

### INTRODUCTION

Once we begin to imagine an institutional instrument to support the potential recovery of a decaying city, few ideas have the appeal of the charter city.<sup>3</sup> Imagine, for instance, that the government establishes a charter city called *Bossa Nova* in Rio de Janeiro with a new set of organizations and rules of the game that will transform the economy, society, and the politics in a way that facilitates human development.<sup>4</sup> An amazing world of transformative possibilities may emerge from this exercise of institutional imagination. Consider, for instance, that *Bossa Nova* may benefit from a special legal regime to revive industrial production by establishing incentives for manufacturing activities again. It may also have a foundational model of education to facilitate partnerships with prime international universities, professional schools and global businesses, creating excellent centers for research, professionalization and development of innovative technologies. *Bossa Nova* may also be conceived as a bilingual place, so that the possibility of communicating, studying, and working on both Portuguese and English facilitates the presence of international workers, students, and tourists. Moreover, the regulation of urban spaces in this imagined city may facilitate the construction of cheaper buildings and encourage residents of illegal squatters to voluntarily abandon their homes in slums and move to a residence in *Bossa Nova*. Finally, this charter city may also become a laboratory for experimental institutions in other legal fields too, so that legal innovation may be tested in the charter city before being applied to other parts of the country.

This review article reflects on the institutionalization of a charter city in Rio de Janeiro in dialogue with Mariana Prado and Michael Trebilcock's concept of

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<sup>1</sup> This paper was originally presented at the CRN Law and Development during the Law and Society Association Conference in Toronto in 2018 and I am grateful to the co-conveners, David Restrepo Amariles, Mariana Mota Prado, Diego Gil McCawley, and Rolando Garcia Miron for the opportunity to present the paper and discuss my ideas on charter cities as institutional bypasses there. I am especially grateful to Mariana Mota Prado for kindly accepting that a revised version of the original paper could be published as part of this special collection of book reviews.

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<sup>3</sup> Paul Romer. Technologies, Rules, and Progress: The Case for Charter Cities. No Id 2471 (2010).

<sup>4</sup> On the potential impact of institutional quality for human development, see Michael J. Trebilcock and Mariana Mora Prado. An Advanced Introduction to Law and Development. Edward Elgar (2014) Ch 3; Michael Trebilcock and Mariana Mota Prado, What Makes Poor Countries Poor? Institutional Determinants of Development. Edward Elgar (2011).

*institutional bypass*.<sup>5</sup> The term was originally coined by Keith S. Rosenn in a classic socio-legal article about the informal Brazilian way of dealing with rules through “the *jeito*”.<sup>6</sup> However, Prado and Trebilcock reject Rosenn’s definition and redefine the concept of *institutional bypass* as an organizational transformation that (1) keeps the dominant institution in place, (2) creates an alternative institutional pathway (3) with a distinctive feature that targets perceived dysfunctions of the dominant institution.<sup>7</sup> Additionally, an *institutional bypass* is (4) separated from the dominant institution in terms of governance, (5) produces effects in the same jurisdiction as the dominant institution, and (6) it does not contradict the requirements of the legal system.<sup>8</sup> In their book, Mariana Mota Prado and Michael Trebilcock discuss a series of important empirical case studies of institutional bypasses, including some important projects for transformation of healthcare and security in Rio de Janeiro.<sup>9</sup> It would be great to learn from their reflection about the possibilities of transforming municipal and state organizations and their rules through the establishment of a charter city.

In 2014, at the Law and Public Affairs Discussion Group at the University of Oxford, Prado acknowledged that a charter city consisted of an institutional bypass with lawmaking functions. The book focused on bypasses on the delivery of services and functions, placing charter cities in a separate category that is not discussed in the book. During the discussion in 2014, we wondered whether such an institutional bypass of legislative bodies could be considered legitimate. This puzzle remains unresolved, since it is not addressed in the book. On one hand, the investigation of charter cities and the prominent example of the Chinese Special Economic Zones are presented in the book as matters for future research.<sup>10</sup> On the other hand, during their conceptual discussion of the reform strategies for institutional change, the authors acknowledge the development of alternative

<sup>5</sup> Mariana Mota Prado and Michael J. Trebilcock, *Institutional Bypass: A Strategy to Promote Reforms for Development*. Cambridge: CUP (2019), Ch 2.

<sup>6</sup> Keith S. Rosenn, *The Jeito: Brazil’s Institutional Bypass of the Formal Legal System and Its Developmental Implications*. *American Journal of Comparative Law*, vol. 13, n. 3, p. 514 (1971). As Prado and Trebilcock put it, most of the arrangements related to the *jeito* “are adopted by individuals (and are often illegal)” and do not meet their criteria of an institutional bypass. See Mariana Mota Prado and Michael J. Trebilcock, *Institutional Bypass: A Strategy to Promote Reforms for Development*. Cambridge: CUP (2019), page 35.

<sup>7</sup> Mariana Mota Prado and Michael J. Trebilcock, *Institutional Bypass: A Strategy to Promote Reforms for Development*. Cambridge: CUP (2019), 28.

<sup>8</sup> *Idem*.

<sup>9</sup> Prado and Trebilcock, *Institutional Bypass: A Strategy to Promote Reforms for Development*. Cambridge: CUP (2019), Ch. 4.

<sup>10</sup> *Idem*, page 139 (“one example includes the strategies that have been critical to launching China’s remarkable growth, including creation of Special Economic Zones, exposing state-owned monopolies (SOEs) to competition, and decentralizing economic functions to local governments that then compete with each other in promoting new enterprises”).

unofficial systems of rules and norms in competition with the official law-making functions of democratically elected representatives, but consider that “there are conceptual and practical difficulties in conceiving of alternative rule-making regimes as bypasses”.<sup>11</sup> In summary, the analysis of rulemaking bypasses seems to be left open for future research, as it is outside the scope of their book, which focused only on delivery of government services.<sup>12</sup>

Despite being outside of the scope of Prado and Trebilcock’s book, I believe it is valuable to reflect on charter cities as institutional bypasses. As far as I am aware, academic articles have not yet discussed the possibilities and limits of charter cities as institutional bypasses. This article is organized as follows: following this introduction, section 2 presents the concept of charter city and analyses it as an institutional bypass. Section 3 speculates on the possibilities and limits of establishing an imaginary charter city called *Bossa Nova* in the state of Rio de Janeiro. Section 4 discusses conceptual difficulties of bypassing politics and the lawmaking functions through a charter city. Section 5 presents final remarks.

## 2. CHARTER CITIES AS INSTITUTIONAL BYPASSES: THEORY AND PRACTICE.

In a presentation in Mexico City, Paul Romer advanced the argument that the main constraint for progress comes from our limited capacity to discover and implement new rules.<sup>13</sup> In his opinion, this insight was decisive for poverty reduction in China and could be reproduced elsewhere in the world as part of global efforts to promote development: “China employed mechanisms, including special economic zones, which allowed it to copy good rules from the rest of the world, especially its thriving neighbors in Hong Kong”.<sup>14</sup> However, because the choices of the best rules are not obvious, institutional innovation requires laboratories for experimentation and trials with observation of working rules in new contexts.<sup>15</sup> Romer developed a system of meta-rules – rules for changing rules – that do not require designing entirely new systems, but would involve “the effort to create new places with good rules and let people opt in”.<sup>16</sup> His inspiration comes from the Chinese experience with Shenzhen, whose rules were similar to Hong Kong and facilitated prosperity under a market economy.<sup>17</sup> In his conclusion, Romer recommends the chartering of new cities as a strategy for adopting new rules as a driving force for economic progress.<sup>18</sup>

<sup>11</sup> *Idem*, page 54.

<sup>12</sup> *Idem*, page 54.

<sup>13</sup> Paul Romer, *Technologies, Rules, and Progress: The Case for Charter Cities*, No Id 2471 (2010).

<sup>14</sup> *Idem*, page 4.

<sup>15</sup> *Idem*, page 6. See also Davies in this volume.

<sup>16</sup> *Idem*, page 7.

<sup>17</sup> *Idem*, page 8.

<sup>18</sup> *Idem*, page 10.



Explaining charter cities as a new path for development, Romer and Fuller evoked historical references in Europe and the United States: voluntary migrants were attracted to new settlements due to promises of opportunities and rights, being able to raise the productivity of the land and to foster progress.<sup>19</sup> In this context, for instance, Pennsylvania originated from unoccupied land that was used to charter new cities that competed for migrants and attracted people through institutional promises of employment, education, and security.<sup>20</sup> A similar rationale seems to be behind the development of the city of Shenzhen in China, which grew from around 30,000 people to a population of more than 10 million in a few decades.<sup>21</sup> According to Romer and Fuller, the great appeal of charter cities as a path for development is "their freedom to chose rules that would be very difficult for the entire host country to adopt".<sup>22</sup> In their conclusion, they challenge the pessimistic view that our fate is to live in the century of the slum: "by starting cities with rules that create more opportunities for people to improve their lives, the world can reshape the arc of urbanization and the future of human development".<sup>23</sup>

In this context, charter cities appear to be a political startup for development of normative spaces that are hybrid and heterogeneous due to a combination of public and private actors and a fragmentation of the national and international boundary.<sup>24</sup> Inspired by this vision, Honduras has pioneered attempts to establish charter cities in its territory. Originally, the government created a new legal framework under which a charter city could be created for special development regions called "Región Especial de Desarrollo (RED)" with promises of low taxes, good governance, and safeguards against political interference.<sup>25</sup> These areas were meant to be laboratories for institutional experimentation without the constraints of path dependence and with the authority and flexibility for setting new rules of the game for public management, business regulation, police, and the justice system.<sup>26</sup> However, the Honduran Supreme Court considered the REDs to be "an unconstitutional abrogation of Honduran sovereignty and territorial integrity".<sup>27</sup>

After this initial frustration with the REDs, in 2013 Honduras announced a new plan to stimulate the establishment of charter cities through "Zones for Economic Development and Employment" (ZEDE), which could have its own political, judicial, economic, and administrative system based on free market capitalism with

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<sup>19</sup> Paul Romer and Brandon Fuller, *Cities From Scratch: A New Path for Development*, *City Journal*, volume 20, number 4 (2010), page 1.

<sup>20</sup> *Idem*, page 2.

<sup>21</sup> *Idem*, page 3.

<sup>22</sup> *Idem*, page 5.

<sup>23</sup> *Idem*, page 6.

<sup>24</sup> Lan Cao, *Charter Cities*. *William & Mary Bill of Rights Journal*, volume 27, issue 3 (2019), p. 719-720.

<sup>25</sup> *Idem*, page 722.

<sup>26</sup> *Idem*.

<sup>27</sup> *Idem*.

autonomy to be governed through best practices and international rules.<sup>28</sup> Importantly, the connection between charter cities and institutional bypasses seems inevitable, as “charter cities will institute a framework that appeals to investors because it can override or bypass everything business-unfriendly about the local environment – bad laws, bad practices, bad norms, bad institutions, and bad infrastructure – that had shackled development in the past”.<sup>29</sup> Given the high crime rates, extreme poverty, and pervasive corruption of the country, hopefully a city operating with better rules and under foreign supervision would facilitate foreign investment and security.<sup>30</sup>

In this context, charter cities could be catalysts for fast-track change: “charter cities can be analogized to a civic startup, allowing different societies to experiment with new rules without the imposition of new layers of bureaucratic regulation on pre-existing regulation”.<sup>31</sup> The Chinese government developed a series of “Special Economic Zones” (SEZs) based on the successful model from Hong Kong that worked as experimental laboratories for the institution of market capitalism within a socialist state.<sup>32</sup> The economic efficiency and the political self-containment of the SEZs allowed Deng Xiao Ping to promote development without the risks of a broad and comprehensive national political reform.<sup>33</sup>

However, charter cities are not solely a concept for contemporary cities. Historical examples reveal the potential of this idea for political transformation and economic development. In the United States, for instance, Pennsylvania resulted from a charter granted in 1681 by King Charles II of England to William Penn, who experimented with the concept of religious freedom and established a haven for immigrants previously oppressed because of their faith (Quakers, French Huguenots, English and Irish Catholics, Swiss Amish, German Mennonites and Lutherans from Catholic German states).<sup>34</sup> Likewise, the state of California amended its constitution in the 1870s during a period of economic crisis and has, ever since, allowed the establishment of charter cities with their own rules on elections, salaries, and contracts.<sup>35</sup>

In Canada, the tradition of experimentation with charter cities started with the grant of a royal charter for the incorporation of Saint John in 1785 and the country holds five charter cities: Saint John, Montreal, Winnipeg, Vancouver, and Lloydminster.<sup>36</sup> Additionally, some Canadian cities have special legislation similar

<sup>28</sup> *Idem*, pages 722-723.

<sup>29</sup> *Idem*, 724.

<sup>30</sup> *Idem*.

<sup>31</sup> *Idem*, page 725.

<sup>32</sup> *Idem*, pages 725-726.

<sup>33</sup> *Idem*, page 726.

<sup>34</sup> *Idem*, page 727.

<sup>35</sup> *Idem*.

<sup>36</sup> Harry Kitchen, *Is Charter-City Status a Solution for Financing City Services in Canada – Or is that a Myth?* SPP Research Paper, volume 9, number 2, page 1.

to a charter but are not called charter cities: Toronto, St. John's, Corner Brook, Nfld. Mount Pearl, Nfld. And Charlottetown.<sup>37</sup> Particularly in the case of Toronto, the charter increased its taxation and borrowing powers, but the enactment of a motor-vehicle-registration levy and a municipal land-transfer tax caused political controversy and questioning on whether charter status should be a solution for financing city services.<sup>38</sup> Importantly, however, in Canada the advantage of charter status has been a myth regarding these powers, because provinces rarely granted these powers to cities. For instance, Toronto could not expand its revenue substantially due to social mobilization of the local population against alternative policymaking.<sup>39</sup> The promises of charter cities implied that autonomous powers and the capacity for self-governing would attract investments, facilitate financing of public services and infrastructure.<sup>40</sup> There was a shared sense that restructuring municipal governance was a necessary response to pressures from globalization and to preserve Toronto's competitive position in the global economy.<sup>41</sup> In the end, however, charter status didn't change its economic development and the Canadian experience offers a cautionary note on the risks related to this political strategy.

### 3. IMAGINING *BOSSA NOVA*, ITS POSSIBILITIES, AND LIMITS.

The theoretical aspects and practical examples of cities developed through charters may invite us to imagine possibilities and limits of establishing *Bossa Nova* to foster development in the state of Rio de Janeiro.<sup>42</sup> Importantly, the need to overcome poor organizational structures through institutional bypasses in Rio de Janeiro is absolutely not a new theme to Mariana Mota Prado and Michael Trebilcock, as they have used the recent experiences of "Unidades de Polícia Pacificadora" (UPPs) and "Unidades de Pronto Atendimento" (UPAs) as case

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<sup>37</sup> *Idem.*

<sup>38</sup> *Idem*, pages 7-14.

<sup>39</sup> *Idem*, 17.

<sup>40</sup> Roger Keil and Douglas Young, A Charter for the people? A Research Note on the Debate About Municipal Autonomy in Toronto, *Urban Affairs Review*, Volume 39, n. 1 (2003) page 95.

<sup>41</sup> *Idem.*

<sup>42</sup> The reference to *Bossa Nova* as the fantasy name for a charter city in Rio de Janeiro evokes the memory of the cities glorious period right before losing the status of national capital. In 1958, Rio de Janeiro experienced its golden year in terms of social life, economic comfort, and cultural recognition with the explosion of *Bossa Nova* as a worldwide musical genre coinciding with the apogee of Rio de Janeiro as a wonderful city to live, work, and develop one's potential. The idea of imagining *Bossa Nova* implies reflecting on how this iconic Brazilian city may recover from the current setting of economic, political, and social decay. Part of the decadence also comes from the political reorganization of Rio de Janeiro after losing the status of federal capital. Initially, the territory of the federal capital remained an independent political unit called *Guanabara*, which eventually entered into a political fusion with the state of Rio de Janeiro.

studies to explain intentional institutional bypasses.<sup>43</sup> In their account, the UPPs attempted to transform police services, through experimentation and a parallel structure of operations that could adapt to different circumstances and respond more effectively to community demands.<sup>44</sup> Likewise, the UPAs also attempted to transform emergency healthcare services by providing an alternative channel for the population to receive speedy treatment for low and medium level emergencies.<sup>45</sup> Eventually these projects failed to deliver their promises due to a lack of resources caused by the fiscal crisis of the state of Rio de Janeiro and one of the country's worst economic recessions.<sup>46</sup>

While the book provides relevant case studies of institutional bypasses for provision of governmental services in Rio de Janeiro, institutional imagination could also be used as an instrument for the reorganization of the entire political structure of the city. The establishment of a charter city could facilitate the development of new legal frameworks for infrastructure, industrial production, educational programs, employment opportunity, and housing policies. A catalyst for the creation of charter cities could be the economic stagnation or decay resulting from institutional failure.

The question is whether the existence of an alternative would prompt reforms. Since the Brazilian capital moved to Brasília in 1960, Rio de Janeiro has experienced continuous decay.<sup>47</sup> While losing political power to Brasília, the political vacuum initiated a vicious cycle of economic loss that resulted in the concentration of economic power in São Paulo. Without political and economic power, Rio de Janeiro lost prominence, businesses, and jobs.<sup>48</sup> Once a relevant center for financial services and industrial production, the city lost its stock exchange, industries, and most of its companies. At the same time, Rio de Janeiro continued to be an attractive destination for migrants, because it remained an important cultural reference for the country.<sup>49</sup> Nowadays, the proportion of people living in one of its many slums corresponds to roughly one eighth of the city's population.<sup>50</sup> Rio de Janeiro hosts a number of significant universities and tens of thousands of highly qualified

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<sup>43</sup> Mariana Mota Prado and Michael J. Trebilcock, *Institutional Bypass: A Strategy to Promote Reforms for Development*. Cambridge: CUP (2019), Ch 4.

<sup>44</sup> *Idem*, pages 73-74.

<sup>45</sup> *Idem*, pages 82-83.

<sup>46</sup> *Idem*, pages 72.

<sup>47</sup> Mauro Osorio e Maria Helena Versiani, *O Papel das Instituições na Trajetória Econômico-Social do Estado do Rio de Janeiro*. *Cadernos do Desenvolvimento Fluminense*, n. 2 (2013), page 190.

<sup>48</sup> *Idem*, pages 191-193.

<sup>49</sup> Mauro Osorio e Maria Helena Versiani. *A História de Capitalidade do Rio de Janeiro*, *Cadernos do Desenvolvimento Fluminense*, n. 7 (2015), pages 77-80.

<sup>50</sup> Mauro Osorio e Maria Helena Versiani, *O Papel das Instituições na Trajetória Econômico-Social do Estado do Rio de Janeiro*. *Cadernos do Desenvolvimento Fluminense*, n. 2 (2013), pages 202-204.

graduates, but suffers from brain drain as these people move away to other cities for better professional opportunities.<sup>51</sup>

The city's decline results partially from malfunctioning institutions, badly designed policies, corruption, and loss of political capacity. Interestingly, after the transfer of the capital to Brasília, local politicians attempted to foster industrial development through the assignment of designated areas as industrial districts that could attract investors, but the lack of adequate institutions discouraged the establishment of new businesses in Rio de Janeiro.<sup>52</sup> Nowadays, Rio de Janeiro has the semblance of a city without prospects for the future.<sup>53</sup>

Planning an agenda for economic development for Rio de Janeiro requires a political strategy focused on the challenges of the metropolitan area, overcoming the precarious infrastructure and low productivity and promoting a virtuous cycle of economic dynamism.<sup>54</sup> However, an important obstacle for regional development comes from the absence of a national plan.<sup>55</sup> The creation of a charter city could provide an opportunity for the political and economic reorganization of the state of Rio de Janeiro and for overcoming the absence of a national industrial policy. Interestingly, there is the possibility of allocating large parcels of unoccupied land in the suburbs and surrounding rural areas of Rio de Janeiro – like Paul Romer recommends – or designating an already existing urban area as a charter city – as with Toronto. In the case of Rio de Janeiro, the charter city should provide an alternative, allowing current residents the opportunity to choose an alternative legal regime and to benefit from the new rules.

The objectives to charter *Bossa Nova* should be to design a new set of organizations and rules of the game that could transform the economy, society, and politics in a way that facilitates human development in Rio de Janeiro. A special legal regime may foster industrial production and recovery of jobs that left Brazil for other countries that provide better value for the global production chain of multinational companies. The failure of the industrial zones of Rio de Janeiro resulted from the misguided belief that the allocation of unoccupied land was

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<sup>51</sup> Fernanda Mendes Bezerra e Raul da Mota Silveira Neto. Existe fuga de cérebros no Brasil? Evidências a partir dos censos demográficos de 1991 e 2000. *Economia*, v. 9, n. 3, (2008) p. 435-456.

<sup>52</sup> *Idem*, pages 197-200.

<sup>53</sup> The condition of hosting the Olympic Games of 2016 provided a false sense of potential reconstruction of the city, but the Organizing Committee failed to deliver its promises. The legacy of the potential revival of the city's apogee vanished after the end of the Olympic Games and turned into a shared sense of political despair, social frustration, and economic depression.

<sup>54</sup> Bruno Leonardo Barth Sobral, *A Questão Metropolitana em Perspectiva: O Desafio de Tornar a Periferia da RMRJ Mais Densa Produtivamente e com Melhor Infraestrutura Básica*, em Mauro Osório et alli (ed). *Uma Agenda para o Rio de Janeiro: Estratégias e Políticas Públicas para o Desenvolvimento Socioeconômico*. FGV (2015), 42-43.

<sup>55</sup> *Idem*.

sufficient.<sup>56</sup> A charter city may also develop alternative policies for education, businesses, immigration, housing, labor and capital. As a laboratory for experimental institutions, a charter city could also provide an opportunity to experiment with decriminalization of gambling, prostitution, and other criminal offences as a policy experiment that could influence comprehensive national legal reform. Obviously, emulating a “*Sin City*” like Las Vegas would probably not bring outcomes analogous to Shenzhen, Singapore, and Dubai, but it is important to have in mind that these possibilities are open for a charter city. In the end, the combined goals of governments, businesses, citizens and consumers will shape the character of this private and public partnership.

A charter city should not be considered to be a panacea for developmental problems. As an institutional bypass, a charter city is only an instrument for institutional reform by offering an alternative to the traditional legal frameworks and providing an opportunity for people and corporations to seek innovative solutions to their problems. Charter cities will also depend on cultural factors and voluntary adhesion from students, workers, tourists, and businesses through a combination of choice, voluntary entry and free exit for the citizens that adhere to the charter.<sup>57</sup> Beyond the law on the books, what really matters are the laws in action, perceptions, expectations, trust, and confidence that the rules of the game function well, solve conflicts fairly, and are properly adjudicated.<sup>58</sup> This combination of factors seems to be present in flourishing new cities, like Shenzhen, Singapore, and Dubai. The programs to transform Honduras into Hong Kong have not produced similar results so far, especially because of these challenges that should be considered when designing and establishing a charter city.<sup>59</sup> Another limitation comes from the political difficulty, which is discussed in the next section.

#### 4. DIFFICULTIES FOR BYPASSING POLITICS AND LAWMAKING FUNCTIONS.

Among the many critiques addressed towards the charter city concept, the political economy question seems to be the most prominent one. These critiques are based on the premise that charter cities are dominated and controlled by

<sup>56</sup> This mindset that is often referred in Law and Development circles as the “field of dreams” curse, that is, a naïve illusion that if one builds an infrastructure in the middle of nowhere, “people will come”. Often state actors in developing countries invest their capital in projects based on this premise and, due to institutional limitations, many of these projects are not sustainable and people don’t come.

<sup>57</sup> Lan Cao, Charter Cities. William & Mary Bill of Rights Journal, volume 27, issue 3 (2019), p. 759.

<sup>58</sup> See, for instance, Machado (2020) in this volume.

<sup>59</sup> A cautionary note about the limits of Paul Romer’s insight and the fact that foreign imperial management produced positive results in Hong Kong, but also negative results in Shanghai and elsewhere comes from Aditya Chakraborty, Paul Romer is a brilliant economist – but his idea for a charter city is bad. Guardian, 27.07.2010, available at <https://www.theguardian.com/science/2010/jul/27/paul-romers-charter-cities-idea> (last checked in 20.03.2020).

multinational corporations and, consequently, subject to loss of national sovereignty, substitution of private law for public law, undemocratic principles, power concentration in foreign investors, and the forces of the market.<sup>60</sup> This political economy dynamic reveals the difficulties of bypassing political institutions and lawmaking functions. Potential problems include the possibility that a foreign partner or perhaps even a bureaucracy could dominate the policies of a charter city.<sup>61</sup> In Honduras, for instance, technocratic criteria of development define the “Employment and Economic Development Zones” (ZEDEs) – instead of the messier and more contested political criteria typical of a multi-party democratic regime.<sup>62</sup> Even if “the very fact that ZEDEs are meant to bypass local and national politics is itself part of the appeal”, the democratic deficit of charter cities is a cause for concern and legitimacy must be found elsewhere other than liberal democratic constitutional structures.<sup>63</sup> Importantly, however, from a political perspective there is a clear distinction between a charter city whose rules are defined by the government and those that are left entirely open to corporations or technocrats – as there is a stronger case for loss of sovereign power and democratic deficit in the latter case.

Some commentators consider that the legitimacy of a charter city may come from the protection of freedom and equal opportunity for its residents. Rahul Sagar argues that a charter city should be considered legitimate when it allows people to escape troubled conditions and is accompanied by substantive and procedural safeguards, such as protection of basic rights, impartial administration of the law, employment of public justification, and potentially a referendum.<sup>64</sup> Julian Müller resorts to instrumental morality and an appeal to mutual advantage and shared interests rather than moral reasons in defense of the legitimacy of charter cities.<sup>65</sup> Christopher Freiman defends charter cities as instruments of cosmopolitan justice in non-ideal global conditions, as it gives the poor new opportunities to migrate to places with comparatively more efficient institutions.<sup>66</sup> Voxi Heinrich Amavilah discards the critique of neocolonialism by pointing out that charter cities are based

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<sup>60</sup> Lan Cao, Charter Cities. *William & Mary Bill of Rights Journal*, volume 27, issue 3 (2019), p. 734-5.

<sup>61</sup> *Idem*, page 756.

<sup>62</sup> *Idem*, 758.

<sup>63</sup> *Idem*.

<sup>64</sup> Rahul Sagar, Are Charter Cities Legitimate? *The Journal of Political Philosophy*, Volume 24, number 4 (2016) page 510.

<sup>65</sup> Julian Müller, Advancing Justice by Appealing to Self-Interest: The Case of Charter Cities, *Moral Philosophy and Politics*, volume 3, number 2 (2016), pages 225.

<sup>66</sup> Christopher Freiman, Cosmopolitanism Within Borders: On Behalf of Charter Cities, *Journal of Applied Philosophy*, volume 30, number 1 (2013), page 41-42.

on the premise of voluntary participation of all players and the promises of concrete gains if policy makers decide to break the old rules.<sup>67</sup>

Importantly, politics must be present in the charter city as the activity for reconciling different interests within a governed space, through the allocation of opportunities for political participation to the relevant groups and stakeholders proportionate to their relevance for the wellbeing and survival of the political community.<sup>68</sup> In the case of Toronto, for instance, the general feeling was that “the purpose of the charter would be to provide the city with the capacity to act in whatever direction local politics steered it to take”.<sup>69</sup> However, the charter consisted of an instrument of devolution of powers from the province to the municipality without any commitment to more participatory forms of democracy that seemed to reinforce the ability of local politicians to articulate and implement the common good.<sup>70</sup> A charter city may strike a different balance between decisions based on politics and policy, but should not let the political domain be colonized by technocracy or corporate interests in a way that harms interests from city residents.<sup>71</sup>

## 5. FINAL REMARKS

Charter cities are a thought-provoking example of an institutional bypass that captures our imagination after the successful transformations promoted in the Chinese economy.<sup>72</sup> Particularly in the case of Rio de Janeiro, establishing a charter city – the imagined *Bossa Nova* – may constitute a strategy to reverse the current path of continuous decay, restore institutional capacity, and establish an alternative legal regime that may foster development. Perhaps the critical juncture for such a radical institutional transformation could result from the economic recession brought by the COVID-19 pandemic crisis that hit hard tourism and oil industries. Truly, the experience with Honduras recommends caution, but also deserves attention. After initial support for the REDs, Paul Romer withdrew from the program due to “opaque decision-making by the Honduran government, without the approval of the Transparent Commission required under RED legislation, which charter cities are intended to remedy”.<sup>73</sup>

<sup>67</sup> Voxi Heinrich Amavilah, *Romer’s Charter Cities v. Colonization, Imperialism, and Colonialism: A General Characterization* (2011).

<sup>68</sup> Bernard Crick, *A Defesa da Política*. UNB (1975) page 7.

<sup>69</sup> Roger Keil and Douglas Young, *A Charter for the people? A Research Note on the Debate About Municipal Autonomy in Toronto*, *Urban Affairs Review*, Volume 39, n. 1 (2003) page 97.

<sup>70</sup> *Idem*, page 97.

<sup>71</sup> On the methods and approach of law and public policy, see Maria Paula Dallari Bucci, *Métodos e Aplicações da Abordagem direito e Políticas Públicas*, *Revista Estudos Institucionais*, volume 5, n. 3 (2019), pages 791-832.

<sup>72</sup> See Henry Kissinger, *On China*. Penguin (2012).

<sup>73</sup> Lan Cao, *Charter Cities*. *William & Mary Bill of Rights Journal*, volume 27, issue 3 (2019), page 743.