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## REACTIONS TO PEDRO FORTES

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In a very provocative piece, Pedro Fortes explores the idea of creating a charter city in Rio de Janeiro and raises the question of whether charter cities can be considered institutional bypasses. As he acknowledges, this is beyond the scope of our book: we did not explore rulemaking bypasses. Rather, the focus of our attention was on institutions that deliver services. The reason for limiting the scope of our analysis becomes clear in Fortes' piece: through a series of comparative and historical analogues to charter cities, Fortes shows that this kind of reform raises significant challenges.

This is not to say that scholars should stay away from exploring rulemaking bypasses. In fact, one of us has explored the topic by analyzing international institutional bypasses (Prado and Hoffman 2019). The case studies produced in the context of that project reinforce some of the challenges pointed out by Fortes. In an analysis of how regional institutions in West Africa bypass their national counterparts, Edefe Ojomo points to the lack of legitimacy of these technocratic bodies and distills the potentially adverse implications that they may have in fragile democratic systems (Ojomo 2019). There is also a risk that these bypasses may be captured by interest groups for their own benefit and can be used to forestall what would be otherwise meaningful mainstream reforms. Oonagh Fitzgerald shows how this has happened in the context of corporate responsibility for human rights violations in the United Nations (Fitzgerald 2019). Finally, as laudable as the hope that these experiments will lead to reforms in the dominant system, it is also possible that these parallel systems will simply coexist with the dominant one, complementing rather than substituting for it. Rohinton Medhora shows how this has happened with Central Banks swap lines and the International Monetary Fund (Medhora 2019). In summary, all the problems identified by Fortes as potential risks have already materialized in another set of rulemaking bypasses in the international arena.

For scholars interested in charter cities as a form of experimentation (or even as institutional bypasses), it would be important to first and foremost clarify how the arguments in favour of charter cities are different from the large and well-developed literature on federalism and the case for decentralizing government functions to provincial/state or local governments. Proponents of this idea often argued that decentralization or devolution of government functions brings governments closer to the people and renders it more likely that governments will adopt policies appropriate to local citizens' needs and preferences. It is also argued that centralized governments can act as a relatively low-risk promoter of policy

experimentation, which, if successful, can be adopted more broadly across the country but, if unsuccessful, do not put the whole country's welfare at risk. However, the political economy of national and local elections and voters' preferences shows that the rule-making dynamic not always generate welfare-enhancing outcomes (Rose-Ackerman 1981). Furthermore, Tiebout (1956) famously argued that decentralized governments may often promote a welfare-enhancing form of inter-jurisdictional competition where citizens can vote with their feet in choosing to locate themselves within a subnational jurisdiction with tax, expenditure, and regulatory policies adapted to their preferences. This argument, however, has proven controversial (Donahue 1997; Epple and Romer 1991). And even those who see potential in the idea of decentralization, acknowledge that its stability and success depend on a complex national constitution setting out the powers and functions of the different levels of government – always a highly contentious issue as Canadians know better than most (Ordeshook and Shvetsova 1997; Manor 1998).

In the process of comparing charter cities with similar forms of decentralization and experimentation, it is important also to focus on the legal intricacies of these arrangements. In many cases, detailed institutional design may make many of the initial similarities disappear. For example, Toronto (or indeed any other Canadian city) cannot be considered an example of Paul Romer's charter city because it is entirely a creature of the provincial government and has no constitutional status whatsoever; this implies that its powers and functions can be changed at any time by the government of the province in which it is located. In other words, scholars need to explore both the constitutive and ongoing relationship between charter cities, larger municipalities where they may be located, provinces or states, and national governments. In exploring such legal intricacies, one may also find that there are significant differences between the charter cities as proposed by Paul Romer and special economic zones, which remain subordinated to the central government of the country where they are located. If this indeed the case, it may be fruitful to ask if they are both bypasses and if so bypasses of what. As the definition of bypass indicates, these alternatives need to have effects in the same jurisdiction in which the dominant institution is located. Thus, if a charter city is not even subject to the same government and the same constitution, is it still within the same jurisdiction? And if it is still subject to the same central government, as the special economic zones are, what is it an alternative to? What is the dominant institution?

Last but not least, charter cities bring an interesting normative question: should these experiments be evaluated according to results, or according to decision-making processes? This is not a new question in development circles: the developmental state seeks legitimacy based on outcomes, while democratic regimes rely on procedural legitimacy (Prado, Schapiro, and Coutinho 2016). Yet, it is not clear if Fortes' *Bossa Nova* experiment is trying to improve processes or

outcomes. Another important normative question is whether the creation of a charter city is likely to have a beneficial effect, a negative effect, or no effect at all on the larger environment in which it is located. Fortes mentions that the creation of the new capital of Brasília had a detrimental effect on Rio de Janeiro and did not induce it to raise its game. Is this a highly context-specific example, or should we expect this to be a standard outcome in the creation of charter cities? If the latter, is this desirable? In other words, further research is needed on the impact of charter cities on institutions in the pre-existing cities.

In summary, our book does not have much to offer for those interested in charter cities, but we have outlined here a series of questions and reviewed some of the literature relevant to the topic. If anything, perhaps our book has a lesson in modesty. Unlike proponents of charter cities, we carefully tread the line that divides the descriptive exercise of defining a concept and policy prescriptions. For bypasses to serve as a policy reform tool, it is necessary to carefully evaluate their ability to promote change, which in turn requires empirical evidence. Therefore, rather than a call for action, our book is a call for further research. More than providing a new concept, we hope that our book underscores that law and development scholars can never be too careful in crossing the line between descriptive and normative claims.

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