

“Governance becomes a service that is provided by a private entity and not a collective construction created by citizens”

Conversation with Beth Gaglia (Anthropologist, Washington DC) and Andrea Nuila (Jurist, Heidelberg)
Interview: Jutta Blume

Jutta Blume: Could you describe the ideology and the political-economical context behind the concept of the „Charter Cities“ or „Free Private Cities“?

Beth Gaglia: Without going into the entire history of global capitalism I thought I'd give a few of elements of sort of the political economic context that brings us to the point where this movement for private cities emerges around the world and of course manifests in Honduras. First of all, basically starting in the sixties and seventies the production of goods and manufacturing ceases to be the primary form of capital accumulation globally. And this means that speculative real estate markets and speculative financial markets become two of the primary places where surplus capital is reinvested and where profit is extracted around the world.

At the same time, we see a move from globalization to what people have called glocalization, which is basically like the rise of importance of these sorts of deregulated cities and deregulated city-regions that become the nodes that connect global trade. So, it's starting this process of bypassing the nation-state within the global economy and beginning to do trade more directly between deregulated city regions that are increasingly commodified and increasingly privatized. This contributes to new city projects around the world becoming more profitable and they've been proliferating for a while now. This has led to a global land rush primarily for the real estate market and we've seen a new generation of special economic zones emerge. We have had special economic zones around since the sixties: export processing zones, different kinds of free ports etc.

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But since the early 2000s a new wave of special economic zones has emerged, that's focused increasingly on the demand for land for real estate markets. And we've seen that this has produced new regimes of accumulation by dispossession. There are people in Asia who talk about this, particularly where we have seen the state take on a role as a land broker in these special economic zones and states increasingly frame these zones as inherently zones of public interest or projects the public interest in order to use eminent domain to expropriate land and sell it or pass it off to private developers, who then make a profit off of it.

Another thing that we see is the rise in the power of the tech industry both in the US and globally. This increases the need for deregulated spaces to both develop and operate digital markets. I'm talking about things like cryptocurrencies and also to experiment with technological innovations in governance. So that includes things like using blockchain technologies for governance and e-governance platforms like for example ULEX⁽¹⁾, which is being used in the Próspera ZEDE.

From a geo-political standpoint there's also an increased investment from China in global infrastructure and so some of the start-up-city or private city promoters talk about this in a geo-political context as an opportunity for the US to increase its soft power, its soft influence around the world, in contrast to China's influence in global infrastructure. This is to say that the move towards private cities is nothing new, it's kind of the next stage in this global process that has been taking place for decades. But it is true that there's a particular sort of territorial ideology that is espoused by different groups that are increasingly organized in a movement to form private cities around the world. And this movement is rooted in libertarian and free-market ideology as well as tech-futurism.

I want to start off by saying that I think Honduran elites and Honduran officials don't necessarily adhere to this ideology and that their reasons for pursuing ZEDs are rooted more in sort of classical race-to-the-bottom-neoliberalism, attracting foreign investment. CAFTA, sort of equalized investment incentives throughout the region of Central America. And, according to them, Honduras needs to create more legal exceptions and more incentives to continue to attract foreign investment.

And of course also in the case of Honduras, I won't really talk about this too much, there are other interests including narco-territorial interests and kind of the more criminal interests that can potentially be influencing Honduran leaders in wanting to pursue this territorial model. But in terms of a global movement, I think that the movement for private cities which I called the Startup City movement they consider or they frame their ideology as radical decentralization. Often they will talk about their project in terms of "we are decentralizing governance so that we can create new societies and people can experiment with new ways of coexisting and new ways of being", that it's all about experimentation with new models. I think that this framing of decentralization obscures the political and economic function that these private jurisdictions serve. I prefer to use the term territorial flexibilization and I think it's a more appropriate term because we can see how it runs parallel to the process of labor flexibilization. In Spanish we talk about "flexibilización laboral", in English usually we use "labor casualization" as the term. But these two processes, labour flexibilization and territorial flexibilization, can be seen as the two processes that help capital overcome its constraints in the neoliberal era. We see that labour flexibilization removes protections from workers and subjects them to pure market forces. It's things like short-term contracts, moving away from unionization and full-time work. And then territorial flexibilization similarly subjects territory and governance to market forces by delinking sovereignty and territory from the nation-state.

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The goal of this process of flexibilization is to create sort of ever-shifting configurations of territory that can move and take new forms, that are malleable. Configurations of territory, governance, and citizenship can shift according to market demands. In terms of the Startup City movement ideology they see the Startup Cities as the legal technology that will bring about this kind of flexibilization and that will disrupt democracy by creating what they call competitive governance. The ideology basically says that the nation-state has a monopoly on sovereignty and this monopoly must be broken in order to create a governance market of competing private jurisdictions. They seek to "escape from politics" with the idea being that competition between jurisdictions is better than democracy for reaching the best governance models. Within this ideology, governance becomes an industry itself. Territoriality is recast in market terms. Nation-state sovereignty is seen as an asset that can be franchised to private firms. Governance becomes a service that is provided by a private entity and not a collective construction created by citizens. Citizens become consumers of that service who can "vote," but with their feet. The idea of the mobile citizens is that they are "free" because they have choice, because they can move between different jurisdictions according to their desires etc. which is a major tenet of this ideology.

There's another framing that talks about these private cities as proprietary societies where the idea is that citizenship is directly linked to property ownership and that citizens are shareholders of the city, which is the corporation. A final major tenet of this city ideology is techno-utopianism and futurism - the idea that governance can be "hacked" by new technologies. And this also creates a market for e-governance technologies which I think we can see is becoming increasingly profitable. And so the most radical extension of this logic also seeks to materialize or create what they call "governance without geography" which is the idea that technology can replace governments and actual territory at some point in the future becomes obsolete and you can have the creation of fully virtual jurisdictions. We can start to see traces of this in the Próspera ZEDE in Honduras with their e-residency-program, which also exists in Estonia.

Cutting across all of this is a very neoliberal logic that everything should be ruled by the market. We have to marketize everything, fully private cities, etc. but these ideologies also are very settler-colonialist. ZEDE promoters talk a lot about the fantasy of the blank slate territory. The Seasteading Institute in particular talks about what they call "blue space," which is politically uncontested space. In their theory they are referring to space on the ocean. But they may also engage in on-land city venture projects such as is the case in Honduras. So really the idea is that there is land that doesn't have any cultural or ecological or political ties to the host countries. There is a romanticization of the idea of pioneering new frontiers.

Maybe we can just have of short look at the personalities and corporations or networks that are promoting this idea...

Basically we see an emerging movement and increasingly organized network of people and groups and institutions that are working on this project, that are supporting each other in different ways. In 2008 the Seasteading Institute is founded by Peter Thiel and Patri Friedman. Peter Thiel being a prominent tech capitalist from Silicon Valley, Patri Friedman being the grandson of Milton Friedman who is sort of the grandfather of free-market ideology. In 2009 Paul Romer publicly launches his Charter City proposal vis-à-vis his TED Talk. In 2011 we see the "Future of free cities"-gathering in Roatán, but at this point the movement towards private cities is still kind of disperse. We have individual actors like Michael Strong who at that point had his FLOW organization, Freedom Lights Our World. We have Paul Romer who is as you know a very prominent economist. We have the Seasteaders, we have Mark Klugman with his legal

economic administrative and political zones, LEAP zones, framework. But it's in 2015 that the Startup Society Foundation was founded by Joseph McKinney and Mark Frazier with Patri Freeman being on the board of directors. And they are trying to unite these different actors and bring them into more consistent communication. And in 2017 the Charter City Institute is formed, a competitive governance Institute is founded, and the Startup Society Summit is held in San Francisco, which is considered the first ever "private city trade show". In 2018 the same group of organizations and the Startup Society Foundation holds another large conference in Washington DC to try and develop private cities using blockchain technologies in Puerto Rico after Hurricane Maria and from this point on they start to organize different annual gatherings.

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I think there's two main groups of actors that are interacting in this process. One is these libertarian-leaning "thought leaders" and ideologues and also venture capitalists such as Peter Thiel who is cofounder of the Seasteading Institute but is also a major investor in PayPal and Facebook and also founder of the company Palantir, a very influential and powerful surveillance technology company. But we also have these actors that are really important to mention that are part of shadow power of US political conservatism. And the place where they show up primarily is in the CAMP, the Committee for the Adoption of Best Practices in Honduras.

Let us just move to Honduras at this moment and look how the idea of Charter Cities was established in Honduras. Many of you might know that the first law on Charter Cities, in the former version called RED, the Special Development Regions, was passed in 2012, but then rejected as unconstitutional by the Honduran Supreme Court. The ZEDE was the follow up project which had been slightly modified but follow basically the same concept. I'd like to ask Andrea Nuila: Could you give us just a brief history of how this law was established and who were the driving forces behind it? 0:17:15

Andrea Nuila: I will try to summarize more than 10 years of history. But first of all I would just like to start by saying that ZEDE, charter cities in Honduras, might be legal in the sense that they have their own legal framework, but their legitimacy is really highly questionable. I think that we need to go back to 2009 in order to start to understand the illegitimate character of the current zones. So most of you know, in 2009 Honduras underwent a coup d'etat. This meant that the democratic elected government was overthrown and was replaced by a de facto government that then went under a certain sort of transition although not really the democratic transition that the people wanted. But it made a transition into a completely nationalist conservative-dominated political government. So after the coup, the nationalist conservative party took control over congress and the executive power. There was no opposition within the congress. This is very important in order to understand how the legal framework starts to take shape.

"In 2012 the Supreme Court declared that this law violated the territorial integrity of the country. It violated fundamental rights and the form of government that was republican, democratic and representative."

Around 2011 the concept of the Charter Cities -coined by Paul Romer- made its way into the National Congress. There was even a showcase of the TED-talk that Paul Romer gave, at the National Congress. With the support from the members of the Nationalist party, a bill was passed in order to create these so called special regions of development (Regiones Especiales de Desarrollo, RED). The law was of course questioned, the opposition filed unconstitutional claims against the law before the Supreme Court. And in 2012 the Supreme Court sustained the claims and declared among others that this law violated the territorial integrity of the country. It violated fundamental rights, what we understand in Germany as "Grundrechte", and the form of government that was republican, democratic and representative. But what happened next is really interesting: the Court's ruling was issued on Friday December 7th, on the next Wednesday at 4 o'clock in the morning, Congress actually dismissed four of the five judges of the Constitutional Chamber of the Supreme Court - all those who sustained the unconstitutional claims against the Special Regions of Development. The National Supreme Court was actually militarized at the time when the judges were dismissed. After the dismissal, a new court was formed, the majority of which was linked to the Nationalist party.

This takes us to 2013: On September 5th 2013 a new bill was discussed to create the Economic Development and Employment Zones (ZEDE). At this time what they did is that they went to the constitutional chamber of the Supreme Court of Honduras and requested that

they issued, what's called an "opinion" before the bill was passed through Congress. In that way they were actually already anticipating any unconstitutional claims that would come. The premises were basically the same, the new framework of the current law provides special executive, judicial and legislative powers to ZEDE-authorities. These also includes prescriptive rights within public policy, including health and education, its own criminal Justice system: police, prosecution, defense, courts and prisons, its own rights framework under what's called a Bill of Rights and even also the right to establish its own currency and the right to decide its own monetary policy, opening the door to blockchain and cryptocurrencies. Legal practitioners filed unconstitutional claims once again, but this time of course, the Court overruled the claims. The entire context in which the new law was adopted was dominated completely by members of the Nationalist party. At the same time also passing through Congress were several new neoliberal policies that went through together during the same period.

We mentioned the CAMP before, and there are other institutions behind the ZEDE. In order to understand how the ZEDE are established, can you explain who has the right to establish a ZEDE, who is allowed to give them their legislation and who in the end will be managing them?

Beth Gaglia: The ZEDE-law establishes this sort of para-state entity which is called the Committee for the Adoption of best Practices (Comite para la Adopción de Mejores Practicas), the CAMP. The CAMP is like the governing board of all the ZEDEs in the country, but it's also a body that actively promotes the ZEDEs internationally and seeks out investment for the ZEDEs and courts investors inside Honduras. The CAMPs major roles are to approve ZEDE proposals submitted to them by groups of investors and there's a series of documents that the group of investors has to submit including proof of landownership or intention of owners to incorporate land as part of the ZEDE, a feasibility study, a master plan, things of that nature. And then the CAMP approves the ZEDE. The ZEDE proposes its own Technical Secretary which is basically the administrator of the zone and the CAMP either approve or does not approve that technical secretary. It approves the internal ZEDE laws as well. The CAMP provides a list of judges to serve on the ZEDEs independent courts. The list of judges is then passed on to the National Judicial Council, the Consejo Nacional de Judicatura, of Honduras for approval.

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It's important to note that the CAMP has the ability to approve ZEDEs without any Congressional approval in "low population density areas" in the departments that are adjacent to the Atlantic Ocean in the North and the Gulf of Fonseca in the South. In the interior of the country, Congressional approval is needed to approve a ZEDE. If it's high population density then there's also a popular referendum where people get to vote on it, but not in these two major regions of the country. So the CAMP has immense power there. It's important to say that the CAMP basically has the power to override decisions that are made inside the ZEDE. So if the ZEDE reports that they are establishing a democratic process within the boundaries of their zone, any decision that they make, such as electing a Technical Secretary or enacting laws or policies, can be overridden by the CAMP. Another thing worthy of note is that there don't seem to be any sort of conflict of interest-provisions related to the CAMP. I was told by a Honduran official that a CAMP-member can also be an investor in the ZEDE and can even be the Technical Secretary.

Who is on the CAMP? The CAMP was first ratified in 2014 with 21 members, nine of whom from the US. And all of the members are heavily represented by the leading neoliberal and libertarian institutions in the world, such as the Cato Institute, Atlas Network, Mont Pelerin Society, the Hayek Institute, among others. But also some of these members are really noteworthy because they are extremely influential conservative political activists from the US.

Let's look at the case of the ZEDE Próspera, which has just been established on the island of Roatán. As far as I understand the charter has been approved already in 2017, but it only became public in 2020. Who are promoting the ZEDE Próspera? In which sense can it be seen as a public-private partnership?

Beth Gaglia: In terms of who's behind the ZEDE Próspera, the Technical Secretary of Próspera is Tristan Monterroso who is a Roatán native. The Secretary of the Council of Trustees, the governing body within the Próspera ZEDE, is Erick Brimen, who is a Venezuelan native and a US citizen and he's also the CEO of NeWay Capital, which is the primary investment firm that is establishing the Próspera ZEDE. Within NeWay you find people like Tom Murcott, who is a major real estate developer in special jurisdictions around the world. He primarily worked on new Songdo in South Korea. There is Gabriel Delgado, who is on the advisory board, who is a tech and finance entrepreneur and very into digital currencies. Oliver Porter is a US-person who's been involved in semi-private cities, one in Georgia, and generally working on urban development through public-private partnerships. There is Titus Gebel. He originally appears as a member of the council in some of the earlier documents. However he's not currently a member of the council of trustees. He is German

and former CEO of a German mining corporation. And he is currently the CEO of Tipolis which is a consulting firm that works on developing new private jurisdictions including working with NeWay Capital on the Próspera ZEDE. There's also the Technical University of Múnich, and the Próspera ZEDE is also working with the developers of the e-Estonia virtual residency program.

As far as whether Próspera ZEDE is a public-private partnership, I think it goes beyond this sort of legal framework, but a public-private partnership has a lot of the same logic. I think both PPPs and ZEDEs are ways of outsourcing governments' functions to private actors. The ZEDE does this on territorial scale, but it's different in the sense that the ZEDE does not have to follow Honduran law. A private entity that takes on a contract to administer a hospital through a public-private partnership, for example, in Honduras, is still subject to Honduran law whereas the ZEDE is not. And in fact the ZEDE governments themselves have the ability to enter into contracts with private entities separate from the Honduran government.

Andrea, you mentioned the possibility for each ZEDE to establish its own charters and laws. Do you have any details on the charter of the ZEDE Próspera? And the second question as I mentioned before it's been constituted in 2017 but only became public just this year. How could this happen that the public didn't even know about that case?

Andrea Nuila: The technical secretary in this case is something like the president of the ZEDE.

When you go through all of the enactments and the laws, that they are drafting, you can see that they are formally approved by the technical secretary and then submitted to CAMP. But actually what happens is that most of it is decided, and it's all registered there online, mostly is decided by the Council of Trustees together with the technical secretary, and then submitted to CAMP. On the question of secrecy, I think it is also important to acknowledge that while the ZEDE law was being approved and passed through congress in 2014 there were also several other laws, as I said earlier, several other laws that would complement this legal framework. And one of those was a special law on state secrecy, linked to "national defense and security". This was sort of a shield that worked very well in order to cover up the negotiations and everything that was going on around the ZEDEs. So there was a lot of speculation around negotiations and future projects but no information was made public, not even in the media.

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There were a lot of legal actions and legal claims around having access to information, but they were just denied. In 2020 it became public that a ZEDE was being created in Roatán: Próspera Roatán. And it was until two months ago or a month ago that we actually got to see the first draft of the Charter of the Próspera ZEDE. The draft was apparently signed in the US, in the Honduran Embassy in Washington DC, around 2017. Linking it to the national political context, this was also when the current president was being re-elected and there was a lot of unrest in the country because of that. So this charter is sort of like a constitution. It lays out the governance structure, trust funds, taxation, dispute resolution, which is divided between arbitration tribunal and ZEDE's court. It has its own security, so it regulates norms about that and residents rights, especially through the so called Bill of Rights, mainly based on the right to life, liberty and property. There are no social rights incorporated into this model. The entire normative framework beyond the charter has different types of scopes. It includes labour law, it includes civil codes, linked to ULEX. It is also linked to medical and health related practice, it even has some norms on adoption and surrogacy, which is something that has not even been discussed in Honduras, which is why it's really interesting how this was just incorporated into the ZEDE. And it establishes a series of regulations for residents. So residents can be physical residents, but also electronic residents. And they have to sign the agreement of coexistence, which is linked a lot to the idea of Titus Gebel of having something like a "social contract" with the customer, who in this case is the citizen. So the state, which in this case is the corporation, makes a contract with the citizen and then agrees on certain terms.

Residents have to sign these agreements of coexistence and they have some voting rights - allegedly - that would allow them to elect the technical secretary. But this voting rights are also linked to the number of slots or units owned. So you get basically one vote per unit that you own. It is entirely linked to property. It also creates a well-known human rights figure called the ombudsman. This is interesting because it also has the role of monitoring and engaging in dispute resolution. This institution could be created after a certain number of residents are living in the ZEDE. The residents' Bill of Rights which I was talking about, includes the right to life, liberty and property, there is also a big emphasis on the right to self-defense. This follows, I would say, a US-tradition/doctrine of how you understand the right to life and the exceptions of the right to life as self-defense in a very broad way. The interpretation is to give or allow for self-defense to be applied when there is overstepping property. The ZEDE Prosperá also has its own digitalized land registry and peoples registry.

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I also want to mention that it also has different types of permits. This is linked to some of people’s worries when they found out that Próspera was going to be installed in their region. The entire legal code also foresees a series of permit types, and actually puts a prize to dispossession. For example, there is a permit type called “indigenous impact”: “any project posing a substantial risk of involuntary displacement of indigenous population groups”. The fee is \$200 or 4.800 Lempiras. There’s also a permit for cultural or anthropological impact, it’s also \$200. Biodiversity impact: \$200. Well, of course thermoelectric or hydroelectric energy projects with \$1.000.

There is one question that is really concerning the people on the island of Roatán, which is the expropriation of territories. Is it really possible that people living on the island, indigenous people, can be expropriated by the ZEDE Próspera or by the state of Honduras in order to give their territory to the ZEDE?

Andrea Nuila: Is it possible? Yes! Is it legal? No! I mean it doesn’t go according to international law. International law protects indigenous peoples, land titles and land tenure of local communities. So it is not in line with international law, but it is foreseen in the national legal framework around Próspera. I would say that it is intentionally very vague how these articles are applied. CAMP just a few months ago issued a new normative or memo where it addressed the issue of eviction and it said that Próspera or any of these corporations that are ruling the ZEDEs don’t have the right to expropriate people. So they cannot expropriate anyone. The only one that is entitled to expropriate is the State. If that’s true I would say that this does not mean that that expropriate won’t be possible. Because that doesn’t mean that Próspera authorities can’t request the support of the Honduran state. So I would say this is a very justified fear.

Beth Geglia: I just agree. I think the ZEDE law is written intentionally in a vague way around expropriation. One thing that’s very clear is that while eminent domain is normally reserved for states to use for things that are considered a public benefit, the ZEDE law characterizes anything having to do with the development of the ZEDE as public benefit, and that includes expanding the ZEDE or expansion of the zone, which can trigger the use of eminent domain. Even though the Honduran government might state right now that they’re not going to use expropriation at all in this process, there’s no legal guarantee that they won’t. The ZEDE law also creates a weird system in which if there’s a land dispute - there’s a lot of land in Honduras which is under dispute or has multiple titles to it - then the expropriation moves forward, but the compensation that’s guaranteed for people in the case of an expropriation is put in a trust fund and then there’s a legal proceeding to decide who is the actual owner of the land. The law doesn’t specify which court that legal proceeding takes place in. So there’s a lot of just really undefined stuff about the process of expropriation that I think communities have every reason to be concerned about.

(1) A legal system for Start Up Cities cf. <https://github.com/proftomwbell/Ulex>

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