest and most subtle inventions imaginable, a composition which is, in some measure, exempted from all these infirmities." (Norton and Norton, 2000)

The transaction costs argument is quite simple: agreements between two people are quite easy, but the costs of getting a thousand to agree make such agreements very difficult. Such agreements may seem to be nearly impossible in theory, but in practice they happen all the time. In the civil society section above we identified how people from all over the world solve such problems. It requires organization, agreement, and sanctions imposed within the group, but not necessarily by government.

Hume's discussion would be entirely different if the meadow were owned by someone rather than everyone. In fact, property rights are what make exchange possible and solves many of the problems of transaction costs. For example, airport authorities purchase land under landing approaches and then resell it with a noise easement is an example of solving the problem of the airport being a bad neighbor. Those purchasing the property do so at a substantially reduced cost, in exchange for giving up any rights noise reduction. Subdivision covenants are put in place when a subdivision is begun to solve the bad neighbor problem by identifying what is and is not allowed in that subdivision. One way to think of subdivisions with covenants is that everyone purchasing property in the subdivision gives up a portion of their property rights to everyone else in order to guarantee (assuming the covenants are enforced) that actions deemed bad by those drafting the covenants are not allowed.

Understanding how property rights solve bad neighbor problems requires understanding a bit about property rights. First of all, property rights are not rights to things, they are a set of use rights that may be asserted against others. That is, they are rules of behavior that dictate how you and others interact about what is "yours" and what is "mine." The shared understanding of rights, responsibilities, and limitations form a sort of social contract about acceptable behavior towards each other.

In Kaiser Aetna v. United States, the U.S. Supreme Court declared that "The right to exclude others" is "one of the most essential sticks in the bundle of rights that is commonly characterized as property." (Kaiser Aetna v. United States, 1979) Note that the court was essentially agreeing with our assertion that property rights are a set of behavioral rules. The court was also recognizing one of the most important features or property rights; they are bundled rights, not simple overarching rights. That is, there are often separable features, or "sticks" as the court referred to them, in a person's bundle of rights. Those sticks can be separated and sold, leased, or given away.

The number of sticks in a bundle of rights is only limited by imagination or legal rules. A person can offer to purchase a view right and once that agreement is filed as an easement, it is a right that is now legally recognized. That can only happen if it clear that someone owns that stick in her bundle of rights. If you own a view right across your neighbor's property, she can offer to purchase that right from you in order to build a view-blocking building. The same is true of sunshine rights. If it is clear that someone owns a right to sunshine not being blocked from reaching his property, he can sell that right or not.

Unclear rights make it difficult to make a deal. In one California example a family planted redwood trees on their property line. Five years later their neighbor installed solar panels on his roof and then complained that as the redwood trees grew, they would shade his panels. California had a law protecting sunshine rights for solar panels, but what if the solar panels were installed after the trees were planted? That lack of clarity drove the neighbors to court and the tree owners were forced to prune their trees. (Barringer, 2000) In response, the California legislature modified the solar law to exempt trees planted before a solar collector is installed, and a fact sheet prepared by the chief sponsor of the bill explained that the legislation was necessary because "a recent court order raised questions about the clarity of current law." (www.senatorsimitian.com, n.d.)

Note that what clear property rights create is the opportunity for negotiation and security among right holders and purchasers. If rights are clear, neighbors can negotiate and reach a mutually agreeable solution, or not. But Neighbor A cannot take Neighbor B's sunshine without compensation unless the legislative process is used rather than negotiation. Instead, they must negotiate a solution. If they cannot reach an agreement, it is at least clear who owns what rights.

3. Conclusions

Our goal in identifying these four approaches to bad neighbor problems was to examine how we might use alternative approaches and to encourage those interested in creating alternative governing jurisdictions to look to look beyond how they can adapt the public law into the private sphere. Relying solely on the Public Law its prohibition on human activities makes societies less rich than they could be otherwise, and for those interested in creating alternative approaches to governing these considerations should be at the front of their consideration. We believe that if people had to solve their problems themselves, most real problems would be solved without force.

Beekeepers and neighbors could resolve conflicts through private law or just by being neighborly, or through exchange.

Our taxonomy of approaches gives the administrator of special jurisdictions, the planner from local governments, the creator of new communities, or the theorist of alternative governance additional ways to think about the how governance can occur beyond of the public law.

The public law even if administered by a private jurisdiction, has particularly serious problems for those interested in alternative governance: It stands in front of the creativity, enterprise, and progress that are encouraged by private law, civil society, and exchange. One of our favorite books is Virginia Postrel's, The Future and Its Enemies: The Growing Conflict Over Creativity, Enterprise, and Progress. (Postrel, 1999) She uses the terms "dynamism" and "stasism" to identify systems that encourage creativity and those that do not.

The dynamism of market exchange especially when allowed to occur without artificial restrictions established by governments is well established. The creativity, effort and rewards that come from mutually beneficial trade are laid bare when compared to the limits imposed by politically determined rules.

The private law can be dynamic because it addresses issues once they have occurred, which allows for conversation and solutions that could not have occurred to planners in advance. It allows for time and place specific information to be used. It also allows for questions about who is, in fact, the bad neighbor.

Civil society can also be a system of dynamism because it encourages people to seek creative solutions to bad neighbors. The dog bark collar we mentioned above is one example. It was a simple solution that left both neighbors much happier than invoking the police power of the city would have done. Using public law creates winners and losers. Being a good neighbor sometimes requires a great deal of creativity and tolerance. It also requires connecting with neighbors in ways that build social capital.

To create alternative approaches to governing the special jurisdictions that can provide it have to rethink the usual approach of governing that seeks to address problems like the "bad neighbor" that local governments are so often asked to solve. We the public law and its use of the force of the state to enforce compliance can be replaced by private law, civil society, or exchange the quality of life in the communities we live in have the potential to be improved substantially, and individuals left freer as a result.

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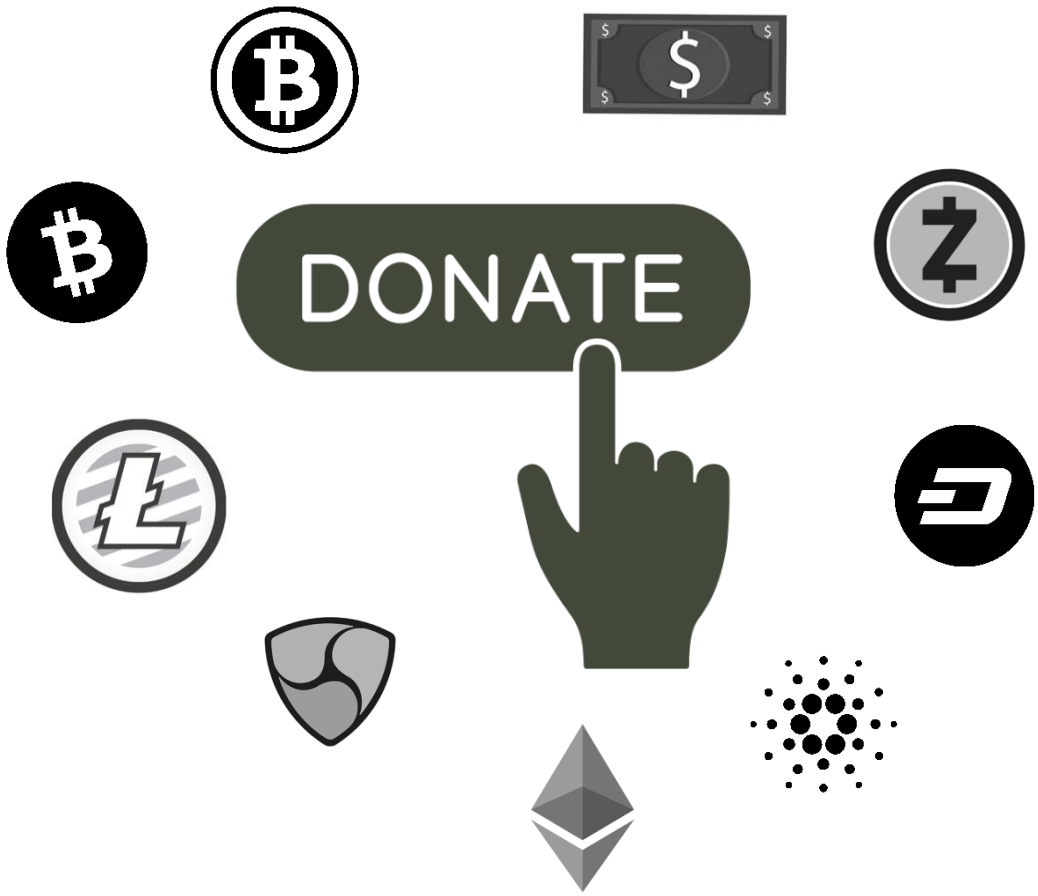

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