

A Utopia? Government without Territorial Monopoly

1. Relationship between Government and Territory

From a traditional point of view the definition of government is based on the fact that governments have a territorial monopoly. This basically means that each government or state has its corresponding territory and visa versa.

Nevertheless this identification of government with territory has not to be the case at all. The purpose of Bruno Frey's Paper - 'A Utopia? Government without a Territorial Monopoly (June 2000)' - is the question, if there are governments without a territorial monopoly and if so, to question this property from a social science and economic point of view.

(1) Multiple Governments associated with the same Territory

The classical case is where several governments claim the same territory. Often the borders are not well defined or the ownership of the territory is not clear.

As you can see at the present conflicts in ex-Yugoslavia different governments and ethnical groups claim authority over the same territory. Overall today not less than 75 percent of international wars are caused by this fact.

(2) Governments Without Territory

Secondly there are many quasi-governmental organisations (QANGOs) like the United Nations or the International Court in Den Haag, which perform similar functions as states do without having any monopolistic power over a territory. Rather they act globally.

Another case of virtual governments are religious organisations. In particular the Catholic Church is a good example because of its hierarchic structure. Although they have just a monopoly over a very small territory in Rome there international importance is enormous because of the members which are spread all over the

world. They perform very similar activities to normal governments like raising taxes and pursuing a foreign policy.

Another example is FIFA, the international football association. They also undertake some government-like activities like impose rules on its members. The FIFA President Joseph Blatter and the UEFA President Michel Platini tried to establish the so called '6+5' rule which would force the European Clubs to start with at least 6 local players. EU Assembly President Hans-Gert Pöttering stopped the undertaking, because it would violate applicable EU law. It is forbidden to discriminate European citizens on grounds of nationality.

The most important virtual governments are of course profit-making global firms. Especially since the digital revolution the number of knowledge firms in the so called New Economy has increased rapidly. Often their only capital is human resource, which is not attached to any territory at all. Such firms perform governmental functions, in the sense that they have the possibility to negotiate with national states on an equal level because of their economical power.

Of course, international organisations, churches and global firms will never meet the traditional definition of government. Nevertheless if you take the radically different definition of government into account, you can see that there are 'multiple governments on a given territory and governments without territory'. Since the influence of the globalisation rather the opposite is the case. Much literature on globalisation claims that national governments have lost significant power to global firms. Bruno Frey in contrast thinks that relative power is shifted actively to non-territorial governments by national governments.

To summarise, the number and importance of these 'virtual' governments has greatly increased. Nowadays there exist at least 350 intergovernmental organisations with more than 100.000 employees.

2. Federalism and Political Competition

'The basic idea of federalism is that the preferences of individuals can better be met by decentralising government activity.' There are many different factors which affect the demand for goods and services within a country:

-) geographical characteristics: differences between rural and city areas
-) ethnicity, culture and traditions
-) economic structure: agricultural and industrial production and services
-) social structure

All these differences lead to different demands for public activities from the citizens. For sure a centralised government can meet all these demands, but nevertheless decentralised politics have clear information advantages. It's obvious that local politicians are better aware of local needs. What is maybe even more important is how local political decision-makers care for the wishes of the local population who elects them. As we can see later on, this close relationship between citizens and politicians is very important for the whole FOCJ theory to work properly.

The economic theory of Federalism has focused on four important theoretical elements:

1. Fiscal Equivalence

'Each jurisdiction should extend over space in such a way that the recipients of the benefits and the tax payers correspond as closely as possible.'

2. Clubs

These are institutions offering public goods only to its members. 'The optimal size of a club is reached when the marginal utility received corresponds to the marginal cost induced by an additional member.'

3. Voting by Foot

A competition between jurisdictions is possible due to the fact that citizens' can move. Public jurisdictions can be considered as enterprises offering local services in return for taxes. As a matter of fact citizens will move to the jurisdiction with the best service at the lowest price. The competition forces jurisdictions to take the citizens' wishes into account.

4. Exit and Voice

Citizens don't have only the possibility of choosing between different jurisdictions they can also participate in the political decisions of the jurisdiction they belong to.

For federalism to work in a satisfactory way, there are two important conditions to be met:

-) First the sub-units must have to power to tax citizens for the function they perform. This has two big advantages. First, they have the possibility to balance the benefits and cost of government activities. Furthermore, this policy gives them a certain degree of independence from the central government. Actually this requirement is not met in most 'federations'. As a consequence they local politicians have to please the political decision makers in the centre to obtain funds. This policy leads directly to fiscal irresponsibility at the local level.

The fact that local politicians must be elected by the citizens of the jurisdiction is the second condition for a well-functioning federalism. This requirement aligns the politicians' incentives with the wishes of the local population.

3. A Network of Competing Jurisdictions

The federal units here proposed are called 'FOCJ' according to the acronym for 'Functional, Overlapping, Competing Jurisdictions'. (FOCUS is the singular of FOCJ)

-) **Functional (F)**: the new political units extend over variable areas, defined by the tasks to be fulfilled

-) **Overlapping (O)**: the governmental units extend over different geographical areas which necessarily have intersections (?)

-) **Competing (C)**: individuals & communities may choose to what governmental unit they want to belong and they have political rights to express their preferences directly via initiatives and referenda

-) **Jurisdictions (J)**: the units are governmental, they have enforcement power and can, in particular, raise taxes

FOCJ form a governmental system, which is quite different to the one suggested in the economic theory of federalism. FOCJ emerge in response to the 'geographic of problems'.

Four elements of FOCJ:

A. Functions

A public service that benefits a certain geographical area should be financed by the people living in that area. The different governmental units can cater to the citizens' demand. To minimise cost, these units have to exploit economies of scale in production.

B. Overlapping

FOCJ may overlap in two respects: (i) FOCJ catering different functions may intersect; (ii) two or more FOCJ catering the same function may geographically intersect. For example a multitude of school FOCJ may exist in the same area. As one can see FOCJ don't need to have a monopoly over a certain area of land.

C. Competition

FOCJ are induced to conform closely to their members' demands because of two reasons:

(i) The right to exit mimics market competition and the right to vote establishes political competition. It should be noted here that migration is only one possibility to exit. A membership can be discounted without changing ones location too. To

establish competition between the governments, exit should be free. In contrast, entry needs not necessarily to be free.

(ii) The citizens should directly elect the person managing the FOCJ and should also be allowed to initiate referenda on specific issues. These direct democratic institutions raise efficiency in the sense of meeting individual preferences.

D. Jurisdictions

A FOCUS is a democratic governmental unit with the authority over its citizens, including the power to tax. According to the two types of overlap, two forms of membership can be distinguished: (i) citizens automatically become citizens of the FOCJ to which their community belongs. In that case an individual can only exit by migration. (ii) Individuals may freely choose whether they want to belong to a particular FOCUS or not. Such FOCJ can be non-voluntary in the sense that one must belong to a FOCUS providing for a certain function. For example health insurance, which in many countries is obligatory, but where individuals are allowed to choose an insurance company.

4. Strengths of FOCJ

FOCJ have many advantages in comparison to traditional forms of federalism like mentioned above. Because of the fact that one FOCUS concentrates only on one functional area, the citizens of this particular FOCUS have better information on its activity and are in a better position to compare its performance to other FOCJs. Furthermore the exit option opened by the existence of overlapping jurisdictions is also an important means to make one's preferences known to governmental suppliers and to establish good competition between them.

'FOCJ are moreover able to provide public services at low cost, because they are formed in order to minimise inter-jurisdictional spill over's.' Nevertheless if the benefits of a specific activity extend over large areas, 'the corresponding FOCUS may cover many communities, several nations or even Europe as a whole'. Military defence could be an example where the appropriate FOCUS may extend over the whole of European Union and if necessary even farther.

The threat of dissatisfied citizens or communities to exit the FOCUS, and the benefit of new citizens and communities joining, gives the politicians in charge an incentive to take the preferences of the citizens into account and to provide the public services efficiently.

5. Alleged Disadvantages of FOCJ

-) Overburdened Citizens

In a federal system of FOCJ each individual is a citizen of various jurisdictions. As a consequence individuals may be overburdened by voting in elections in each FOCUS.

-) Overburdened Consumers

Similar to supply in the private sector, there are many different supplies of public services. For some people this might be a problem because they don't know which supplier to choose. An advisory service could be established which would offer information and support for the consumers decision.

-) Redistribution

Federalism – including FOCJ – is often claimed to undermine redistribution police. Frey thinks that this fear is unwarranted, because there is the possibility to establish a FOCUS for redistribution.

6. Examples of FOCJ Today

In Switzerland a multitude of governmental units exist. In addition to the 26 cantons, there are around 8000 communes of various forms. The most important are the 2940 political communes which define citizenship. These communes have for example the authority to impose income and property taxes. As a consequence the tax rates between communes may strongly differ. This is a very important factor for inducing political competition between communes.

In addition to political communes there are 5000 overlapping special communes. The most important are school communes offering education for the children of several political communes.

The Swiss federal system at a local level shows that FOCJ are possible even if they have not been developed to their full extend yet.

A completely different kind of FOCJ develops in Cyberspace. An example is the ICANN (Internet Corporation for Assigned Names and Numbers) which controls Internet domain names. It is a good example for a global acting regulation institution without any territorial borders. The internet as a whole has no – or at least very limited – geographical borders. Net firms can move from one jurisdiction to another just by switching the location of their servers. ICANN is not a governmental institution and has several features of FOCJs: It is functional and overlapping; it allows exit and entry; and it imposes taxes for its service.

Furthermore it is based on openness and collaboration and they seek to establish wider legitimacy by holding democratic elections.

As a result it is much closer to the idea of FOCJ than to the idea of a traditional form of government.

7. Conclusions

The organisation of states today does not follow the model of FOCJ for two reasons. First of all it's almost everywhere forbidden for individuals and communities to establish such jurisdictions. Secondly FOCJ violate the interests of politicians and public officials at high level of government, because they would lose power. FOCJ reduce the public suppliers' power and increases the citizens' influence in tow ways:

-) Competition by exit and entry
-) direct democratic elements

Under these conditions a federal system of FOCJ will not be successful. New constitutional rules allowing the formation of FOCJ are necessary. The Four Freedoms of the European Union, which contain the ability to move goods, services, capital and labour freely within the internal market where established because of the understanding that competition leads to wealth. However one of the most important reasons to support FOCJ is the belief that not only economical competition, but rather

the political competition between governments will lead us not only to more wealth but, what is even more important, to a politic culture with more direct democratic elements. The Fifth Freedom of the European Union should be therefore the right to establish FOCJ. 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 ensure a measure of independence for the lowest political unit (communities) so they can form FOCJ. Furthermore the citizens must be given the right to establish FOCJ by popular referenda. And, last but not least, the FOCJ themselves must have the right to levy taxes to finance the public service they provide. If all these criteria are transformed, the dream of a European Union of regions instead of national states is not far away any more.

Bibliography:

- Frey, Bruno S. (2000): A Utopia? Government without Territorial Monopoly
- Wohlfahrtstätter, Claudia (1996): Die Bedeutung überlappender, funktionaler Jurisdiktionen in der Schweiz; Diplomarbeit an der Universität Zürich
- Frey, Bruno S. & Eichenberger, Reiner (2001): Federalism with Overlapping Jurisdictions and variable levels of Integration: The Concept of FOCJ
- Fußball: EU erteilt Blatter und Platini klare Abfuhr, Die Presse, 06.06.2008, <http://diepresse.com/home/sport/fussball/388953/index.do?from=suche.intern.portal>