

Second Draft

## **Notes on Human Development, Human Rights, and Auditing the Quality of Democracy**

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### Three Preliminaries

1. First, three very general comments. Guillermo's working document provides a framework for integrating topics and areas of analysis which have grown up as independent specialisms. To master the relevant literatures and then rethink them in a more holistic manner requires a very wide range of expertises combined with a firm sense of intellectual discipline. One has to go back to first principles in order to construct a robust framework. But at the same time the project is eminently practical, so one must also need a very realistic grasp of the relevant social realities; how administration, legal systems, social policies and so forth actually function in a variety of very distinct and often troubled settings; and how to identify indicators or measurements of these realities that make sense for the purpose of comparisons and that can help identify priorities for ameliorative action. This is a hugely ambitious undertaking, and all comments – and especially criticisms – must start by acknowledging the difficulty and originality of the task.

2. It is also the right general approach, and indeed is long overdue. Political scientists have segregated a limited range of institutional variables within the framework of “democratic consolidation”, and tried to analyse them abstractly and in isolation from their consequences for the citizenry. The *reductio ad absurdum* of this approach is a formally consolidated democracy in Argentina that no-one knows how to govern, because the people as a whole are utterly

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disgusted with the achievements of their rulers. Similarly, some human rights advocates have isolated a selection of vital, but in the end partial, legal and civic rights that have been abstracted from their historical and social settings and exalted into absolute desiderata, regardless of other considerations or consequences. Carried to an extreme this can result in criminal trials where the scales of justice are so rigged in favour of the accused that the police give up trying to make arrests, and the victims of crime resort to public lynchings.

3. Even the “human development” community, which has done so much to widen our appreciation of the social dimensions of development not captured by the crude growth rate data, can sometimes be faulted for isolating certain “politically correct” parameters of development performance that may not entirely reflect the aspirations, or even the best interests, of the poor they claim to champion. For example, defence spending tends to be seen as pure waste and diversion of resources from the satisfaction of human needs. Often, of course, it may well be, but there is also an opposite possibility, as illustrated by various “failed states” and by the current preoccupation with international terrorism. The preservation of order may sometimes require a large and sustained collective effort, without which hopes of cumulative human development will be frustrated. More generally, effective democratic governance is not an optional add on to the pursuit of uncontentious poverty alleviation goals, it is constitutive of human development properly understood. If so, then we need both theoretical tools and empirical instruments for integrating the concerns of the human development community with the priorities of the human rights advocates and the analysts of comparative democratization. This justifies a shift in theoretical emphasis from the incentive structures associated with democratic procedures to the quality of outputs associated with democratic responsiveness to citizen demands. But the shift cannot be purely theoretical. If we are to speak with any conviction about the satisfaction of citizen demands we need accurate and independent methods of assessing and prioritising those demands. We need a democratic audit, understood not as a technocratic instrument, but as an intelligible and practical tool for channelling feedback between the governors and the governed.

## On The Language of Rights

1. What do we mean by classifying any social claim as a “right”? Is it just an officially endorsed collective aspiration, or is it a personally enforceable entitlement that trumps all contrary considerations? At one extreme we have the hazy rhetoric of so many populist orators, at the other the libertarian absolutism of the late lamented Robert Nozick. On the one hand we have the vacuous amendment to the Mexican Constitution promoted by President López Portillo, which guaranteed all citizens the right to a job; on the other hand we have the “right to lifers” who view the sanctity of the foetus as so absolute that the courts may compel a woman to carry an unwanted child to termination, even at the risk of her own health. Between these two theoretical extremes most claims about rights are neither entirely vacuous nor unconditionally enforceable. And different rights have different degrees of enforceability in any case. Property rights may be (in some historical contexts) pretty well universal and authoritative. Indigenous rights are almost invariably patchy and contested. So we need to distinguish between different types of rights, different contexts in which they may be invoked, and different degrees of enforceability. If rights are trumps, some of them are low trumps, and players often pretend to hold an ace of hearts when really their chances of prevailing are far from certain.

2. Guillermo’s theoretical standpoint on rights is at the heart of the analysis. For him democracy, human rights, and human development all share a foundational conception of the human as agent. This condition of agency originates not only moral claims but also universalistic rights. However it is theoretically undecidable what minimum sufficient set of rights or capabilities could generate clear and firm generalized intersubjective agreement. What we must do, therefore, is not seek to artificially stipulate any particular set of universal rights, but instead analyse the reasons and consequences of their undecidability. I hope this is a fair summary of a complex and sophisticated argument. It leads to a critical conclusion with which I am wholly in agreement. If we cannot arrive at a timeless and universal consensus on a

minimum set of universal rights; and if merely stipulating the negative (absence of rights) is insufficient to determine the positive requirements for agency; then the crucial issues becomes how can and should we decide which rights are enacted and implemented. The answer provided by Guillermo is that this only can and should be decided by democracy itself. The consequence of this move is to allow rights to be socially constructed, and (within limits) variable. It is also to make democracy not an optional add on, but arguably the master value behind human development and human rights. But we are in deep waters here. Rather than trying to derive democracy from human rights, or human rights from democracy, the logic of Guillermo's "elective affinity" approach might be to conceive of both as social constructions derived from a common heritage and capable of being made mutually supportive over time.

3. It would take a long time and much careful work to bridge the gap between foregoing paragraphs one and two. I will try to use the standpoint of paragraph 1 to probe the limits and implications of Guillermo's argument as summarized in paragraph 2. But these are only tentative draft notes for a discussion. My first thought is that if rights are socially constructed and contextually located, if they are often just in some sense turbo-charged aspirations, then we can escape the sharp dichotomy between rights and non-rights. Instead of searching for some universal minimum set, we can think in terms of a core of solidly established aspirations-that-have-come-to-be-regarded-as-rights, (that have been socially constructed, e.g. over centuries of campaigning for the abolition of slavery;<sup>1</sup> that have been generalised from just some social contexts until the remaining exceptions are just shameful dark corners; and that may now carry the credible threat of enforcement by-if necessary- international legal action). Then, growing out from these powerful, but still contingent, core aspirations-become-rights we can think of correlates that are either not-yet-so-universal (different cultures still have different assumptions about say gender equality, or the death penalty); or not-clearly-

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<sup>1</sup> On the paradox of western historical development, that ideas of precise legal agency and personal responsibility developed first and furthest in association with the slave owning democracies of Greece – and the USA – see Orlando Patterson. Freedom in the Making of Western Culture (I. B. Tauris)

so-integral (is the right to a pension an essential component of agency?); or not-so-reliably-enforceable (the right to work is a glorious aspiration, but we live in a globalized market economy). So we would have a relatively solid core of rights, surrounded by a penumbra of associated aspirations of varying degrees of stability, coherence, and enforceability. When democratic processes gave rise to an expansionary use of the language of rights more of these aspirations would be codified and enforced. But since democracy is also a perpetual error correction mechanism if the system became overloaded with too many unmanageable and incompatible claims to rights, the community could always decide to renegotiate the boundaries, to revert to fewer but sounder enforceable rights. The precise line would be theoretically undecidable because it would be “essentially contestable” – permanently subject to democratic deliberation and review.

4. I am also against dichotomy on the question of the universal nature of rights. In practice schizophrenics do not have all the same universal rights as supreme court judges. As Guillermo’s paper clearly shows (particularly the quotation from Jeremy Waldron on p.52) the structure of rights potentially available to any bearer of rights is inherently complex. While some of these may be clearcut and directly enforceable many are tacit conventions and expressions of sociability rather than portable possessions.

Moreover, in new democracies social heterogeneity and policy instability are palpable realities that filter the citizen’s subjective experience of her entitlement to rights. The Yanoami do not have precisely the same aspirations (let alone prospects of codifying those wishes into enforceable entitlements) as executive council of FIESP. There is a socially constructed continuum, and there is constant bargaining and negotiation over the scope and coverage of rights. In what Guillermo calls the “North West” it may be that such coverage is relatively stable and clear-cut (although persons of Middle Eastern appearance or origin may not feel so sure of that in the wake of September 11<sup>th</sup>). But certainly in the new democracies that interest us here, and in the democracies where “quality” is most subject to questioning, the scope and coverage of rights is characteristically unstable and volatile. A certain minority may feel reasonably secure in all their rights. A possibly

equal sized minority may be absolutely clear that such rights are not extended to themselves. But in between lies a wide array of citizens who cannot be sure. On good days they can claim some rights, especially if they agitate. If they stay passive, or if their system is subjected to some characteristic shock, rights that seemed to be assured can abruptly evaporate. Their pension fund can be seized and allocated to pay off foreign creditors. Their access to information can be abruptly curtailed by censorship or manipulation. The leaders who seemed accountable to them can at short notice turn into inaccessible autocrats or irresponsible incompetents. Experience teaches that the norm is not the stability and taken-for-grantedness of rights, but rather their volatility. But this is in no way to undervalue the importance of generating such rights. On the contrary those citizens who feel most insecure in their entitlement to rights have most to gain from collective reiteration of such aspirations.

5. Another aspect of Guillermo's perspective on rights also deserves comment. In a laudable attempt to pinpoint foundational principles he keeps returning to the requirements of individual agency. But if rights are socially constructed, are enforceable aspirations, and if they come in clusters that do not necessarily follow the sequence postulated by T.H. Marshall, then perhaps some of the requirements of individual agency may not always and necessarily be so foundational. To put the point provocatively, if individual agency is truly the universal core of his conception of rights, then does he not have to follow the libertarians and place private property entitlements in a privileged position? Alternatively, if as seems clear, e.g. from his references in footnote 89 on p.37 he resists the pure logic of possessive individualism and prefers to think in terms of more socially responsive variants of agency, (which could include heavy taxation, obligatory community service, and other forms of collectivism), then something other than strictly individual rights may become foundational. Does the church, or the state, or the university, or the courts have the status of agency, as well as the individuals composing these corporate entities? If so, the rights of private property can be subordinated, but if so the cluster of agency rights that may have to be respected is that much wider and more indeterminate – more subject to social construction.

Individualists fear the assertion of such collective rights, as oppressive. But both Guillermo and I seem to be at one in arguing that democracy offers (in principle) a way in which such collective aspirations can be codified and enforced without necessarily destroying the foundations of personal freedom.

### On Human Development and Democracy

1. Since the 1990s the conviction has grown that democracy and development are more intimately interconnected and more positively associated than this. Data from many countries have been used to test for such an association (with somewhat mixed results), and various democracy-related term – “participation”, “civil society”, “empowerment”, - have assumed increasing prominence among the goals pursued by international development agencies. As more developing countries have adopted at least the outward appearance of democratic political practices the traditional lobby opposed to linking democracy with development has weakened. The majority of developing countries can now hope to benefit if developmental assistance carries democratic conditionality, and donors are increasingly inclined to associate democracy with social development and therefore attach such conditions to their assistance.

If this shift in beliefs and practices to prove more than just a passing fashion it will have to be accompanied by a re-conceptualization of both democracy and development. Fortunately, just such a debate may be getting underway in the relevant scholarly communities. Social development provides the key point of intersection between the separate academic discourses of democratization and economic development. To the extent that these discourses converge, social policies and citizenship entitlements will move from the margins to the centre of attention. But it is one thing to shift the focus of attention, and quite another to integrate the new objects of study into a coherent and operational analytical framework. Given the intellectual difficulties involved, it is all too tempting for development agencies to maintain an established framework, with some “add on” references to social development, environmental sustainability, gender balance, or political empowerment, that sound encouraging but that do not disturb core

assumptions or modes of analysis. Similarly, advocates of democratic conditionality find it tempting to treat social welfare as an optional extra.

2. However, the established policy framework confronts mounting difficulties, both practical and political. On the practical side, with the spread of democracy come growing demands for decentralization and the devolution of public policies to local levels of government. Similarly with the spread of market-based systems of competition and allocation comes a shift of economic power away from the government agencies. Moreover, where social development has been allowed to falter, perhaps through omissions arising from too narrow a conception of “good performance”, the evidence has increased that such omissions easily produce negative feedback that can eventually destabilize procedural democracy and/or disrupt “sound” growth strategies. Practical considerations of this kind, reinforced by the political preferences of a growing number of both donor and recipient governments, have driven defenders of the old framework to make concessions. However, those who favour the incorporation of “softer” styles of explanation and evaluation have yet to develop generally accepted alternative approaches.

It should be possible to move beyond this state of affairs, and to reconceptualize both democracy and development in a manner that would provide a superior and integrated policy rationale. The UNDP’s Human Development Report, UNRISD’s Visible Hands Taking Responsibility for Social Development, and a range of academic initiatives indicate that the search for a substitute framework is well underway. It is increasingly recognised, for example, that freedom of expression and association somewhat offset the risks of man-made famines and other preventable “natural” disasters. Citizens with voting rights can exercise some leverage over public policy priorities, and may prefer clean drinking water to pharaonic dams and such projects. If social development elicits local ownership and citizen participation, it may constrain wasteful arms expenditure and tilt international relations towards co-operation rather than conflict. The traditional separation between politics and economics, both narrowly conceived, obstructed investigation of such potential linkages (forgetting what Gunnar Myrdal had once taught us about “cumulative and circular” causation in development studies).

3. But at least four big analytical questions remain unanswered. First, how are developmental priorities to be established, and reconciled, once the traditional criterion of growth maximization had been relaxed? Second, how is good performance to be evaluated if a variety of somewhat competing and partially subjective long-term goals become the central to integrated “social development”? Third, since on any realistic definition long-term democratic and social development provokes resistance and conflict, and is therefore prone to periodic interruption and even reversal, how is such turbulence to be interpreted and (possibly) managed? Finally, since even on the most optimistic of assumptions about the pace of progress hold that most new democracies will continue for generations to include large numbers of poor citizens whose urgent social policy needs can at best be addressed only gradually, how can democratization and social development be stabilized in the intervening decades?

4. Merely listing these questions is sufficient to demonstrate the scale of the task required before an integrated new analytical framework can fully substitute for the old dichotomy. Here are a few tentative responses.

First, on the establishment of developmental priorities, in principle the answer must lie with the newly enfranchised citizens of these developmental democracies. As democratization proceeds, ownership of the development process is bound to pass from the specialized agencies and ministries towards the local authorities and societies directly and permanently affected. (Admittedly this assertion rests on a view of democratization as a long-term, cumulative process of social learning.)

Second, on the evaluation of social development performance, international comparative indicators will remain indispensable, and will have to be further refined. But on an integrated view of development all evaluations will need increasingly to take account of the expectations and perceptions of the citizens in question. That, too, follows from the idea that democratic development requires local ownership.

Third, the realities of conflict and non-linearity in long-term processes of social development pose a severe analytical challenge that cannot be resolved purely by invoking democratic authority. Local ownership must be qualified by respect for the opinions and experiences of others. Social

development in a liberalized international system must be cosmopolitan, and constrained within an agreed framework of basic rights and values. For this reason, an integrated approach will require co-operation and co-responsibility across international boundaries. A social catastrophe in, say, Afghanistan or Albania can jeopardize both democracy and development far afield. Recently there has been a some progress in generating norms of conduct for managing such conflicts, but the challenges remain acute.

Finally, at the domestic level, the management techniques needed to contain frustration while gradually diminishing the backlog of legitimate and unmet citizen demands can easily jar with both the standard operating procedures of the development agencies, and with the impersonal logic of the market economy. Once democracy is understood as more than the alternation in government of rival parties, politics regains its status as an autonomous sphere of social action with its own messy logic, and awkward outcomes. UNRISD is right to refer to the “visible hands” that will then “take responsibility for social development”, but more analysis is needed to distinguish the legitimate exercise of democratic authority from the old vices of mismanagement from behind a veil of good intentions. Once development is understood as a process of social construction and not just of growth maximization, then local creativity and experimentation can be celebrated. But here, too, lurk the dangers of distortion and manipulation. A strong analytical framework, grounded on solid international consensus and backed by widely accepted lessons of experience, will be required if such experiments are to be more than cosmetic “add ons” to development, and are not to prove costly “subtractions from” conventional growth.

### The Method of Audit

1. Guillermo's working paper contains rich theoretical analysis, but it also gives rise to four excursi on assessing the quality of democracy. The aim is to identify procedures and indicators that are empirically testable and that permit comparison and feedback. He joins Sen in stressing that in order to assess the “real interests” of individuals both internal and external perspectives are

needed. The method of audit permits the assembly and testing of a widening range of indicators – objective rankings and national performance as in the Human Development Index; subjective perceptions via public opinion surveys like Latino barometro; cross-tabulated evaluations of such key hidden variables as the incidence of corruption (as in the Transparency International and World Bank enquiries), and in-depth case studies such as the seven municipal governments evaluated in Costa Rica's Estado de la Nación project. There is a rapid proliferation of measurements and assessments of this kind. One of the key tasks of our workshop on the quality of democracy is presumably to evaluate the different types of evidence becoming available, and to help us put it in order, so that instead of being swamped by floods of partial and inconsistent data we are able to assemble a coherent and collectively intelligible picture of overall democratic performance. For this we need reliable comparisons over time; between countries; and also within single countries at a given moment in time.

2. Costa Rica seems to be in the vanguard in Latin America, as far as democracy audits are concerned. (Although I have also seen UNDP-backed studies of El Salvador and Bolivia that contain much of great value and that, in particular, illustrates my thesis about the “instability” or “volatility” of the rights extended to so many of the citizens of new democracies). What seems to me critical is that the method of audit should be sufficiently comprehensive and impartial to provide a basis for collective deliberation, but it should also be sufficiently crisp and relevant to attract popular interest and involvement. Somehow the partial indicators and complex comparisons would have to be structured in such a manner that ordinary citizens, and not just a coterie of experts, can assimilate their implications. The diagnosis has to be sufficiently precise and well-founded to generate proposals for improvement and reform that can be made operational by a public administration and a legal system which cannot just respond to moral exhortations. But a democracy audit is not just an instrument for generating specific measures of reform. It is also a means of collective self-reflection, a component of the very process of democratic deliberation itself. At the risk of sounding pretentious it struck me that in Weberian terms one might think of a democratic audit as penetrating

the *verstehen* of the society; or in Hegelian terms as contributing to its self-realization.

We are at a very early state in experimenting with this method of both assessing and improving the quality of democracy. A democratic audit can be promoted as a strategic instrument for the social construction of a more responsive and accountable system of self-government. It could fill a crucial gap between elite circulation via competitive elections (the Schumpeterian conception of democracy) and more ambitious conceptions of democratization as a progression towards a more rule based, more participatory, and more consensual form of social coexistence. But we should not overlook the possibility that some variants of the democratic audit process could also be subject to distortion or appropriation in the service of other less noble, causes such as buying time or deflecting blame. Tom Carothers made a key point when he warned that too long a list of secondary desiderata could distract attention from the essential problems of centralization of power and lack of participation. There are huge conceptual and practical difficulties before the democratic potential of the audit process can be fully realised, but the attempt is of the utmost interest, not only for Costa Rica or for Latin America, but for the future of democracy itself. That future remains “essentially contested”, and a democracy audit could be a vital weapon in such contexts.

### Afterthought

One way to view democracy is as a civic religion. It can stabilise otherwise destructive sequences of collective action, it can reinforce national identity, and it can provide individuals with a means of “value discovery” as well as a way of processing and summing up personal preferences. This is certainly not the only way to view democracy, but it is perhaps the implicit view of those who gathered in the hotel La Condesa on the eve of the Costa Rican *fiesta patria* that is election day. If Costa Ricans have adopted democracy as their civic religion they are particularly likely to embrace methods, such as the Estado de la Nacion democracy audit, that reinforce that self-understanding and that both celebrate and deepen that commitment.

On a more subjective note I could not avoid reflecting as our discussions unfolded that there was a distinct parallel (Guillermo might prefer “elective affinity”) between our proceedings and those of the priesthood of an official religion. Pursuing this slightly farfetched analogy the Human Development Report could be compared to an encyclical, and the annual democracy audits to Anglican discussions about the spiritual health of the nation. On the same basis attempts to generalise this model to other countries bear some resemblance to old debates between Christian missionaries about how far to bend in accepting local religious beliefs in order to generalise the faith.

This is intended as a light-hearted analogy, not a criticism of our deliberations. There is a good case for applying reason and research effort to the task of deepening democracy. This is both a scientific and a normative undertaking. Social scientists who attempt to combine the two may be addressing a deep-felt social need, but they are also filling a space previously occupied by the cleresy. Oxford and Cambridge rose to academic eminence by collaborating to produce the King James bible, a huge task of research, which also addressed a spiritual need and crystallised a civic religion. In a secular age universities no longer preach, but they can still orient their research towards the elucidation of collective values, and the production of well thought out and carefully validated democracy audits offers an appropriate way to unite normative and empirical investigating.

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### **Comments on Three Theses**

The first thesis is a thoughtful return to some quite familiar themes. I discuss much of these in my first chapter of *Democratization: Theory and Experience* and will not repeat those arguments at length here. My main comments on the way this thesis is developed are i) the stipulations become increasingly exacting as the argument unfolds and ii) there is insufficient allowance for the pace of social change, and the respects in which democracy can therefore take different forms at different times (including evolving in the future in ways that may escape many of those stipulations). For example, the thesis invokes a very traditional and rather static conception of the “rule of law”, which it associates with a territorial state exercising a monopolistic sovereignty. But the European Union is showing us how far the rule of law may develop outside the limits of state sovereignty. The UN has also attempted to promote forms of democratization in the context of suspended sovereignty (tutelary or protectorate democracy). Puerto Rico illustrates the scope for rule of law and the expansion of democratic rights in the absence of traditional sovereignty. In the future we may see new forms of democracy (direct citizen consultations through the internet, for example) which could bypass traditional machinery of political representation. The idea that democracy presupposes political parties may need more debate, considering the discredit that increasingly attaches to them. I am also uneasy about making the “individual right to property” a static and universal pre-requisite. (This might mean, for example, that when the Chileans elected Allende they were voting against democracy. It might mean that Iranians could not democratically choose to live under an Islamic legal system that restricted their property rights in accordance with strict Islamic law). All in all, I worry about such timeless and universal assertions of rights, when historical experience suggests that these are social constructions subject to continuous innovation. But, despite these reservations on the detailed development of the thesis, I see great merit in the italicised summary.

The second thesis grapples with the “singularities” of Latin American politics. I welcome the attempt to specify these, and I am confident that the enquiry points in the right direction when it highlights the distinctive problems of “developing” democracies and the distinctive timing of social, political, and civil rights in this region. But I would soften the language of “uniqueness”, and I would pay more attention to the volatility of rights in the region, rather than to their distinctive sequencing (see here my notes for the Costa Rica meeting, especially pp3/7 attached). After all, there are numerous other developing democracies outside Latin America, so some of the assertions made in this section may also apply to, say, South Africa or Turkey. Also, I feel that the important differences within Latin America (e.g. between Chile and Argentina) get blurred in this emphasis on “singularities”. Just at present my work on Mexico is posing the question whether the impediments to the expansion of democracy and citizenship are really of the same order in that country as in (say) Bolivia, or (dramatic example) Argentina. My tentative conclusion is that there is scope for strong cumulative causation – both positive (virtuous circles) and negative (vicious circles). This, together with uncertainty about which rights can really be upheld for which sections of a very unequal society, may be another “singularity” that applies to the whole sub-continent. But if so it means that there can be large variations in the “quality” of democracy across the region.

The third thesis treads the fine line between upholding the centrality of a narrowly political conception of democracy, and paying enough attention to the social embeddedness required for democratic sustainability. In *Towards Democratic Viability: The Bolivian Experience* (Palgrave, 2001) edited by John Crabtree and Laurence Whitehead, I have argued for use of the term “viability” in this context, which I prefer both to “consolidation” (which is only about institutional coherence) and the strange verb “perdurance” used in this text. Beyond semantics, however, the key point is correct. We need to attend to the social legitimation of democratic practices, and we cannot take those practices as given, independently of the specific features of citizenship and development that characterise Latin America. What I would like to see added to the third thesis would be a fuller discussion of how far the social requirements specific to Latin America alter or modify the institutional

content of what we can describe as a durable democratic regime. For example, given what we say about the expansion of citizenship and the legacy of incomplete development, what kinds of political representation can we envisage? Do conventional political parties exhaust the repertoire? Equally, given what we are saying about the volatility of political and social rights, what variants on the expansion of democratic legality need to be contemplated? Can the existing legal system be extended to provide minimum access to legal redress for all citizens, or if not are other (informal) variants of legal provision a part of democratization in this region? The thesis also refers to regional and international reinforcements to domestic legality, and I support that, although it raises questions of sovereignty that may need further discussion (as per my comments on the first thesis).

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