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**FUNCTIONAL, OVERLAPPING AND COMPETING
JURISDICTIONS (FOCJ):
A COMPLEMENT AND ALTERNATIVE
TO TODAY'S FEDERALISM**

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I. INTRODUCTION

Traditional types of federalism and decentralization exhibit many important advantages over centralization, but they also face some serious problems. In this contribution we develop a new concept of functional federalism which exploits the advantages of decentralization, but which at the same time avoids the inherent problems. Our concept, called *FOCJ* as the acronym of Functional, Overlapping and Competing Jurisdictions is well-suited to improve politics in industrial as well as developing countries. This new kind of competitive federalism we put forward may seem radical in various respects, but we will show that the concept has been successful in the past as well as the present. Thus, we believe that it constitutes an idea worthy of serious consideration. The remainder of this paper is organized as follows. In the second section we discuss the advantages and problems of traditional federalism. The third section specifies the concept of FOCJ, and discusses its main beneficial effects. The fourth section puts it into theoretical perspective. The fifth section shows that some aspects of FOCJ have existed throughout European history and continue to do so today. Furthermore, the relationship to US-special districts and in particular to functional communities in Switzerland is emphasized. While the sixth section discusses how FOCJ can be institutionalized in Europe, the seventh section focuses on the relevance of FOCJ for developing countries. The last section shortly concludes.

II. ADVANTAGES AND PROBLEMS OF FEDERALISM

The Economic Theory of Federalism yields one clear and overriding result: a federal (i.e. decentralized) state is superior to a centralized one in the sense that it fulfils the demands of the citizens more effectively. A federal constitution that endows the federal units (provinces, Länder, states, cantons, or communes) with sufficient decision-making rights and taxing power has three major advantages over a unitary state:

Advantage 1: More flexible politics. In all societies, citizens differ widely in their demand for services provided by the state. These differences in demand are not only the result of heterogeneous tastes due to differences in tradition, culture, language etc, but also of unequal economic conditions. The latter are caused by, for example, leads or lags in the general business cycle and, of course, special structural conditions such as differences in infrastructure, unemployment, the concentration of particular industries etc. These differences in the demand for public services must be met by differentiated supply policies if citizens' preferences are to be fulfilled. Federal subunits are best able to meet this challenge. While the politicians in charge are better endowed with information about the local requirements, they have the incentives to provide these services according to the preferences of the citizens because they are directly accountable for local policy and their reelection depends on the satisfaction of the voters they represent.¹ In contrast, centralized states tend to produce unitary policies which are less capable of responding to differences in local demands.

Advantage 2: More efficient provision of public services. The efficiency of the public sector is extremely important due to the very large size of today's public sector in terms of government expenditure as a share of national income, public servants as a share of the total workforce, the dependence of a substantial portion of the population on income redistributed by government (e.g. in the form of subsidies, social security and old age pensions) and, of course, the many resources that go into tax collection. In federally-organized states, efficiency is enhanced by at least three mechanisms. First, individuals and firms which are not satisfied with the balance between the supply and cost of public

¹ It could be argued that locally elected politicians in central states also face incentives to cater for the local preferences. However, in many countries, the members of the national parliament are only partly, or not at all, elected in local precincts. In the Federal Republic of Germany, for instance, a substantial share of the members of the Bundestag are not elected by winning in a particular precinct but because they are placed on a list which is controlled by the party they belong to. Moreover, in national parliaments, a local delegates' accountability is low as he is only one of several hundred parliamentarians.

services may move to jurisdictions where this balance is more favourable. Such exit and entry thus establish competition among the various local suppliers of public services, giving them a strong incentive to be efficient. The exit/entry-mechanism does not depend on the full mobility of individuals or firms (there are, of course, costs of moving); it suffices if *some* such mobility is induced (in analogy to the marginal traders leading to equilibrium prices on normal goods markets). Indeed, spatial competition between jurisdictions in a federal system mimics competition among firms for the supply of private goods and services (Tiebout, 1956). Second, decentralization enhances efficiency by decreasing the cost of information for the citizens. As the voters can compare politics and policy outcomes in their own jurisdictions with those variables in other jurisdictions, it becomes easier for them to assess the performance of their governments and politicians. Such comparisons lead to ‘yardstick competition’ among local governments (see Salmon 1987, 2005 in this volume, Besley and Case 1995) which enforces the incentives of the governments to cater for the preferences of the citizens. Third, there is not only horizontal competition among governments of the same level, but there is also vertical competition among governments of different levels which fortifies the governments’ incentives to provide their services efficiently (Breton 1996, 2005).

Advantage 3: More innovation. In a federal system, innovations in the supply of public goods or taxation can be implemented first in those local units where the conditions are ideal for success. Moreover, a particular local unit finds it less risky to undertake innovations in the supply of public goods or taxation because the effects are limited and can be better observed and controlled. If the innovation is unsuccessful, not much is lost. However, if it proves to be successful, it will be quickly adopted by other jurisdictions and eventually the entire nation. For this Hayekian process to take place, the innovators must reap at least some of the benefits. This is much more the case when the innovation starts from a clearly-defined local jurisdiction where the success (or failure) can be clearly attributed to the respective politicians and governments.

In spite of these heavyweight advantages, federalism is not an ideal system. However, there is *no* ideal system. Following the well-established *Comparative Analysis of Institutions*, it is fruitless to judge any existing system or a new proposal by comparing it with a theoretical optimum. Rather, a comparison must be made with actual systems existing in reality. In the case of federalism, it is appropriate to compare it with a

centralized state. From this point of view, it has often been argued that a federal constitution is faced with four major problems:

Problem 1: Spillover effects. Spatial positive and negative externalities produce systematic distortions in the allocation of publicly supplied goods and services. "Fiscal equivalence" (Olson 1969, Oates 1972) is not secured: some benefits of local public supply go to citizens of other jurisdictions who have not paid the corresponding tax cost (which induces under-supply); some costs are carried by citizens outside a particular jurisdiction (which induces oversupply). This cause for the distorted allocation of public services cannot be neglected. In reality, it can often be observed that such spillovers are substantial and part of the fiscal crises of cities can be attributed to this factor. As an example, the cultural institutions (e.g. the opera house) whose costs are carried by the local tax payers but whose benefits are enjoyed by many people living and paying taxes outside the city. Acknowledging that such positive and negative spillovers may be serious under many circumstances, we hereby propose a solution: the size of the jurisdiction should correspond to the "geography of the problems".

Problem 2: Smallness. In traditional federalism, jurisdictions are often too small to exploit economies of scale. Think, for example, of nuclear power plants or universities, which normally require heavy capital investments for a local jurisdiction (city, commune) to run efficiently. In our proposal for a new federalism, we are trying to confront the problem directly. We envisage flexible (functional) jurisdictions which are able to adjust to the lowest cost size.

Problem 3: Need for coordination. It is often claimed that federalism makes cooperation difficult or impossible. However, this is only part of the real problem. In federal states, cooperation among the various national sub-units emerges endogenously because it is obviously advantageous for all actors concerned. Moreover, it should be noted that coordination problems also exist within unitary states, in particular among the various national ministries whose competencies and interests overlap. Thus, a unitary state is neither a necessary nor sufficient condition for effective cooperation.

Problem 4: Redistribution of income. This argument says that when a local unit tries to tax the rich in order to support the poor, the rich will leave and the poor will enter. The

redistribution policy therefore cannot be maintained in a federalist state, but is only feasible in a unitary state. This argument has some truth in it. However, empirical evidence shows that federalist structures admit a substantial amount of income redistribution (see, e.g., Gold 1991, Ashworth, Heyndels and Schmolders 2002). One example is Switzerland where the (partly very small) 26 cantons together with about 3000 communities levy more than 80% of total income and capital taxes. Although each canton is free to set its own tax schedule, all cantons rely on progressive taxes and engage heavily in income redistribution (see Kirchgässner and Pommerehne 1996, Feld 1999). Moreover, quite a large amount of redistribution exists between rich and poor cantons. Nevertheless, the problem of redistribution in a decentralized governmental system has to be taken seriously. In our proposal for a new kind of federalism, we argue that this is one of the functions for which the national state is sometimes an appropriate jurisdiction.

III. FOCJ: BEYOND TRADITIONAL FEDERALISM

The federal units proposed here are named FOCJ due to their four essential characteristics: they are

- *Functional (F)*, i.e. the new political units extend over areas defined by the tasks to be fulfilled;
- *Overlapping (O)*, i.e. in line with the many different tasks (functions) there are corresponding governmental units extending over different geographical areas;
- *Competing (C)*, i.e. individuals and/or communities may choose to which governmental unit they want to belong, and they have political rights to express their preferences directly via initiatives and referenda;
- *Jurisdictions (J)*, i.e. the units established are governmental, they have enforcement power and can, in particular, levy taxes.

These *functional, overlapping, and competing jurisdictions* form a federal system of governments that is not dictated from above, but emerges from below as a response to citizens' preferences. For this to become reality, a fifth freedom has to be enacted, which in some way is the political counterpart to the four economic freedoms. It simply has to

permit the formation and continued existence of FOCJ. Such a fifth freedom requires a *constitutional decision* (see, e.g., Frey 1983, Mueller 1996) which ensures that the emergence of FOCJ is not blocked by existing jurisdictions such as direct competitors or higher level governments. Every citizen and community must have the right to directly appeal to the European Court if barriers to the competition between governments are established. The European Constitution must give the lowest political units (communities) a measure of independence so that they can engage in forming FOCJ. The citizens must be given the right to establish FOCJ by popular referenda, and political entrepreneurs must be supported and controlled by the institution of popular initiatives. The FOCJ themselves must have the right to levy taxes to finance the public services they provide.

The concept of FOCJ is based on theoretical propositions advanced in the economic theory of federalism. It nevertheless leads to a governmental system that is completely different to the one suggested in that literature. While the economic theory of federalism (see Oates 1991, or the various contributions on federalism in the Fall 1997 issue of the *Journal of Economic Perspectives*) analyzes the behaviour of *given* political units at the different levels of government, FOCJ *emerge* in response to the '*geography of problems*'.²

FOCJ with their four main elements are now compared with existing federal institutions and theoretical concepts, pointing out both similarities and differences and the beneficial effects of FOCJ.

1. The Main Characteristics

Functions

A particular public service which only benefits a certain geographical area should be financed by the people living in this area, i.e. there should be no spillovers. Under this rule, the different political units can cater for differences in the populations' preferences or, more precisely, to its demands. To minimize cost, these units have to exploit economies of scale in production. As these may strongly differ between functions (e.g.,

² The concept of FOCJ is extensively discussed in Frey and Eichenberger (1999). Similar ideas can already be found in Montesquieu (1749). Burnheim (1985) and Wehner (1992) mention similar elements. In the economics literature, a related concept has been pioneered by Tullock (1994), who calls it 'sociological federalism'. Casella and Frey (1992) discuss the concept and refer to relevant literature. A Centre for Economic Policy Research Publication (CEPR 1993) briefly mentions the possibility of establishing overlapping jurisdictions in Europe (pp. 54-55) but does not elaborate on the concept nor does it refer to previous research (except for Drèze 1993 on secession).

between schools, police, hospitals, power plants and defence) there is an additional reason for single-functional (or few-functional) governmental units of different sizes. While this idea is central to 'fiscal equivalence' as proposed by Olson (1969) and Oates (1972), the endogeneity of the size of governmental units constitutes an essential part of FOCJ. Moreover, fiscal equivalence theory has been little concerned with decision-making within functional units. The supply process is either left unspecified or it is assumed that the mobility of persons (and of firms, a fact rarely mentioned) automatically induces these units to cater for individual preferences. This criticism also applies to a closely related concept of fiscal federalism, namely 'voting by feet' (Tiebout 1956). This preference revealing mechanism makes comparatively efficient suppliers grow in size, and the others shrink. According to this model of federalism, the political jurisdictions are exogenously given, are multi-purpose, and do not overlap, while the political supply process is left unspecified. In contrast, we emphasize the need to explicitly study the political supply process. In line with Epple and Zelenitz (1981), exit and entry is considered insufficient to eliminate rent extraction by governments. Individuals must have the possibility to raise voice in the form of voting. Buchanan's 'clubs' (see Buchanan 1965, Sandler and Tschirhart 1980) are similar to FOCJ because their size is determined endogenously by club members' benefits and costs.

Overlap

FOCJ may overlap in two respects: (i) two or more FOCJ catering for the same function may geographically intersect (e.g., a multitude of school FOCJ may exist in the same geographical area); (ii) FOCJ catering for different functions may overlap. The two types of overlap may coexist; however, a constitutional decision can be taken to restrict FOCJ of specific functions to the second type because this alleviates free-riding problems (see also Vanberg 2000). An individual or a political community normally belongs to various FOCJ at the same time. FOCJ need not be physically contiguous, and they need not have a monopoly over a certain area of land. In this respect the concept of FOCJ is similar to Buchanan-type clubs which may intersect, but it differs completely from archaic nationalism with its fighting over pieces of land. It also breaks with the notion of federalist theory that units at the same level may not overlap.

Competition

In FOCJ, two mechanisms guarantee that empowered politicians conform closely to their members' preferences: while the possibility for individuals and communities to exit mimics market competition (Hirschman 1970), their right to *vote* establishes political competition (see Mueller 2003). It should be noted that migration is only one means of exit. Often, membership in a particular FOCUS (we define a FOCUS to be the singular of FOCJ) can be discontinued without changing one's location. Exit is not restricted to individuals or firms; as said before, political communities as a whole, or parts of them may also exercise this option. Moreover, exit may be total or only partial. In the latter case, an individual or community only participates in a restricted set of FOCUS activities. This enlarged set of exit options makes 'voting by foot' a real constraint for politicians.

'Secession', i.e. exit of jurisdictions such as states or regions, has been recognized in the literature as an effective mechanism for restricting the power of central states (e.g., Zarkovic Bookman 1992, Drèze 1993, Backhaus and Doering 2004). Secession has been suggested as an important ingredient for a future European constitution (Buchanan 1991, European Constitutional Group 1993). The right to secede stands in stark contrast to the prevailing concepts of nation states and federations where this is strictly forbidden and often prevented by force, as is illustrated, e.g., by the American Civil War 1861-1865, by the Swiss 'Sonderbundskrieg' 1847, or more recently by the wars in Katanga (1960-63), Biafra (1967-70), Bangladesh (1970-71), and in the past decade in Ex-Yugoslavia.

For FOCJ to establish competition between governments, exit should be as unrestrained as possible. In contrast, entry need not necessarily be free. As for individuals in Buchanan-type clubs, jurisdictions may be asked to pay a price if they want to join a particular FOCUS and benefit from its public goods. The existing members of the particular FOCUS have to democratically decide on the entry prices. 'Free' mobility in the sense of a disregard for the cost imposed on others is overcome by internalizing the external cost of movement. In addition, FOCJ do not have to restrict entry by administrative and legal means such as zoning laws. Explicit, openly declared entry fees substitute implicit restrictions resulting in high land prices and housing rents. The commonly raised concern that pricing could be exploitative and mobility strongly curtailed is unwarranted as FOCJ are subject to competitive pressure. Moreover, the possibility to impose an explicit entry fee gives incentives to FOCJ-governments to not only cater for the preferences of actual, but also of prospective members.

However, the exit option does not suffice to induce governments to act efficiently. Thus, competition needs to be enhanced by political institutions. The citizens should directly elect the persons managing the FOCJ, and should be given the right to initiate popular referenda on specific issues. These democratic institutions are known to raise efficiency in the sense of fulfilling individual preferences (for elections, see Downs 1957, Mueller 2003; for referenda Frey 1994, Frey and Stutzer 2001, Feld and Kirchgässner 2001, Feld and Matsusaka 2003).

Jurisdiction

A FOCUS is a democratic governmental unit with authority over its citizens, including the power to tax. According to the two types of overlap, two forms of membership can be distinguished: (i) The lowest political unit (normally the community) is a member, and all corresponding citizens automatically become citizens of the FOCJ to which their community belongs. In that case, an individual can only exit via mobility. (ii) Individuals may freely choose whether they want to belong to a particular FOCUS, but while they are its citizen, they are subject to its authority. Such FOCJ may be non-voluntary in the sense that one must belong to a FOCUS providing for a certain function, e.g., to a school-FOCUS, and must pay the corresponding taxes (an analogy here is health insurance which in many countries is obligatory but where individuals are allowed to choose an insurance company). The citizens of such a school-FOCUS may then decide that everyone must pay taxes in order to finance a particular school, irrespective of whether one has children. With respect to FOCJ providing functions with significant redistributive effects, a minimal amount of regulation by the central government may be in order so that, e.g., citizens without children do not join 'school-FOCJ' which in effect do not offer any schooling but have correspondingly low (or zero) taxes. In this respect, Buchanan-type clubs differ from FOCJ, because they are always voluntary while membership in a FOCUS can be obligatory.

FOCJ as jurisdictions provide particular services but do not necessarily produce them themselves if contracting-out to a public or private enterprise is advantageous. It is noteworthy that present-day outsourcing by communities does not automatically lead to FOCJ. The former is restricted to production, while FOCJ typically concentrate on provision and are democratically controlled. FOCJ also differ from existing functional and

overlapping institutions such as the various kinds of specific administration unions (or *Zweckverbände* as they are aptly called in German speaking countries). These institutions normally do not have the legal status of governments but are purely administrative units. The same applies to the many types of corporations which usually have no power to tax but have to rely on charges.

2. Beneficial Effects of FOCJ

Due to its four essential characteristics, FOCJ compare favourably to traditional forms of federalism. One aspect concerns the governments' incentives and ability to satisfy heterogeneous preferences of individuals. As a consequence of the concentration on one functional area, the citizens of a particular FOCUS have better information on its activity, and are in a better position to compare its performance to other governments. As many benefits and costs extend over a quite limited geographic area, we envisage FOCJ to be often small which is also helpful for voters' evaluations. The exit option opened by the existence of overlapping jurisdictions is not only an important means to make one's preferences known to governmental suppliers but it also strengthens the citizens' incentives to be informed about politics (see Eichenberger and Serna 1996).

On the other hand, FOCJ are able to provide public services at low cost because they are formed in order to minimize interjurisdictional spill-overs and to exploit economies of scale. When the benefits of a specific activity indivisibly extend over large areas, and there are decreasing costs, the corresponding optimal FOCUS may cover many communities, several nations, or even Europe as a whole. An example may be defence against outward aggression where the appropriate FOCUS may most likely extend over the whole of Europe (even beyond the European Union). That such adjustment to efficient size is indeed undertaken in reality is shown by the Swiss experience. Communities decided by referendum whether they wanted to join the new canton Jura established in 1978, and in 1993 communities in the Laufental opted to belong to the canton Basel-Land instead of Berne. Communities also frequently change districts (the federal level below cantons) by referendum vote, which suggest that voters perceive the new size of jurisdictions and the new bundle of services to be more efficient. The same holds for American special districts.

The specialisation in one or a few functions further contributes to cost efficiency due to the advantages of specialisation. As FOCJ levy their own taxes to finance their activity, it pays to be economical. In contrast, in APJ (All-Purpose Jurisdictions) financed from outside lacking such fiscal equivalence, politicians have an incentive to lobby for ever increasing funds, thereby pushing up government expenditures. The incentive to economize in a FOCUS induces its managers to contract-out whenever production cost can thereby be reduced. While FOCJ are more market oriented than APJ, they reduce the size of the public sector. However, they differ from today's one-shot privatization, which usually does not impact on the governments basic incentives and thus is often reversed by re-regulation and de-privatization. In contrast, in a system of FOCJ privatization emerges endogenously and is sustainable, as the politicians incentives are fundamentally changed.

The threat of dissatisfied citizens or communities exiting the FOCUS, and the benefit of new citizens and communities joining, gives an incentive to take individual preferences into account and to provide public services efficiently. Quite another advantage of FOCJ is that they open up the politicians' cartel ('classe politique') to functionally competent outsiders. While in all-purpose jurisdictions persons with broad and non-specialized knowledge tend to become politicians, in FOCJ persons with a well-grounded knowledge in a particular functional area (for e.g. education or refuse collection) are successful.

FOCJ do not only make it possible to the citizens to change from one supplier to another, but they also increase the mobility of politicians. In trans-border FOCJ, politicians will be allowed to supply their services in several countries. This is in stark contrast to current regulations, which prevent politicians from doing so. In FOCJ, it is also more likely than in traditional territorial units that foreigners and institutional providers are allowed to enter the political market (on the favourable effects of open markets for politics, see Eichenberger 2003, Eichenberger and Frey 2002). While many people reject the idea of allowing policy consulting firms and foreigners to run directly for office in general purpose units, they are quite favourable to the idea when it is applied to the politics of FOCJ. Examples are FOCJ that concentrate on the supply of fresh water and sewage systems, which could be governed by international firms specializing in water resource management.

The right to form FOCJ helps to address issues raised by fundamentalist sentiments. Political movements focused on a single issue (e.g., ethnicity, religion, environment, etc.) are not forced to take over governments *in toto* but can concentrate on those functions they are really interested in. An ethnic group need not disassociate itself from the state they live in as a whole but may found FOCJ which cater for their particular preferences. South Tyroleans, for example, unhappy with the language domination imposed by the Italian state, need not leave Italy in order to have their demands for cultural autonomy fulfilled, but may establish corresponding FOCJ. Such partial exit (e.g., only with respect to ethnic issues) does not lead to trade barriers often following the establishment of newly formed all purpose political jurisdictions. FOCJ thus meet the criterion of market preserving federalism (see Qian and Weingast 1997).

A federal web composed of FOCJ certainly affects the role of nation states. They will certainly lose functions they presently do not fulfil according to the population's preferences, or which they produce at higher cost than FOCJ designed to exploit cost advantages. On the other hand, the scheme does not purport to do away with nations but allows for multi-national as well as small scale alternatives where they are desired by the citizens. Nation states subsist in so far as they provide functions efficiently according to the voters' preferences.

IV. FOCJ IN PERSPECTIVE

Our proposal is purely process-oriented. It is neither necessary nor possible to determine at the European and at the national levels all the functions which should be provided by FOCJ and how these entities should be organized. The internal organization of a particular FOCUS lies alone in the competence of the communities and individuals who decide to establish such a jurisdiction. Nevertheless, it is possible to specify the conditions for FOCJ to emerge and to fulfil their tasks effectively. Thus, our approach follows the logic of constitutional economics, which aims to design beneficial decision processes without closely defining the outcomes (Buchanan and Tullock 1962, Mueller 1996).

One condition is crucial for FOCJ to work properly: economic and political competition must be guaranteed. Thus, economic markets in FOCJ have to be open; in particular, the four freedoms referring to the free movement of goods, services, and capital, and the free

mobility of individuals have to be secured. At the same time, the political markets of FOCJ have to be competitive, i.e. human rights and fundamental democratic rights have to be guaranteed. This includes the right for citizens to make use of the instruments of direct democracy.

Not only traditional governments, but also the governing bodies of FOCJ, pursue their own interests and tend to undermine competition and to build cartels or even monopolies. Therefore, the rules have to be monitored by a 'competition supervisory board'. This body also has to fix rules for determining the ceiling on entry and exit fees. If they are too high, mobility is hampered. However, such prices for mobility prove effective in preventing individuals from exploiting the redistributive policies in FOCJ. Regulative measures may also be necessary to enable FOCJ to supply public services effectively (see also Vanberg 2000), as has been discussed above for the case of school-FOCJ. In such cases, it may be advantageous to declare membership in a FOCUS to be obligatory, and to fix minimum service levels. The competition supervisory board must be given the competencies to step in if such regulations are violated. This board has to be empowered in a constitutional decision at the national (or, even better, international) level. However, it would be a mistake to delegate the monitoring of competition among FOCJ to the national bureaucracies which are interested in restricting FOCJ. Rather, an independent agency seems appropriate. A possible solution could be a constitutional court (in the European Union the European Court). Even though such institutions tend to favour national at the expense of regional and local interests, they tend to decide less biasedly than national political institutions.

In light of the stiff resistance functional jurisdictions will meet, they can only emerge successfully if two conditions are met:

1. To establish and to operate FOCJ must be a constitutionally guaranteed right - the *fifth freedom*, as we would like to call it. The newly founded political units must be allowed to operate as jurisdictions with (restricted) enforcement rights. The power to tax in order to finance a clearly specified service is the key to efficiency. However, this right of FOCJ will be disputed by other political units with which FOCJ will compete for the same tax base.

Principally, the communities (as the lowest level political units) as well as individuals should be allowed to form FOCJ. However, depending upon the function to be fulfilled, membership may be restricted to the former. It is, e.g., well possible that individuals form a FOCUS which provides a special type of schooling; for other services, especially for those with stronger public good appeal, e.g., waste water treatment or local police, communities or parts of them are the "natural" agent. It is important to note that the decision to which of these two classes a function belongs can be left to the local level itself. This decision should not be transferred to the European level.

2. Existing political units may not hinder the formation of FOCJ. Most importantly, the higher level political units have to appropriately reduce the taxes of those citizens who become members of a FOCUS or of various FOCJ providing governmental services. The competition supervisory board has to force the existing units to openly declare the cost, i.e. the tax prices of the various services they provide. These "tax price lists" can then serve to fairly rebalance the tax rate of the citizens who receive services from newly emerging FOCJ instead of from traditional political units. The existing governments' tendency to underrate the cost in order to minimize tax reductions to FOCJ members can be broken simply by demanding that the tax prices for a specific service not only serve to compensate exiting citizens, but also to tax former and newly entering service recipients. This rule makes the market for politics contestable. The potential existence of FOCJ is enough to compel all levels of government to give an account of the real cost of their services. However, it need not be said that existing political units will use all possible measures to impede the new competitors. Thus, the competition supervisory board has no soft job. Again, the constitutional court seems to be the appropriate institution to undertake this task. It could rely on the competencies of the audit office (or the court of accounts or "Rechnungshof") to control the calculations of the tax prices. This latter institution has the necessary knowledge which has so far been wasted, as audit offices are typically only allowed to formulate non-binding recommendations which are most often ignored by the political decision-makers.

V. FOCJ IN THE FUTURE AND IN THE PAST

1. Future Opportunities

There is a wide range of functional issues to which FOCJ could profitably be applied. A practical example is the policing of Lake Constance (which borders on two German Länder, two Swiss Cantons, and one Austrian Land) which involves the regulation of traffic, environmental protection, the suppression of criminal activities, and the prevention of accidents. Formally, the various local police departments are not allowed to directly collaborate with each other, not even to exchange information. Rather, they must advise the police ministries of the Länder and cantons, which then have to notify the respective central governments which then interact with each other. Obviously, such a formal procedure is in most cases vastly inefficient and unnecessarily time consuming. In actual fact, the problems are dealt with by direct contact among the local police commissioners and officers. However, this is outside the law and depends, to a substantial extent, on purely personal relationships (which may be good or bad). A FOCUS committed to policing the lake would allow a pragmatic, problem oriented approach within the law - and would, moreover, be in the best 'spirit' of Europe.

FOCJ are not restricted to such small-scale functional issues but are relevant for all levels of government and major issues. An example would be Alsace which, while remaining a part of France in other respects, might partially exit by joining, say, the German social security or school system (with German as the main language), or might join a university-FOCUS involving the Swiss University of Basle and the German universities of Freiburg and Karlsruhe. Actually, the first steps for establishing such a university-FOCUS are under way. But these efforts contrast with the idea of regions as set out in the Maastricht Treaty (or elsewhere), not least because one of the participants (the University of Basle) is not part of the European Union. Another example refers to Corsica which according to Drèze's (1993) suggestion should form an independent region of Europe because of its dissatisfaction with France. However, most likely the Corsicans are only *partially* dissatisfied with France. This suggests that one or several FOCJ provide a better solution in this case; they may, e.g., especially focus on ethnic or language boundaries or on Corsica's economic problems as an island. This would make it possible for the Corsicians to exit France only partially instead of totally. Quite generally, tourism and transport issues, in particular railroads, are important areas for FOCJ. It should be noted that, despite the membership of various countries in the (then) European Community, railroad policy was not coordinated to exploit possible economies of scale; a FOCUS may constitute a well-suited organization to overcome such shortcomings.

2. Contemporary and Historical Forerunners

The European Community started out as a FOCUS designed to establish free trade in Europe, and was from the very beginning in competition with other trade areas, in particular North America, Japan, and the EFTA. Due to its economic success, it has attracted almost all European countries. But entry has not been free, the nations determined to enter had to pay a price. They have (with partial exceptions) to accept the 'acquis communautaire' as well as to pay their share to the Communities' outlays which to a large extent serve redistributive purposes. In several respects there exist FOCJ-like units within Europe with respect to law enforcement, education, environment, transport, culture, or sports though they have been prevented to become autonomous jurisdictions with taxing power.

Most of these functional units are not contiguous with the area of the European Union. Some are smaller (e.g., those organized along ethnic or language functions), and some are larger. Several East European countries and Switzerland which are not EU-members are certainly fully involved in, e.g., European culture, education, or crime. FOCJ of the nature understood in this paper may therefore build upon already existing structures, and are in the best of European traditions.

There are two countries in which functional, overlapping, and competing jurisdictions exist (though they do not in all cases meet the full requirements of FOCJ specified above).

United States

Single-purpose governments in the form of 'special districts' play a significant role in the American federalist system (ACIR 1982, 1987, Foster 1996, Nuun and Schoedel 1997). Their number has increased considerably, between 1967 and 1972 by 30.4 per cent, between 1972 and 1984 by 19.7 per cent, in both cases more quickly than other types of jurisdictions (Zax 1988). There are both autonomous and democratically organized as well as dependent special districts (e.g., for fire prevention, recreation and parks). Empirical research suggests that the former type is significantly more efficient (Mehay 1984). In contrast to all purpose jurisdictions, functionally specialized units are able to exploit economies of scale. While, in school districts, increasing size leads to lower cost of production, in all purpose communities there is no size effect as they fulfil many functions

with decreasing economies of scale, and its citizens lose control over politicians (Zax 1989).

Our theoretical hypothesis of the opposition of existing jurisdictions to the formation of special districts is well borne out. In order not to threaten the monopoly power of existing municipalities statutes, 18 states prohibit new municipalities within a specified distance from existing municipalities (ACIR 1982, Zax 1988: 81); in various states there is a minimum population size required, and various other administrative restrictions have been introduced (see, e.g., Nelson 1990). Empirical studies reveal that these barriers imposed by Local Agency Formation Commissions (LAFCO) tend to reduce the relative efficiency of the local administration (Di Lorenzo 1981, Deno and Mehay 1985), and tend to push the local government expenditures upwards in those municipalities which have introduced LAFCOs (Martin and Wagner 1978).

Switzerland

Many Swiss cantons have a structure of overlapping and competing functional jurisdictions which share many features of FOCJ. In the canton of Zurich (with a population of 1.2 Mio), e.g., there are 171 geographical communities which in themselves are composed of three to six independently managed, direct-democratically organized communities devoted to specific functions and levying their own taxes on personal income: in addition to general purpose communities, there are communities that exclusively provide for elementary schools and other ones specializing in junior high schools, and there are the communities of three different churches. All these governmental units have widely differing rates of income taxes. Moreover, there is a vast number of 'civil communities' (Zivilgemeinden) providing water, electricity, TV antennas etc. which are direct-democratic but finance themselves by user charges. These communities often overlap with neighbouring political communities. In addition there are 174 functional units (*Zweckverbände* as they are aptly called in German speaking countries) whose members are not individual citizens but communities. These *Zweckverbände* are responsible e.g., for waste water and purification plants, cemeteries, hospitals and regional planning. The Canton Zurich is not the only Swiss canton with various types of functional communities. A similar structure exists, e.g., in the canton Glarus or Thurgau (for the latter, see Casella and Frey 1992). Various efforts have been made to suppress this

diversity of functional communities, usually initiated by the cantonal bureaucracy and politicians. However, most of these attempts were thwarted because the population is mostly satisfied with the public supply provided. The example of Switzerland - which is generally considered to be a well-organized and administered country - demonstrates that a multiplicity of functional jurisdictions under democratic control is not a theorist's wishful thinking but has worked well in reality.

Decentralized, overlapping political units have also been an important feature of European history. The competition between jurisdictions in the Holy Roman Empire of German Nations, especially in today's Italy and Germany, was intensive. Many of these jurisdictions were small. Many scholars attribute the rise of Europe to this diversity and competition of governmental units which fostered technical, economic, and artistic innovation (see, e.g., Hayek 1960, Jones 1981, Weede 1993 and Baumol and Baumol 1994 who also give a lively account of how the musical genius of Wolfgang Amadeus Mozart benefited from this system of government). While the Chinese were more advanced in very many respects, their superiority ended with the establishment of a centralized Chinese Empire (Pak 1995, Rosenberg and Birdzell 1986). The unification of Italy and Germany in the 19th century, which has often been praised as a major advance, partially ended this stimulating competition between governments and led to deadly struggles between nation states.³ Some smaller states escaped unification; Liechtenstein, Luxembourg, Monaco, San Marino, and Switzerland stayed politically independent, and at the same time grew rich.

The above mentioned governmental units were not FOCJ in the sense outlined in this contribution but they shared the characteristic of competing for labour and capital (including artistic capital) among each other. However, history also reveals examples of jurisdictions close to FOCJ, most importantly in multicultural and plural societies (Kyriacou 2004, Coakley 2003). For instance, the problems connected with Poland's strong ethnic and religious diversity (Catholics, Protestants and Jews) were at least partly overcome by jurisdictions organized along these features, and not along geography (see, e.g., Rhode 1960, Haumann 1991). The highly successful Hanse prospered from the 12th to the 16th century, and comprised among others Lübeck, Bremen, Köln (today German),

³ According to Sperber (1994, p. 24), in the first half of the 19th century average income was higher in strongly decentralized Germany than in strongly centralized France, which may at least partly be attributed to the difference in the degree of centralization.

Stettin and Danzig (today Poland), Kaliningrad (today Russia), Riga, Reval and Dorpat (today Baltic Republics) and Groningen and Deventer (today Netherlands); furthermore, London (England), Bruges and Antwerp (today Belgium) and Novgorod (today Russia) were *Handelskontore* or associated members. It was clearly a functional governmental unit providing for trade rules and facilities and was not geographically contiguous.

VI. FOCJ AND EUROPE

In its present form, EU-enlargement solves some old problems, but also creates many new problems. With progressing enlargement, the economic and institutional disparities grow among the member countries, as well as between the existing members and the new neighbouring countries at the shifting outer borders. The envisaged integration of Turkey, for instance, would make Georgia, Armenia, Iran, Iraq, and Syria neighbours of the EU.

For several reasons, it will prove impossible to fully integrate all the present neighbouring countries and, a fortiori, the new neighbours, without changing the whole concept and institutions of the EU:

(1) *Decreasing potential for full integration.* The increasing economic and institutional gap at the outer border makes it unlikely that border countries can, in due time, meet the formal requirements regulating the entry into the European Union⁴, which stipulate that acceding states must have a stable democracy and a functioning market economy, follow the rule of law, observe appropriate standards of human rights and protect minorities, and most importantly must agree to the obligations of EU membership which include adherence to the aims of political and economic union. This means that they have to fully accept the “*acquis communautaire*”. This legal corpus of the EU has now reached a considerable size, involving more than 16,000 pages of text.

(2) *Overcharged redistribution system.* It is most unlikely that the EU member states will be willing to grant ever poorer applicant countries the free movement of labour, and integrate them into the EU income redistribution mechanisms, the most important being

⁴ See extensively Cameron (1998), Dehousse (1998), Laurent and Maresceau (1998), Wagener and Heiko (1998).

the Common Agricultural Policy and the Structural Funds. For a long time to come, the income differences between the existing member states and the countries applying for entry will be too pressing (see Carius, Homeyer and Baer 2000).

(3) The growing democracy deficit. Enlargement does not even begin to tackle the basic problem of the EU, the democracy deficit. On the contrary, it has even worsened. In a growing EU without fundamental institutional reforms, the negotiation processes among the member countries become more complex and the responsibilities more blurred. Thus, the citizens' influence on politics diminishes and the discretionary leeway of the EU decision-making bodies grows. The large increase in the number of member countries, with even more divergent preferences among the population, necessitates new decision-making mechanisms in the Council of Ministers and the Commission. If such structural changes are absent, there is a risk of deadlock, or at least a standstill, because the citizens' resistance to widening and deepening the EU will increase.

How will the European Union respond to these challenges? A likely scenario is already partly visible. The negotiations will most probably extend over a long period, in any case much longer than desired by the applicants. The formal entry conditions will be maintained, but long adjustment periods will have to be granted. Most importantly, the free movement of labour will more than likely be blocked by the current members, while the countries applying for membership will ask for exemptions from the free movement of goods, services, and capital. The challenges will therefore be solved only at the legal level, while the underlying economic problems of integration will remain unsolved.

As the income discrepancies at the borders increase, migration will pose a growing problem. The huge economic discrepancies and disequilibrium creates opportunities for rent seeking and interventionism, which result in protectionism, stagnation, and corruption.

At the same time, the political structure of the EU will not be fundamentally changed, but only the weights of the respective countries in the decision-making procedures will be somewhat adjusted, and the requirements of unanimity and qualified majorities will be somewhat softened. At the end, the discussion on the democracy deficit tends to be undermined by the strong focus on enlargement. On the whole, this scenario suggests that

the European Union will continue to “muddle through” instead of squarely facing the problems of enlarged membership.

The concept of FOCJ suggests a totally different approach. Countries which want to be integrated more closely with the EU should have the option of forming FOCJ with some or all EU-member states. Thus, they would get the possibility of *partial* entry into the European Union rather than the all or nothing decision to accept the whole *acquis communautaire* in one go. These FOCJ should not be imposed from above, but should emerge as the result of the voluntary negotiations between the new partners. To the extent that the partially integrated countries develop (partly as a result of the existence of these flexible partnerships), an increasing number of such FOCJ with different members and functions will arise so that an ever closer integration can take place. With FOCJ, variable geometry is a desirable feature of integration rather than a shortcoming. It goes far beyond the proposal for a multi-speed integration of some “chosen” countries into a “core Europe” (as recently proposed by the German foreign minister Fischer), or the special cases of the treaties of Schengen and of the Economic and Monetary Union EMU, which not all EU member countries need to join.

A. Flexible Widening and Deepening

FOCJ allow for differentiated, tailor-made integration. Thus, they are in stark contrast with the *acquis communautaire*, which stands for equalized integration. With FOCJ, countries and regions can establish cooperation in those matters in which it is really important that they cooperate, and they are not forced into cooperation with respect to those matters where they would rather be alone. However, for three reasons FOCJ do not lead to less integration than the *acquis communautaire*. First, FOCJ decrease the price of integration for the citizens and thus increase the demand for integration, as they make integration more efficient and enhance citizens’ democratic influence. Second, thanks to FOCJ, integration of partner countries is no longer a question of “all or nothing”. The countries which are not able to quickly incorporate the *acquis communautaire* can be integrated better with FOCJ than without. Third, a FOCUS may aim at stronger integration with respect to its specific function than the *acquis*.

Of course, differentiated integration is not a totally new concept. Today's standard procedure of integration of new member countries also entails some differentiation, as the countries are granted different adaptation periods. These, however, are only looked at as temporary exceptions and unwelcome deviations from the current *acquis*. They neither allow for stronger integration with respect to certain functions, nor do they give the new entrants the right to search for different degrees of integration with a special selection of today's members. Partial integration has also been institutionalized in the European Economic Area (EEA) with Norway, Iceland, and Liechtenstein, or with Switzerland via bilateral treaties. However, the concept of FOCJ goes far beyond a partial integration via treaties. It provides for a common government composed of all the members. The extended rights of political codetermination strengthen identification and provide the basis for solidarity among the members.

B. Multi-level integration

Trans-border FOCJ can emerge at all levels of government. With respect to European integration, three kinds of FOCJ may be identified:

- (a) *FOCJ formed by all the EU-member and some non-member states.* The EU and its neighbours have a common interest in fighting transnational mafia-type activities. Today, this problem is approached in a purely technocratic way via EUROPOL and INTERPOL, often with very limited success. A police FOCUS comprising the affected nations would bring about a more efficient anti-mafia policy because governance and taxation would be matched. The FOCUS would make it possible to deploy police resources in the areas where they could most effectively be used. In contrast, the EU does not have any joint police forces, not even for special purposes. Such a police FOCUS would thus go beyond the integration now existing in the EU.
- (b) *FOCJ formed by some EU-member and non-member states.* An example is the reciprocal acceptance of technical norms for goods and services. With present arrangements, trade between the EU member and non-member states is severely hindered, as the norms differ and the countries do not accept each other's norms – i.e. the “Cassis de Dijon” principle is only valid within the EU. However, with present enlargement, it is impossible to apply this important principle to non-EU members, as

there are always some member countries in which some influential special interest groups stand to lose from freer trade, and thus object to liberalizing trade. Under the regime suggested here, those members of the EU could partially integrate their economies with selected neighbouring countries by establishing a joint FOCUS for the reciprocal acceptance of norms. Such a FOCUS would most probably not only represent a treaty stipulating the reciprocal acceptance of norms, but it would also have an institutional structure, which guarantees that the norms of the EU partner countries satisfy some reasonable standards and that the norms are followed by the producers. Thus, such a FOCUS would be an institution which comes close to a special government for the setting, controlling, and reciprocal acceptance of norms. This allows all the FOCUS members to exploit their international comparative advantage, and thus to experience a welfare gain, even if full integration according to the *acquis communautaire* is impossible.

- (c) *FOCJ formed by communes and regions of some EU-member and non-member states.* This is a new form of cross border cooperation. A pertinent example refers to local environmental degradation, say water pollution. One or several communes of, e.g., Finland, Estonia, and Russia, may form an environmental FOCUS. The government of the FOCUS would be elected by the citizens of all the communes involved. The FOCUS would be responsible for water quality in the area, would set the standards best meeting the preferences of all the citizens and would impose the taxes necessary to reach these goals. The Russian communes can therewith adopt an environmental standard higher than that generally obtained in the rest of their nation. Such an institutional arrangement is also advantageous for the respective Finnish and Estonian communes because of the negative spillovers connected with Russian emissions.

Obviously, FOCJ do not only facilitate the integration of new countries, but they also make it possible for the current members to flexibly deepen integration. Therefore, the general rules of full integration into the EU can be relaxed to some extent, as the countries that want to integrate more closely have an effective institutional tool for doing so (which sharply differs from existing instruments such as the regions as envisaged in the INTERREG programmes, see, e.g. Jensen and Richardson 2001, European Commission 2001).

C. Meeting the Challenges

By making use of the concept of FOCJ, the three main challenges faced when enlarging the EU can be successfully addressed.

- (1) *Outer-border problems.* The use of FOCJ allows a differentiated expansion of the EU instead of an abrupt rupture when it comes to non-EU countries. This can be achieved in two ways: first, a country which is not yet able to accept the *acquis*, would nevertheless be able to enter the EU partially, i.e. with respect to only some functions. Thus, integration of possible prospective member countries is accelerated and facilitated. Such partial enlargement will have much farther reaching geographical implications than the “all or nothing” approach. Second, the institutional development of partially integrated countries will be accelerated. EU-trans-border FOCJ are ideal vehicles for the transfer of democratic culture to neighbouring countries, as their citizens come in contact with, and become accustomed to, well-functioning democratic institutions.
- (2) *Income redistribution.* FOCJ reduce the number of problems connected with redistribution by two means. First, the demand for receiving subsidies by current members of the EU will be reduced because with FOCJ it is feasible to cooperate mainly with respect to those functions which yield particular high benefits of cooperation. The applicant countries are not forced to compromise on functions from which they do not profit much, or even lose, when accepting the *acquis communautaire*. Therefore they need less compensation. Second, it is likely that the full entry of some or all neighbouring countries will be blocked by those members which would lose from a new targeting of redistributive flows. With FOCJ, instead, particular neighbouring countries and the EU could establish a redistribution FOCUS acceptable to all existing EU members.
- (3) *EU decision-making structure and democracy deficit.* The existing EU-members which do not agree with the partial admission of one or several neighbouring countries can opt out instead of having to use their veto power. Thus, the current decision-making mechanisms in the EU need not be changed. However, FOCJ can help to

overcome the democracy deficit of the EU because they are based on effective democratic principles.

VII. FOCJ AND DEVELOPING COUNTRIES

The concept of FOCJ is not only suited for industrial countries. It can also be fruitfully applied to developing countries whose problems are mainly due to inadequate institutions.

1. Too much and too little government

Economic growth in many developing countries is hampered by excessive government. The state tends to interfere in, and minutely regulate, almost all activities. The government sector which is often very large employs a high proportion of the population outside agriculture. The administration tends to be more bureaucratic than in industrial countries. Rent-seeking distortions are rampant and waste is pervasive. This combination of interventionism and bureaucracy stifles investment and innovation in the private sector, making over-government a reality.

At the same time, however, many governments do not adequately fulfil the functions necessary for rapid economic growth. Most importantly, property rights are only insufficiently secured. Investors are faced with a high degree of uncertainty and are, therefore, reluctant to commit themselves to long term investments. Instead of concentrating on productive endeavours, investors devote their resources to finding substitutes for the deficient property rights.

But governments in developing countries are also inadequate in a second, quite different sense. They are far from meeting the wishes of the citizens; many are either strongly paternalistic or even dictatorial. While the preferences of the city dwellers – in particular of the capital – are at least taken into account in so far as to avoid an uprising, the preferences of the peasantry are almost totally disregarded. While some Third World countries are officially federal, central governments regularly neglect local problems and demands. Often, it even actively destroys well-working production and distribution arrangements, in particular in self-governing units.

Thus, developing countries are faced with a paradoxical situation: at the same time there is “over-government” (i.e. interventionism) and “under-government” (i.e. too little consideration for fragmented local problems). The concept of FOCJ can overcome this unproductive situation as it allows for a large number of jurisdictions that are based on grass-roots local democracy to check government and prevent it from evolving into an oppressive and intervening bureaucracy. Of course, the concept of FOCJ deviates strongly from existing development plans. It is worth observing that a large part of the economic literature on development does not address the government structure. The failures of government are duly noted but no remedies are proposed. To just hope that the future will bring “better politicians” is unfounded optimism. Government will only improve if the underlying institutional conditions are changed. This is exactly what FOCJ do. These jurisdictions are formed according to the geography of problems, i.e. by the citizens seeking to cope with issues with which they are confronted.

The local power to impose taxes as an essential ingredient to FOCJ will also prove decisive for developing countries. Whenever the central government allocates funds (as it is the rule in today’s “federal” developing countries) the lower level units become dependent on it and have biased incentives so that most of the advantages of decentralization are lost. Under these circumstances decentralization is not necessarily beneficial. In a system with important central allocations the lower level units are liable to become fiscally irresponsible. They tend to borrow too much on the (normally correct) assumption that they will be bailed out by central government if they run into trouble. In contrast, if FOCJ have the power to levy their own taxes, the population would have to carry the cost of bad politics, therefore, governments have an incentive to observe the budget constraint and to behave fiscally responsible.

2. Benefits of FOCJ for developing countries

FOCJ produce major advantages over the existing form of government in developing countries:

a) They break the central government’s effort to monopolize politics which would otherwise stifle economic development and oppress the citizens. FOCJ shift the power to initiatives from below. Effective local governments become viable because they have

authority over particular government functions, and may raise taxes to finance the respective expenditures.

b) FOCJ makes it possible to combine various forms of political rules. They do not only blend federalism with democracy, that is exit and voice, but also modern and traditional styles of governing such as meetings by village elders. Time-proven local ways of public decision-making are not dumped, but are used and fostered in those areas in which they prove to be effective.

c) FOCJ solve the “fundamental organizational dilemma” between an open polity and decentralized development at the local level: “... one of the necessary (though far from sufficient) conditions of a development state is a large degree of insulation that the development-minded decision-makers can have against the ravages of short-run pork barrel politics and their ability to use the discipline of the market (...) against the inevitable follies of group predation” (Bardhan 1993, p. 46). Indeed, FOCJ provide such insulation by the establishment of new, growth-oriented development units which are, however, disciplined by economic and political competition.

d) FOCJ deal with another “fundamental dilemma of government” (Montignola et al. 1995, pp. 54-55). The state has to be strong enough to enforce legal rules, especially property rights which are prerequisites for economic development. At the same time government institutions have to be “weak” in the sense of not exploiting the citizens by, e.g., expropriation or excessive taxation. FOCJ are able to convey credible limits against such exploitation because each FOCUS is self-financed and may go bankrupt if its members choose the exit option. In a system of FOCJ individuals and firms do not face a monopolistic and therefore oppressive state but may resort to substitutes.

e) There is an emphasis on local public production and efficient polycentric organization. This aspect has been much neglected in the literature.

f) The fiscal decentralization induced by FOCJ reduces the volatility in macroeconomic variables (for instance, in budget deficits and income growth).

g) The concept of FOCJ overcomes the fruitless contradiction of “Government versus market” which was typical of many of the writings on developing countries. FOCJ mark a

radical departure from much of the earlier literature on developing countries that emphasized the need for a strong, well-organized central state and bureaucracy to steer and support economic growth. They depart from the more recent exclusive emphasis on private property and free market as the key to successful development. In both cases local governments needed for economic growth are neglected.

3. Counter-Arguments

Some people may consider the claim that FOCJ are also advantageous to developing countries to be too optimistic and naïvely neglect the specific conditions reigning there. The following refutes three related assertions which are often raised.

1. *“FOCJ do not meet with the traditions in developing countries which are neither federalistic nor democratic”*. This historical argument is factually incorrect. The pre-colonial political system in developing countries was characterized by various forms of self-government though they, of course, did not meet the criteria of democracy with which we are familiar. Vestiges remain even today, but this traditional way of governing was on the whole destroyed by the authoritarian colonial rule. Post-colonial governments wanted to centralize as much power as possible in their hands and consequently destroyed traditional local rule.

2. *“FOCJ are unsuitable for developing countries”*. This “culturalist position” maintains that individuals in developing regions are basically different from Westerners and, therefore, need a different form of government, arguably a more authoritarian one. A popular version of this belief is that people in developing countries lack the discipline and initiative to form FOCJ. However, the economic approach to human behaviour suggests the opposite causation. The lack of observed discipline and initiative is the consequence, and not the cause, of unfavourable institutional settings. Three types of empirical observations strongly support the economic view: (i) Empirical evidence shows that to the extent self-government could be preserved, it often functions well and is even able to solve difficult common property resource problems (Wade 1988, Ostrom 1990, Ostrom et al. 1993). (ii) When individuals in developing countries shed the stifling restrictions imposed upon them by government bureaucracies, they become active and venturesome. While this applies to all developing countries, it has been particularly impressively

demonstrated for Peru by de Soto (1989) who shows that people who are passive within the confines of the highly regulated and inimical official sector become enterprising and energetic once they act in the unofficial or shadow economy. (iii) Even experiences with an extreme form of democracy, popular referenda, are positive provided they are devoted to substantive issues and not simply plebiscites to support the authoritarian or dictatorial rulers (Rourke et al. 1992). If citizens in developing countries are taken seriously, they participate in political affairs (for Africa, e.g., Chazon 1994; for Mexico, see Oberreuter and Weiland 1994).

3. “FOCJ worsen inequality”. Many people believe that central governments promote inequality while federal systems make the rich richer and the poor poorer. Central governments are at best formally committed to an “equal” provision of public services but in actual fact, there are huge differences in the services provided across the country – Ostrom et al. (1993, p. 211) even speak of a “myth of equality”. Typically the population in the capital is grossly favoured, in particular by highly subsidized food, while the much poorer inhabitants in the rural areas are taxed. FOCJ redress such imbalances because they are based on decentralized decision making and subsequently allow regional and local development of the natural and human resources to be made available.

VIII. CONCLUSIONS

Our concept of functional, overlapping, and competing jurisdictions provides a radical alternative to today’s policy in industrial and developing countries. However, the idea of FOCJ is not driven by any particular ideology (except for the normative position that politics should function according to the citizens’ preferences), and it does not suggest perfect, simple, nor ready-made solutions. Nor does it require an all-or-nothing decision. It may sometimes appear surprising and perhaps even shocking, but it may be introduced on a step-by-step basis. The beneficial features of the concept already become evident even when it is only applied with regard to some functions and a few members. This does not mean that FOCJ emerge all by themselves. Even if political competition works well to the advantage of citizens, established politicians who see their power reduced will make an effort to block or at least undermine the concept. It is, therefore, necessary to openly and seriously discuss the proposal in order to make the advantages generally known and accepted by the population. In democratic societies the citizens then have the means to

make FOCJ to become a reality by rewriting the constitutions such that FOCJ may emerge.

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