ECONSTOR
Make Your Publications Visible.

A Service of
ZBW
Leibniz-Informationszentrum Wirtschaft
Leibniz Information Centre for Economics

Vanberg, Viktor J.

Working Paper

Competition among governments: The state's two roles in a globalized world

Freiburger Diskussionspapiere zur Ordnungsökonomik, No. 10/2

Provided in Cooperation with:
Institute for Economic Research, University of Freiburg

Suggested Citation: Vanberg, Viktor J. (2010) : Competition among governments: The state's two roles in a globalized world, Freiburger Diskussionspapiere zur Ordnungsökonomik, No. 10/2, Albert-Ludwigs-Universität Freiburg, Institut für Allgemeine Wirtschaftsforschung, Abteilung für Wirtschaftspolitik, Freiburg i. Br.

This Version is available at:
https://hdl.handle.net/10419/51551

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.

WWW.ECONSTOR.EU

Mitglied der Leibniz-Gemeinschaft

Walter Eucken **Institut**

ORDO ➔ Constitutio in Libertate

Competition among Governments: The State's Two Roles in a Globalized World

Viktor J. Vanberg

10/2

Freiburger
Diskussionspapiere
zur Ordnungsökonomik

Freiburg
Discussion Papers
on Constitutional Economics

ISSN 1437-1510

Institut für Allgemeine Wirtschaftsforschung
Abteilung für Wirtschaftspolitik
Albert-Ludwigs Universität Freiburg i. Br.

Competition among Governments: The State's Two Roles in a Globalized World?

Viktor J. Vanberg
10/2

Freiburger Diskussionspapiere zur Ordnungsökonomik
Freiburg Discussionpapers on Constitutional Economics
10/2
ISSN 1437-1510

Walter Eucken Institut, Goethestr. 10, D-79100 Freiburg i. Br.
Tel.Nr.: +49 +761 / 79097 0; Fax.Nr.: +49 +761 / 79097 97
http://www.walter-eucken-institut.de

Institut für Allgemeine Wirtschaftsforschung; Abteilung für Wirtschaftspolitik;
Albert-Ludwigs-Universität Freiburg, D-79085 Freiburg i. Br.
Tel.Nr.: +49 +761 / 203 2317; Fax.Nr.: +49 +761 / 203 2322
http://www.wipo.uni-freiburg.de/

Competition among Governments: The State's Two Roles in a Globalized World*

By

Viktor J. Vanberg

Walter Eucken Institut
Freiburg, Germany

Abstract: It is common wisdom that the process of globalization has intensified competition among governments. The precise nature of such competition is, however, less well understood. The purpose of this paper is to explore how the competitive pressure that globalization exerts on governments affects the legal-institutional foundations of markets and states. Its main thesis is that globalization demands a stricter distinction between two different functions of the state, functions that have traditionally not been clearly separated. The first is the role of the state as the joint enterprise of its citizens, i.e. as the agency through which citizens provide for themselves the public services they want. The second is its role as a 'territorial enterprise,' i.e. as the agency that defines and enforces the rules of the 'national market,' i.e. the legal-institutional terms under which agents, citizens as well as non-citizens, may do business within its jurisdiction. Making this distinction has important implications for taxation and regulation because individuals' choices concerning their citizenship are determined by other considerations than their choices as 'market-users' or 'jurisdiction-users.' Accordingly, governments face different constraints in defining the terms of citizenship on the one hand and in defining the terms for 'jurisdiction-users' on the other.

* Prepared for the international conference on "Institutions and National Competitiveness," Seoul, August 17-20, 2009.

1. Introduction

The development called "globalization" reflects most visibly the evolutionary dynamics of an economic and social world that is subject to permanent change, driven by creative human action. The world-wide integration of markets that this term describes is but the significantly accelerated modern phase in a process that has unfolded throughout the entire history of humankind, namely the expansion of markets. Since humans discovered that gains can be had from trade their advantage-seeking ambitions led them to explore ever new trading opportunities beyond their already established exchange networks and thereby, as an unintended byproduct, to widen the extent of the market.

That the expansion of markets – by allowing for specialization and its effects on the productivity of human labor – is the main wellspring of the "wealth of nations" has been the message behind Adam Smith's famous dictum "the division of labor is limited by the extent of the market" and it has been a principal message of economics ever since.[1] Its wealth-creating effect, the advantages it produces for consumers, is the unambiguously beneficial side of globalization. The more burdensome flipside of the coin is the intensified competition that comes with it, the constant pressure to adapt to changes that originate in some, be it the most remote corners of the global economic network.

The competition-aspect of globalization, the adaptive pressure it exerts, is the subject of this paper. Specifically, I want to explore the issue of what the need to adapt to the forces of globalization means for the role of the state as the agency that, within the territorial limits of its jurisdiction, defines and enforces the "economic constitution," i.e. the legal framework within which economic activities take place. The main conjecture that I will seek to support in this paper is that adapting to the conditions they face in a globalized world requires governments to distinguish more clearly than has traditionally been the case between two distinct roles or functions of the state. This is, on the one hand, the state's role as a *joint enterprise of its citizens*, i.e. as the organization that defines and enforces the rights and duties *among its members*, the citizens. And this is, on the other hand, its role as a *territorial enterprise*, i.e. as the agency that defines and enforces the legal terms to which everybody – citizens and non-citizens alike – is subject who resides or carries out activities within its territorial boundaries.

2. Globalization, Competition among Governments and Democratic Rule

The accelerated extension and integration of markets we are witnessing in our times may well be – and is often – described as "second globalization" in recognition of the fact that the late nineteenth century witnessed comparable developments in the world economy, developments that were driven by a similar combination of technological and political-institutional factors as today's globalization. These were, and are today, on the one side advances in transport- and communications-technology that significantly reduce transportation- and communication-costs and, on the other side, political-institutional changes that remove or lower artificial barriers to trade and capital mobility.[2] It is the reduction in transaction costs made possible by these technological and institutional changes that allows goods and services, information and technology, productive resources and financial as well as human capital to move more easily across national boundaries, creating new choice opportunities for people in their various capacities as consumers, producers, investors, etc..

In a world that provides persons with increased opportunities to choose where to buy, where to produce, where to invest and where to live national governments are naturally increasingly in competition with other governments, both directly and indirectly.[3] Governments compete *indirectly* with each other to the extent that the legal and other terms to which they submit economic activities within their respective territories have an impact – via their effects on the costs of production – on the competitiveness of domestic producers in international markets for goods and services. And governments compete *directly* with each other to the extent that the legal-institutional framework and other attributes of their jurisdictions that they can control provide a more or less attractive environment for mobile persons and economic resources, compared to other jurisdictions.

It is a common theme in the literature on globalization that competition in both its forms imposes constraints on what governments can do in the sense that they cannot with impunity, i.e. without negative consequences for their tax base, ignore the ways in which their policy choices affect the competitiveness of domestic producers and the attractiveness of their respective jurisdictions for internationally mobile persons and economic resources. Thus, studies on globalization generally agree that the competitive constraints globalization imposes on governments limit their power to act. These studies usually do not limit themselves, though, to just diagnosing this fact but include, whether explicitly or implicitly, normative views on how it is to be judged in light of the proper tasks that governments are supposed to perform. On this issue there is less agreement indeed.[4] In this context the argument that

globalization forces democratic governments to cater to the interests of mobile resources, in particular mobile capital, supposedly at their citizens' expense, plays a prominent role.[5]

Beyond analyzing the factual claim that globalization requires governments to distinguish more strictly between the two noted functions – its role as joint enterprise of its citizens on the one side and its role as territorial enterprise on the other – this paper will, therefore, also be concerned with the *normative* issue of how this separation affects governments' capacity to perform their proper tasks. With regard to this normative issue I shall presume that we are dealing with *democratic* governments and that the relevant question therefore is how the proper performance of democratic governments is to be measured. If democracy, as is often done, is simply identified with majority rule, globalization may indeed be an impediment to democratic government, since in a globalized world there will surely be occasions where majority wishes are obstructed by the constraints of competition. In line with John Rawls' (1971: 84) characterization of democratic society "as a cooperative venture for mutual advantage" I shall adopt here a different standard for judging the proper performance of democratic government, namely its capacity to create *mutual advantages* for its citizens or, in other words, to serve their *common interests* (Vanberg 2000).

Majority rule is a decision-making tool that a democratic polity adopts for pragmatic reasons, but it is not always a reliable instrument for making governments serve best their citizens' common interests. Quite obviously, there are instances in which majority decisions produce outcomes that, instead of creating mutual advantages for all citizens, benefit only some groups at the expense of others, and their cumulative results may sometimes even be in nobody's interest. This is the reason why additional constraints on majority rule, such as the constraints imposed by competition among jurisdictions, may well serve to bring governments more in line with their proper task of working to the common benefit of their citizens.

To sum up, as "cooperative ventures for mutual advantage" or, in brief, as "citizens cooperatives" democratic polities, like ordinary cooperative enterprises, are supposed to be operated in the common interest of their members, i.e. the citizens. The appropriate measuring rod for the performance of democratic governments is, accordingly, how well they serve to advance citizens' common interests and refrain from taking measures that serve the interests of particular interest groups at the expense of other citizens, or even their own interests at the expense of the citizenry at large. This normative standard will be used in the following sections when assessing the constraints that governments face in a globalized world.

3. The State as Citizens' Joint Enterprise and as Territorial Enterprise

As noted above, the purpose of the present paper is to focus on a particular aspect of the constraints that the competitive dynamics of globalization impose on governments, namely the growing necessity to distinguish more strictly between two functions of the state. States have always performed these two functions, but the need to keep them separate from each other was of less urgency as long as the mobility of persons and economic resources remained below a critical threshold. The process of globalization has moved societies beyond this threshold.

As already stated, on the one hand the democratic state is the *joint enterprise* of its citizens, i.e. the organization that its members-citizens form to undertake projects of common interest, projects that they can better realize as a politically organized community than in private organizational forms. On the other hand the state is the *territorial enterprise* that, within its geographically defined jurisdiction, legislates and enforces rules and regulations to which everybody is subject who resides or operates within the jurisdiction, whether they are citizens or not. Corresponding to these two roles of the state persons can be affected by governmental measures in two capacities, namely as *citizens* and as – what in want of a better name I propose to call – *jurisdiction-users*. As citizens persons are *members of the polity*. They are the constituents in whose common interest governmental authority is to be exercised and to whom political agents are responsible. In this capacity they are subject to rights and duties hat the state as a citizens' cooperative defines for its members. By contrast, as jurisdiction-users persons are subject to governmental authority in their *private capacities*, as private law subjects. As jurisdiction-users they can take advantage of the generally accessible public amenities a polity offers within its territory, subject to the rules that the state as territorial enterprise defines for all – natural as well as legal – persons who engage in economic or other activities within its domain.

While as citizens persons are *members* of the state as a cooperative enterprise, their relation as jurisdiction-users to the state as territorial enterprise is comparable to that between a commercial business and its *customers*. This is equally true for citizens as jurisdiction-users in relation to their own government, as it is for non-citizens who enter the territory of a state as jurisdictions-users. In their private capacities, in their decisions where to work, where to take residence, where to invest etc., citizens can, no less than non-citizens, compare the advantages and disadvantages that their home-jurisdiction offers to the conditions they might enjoy in other jurisdictions, and decide in favor of the most attractive alternative.

Just as we can, according to the two roles of the state, distinguish between citizens and jurisdiction-users, the totality of rules and regulations that a state legislates and enforces can be sub-divided into two categories. These are, on the one hand, rules that concern the conditions of membership in the citizens' cooperative, i.e. the rights and duties that come with being a member of the state as joint enterprise of its citizens. And these are, on the other hand, rules that apply to jurisdiction-users, to non-citizens as well as to citizens in their private capacities. In other words, as *citizens' joint enterprise* the state manages the internal affairs of the citizens' cooperative, i.e. the relations between citizens *in their capacity as members of the polity*. As *territorial enterprise* it provides the legal-institutional framework for the private law society, i.e. the framework of rules within which citizens *in their private capacities* can interact with each other as well as with non-citizens who enter the state's territory as jurisdiction-users. These rules include the system of private law or civil law that governs the relations among individual as private law subjects and the public regulations that the state imposes on private activities within its territory. From this perspective, the set of rules referred to as public law can be distinguished into two parts, rules that concern the internal relation among the citizens-members of the polity and rules that concern all private law subjects, citizens as well as non-citizens, who entertain activities within the state's jurisdictional boundaries.

The economic order that we call *market* is nothing but the system of economic relations that emerges within a private law society. As Franz Boehm, co-founder of the Freiburg School of Law and Economics (Vanberg 1998) aptly put it the market economy is the twin-sister of the private law society (Boehm 1966). A market economy emerges naturally where a private law society exists, and it can only come into being to the extent that a private realm exists in which individuals can freely act as private law persons, separate from their status as members of the polity.

It is worth noting that there is only one case in which the state's two functions cannot be separated, namely the limiting case of a perfectly totalitarian society in which persons are nothing but members of the citizens' cooperative. In such a totalitarian society no separation between the state as a collective enterprise and private law society is possible. All rights are collectively owned and exercised through the state's collective decision procedures. Individuals have rights only in their capacity as members of the cooperative organization, not as private persons. In such a society there is no room for a market economy whatsoever. As we move away from the totalitarian extreme there will be a division between rights collectively exercised by the political community and rights that individuals hold and exercise

in their private capacity. In other words, there will be a division between state and private law society, the former functioning as the organization that provides citizens with public services (including the service of legislating and enforcing the rules of the private law society), and the latter functioning as a spontaneous order formed by individuals who interact and cooperate with each other as private law subjects within the "rules of the game" defined by the private law system and the state's regulations for private activities. In different polities the dividing line between state and private law society may be drawn quite differently, giving more or less scope to individual liberty and to the emergence of markets. Of relevance in the present context is the fact that where it exists individuals are affected by government in two distinguishable capacities, as citizens-members of the polity and as private law subjects.

Why with increasing mobility of persons and economic resources states are increasingly required to separate their two functions from each other can best be seen if one imagines the world of states arranged along a continuum at the one end of which is a world in which states, for geographical or other reasons, exist in perfect isolation from each other, without any mobility between them, and at the other end of which is a world in which people can entirely free and easily move between states in the sense that they are free in their choice of citizenship and are unimpeded in moving as jurisdiction-users from one state to another.

In a world of perfectly isolated states governments are pure monopolists. Birth and death are the only events by which the population of their "subjects" can change. Even for the perfectly isolated state we can conceptually distinguish between the role of the state as citizens' joint enterprise and its role as territorial enterprise that provides the legal framework for the private law society. Yet, materially the distinction between the two roles is of little consequence. The population of members of the citizens' cooperative and the population of jurisdiction users are identical. Since they are confined to the state's territory without exit-option individuals are faced in both their capacities, as members-citizens of the polity and as jurisdiction-users, with the same monopolist. Whatever the state does in one of its two roles, those who live within its borders are inescapably affected thereby. In the absence of any exit-option individuals subject to the state's authority can only use their "voice" (Hirschman 1970), an option that, by itself, is of limited and, with growing population size, decreasing effectiveness.

At the opposite end of the spectrum, in a world of uninhibited mobility between states, the difference between the two roles of government becomes most visible. In this world individuals can freely decide in both matters, to which polity they wish to belong as citizens-members and how they which to allocate their activities as private law subjects across

alternative jurisdiction. In regard to both kinds of choices they can weigh the respective costs and benefits of being a member in one polity rather than another and of opting, as jurisdiction-users, for one jurisdiction rather than another. By contrast to the world of isolated states in this world the population of citizens and the population of jurisdiction users are no longer identical in any given territory. Members-citizens of one state will, in smaller or larger numbers, engage in various activities or even reside in the territory of other states while keeping up their citizenship, and citizens of other polities will, as jurisdiction users, live, work and invest in the state's territory.

The real world of states has never corresponded to either of the two polar cases. States have never existed in perfect isolation from each other, nor is today's world one of perfectly uninhibited mobility. But over time the world has surely moved significantly away from the one end to the other end of the spectrum toward the other. Globalization has markedly accelerated this development creating new constraints on the powers of government that will be the particular focus of the remainder of this paper. More specifically, the focus will be on the implications of globalization for the state's power to tax and to regulate.

4. Taxation in a Globalized World and the Benefit Principle

In the theory of public finance two different principles of taxation have been in longstanding conflict, namely the ability-to-pay principle and the benefit or interest principle (Musgrave and Peacock 1967: ix ff.; Buchanan and Flowers 1987: 50ff.).[6] Traditionally the first principle has been dominant in the theoretical debate and even more so in the practice of taxation.

The *ability-to-pay principle* corresponds to the *non-affectation principle* that is widely practiced in budgetary policy. According to this principle the revenue-generating side of the public household is systematically separated from the expenditure side, that is, no direct connection is supposed to exist between how taxes are collected and the purposes for which they will be used. In other words, public decisions an how to raise the funds for public activities are kept separate from the decisions on how the budget is to be spent. And typically the ability-to-pay principle is then considered the natural principle to be applied on the revenue-generating side.[7] Persons are supposed to be charged taxes according to their "capacity" – however specified – entirely independent of the benefits they receive from the state's activities. Notwithstanding its widespread application the ability-to-pay principle has not only been challenged on theoretical and normative grounds, in a world of mobile people and resources its sustainability is seriously challenged by the choices people can make.

One of the most influential critics of the ability-to-pay principle, Knut Wicksell (1967 [orig. 1896]), has argued that the principle of taxation according to benefit or interest is not only more consistent with the subjectivist-individualist thrust of theoretical economics, but is also more consistent with the normative foundations of a democratic society (Musgrave and Peacock 1967: xiv).[8] In a spirit similar to John Rawls' notion of a democratic society as a "cooperative venture for mutual advantage," Wicksell insisted that in a society of free and equal individuals public expenditures can be considered legitimate only if they are "intended for an activity useful to the whole of society and so recognized by all" (Wicksell 1967: 89). From this he concluded: "It would seem to be a blatant injustice if someone should be forced to contribute towards the costs of some activity which does not further his interests or may even be diametrically opposed to them" (ibid.).

The task of assuring that the benefit principle is actually honored in budgetary practice has, according to Wicksell, to be solved in a democratic society by adopting a suitable decision-making procedure, one that best protects the interests of everyone. In his view this asks for a decision rule that essentially aims at consent.[9] The unanimity (or approximate-unanimity) rule that Wicksell suggested to adopt for every single budgetary decision[10] has obvious limitations as a practical instrument for implementing the benefit principle. Following up on Wicksell's notion that legitimacy in budgetary – and, more generally, in social matters – derives from voluntary consent among the persons involved James M. Buchanan has developed the research paradigm of contractarian constitutional economics that shifts the unanimity requirement from the level of sub-constitutional ordinary, day-to-day policy choices up to the constitutional level where the rules for making ordinary policy choices are chosen (Buchanan 1990).

Of interest in the present context is the fact that the Wicksellian project can count on the assistance of a substitute force that he did not consider, namely the opportunity for people to vote with their feet and to exit with their economic resources from jurisdictions that do not respect their interests. In a world of isolated monopoly-states the ability-to-pay principle may be easy to implement, because people have no way of escaping whatever taxes are imposed on them. Just as a monopoly enterprise may be able to differentiate the prices for its products according to its customers' wealth, a monopoly-state may tax its citizens according to their ability to pay, independent of the benefits that its services provides to them. And in the absence of any exit-option their co-determination rights in democratic procedures can only provide limited protection from being exploited. The situation is obviously different, however in a competitive world. Just as a business that has to compete with others would soon loose its

more-well-to-do customers if it were to try to charge them differentially higher prices, in a mobile world a state would soon see its wealthier taxpayers move away if it were to try to tax them according to their ability to pay, entirely independent of the benefits that they may reap from remaining in the jurisdiction. And this applies equally to their citizens' choice to keep up or give up their citizenship as it applies to their jurisdiction users' choice of where to take their business, even though, as will be discussed below, there are significant differences between the two groups that need to be considered in this context.

An early author to recognize the significance of increasing mobility for the practice of taxation is the German public finance economist Georg Schanz.[11] In an article "On the issue of the liability to pay taxes" published in 1892 he observed that the increasing mobility of persons and economic activities, primarily across local communities but more and more also across national boundaries, had to be taken into account in the ways taxes are levied, because, as he argued, the different ways in which persons are affected by public activities need to be reflected in the taxes they pay. Pointing in particular to the difference between the members-citizens of a polity and others who enter the respective jurisdiction for various economic purposes he noted: "As long as taxes are a general payment for expenditures of the community it will not be compatible with the nature of taxes if the community does not tax a number of people who benefit from its expenditures while taxing others who do not benefit" (Schanz 1892: 8).[12] Anticipating the objection that he was reviving the "old, strongly contested benefit principle," he argued: "To this objection I can only reply that a tax which does not include some kind of a benefit relation does not exist. Of such a tax one could speak only if one were to suppose … an absolutely coercive membership in a community, which does not exist; one can exit from every community, also from the national polity, one can weigh whether the services of the community, the amenities and happiness it provides, compensate for the sacrifices it demands" (ibid.: 9f.).[13]

The forces that Schanz described have significantly intensified in the process of globalization with the consequence that governments are increasingly under pressure, on factual grounds, to move their taxation practices in the direction of the benefit principle that Wicksell argued for on grounds of justice. While in a closed society persons who feel unduly burdened by the taxes they are forced to pay can only raise their voice, in a globalized world they can with relative ease exit from inhospitable jurisdictions and relocate their activities to places where they feel more fairly treated. In such a world governments will find it more difficult to sustain the ability-to-pay principle, in particular with regard to jurisdiction-users.

The ability of persons to exit from one jurisdiction and to move to another clearly differs between citizens and jurisdiction-users. This reflects the interrelated facts that, on the one hand, to shift one's allegiance as citizen between states is generally much more difficult than to move as jurisdiction-user between polities and, on the other hand, that the cost-benefit calculus that underlies a person's choice of citizenship (to the extent that such choice-option exists) is characteristically different from the cost-benefit calculus that guides her choices as jurisdiction-user. Not only are the political barriers to changing one's citizenship typically much higher than the barriers jurisdiction-users face in moving between polities, it lies in the nature of things that shifting one's membership between polities is a more complex undertaking than relocating one's activities as jurisdiction-user. The packages of services and benefits that come with being a member of a polity are significantly more extensive and multifaceted than the bundle of location-specific services and benefits that jurisdiction-users are typically interested in. As a trans-generational cooperative enterprise the state allows its members to enter into joint commitments the costs and benefits of which can be appropriately assessed, if at all, only in a long-term perspective. In particular, solidarity- or mutual insurance arrangements by which citizens can provide each other and their offspring with a measure of protection against the misfortunes of life that they could not obtain from private-law arrangements are the most obvious of these benefits. It is, in fact, because of the more complex and long-term nature of the benefits that political communities can provide for their members that persons can change their citizenship not nearly with the same ease with which they can move as jurisdiction-users between polities. Most importantly, in choosing one's citizenship, where such choice is feasible, one must choose between the inclusive bundle of costs and benefits from being a member of polity A instead of B, bundles that on either side may well include components that one would rather do without.

By contrast, in their capacity as jurisdiction-users persons are much more flexible in their choices. There is no need for them to concentrate all their potential activities in one jurisdiction. Instead, they can separate the various dimensions of their inclusive interests from each other and choose separately for each of them the jurisdiction that offers, with regard to the respective activity, the most attractive conditions. They can choose different jurisdictions for different kinds of investments or financial engagements, others for their own professional activities, and still others for other purposes including their place of residence. To be sure, even though as jurisdiction-users persons can choose with greater ease among alternative polities than they can choose their citizenship, there remain significant differences depending on the different capacities in which they may be engaged in a jurisdiction. Where immovable

resources, such as land and real estate, or sunk-investments are concerned jurisdiction-users are, for obvious reasons, less mobile than with their flexible investments or their financial capital. And in relocating their residence or long-term employment from one jurisdiction to another they obviously face more serious obstacles than in choosing where to take a temporary job or where to spend their vacation. Various issues raised by these differences have been discussed extensively in the literature on inter-jurisdictional competition (Vanberg 2000 and 2008).

Of particular interest in the present context is the question of how the differences in mobility between citizens and jurisdiction-users, as well as between the latter, affect the power of governments to tax their citizens and their jurisdictions-users.[14]

5. Taxing Citizens and Taxing Jurisdiction Users

In a world in which the benefit principle were generally practiced, taxes would fall into two principal categories, corresponding to the two roles of the state, namely, on the one hand, taxes that citizens would have to pay in their capacity as members of the polity and, on the other hand, taxes that would be collected from jurisdiction-users. In their capacity as citizens persons would be charged taxes as payment for the right to benefit from the services that the state provides for its members, comparable to the *membership fees* persons pay to the private clubs or associations to which they belong as payment for the opportunity to take advantage of the rights that come with being a member. By contrast, in their capacity as jurisdiction-users they would be charged taxes as payments for the right to carry out in a state's sovereign territory the kind of activities they are interested in, comparable to the *access*- or *user-fees* that a private territorial enterprise (such as a recreation park or a developer of a private community) charges its customers for the right to take advantage of the facilities it offers.

The traditionally and still widely practiced systems of taxation in the real world of states are scarcely organized in ways that reflect the systematic separation between taxes as citizens' *membership-fees* and as jurisdiction-users' *access*- or *user-fees*. Yet, the same forces of globalization that require governments to move in the direction of taxation according to benefit will require them to distinguish more strictly between the two kinds of taxes than has been the case in the past. It is the need to adopt principles of taxation that can be sustained in a world of mobile persons and resources that will leave governments no choice other than making these adjustments or see their tax-base erode.

The possibility of jurisdiction-users to divide the various activities they engage in between different jurisdictions and to respond with exit to adverse treatment in any one

jurisdiction makes it impossible for governments to impose on them tax-burdens that exceed the price they are willing to pay for the benefits the jurisdiction offers them, compared to the cost-benefit packages that other jurisdictions offer. The ease with which jurisdiction-users can escape unwanted tax-burdens, the more so the easier they can move with their respective activities from one jurisdiction to another, is often diagnosed in the globalization literature as the source of two major problems. It is argued, firstly, that the need to compete for mobile taxpayers, in particular for investors of mobile capital, forces governments into a "race to the bottom" in the sense that they underbid each other with ever lower tax-rates with the consequence that the tax-burden will be increasingly shifted to less mobile taxpayers, specifically the citizens. And it is argued, secondly, that the competition for taxable mobile jurisdiction-users inhibits governments in their capacity to carry out public projects that serve their citizens' interests, such as, in particular, redistributive policies.

As far as the first charge is concerned, the fear that competition among governments leads to a race to the bottom seems to be based on the tacit assumption that jurisdiction-users consider in their choice among jurisdictions only the tax-price they are required to pay without regard to other jurisdictional attributes. This is, however, an assumption no more realistic than the assumption that customers of any ordinary business make their choice where to buy exclusively in light of what the price-tags say without regard to the quality of the products that are at stake or the quality of the service they can expect. Prudent jurisdiction-users, such as investors of mobile capital, will surely compare the tax-prices they have to pay with the advantages that jurisdictions have to offer with regard to the kinds of uses they might be interested in, such as a functioning infra-structure, protection of the law, reliable courts, an effective public administration, an educated work-force, etc.. Among alternative jurisdictions that are open to them they will choose the one that offers the most attractive cost-benefit package for their purposes, not simply the one with the lowest tax rate. The fear that competition among governments leads to a ruinous race to the bottom is as implausible as the fear of ruinous competition in ordinary business life. What competition does in both realms is to require enterprises – be it states as territorial enterprises or producers of ordinary goods and services – to offer their customers attractive price-quality combinations.

Discussing the second charge provides an opportunity to add a specifying comment to the conjecture that the forces of globalization require governments to adjust their taxation systems in the direction of the benefit principle. With regard to taxes as citizens' membership-fees this conjecture needs to be clarified. Because of the specific nature of the benefit-packages that polities extend to their citizens-members, in particular because of the solidarity-

or insurance-arrangements that their members enter into, citizens have with prudential reasons for taking persons' ability to pay into account when determining their tax obligations. The uncertainty about their own longer-term fate in life – and even more so the uncertainty about the fate of their offspring – is the reason for citizens' common interest in a mutual commitment to assist each other in case of need. The very logic of such a mutual insurance arrangement requires that the funds from which assistance to needy members of the polity is given must be fed by those who are able to make the necessary contributions. In an uncertain world it can therefore be assumed to be in the mutual interest of the members of a citizens' cooperative to agree on a taxation system that takes the ability to pay into account.

Beyond the sheer technicality of financing a solidarity-fund there are more general reasons why citizens may have a mutual interest in adopting a taxation system among themselves that takes the ability to pay into account, reasons that have to do with the extent of the services that the state as citizens' joint enterprise can provide to its members. The package of services that governments could finance would inevitably be rather slim if what the poorest members of the polity are able to contribute would define the upper limit of the taxes that citizens might be charged. Given the uncertainty about their own and their offspring's long-term income-earning capacity, citizens have good reasons to accept a taxation system that charges them in line with their ability to pay, if they wish to assure that a generally desired level of public services can be financed.

Note, that to argue, as I have done above, that there are prudential reasons for citizens to adopt, for the internal operation of their citizens' cooperative, a taxation system that takes their ability to pay into account does not mean to re-introduce the ability-to-pay principle through the backdoor. The rationale for organizing the taxation system in such manner is not axiomatically derived from a pre-supposed ability-to-pay principle but is, instead, located in the very interests of the citizens themselves. In other words, it is the benefit principle that provides the rationale for considering citizens' ability to pay in determining their tax-obligation,[15] - and it will also limit the extent to which unequal tax burdens can be sustained. To the extent that citizens can gain membership status in other polities they will compare the inclusive cost-benefit package that their home-country offers them with what they could realize elsewhere, and this will set limits to the tax-burden they willingly accept.

Returning to the issue of what the mobility of jurisdiction-users means for the capability of governments to engage in redistributive policies, it should be noted first that redistribution is clearly part of the solidarity- or insurance arrangements that citizens may organize among themselves for their mutual benefit. The charge that the ease with which

mobile factors can move between polities unduly limits the power of governments to impose on them redistributive taxes (Sinn 1994: 101) implicitly presumes that jurisdiction-users ought to pay their share in financing citizens' solidarity projects.[16] It is, however, difficult to see how such demand could be justified. Jurisdiction-users are customers of the state as a territorial enterprise; they are not members of the state as citizens' joint enterprise and, accordingly, not among the beneficiaries of the solidarity arrangements that this enterprise provides for its members. There are neither legitimate normative grounds on which jurisdiction-users could be required to contribute to citizens' solidarity projects, nor factual grounds on which one could expect them to willingly make such contributions, except to the extent that, besides the direct benefits to citizens, there are indirect effects, such as a reduced likelihood of social unrest or criminal offenses, that would make the jurisdiction a more attractive place for prospective users.

What is true for redistributive policies in the service of citizens' mutual insurance arrangements applies to all public projects that create benefits for the members of the polity without contributing to a more hospitable environment for jurisdiction-users. Any attempts to shift the burden of such projects to jurisdiction-users will be difficult to sustain in a mobile world in which persons as private law subjects can compare the cost-benefit packages of different polities and choose the one that offers conditions most attractive for the kind of activities they are interested in. This does not mean at all that the state in its capacity as citizens' joint enterprise is prevented from carrying out projects that serve common interests of its members. It only means that the costs of such projects must be covered by contributions from its citizens-members, i.e. by taxes as membership-fees, and cannot be shifted to mobile jurisdiction-users, except, again, to the extent that such projects add indirectly, in one way or another, to the attractiveness of the state as territorial enterprise. Generally, as customers of the state, jurisdiction-users can be charged taxes as access- or user-fees only to the extent that – compared to available alternatives – a state offers an attractive environment for their respective activities.

The principle that citizens' projects ought to be financed by taxes as membership-fees has surely not been the guiding rule of traditional taxation practices. Instead, taxes have been – and continue to be – quite commonly collected from jurisdiction-users to (co-) finance such projects. In a less mobile world governments may have felt little pressure to change this practice, yet in an increasingly mobile world the pressure intensifies. The principal reason why governments are typically reluctant to adjust their taxation systems accordingly is that it is all too tempting for (re-) election seeking politicians to promise voters benefits without

having to present them with a corresponding tax-bill. And shifting the financial burden on to jurisdiction-users may work as a successful short-term strategy to give voters the illusion of a cost-free gift. Yet, while it may possibly bring success at the next election, this strategy will not improve the longer-term economic prospects of the citizenry. Since it is bound to make the jurisdiction a less attractive place for wealth-producing jurisdiction-users it reduces, in the longer run, the income-earning opportunities of citizens themselves and, thereby, their own ability to finance the kinds of projects, including solidarity projects, that they may wish to fund for their mutual advantage.

The difficulties to sustain a taxation system that seeks to burden jurisdiction-users with the costs of citizens' projects are most visible in the case of business taxes. Business enterprises are legal entities and as such cannot be members of a citizens' cooperative that, by its very nature, can only be composed of natural persons. Businesses are pure jurisdiction-users and their calculus of advantage in choosing a jurisdiction for their activities is exclusively based on a comparison between the costs they have to incur and the benefits they can expect.[17] It does not include benefits that the state as citizens' joint enterprise provides exclusively to its members. Any attempt to impose on them tax-burdens that are not compensated by jurisdictional advantages, such as the costs of pure citizens' projects, runs the risk of provoking their exit from or deterring their entry into the jurisdiction. In a globalized world with an increasingly mobile corporate tax base governments are under intense competitive pressure to recognize this fact. And, it is indeed in the realm of corporate taxes that the most far-reaching adjustments in national taxation systems have occurred in recent decades (Edwards and Mitchell 2008).

6. Regulation in a Globalized World

Just as the increased mobility of persons and resources imposes competitive constraints on governments that limit their power to tax it imposes similar constraints on their power to regulate. As in the case of taxation, in the field of regulation competition among governments creates the need for a stricter separation of the two roles of the state in the sense that governments are required to distinguish more clearly between, on the one hand, regulations that they legislate in their capacity as citizens joint enterprise, i.e. regulations that concern the internal relations among the members of the citizens' cooperative, and, on the other hand, regulations that they legislate in their capacity as territorial enterprise, i.e. regulations that define the terms under which private law subjects – citizens and non-citizens alike – are allowed to operate as jurisdiction-users within the state's territory.

As citizens' joint enterprise the state can use regulation as an instrument to advance its members common interests if by jointly submitting to the respective regulatory constraints citizens can realize among themselves mutual benefits that they would otherwise forego (Vanberg 2005: 29ff.). As territorial enterprises states face the challenge of defining the terms under which private law subjects are allowed to operate within their sovereign territories in ways that are, in comparison to the terms in other polities, sufficiently attractive for jurisdiction-users they want to draw to their domain. In the traditional discussion on issues of regulation the distinction emphasized here can scarcely be found in explicit terms, and it may in fact be often difficult in practice to classify particular regulatory provisions unambiguously in one or the other of the two categories because they simultaneously affect common concerns of citizens as well as the interests of jurisdiction-users. Nevertheless, it is a distinction that governments cannot disregard with impunity in a globalized world.

The relevance of conceptually separating the two regulatory roles of government is, in fact, not so much a matter of unambiguously classifying each and every act of regulation. It is, instead, in the first instance a matter of clarity about the purposes that a regulatory provision is meant to achieve, namely whether its principal aim is to serve interests that citizens share in their capacity as members of the polity or whether it aims at improving the institutional framework within which the private law society and the market economy function. Only to the extent that clarity about the intended purpose exists is a meaningful assessment of the balance between intended positive and potential unintended negative effects in such cases possible where a regulatory provision that aims at serving citizens' interests has negative side-effects for the polity's attractiveness for jurisdiction-users or vice versa.

Note that distinguishing between the two regulatory roles of the state is not meant at all to suggest that as a territorial enterprise the state derives legitimacy for its actions from a different source than it does in its capacity as citizens' joint enterprise. In both its capacities the democratic state is supposed to act as agent of its citizens-members, as custodian of their common interests. The difference between the two roles concerns the means and ways by which democratic government carries out its mandate as agent of its citizens, namely, on the one side, by regulating the internal affairs of its members and, on the other side, by providing, as territorial enterprise, a regulatory environment within which citizens in their capacity as private law subjects can best realize mutual gains from interacting and cooperating with each other as well as with other jurisdiction-users. That is to say, the ultimate normative standard against which a democratic government's actions as territorial enterprise are to be judged is not the attractiveness for jurisdiction-users per se but citizens' common interests in how the

private law society should function. The two criteria are connected, though, by the fact that the attractiveness of the polity for jurisdiction-users is an essential determinant of citizens' income-earning prospects and, thereby, of their prospects of realizing mutual benefits as private law subjects as well of their ability to finance mutually beneficial citizens' projects.

There will be instances where regulatory provisions that may serve common interests of the citizens-members of the polity have negative side-effects on their jurisdiction's attractiveness for private users, and in such cases a trade-off exists that citizens must account for in deciding whether or not to adopt such provisions. Of particular interest in the present context, though, are those cases in which governments seek to use regulatory constraints on jurisdiction-users as an instrument to serve citizens' interests without imposing the full burden of such concerns on them, i.e. cases where, instead of taking care of such interests directly by regulating the internal affairs of the citizenry, governments seek to enlist jurisdiction-users to carry (part of) the burden. The temptation to employ such strategy is surely present among (re-)election seeking politicians because it allows them to promise voters benefits that seem to come at no costs, and one does not need to search long in order to find examples in standard regulatory practice that illustrate this very strategy. A preferred area for it to be employed is, in particular, the labor market.

Labor market regulations, like regulations in other areas, can be intended to rectify deficiencies in this market and to improve its overall working properties. Alternatively they can be intended to serve concerns that citizens share as members of the polity such as, in particular, their interests in being insured against risks of life and market adversities that threaten their income-earning prospects. Whether regulations such as minimum wage legislation, regulation concerning dismissal protection, mandatory social benefits etc. are indeed suitable instruments for improving the overall working properties of labor markets in the sense that they improve the employment- and income-prospects of the population at large is, according to standard economic insights, rather questionable, but this is an issue that can be left aside here. Of interest here is the issue of whether such regulations can be suitable instruments of serving interests of the citizens-members of the polity. My principal conjecture is that attempts to impose, by means of regulation, the burden of citizens' projects on jurisdiction-users cannot be sustained in a mobile world.

As in the case of taxation, jurisdiction-users can be expected to accept regulatory burdens that are offset by advantages that a jurisdiction offers them for the kind of activities they are interested in. Yet, attempts to impose on jurisdiction-users the burden of projects, including the solidarity- or insurance-provisions that labor market regulations are often

intended to provide, the benefits of which are exclusively concentrated on the citizens-members of the polity, risks to provoke their exit and to deter their entry. Again, as in the case of taxation, their competition for mobile resources does not prevent governments from providing their citizens with benefits, such as insurance-arrangements, the costs of which they are willing to carry and to share among themselves. It merely limits their opportunities to require jurisdiction-users to shoulder the regulatory (or tax-) burden of citizens' projects beyond the extent to which indirect benefits may accrue to them as well. In other words, competition among governments limits the possibilities for (re-)election seeking politicians to promise voters benefits under the pretence that somebody else will cover the costs.

7. Conclusion: Competition among Governments and the Welfare State

It is a common theme in the literature on the subject that globalization and the intensified competition among governments that comes with it pose a particular threat to the welfare state as it has developed, especially since World War II, in many Western countries. The basic rationale of the welfare state is to find a balance between, on the one side, taking advantage of the productive dynamics of a market economy and, on the other hand, providing a safety-net that insures citizens against major misfortunes of life and fundamental uncertainties that are inherent in a dynamic market process. Both concerns are likely shared by citizens and the question is whether indeed, and if so why, the forces of globalization should impede governments in their ability to respond to them. The argument outlined in this paper can throw some light on this issue.

As has been argued above, the competitive constraints that governments are facing in a globalized world cannot prevent them from serving common interests of their citizenry, at least not as long as citizens are willing to bear the costs of the services the state as their joint enterprise provides for them by paying the necessary taxes as membership-fees or by accepting the required regulatory burden. However, competition does impose constraints on the ability of governments to shift the regulatory or tax-burden of such provisions on to jurisdiction-users to whom they provide no benefit. Most Western welfare states have surely grown beyond the level that can be sustained under these constraints, and they have been able to do so because they have spared their present citizenry the burden of fully covering the costs of their favors by shifting them in part to jurisdiction-users and future generations of tax-payers. These strategies of concealing the true costs of welfare provisions from citizens are less and less sustainable in a world of mobile persons and resources.

Stated differently, the reason why competition among governments poses a threat to the welfare state is not that citizens were no longer able to use the state as their joint enterprise for carrying out projects of mutual advantage. The reason is, instead, the failure to adequately separate the role of the state as citizens' cooperative from its role as territorial enterprise, combined with the failure to recognize that it is in its first role and not in the second that the state must carry out its welfare policies. The forces of globalization increasingly require governments to rectify this failure, to face their citizens with the necessity to carry the regulatory and tax-burden of whatever welfare services they wish to provide for themselves and to realize that the regulatory and tax-burden they can impose on jurisdiction-users is limited by the advantages that the state has to offer as territorial enterprise.

References

Böhm, Franz, 'Privatrechtsgesellschaft und Marktwirtschaft', *ORDO – Jahrbuch für die Ordnung von Wirtschaft und Gesellschaft* 15, 1966, 75-151.

Brennan, Geoffrey and James M. Buchanan, *The Power to Tax. Analytical Foundations of a Fiscal Constitution*, Cambridge: Cambridge University Press, 1980.

Buchanan, James M., 'The domain of constitutional economics', *Constitutional Political Economy* 1, 1990, 1-18.

Buchanan, James M. and Marilyn R. Flowers, *The Public Finances – An Introductory Textbook*, Homewood, Illinois: Irwin, 1987.

Edwards, Chris and Daniel J. Mitchell, *Global Tax Revolution – The Rise of Tax Competition and the Battle to Defend It*, Washington D.C.; Cato Institute, 2008.

Hirschman, Albert O., *Exit, Voice and Loyalty – Responses to Decline in Firms, Organizations, and States*, Cambridge: Harvard University Press, 1970.

Musgrave, Richard A. and Alan T. Peacock, 'Introduction', in R.A. Musgrave and A.T. Peacock (eds.), *Classics in the Theory of Public Finance*, London et al.: Macmillan, 1967, ix-xix.

Rawls, John, *A Theory of Justice*, Cambridge, Mass.: Harvard University Press, 1970.

Schanz, Georg, 'Zur Frage der Steuerpflicht', *Finanzarchiv* 9, vol. 2, 1892, 1-74.

Sinn, Hans-Werner, 'How Much Europe? Subsidiarity, Centralization and Fiscal Competition', *Scottish Journal of Political Economy* 41, 1994, 85-107.

Sinn, Hans-Werner, 'The Selection Principle and Market Failure in Systems Competiton', *Journal of Public Economics* 66, 1997, 247-274.

Smith, Adam, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Indianapolis, IN: Liberty Classics, 1981 [1776].

Vanberg, Viktor J., 'Freiburg School of Law and Economics', in: Peter Newman (ed.), *The New Palgrave Dictionary of Economics and the Law*, Vol. 2, London: Macmillan, 1998, 172-179.

Vanberg, Viktor J., 'Globalization, Democracy and Citizens' Sovereignty: Can Competition among Governments Enhance Democracy?', *Constitutional Political Economy* 11, 2000, 87-112.

Vanberg, Viktor J., 'Market and State: The Perspective of Constitutional Political Economy', *Journal of Institutional Economics* 1, 2005, 23-49.

Vanberg, Viktor J., 'Can Competition Between Governments Enhance Democracy?', in: Andreas Bergh, Rolf Höijer (eds.), *Institutional Competition*, Cheltenham, UK, Northampton, MA: Edward Elgar, 2008, 113-128.

Vanberg, Viktor J. and Wolfgang Kerber, ‘Competition among Jurisdictions: An Evolutionary Approach’, *Constitutional Political Economy* 5, 1994, 193-21.

Wicksell, Knut A New Principle of Just Taxation, in R.A. Musgrave, A. T. Peacock (eds.), *Classics in the Theory of Public Finance*, London: Macmillan, 1967 [1896], 72-118.

---

[1] Smith (1981: 31). – This statement is to be read in conjunction with the very first sentence in *The Wealth of Nations*: “The greatest improvement in the productive powers of labour, and the greater part of the skill, dexterity, and judgement with which it is anywhere directed, or applied, seem to have been the effects of the division of labour” (Smith 1981: 13).
[2] The “second globalization” has, of course, also been most significantly affected by singular historical events such as the collapse of the Soviet Empire and its secondary effects as well as the reform policies in China.
[3] More generally speaking such competition among governments exists, of course, not only at the level of nation states but likewise at the sub-national level between local communities or between states within a federal union, and it exists at the supra-national level in the sense that entities such as the European Union are also exposed to a competitive environment (Vanberg and Kerber 1994).
[4] While e.g. authors like G. Brennan and J.M. Buchanan (1980) emphasize that such competitive constraints have the beneficial effect of limiting the power of governments to serve special interests H.-W. Sinn (1997: 248) concludes: “Since governments have stepped in where markets have failed, it can hardly be expected that a reintroduction of a market through the backdoor of systems competition will work. It is likely to bring about the same kind of market failure that justified government intervention in the first place.”
[5] For references and a more detailed discussion see Vanberg 2000 and 2008.
[6] Wicksell (1967: 74): “As is well known, there are essentially two opposing basic principles … They are the principle of …’taxation according to benefit’ and ‘taxation according to ability-to-pay’ or to the capacity of each.”
[7] Actually the non-affectation principle allows for two interpretations, only one of which is in conflict with the benefit principle. The case of the German tax system may serve as an illustration. In its legal foundation, the so-called “Abgabenordnung,” taxes are defined (in § 3.1) as follows: “Taxes are monetary payments that are not made in return for a specific service.” – If this definition is meant to imply that there is a difference between taxes and fees that are charged for specific services, such as issuing a drivers licence or a passport, it is not at all in conflict with the benefit principle. Such conflict exists, however, if it is meant to imply, that no connection exists between tax obligation and benefits received from public services. The issue of whether or not public services can be generally financed by specific fees (which they surely can not) is entirely different from the issue of whether taxes should be levied according to the ability-to-pay or according to the benefit principle. Only the latter is at stake in the present context.
[8] Wicksell (1967: 88) describes the democratic ideal as “equality before the law, greatest possible liberty, and the economic well-being and peaceful cooperation of all people.”
[9] Wicksell (1967: 106): “There seems to be a clear case for the requirement of full unanimity of all parties as the only possible guarantee against prejudicing these interests.” – Wicksell did explicitly not identify democracy with simple majority rule. As he put it: “It is not the purpose of the (democratic, V.V.) movement … to have … shaken off the yoke of … obscurantist oligarchies only to replace it by the scarcely less oppressive tyranny of accidental parliamentary majorities” (1967: 88).
[10] Musgrave and Peacock (1967: xv) comment on Wicksell’s approach: “While there are issues on which public policy must be determined by simple majority, Wicksell argues that most matters of budget policy are not of this type. Specific public services should be voted upon in conjunction with specific cost distributions; and their adoption should be subject to the principle of voluntary consent and unanimity.”
[11] Already Adam Smith (1981: 848f.) commented on this matter when he noted: “The proprietor of land is necessarily a citizen of the particular country in which his estate lies. The proprietor of stock is properly a citizen of the world, and is not necessarily attached to any particular country. He would be apt to abandon a country in which he was exposed to a vexatious inquisition, in order to be assessed to a burdensome tax, and would remove his stock to some other country where he could, either carry on his business, or enjoy his fortune more at his ease.”
[12] My translation, V.V.
[13] My translation, V.V.

[14] An issue that deserves special attention but will not be separately discussed here concerns the relevance of the difference between the capacity of individuals as citizens-members of a polity on the one side and their capacity as residents, i.e. as jurisdiction-users, on the other for the power of government to tax and to regulate. This issue has received little attention because permanent residents have typically been, and still are, citizens of the country in which they reside. In an increasingly mobile world there is, however, a growing and non-trivial number of persons who reside for longer periods or even permanently as "alien residents" in a foreign country. Since permanent residents tend to share to a large extent in the services that governments provide for their citizen-residents, distinguishing the state's relation to its resident-citizens from its relation to its alien residents and its citizens living abroad raises a number of questions that are important but will, for reasons of space, not be discussed here.

[15] A statement in Adam Smith's *Wealth of Nations* the first part of which is often cited as supporting the ability-to-pay principle can, on closer inspection, be well read as an argument that derives the justification of taxation according to ability from the benefit principle: "The subjects of every state ought to contribute … in proportion to their respective abilities; that is in proportion to the revenue which they respectively enjoy under the protection of the state. The expense of government is like the expense of management to the joint tenants of a great estate who are all obliged to contribute in proportion to their respective interest in the estate" (Smith 1981: 825). – Musgrave and Peacock (1967: ix) comment on Smith's statement: "Thus Smith ingeniously cuts across the ability-to-pay and the benefit theories of taxation." It is, as they add, in the post-Smith era that "a distinct cleavage between the two approaches emerges."

[16] Sinn (1997: 262): "Suppose the country's borders are opened and both capital and labor can freely migrate across them. This liberty … will affect insurance through redistributive taxation since the government loses its power to enforce the payment of taxes."

[17] Business firms are, of course, owned and operated by natural person who act in both capacities, as citizens-members of a polity and as jurisdiction-users. Business enterprises themselves as legal persons can, however, only be jurisdiction-users.

Freiburger **Diskussionspapiere** zur Ordnungsökonomik

Freiburg **Discussion Papers** on Constitutional Economics

10/02 **Vanberg, Viktor J.:** Competition among Governments: The State's Two Roles in a Globalized World

10/01 **Berghahn, Volker:** Ludwig Erhard, die Freiburger Schule und das 'Amerikanische Jahrhundert'

09/10 **Dathe. Uwe:** Walter Euckens Weg zum Liberalismus (1918-1934)

09/9 **Wohlgemuth, Michael:** Diagnosen der Moderne: Friedrich A. von Hayek

09/8 **Bernhardt, Wolfgang:** Wirtschaftsethik auf Abwegen

09/7 **Mäding, Heinrich:** Raumplanung in der Sozialen Marktwirtschaft: Ein Vortrag

09/6 **Koenig, Andreas:** Verfassungsgerichte in der Demokratie bei Hayek und Posner

09/5 **Berthold, Norbert / Brunner, Alexander:** Gibt es ein europäisches Sozialmodell?

09/4 **Vanberg, Viktor J.:** Liberal Constitutionalism, Constitutional Liberalism and Democracy

09/3 **Vanberg, Viktor J.:** Consumer Welfare, Total Welfare and Economic Freedom – On the Normative Foundations of Competition Policy

09/2 **Goldschmidt, Nils:** Liberalismus als Kulturideal. Wilhelm Röpke und die kulturelle Ökonomik.

09/1 **Bernhardt, Wolfgang:** Familienunternehmen in Zeiten der Krise – Nachhilfestunden von oder für Publikumsgesellschaften?

08/10 **Borella, Sara:** EU-Migrationspolitik. Bremse statt Motor der Liberalisierung.

08/9 **Wohlgemuth, Michael:** A European Social Model of State-Market Relations: The ethics of competition from a „neo-liberal" perspective.

08/8 **Vanberg, Viktor J.:** Markt und Staat in einer globalisierten Welt: Die ordnungsökonomische Perspektive.

08/7 **Vanberg, Viktor J.:** Rationalität, Regelbefolgung und Emotionen: Zur Ökonomik moralischer Präferenzen. Veröffentlicht in: V. Vanberg: Wettbewerb und Regelordnung, Tübingen: Mohr, 2008, S. 241-268.

08/6 **Vanberg, Viktor J.:** Die Ethik der Wettbewerbsordnung und die Versuchungen der Sozialen Marktwirtschaft

08/5 **Wohlgemuth, Michael:** Europäische Ordnungspolitik

08/4 **Löwisch, Manfred:** Staatlicher Mindestlohn rechtlich gesehen – Zu den gesetzgeberischen Anstrengungen in Sachen Mindestlohn

08/3 **Ott, Notburga:** Wie sichert man die Zukunft der Familie?

08/2 **Vanberg, Viktor J.:** Schumpeter and Mises as 'Austrian Economists'

08/1 **Vanberg, Viktor J.:** The 'Science-as-Market' Analogy: A Constitutional Economics Perspective.

07/9 **Wohlgemuth, Michael:** Learning through Institutional Competition. Veröffentlicht in: A. Bergh und R. Höijer (Hg.). Institutional Competition, Cheltenham: Edward Elgar, 2008, S. 67-89.

07/8 **Zweynert, Joachim:** Die Entstehung ordnungsökonomischer Paradigmen – theoriegeschichtliche Betrachtungen.

07/7 **Körner, Heiko:** Soziale Marktwirtschaft. Versuch einer pragmatischen Begründung.

07/6 **Vanberg, Viktor J.:** Rational Choice, Preferences over Actions and Rule-Following Behavior.

07/5 **Vanberg, Viktor J.:** Privatrechtsgesellschaft und ökonomische Theorie. Veröffentlicht in: K. Riesenhuber (Hg.) Privatrechtsgesellschaft – Entwicklung, Stand und Verfassung des Privatrechts, Tübingen: Mohr Siebeck, 2008, S. 131-162.

07/4 **Goldschmidt, Nils / Rauchenschwandtner, Hermann:** The Philosophy of Social Market Economy: Michel Foucault's Analysis of Ordoliberalism.

07/3 **Fuest, Clemens:** Sind unsere sozialen Sicherungssysteme generationengerecht?

07/2 **Pelikan, Pavel:** Public Choice with Unequally Rational Individuals.

07/1 **Voßwinkel, Jan:** Die (Un-)Ordnung des deutschen Föderalismus. Überlegungen zu einer konstitutionenökonomischen Analyse.

06/10 **Schmidt, André:** Wie ökonomisch ist der „more economic approach"? Einige kritische Anmerkungen aus ordnungsökonomischer Sicht.

06/9 **Vanberg, Viktor J.:** Individual Liberty and Political Institutions: On the Complementarity of Liberalism and Democracy. Veröffentlicht in: Journal of Institutional Economics, Vol. 4, Nr. 2, 2008, S. 139-161.

06/8 **Goldschmidt, Nils:** Ein „sozial temperierter Kapitalismus"? – Götz Briefs und die Begründung einer sozialethisch fundierten Theorie von Markt und Gesellschaft. Veröffentlicht in: Freiburger Universitätsblätter 42, Heft 173, 2006, S. 59-77.

06/7 **Wohlgemuth, Michael / Brandi, Clara:** Strategies of Flexible Integration and Enlargement of the European Union. A Club-theoretical and Constitutional Economics Perspective. Veröffentlicht in: Varwick, J. / Lang. K.O. (Eds.): European Neighbourhood Policy, Opladen: Budrich, 2007, S. 159-180.

06/6 **Vanberg, Viktor J.:** Corporate Social Responsibility and the "Game of Catallaxy": The Perspective of Constitutional Economics. Veröffentlicht in: Constitutional Political Economy, Vol. 18, 2007, S. 199-222.

06/5 **Pelikan, Pavel:** Markets vs. Government when Rationality is Unequally Bounded: Some Consequences of Cognitive Inequalities for Theory and Policy.

06/4 **Goldschmidt, Nils:** Kann oder soll es Sektoren geben, die dem Markt entzogen werden und gibt es in dieser Frage einen (unüberbrückbaren) Hiatus zwischen ‚sozialethischer' und ‚ökonomischer' Perspektive? Veröffentlicht in: D. Aufderheide, M. Dabrowski (Hrsg.): Markt und Wettbewerb in der Sozialwirtschaft. Wirtschaftsethische Perspektiven für den Pflegesektor, Berlin: Duncker & Humblot 2007, S. 53-81.

06/3 **Marx, Reinhard:** Wirtschaftsliberalismus und Katholische Soziallehre.

06/2 **Vanberg, Viktor J.:** Democracy, Citizen Sovereignty and Constitutional Economics. Veröffentlicht in: Constitutional Political Economy Volume 11, Number 1, März 2000, S. 87-112 und in: Casas Pardo, J., Schwartz, P.(Hg.): Public Choice and the Challenges of Democracy, Cheltenham: Edward Elgar, 2007, S. 101-120.

06/1 **Wohlgemuth, Michael:** Demokratie und Marktwirtschaft als Bedingungen für sozialen Fortschritt. Veröffentlicht in: R. Clapham, G. Schwarz (Hrsg.): Die Fortschrittsidee und die Marktwirtschaft, Zürich: Verlag Neue Zürcher Zeitung 2006, S. 131-162.

05/13 **Kersting, Wolfgang:** Der liberale Liberalismus. Notwendige Abgrenzungen. In erweiterter Fassung veröffentlicht als: Beiträge zur Ordnungstheorie und Ordnungspolitik Nr. 173, Tübingen: Mohr Siebeck 2006.

05/12 **Vanberg, Viktor J.:** Der Markt als kreativer Prozess: Die Ökonomik ist keine zweite Physik. Veröffentlicht in: G. Abel (Hrsg.): Kreativität. XX. Deutscher Kongress für Philosophie. Kolloquiumsbeiträge, Hamburg: Meiner 2006, S. 1101-1128.

05/11 **Vanberg, Viktor J.:** Marktwirtschaft und Gerechtigkeit. Zu F.A. Hayeks Kritik am Konzept der „sozialen Gerechtigkeit". Veröffentlicht in: Jahrbuch Normative und institutionelle Grundfragen der Ökonomik, Bd. 5: „Soziale Sicherung in Marktgesellschaften", hrsg. von M. Held, G. Kubon-Gilke, R. Sturn, Marburg: Metropolis 2006, S. 39-69.

05/10 **Goldschmidt, Nils:** Ist Gier gut? Ökonomisches Selbstinteresse zwischen Maßlosigkeit und Bescheidenheit. Veröffentlicht in: U. Mummert, F.L. Sell (Hrsg.): Emotionen, Markt und Moral, Münster: Lit 2005, S. 289-313.

05/9 **Wohlgemuth, Michael:** Politik und Emotionen: Emotionale Politikgrundlagen und Politiken indirekter Emotionssteuerung. Veröffentlicht in: U. Mummert, F.L. Sell (Hrsg.): Emotionen, Markt und Moral, Münster: Lit 2005, S. 359-392.

05/8 **Müller, Klaus-Peter / Weber, Manfred:** Versagt die soziale Marktwirtschaft? – Deutsche Irrtümer.

05/7 **Borella, Sara:** Political reform from a constitutional economics perspective: a hurdle-race. The case of migration politics in Germany.

05/6 **Körner, Heiko:** Walter Eucken – Karl Schiller: Unterschiedliche Wege zur Ordnungspolitik.

05/5 **Vanberg, Viktor J.:** Das Paradoxon der Marktwirtschaft: Die Verfassung des Marktes und das Problem der „sozialen Sicherheit". Veröffentlicht in: H. Leipold, D. Wentzel (Hrsg.): Ordnungsökonomik als aktuelle Herausforderung, Stuttgart: Lucius & Lucius 2005, S. 51-67.

05/4 **Weizsäcker, C. Christian von:** Hayek und Keynes: Eine Synthese. In veränderter Fassung veröffentlicht in: ORDO, Bd. 56, 2005, S. 95-111.

05/3 **Zweynert, Joachim / Goldschmidt, Nils:** The Two Transitions in Central and Eastern Europe and the Relation between Path Dependent and Politically Implemented Institutional Change. In veränderter Fassung veröffentlicht in: Journal of Economic Issues, Vol. 40, 2006, S. 895-918.

05/2 **Vanberg, Viktor J.:** Auch Staaten tut Wettbewerb gut: Eine Replik auf Paul Kirchhof. Veröffentlicht in: ORDO, Bd. 56, 2005, S. 47-53.

05/1 **Eith, Ulrich / Goldschmidt, Nils:** Zwischen Zustimmungsfähigkeit und tatsächlicher Zustimmung: Kriterien für Reformpolitik aus ordnungsökonomischer und politikwissenschaftlicher Perspektive. Veröffentlicht in: D. Haubner, E. Mezger, H. Schwengel (Hrsg.): Agendasetting und Reformpolitik. Strategische Kommunikation zwischen verschiedenen Welten, Marburg: Metropolis 2005, S. 51-70.

04/15 **Zintl, Reinhard:** Zur Reform des Verbändestaates. Veröffentlicht in: M. Wohlgemuth (Hrsg.): Spielregeln für eine bessere Politik. Reformblockaden überwinden – Leistungswettbewerb fördern, Freiburg, Basel, Wien 2005, S. 183-201.

04/14 **Blankart, Charles B.:** Reform des föderalen Systems. Veröffentlicht in: M. Wohlgemuth (Hrsg.): Spielregeln für eine bessere Politik. Reformblockaden überwinden – Leistungswettbewerb fördern, Freiburg, Basel, Wien 2005, S. 135-158.

04/13 **Arnim, Hans Herbert von:** Reformen des deutschen Parteiensystems. Veröffentlicht in: M. Wohlgemuth (Hrsg.): Spielregeln für eine bessere Politik. Reformblockaden überwinden – Leistungswettbewerb fördern, Freiburg, Basel, Wien 2005, S. 87-117.

04/12 **Goldschmidt, Nils:** Alfred Müller-Armack and Ludwig Erhard: Social Market Liberalism. Veröffentlicht in: The History of Liberalism in Europe, Brochure Nr. 21, Paris 2004: CREA and CREPHE 2004.

04/11 **Vanberg, Viktor J.:** The Freiburg School: Walter Eucken and Ordoliberalism.

04/10 **Vanberg, Viktor J.:** Market and State: The Perspective of Constitutional Political Economy. Veröffentlicht in: Journal of Institutional Economics, Vol. 1 (1), 2005, p. 23-49.

04/9 **Goldschmidt, Nils / Klinckowstroem, Wendula Gräfin v.:** Elisabeth Liefmann-Keil. Eine frühe Ordoliberale in dunkler Zeit. Veröffentlicht in: N. Goldschmidt (Hrsg.): Wirtschaft, Politik und Freiheit. Freiburger Wirtschaftswissenschaftler und der Widerstand, Tübingen: Mohr Siebeck 2005, S. 177-204.

04/8 **Albert, Hans:** Wirtschaft, Politik und Freiheit. Das Freiburger Erbe. Veröffentlicht in: N. Goldschmidt (Hrsg.), Wirtschaft, Politik und Freiheit. Freiburger Wirtschaftswissenschaftler und der Widerstand, Tübingen: Mohr Siebeck 2005, S. 405-419.

04/7 **Wohlgemuth, Michael / Sideras, Jörn:** Globalisability of Universalisability? How to apply the Generality Principle and Constitutionalism internationally.

04/6 **Vanberg, Viktor J.:** Sozialstaatsreform und ‚soziale Gerechtigkeit'. Veröffentlicht in: Politische Vierteljahresschrift, Jg. 45, 2004, S. 173-180.

04/5 **Frey, Bruno S.:** Direct Democracy for a Living Constitution. In deutscher Übersetzung veröffentlicht in: M. Wohlgemuth (Hrsg.): Spielregeln für eine bessere Politik. Reformblockaden überwinden – Leistungswettbewerb fördern, Freiburg, Basel, Wien 2005, S. 26-86.

04/4 **Commun, Patricia:** Erhards Bekehrung zum Ordoliberalismus: Die grundlegende Bedeutung des wirtschaftspolitischen Diskurses in Umbruchszeiten.

04/3 **Vanberg, Viktor J.:** Austrian Economics, Evolutionary Psychology and Methodological Dualism: Subjectivism Reconsidered. Veröffentlicht in: R. Koppl (ed.): Evolutionary Psychology and Economic Theory (Advances in Austrian Economics, Vol. 7), Amsterdam et al.: Elsevier 2004, p. 155-199.

04/2 **Vaubel, Roland:** Reformen der europäischen Politikverflechtung. Veröffentlicht in: M. Wohlgemuth (Hrsg.): Spielregeln für eine bessere Politik. Reformblockaden überwinden – Leistungswettbewerb fördern, Freiburg, Basel, Wien 2005, S. 118-134.

04/1 **Wohlgemuth, Michael:** The Communicative Character of Capitalistic Competition. A Hayekian response to the Habermasian challenge. Veröffentlicht in: The Independent Review, Vol. 10 (1), 2005, p. 83-115.

03/10 **Goldschmidt, Nils:** Zur Theorie der Sozialpolitik. Implikationen aus ordnungsökonomischer Perspektive. Veröffentlicht in: N. Goldschmidt, M. Wohlgemuth (Hrsg.): Die Zukunft der Sozialen Marktwirtschaft. Sozialethische und ordnungsökonomische Grundlagen, Tübingen: Mohr Siebeck 2004, S. 63-95.

03/9 **Buchanan, James M:** Same Players, Different Game: How Better Rules Make Better Politics. In deutscher Übersetzung veröffentlicht in: M. Wohlgemuth (Hrsg.): Spielregeln für eine bessere Politik. Reformblockaden überwinden – Leistungswettbewerb fördern, Freiburg, Basel, Wien 2005, S. 25-35.

03/8 **Dathe, Uwe / Goldschmidt, Nils:** Wie der Vater, so der Sohn? Neuere Erkenntnisse zu Walter Euckens Leben und Werk anhand des Nachlasses von Rudolf Eucken in Jena. Veröffentlicht in: ORDO, Bd. 54, 2003, S. 49-74.

03/7 **Vanberg, Viktor J.:** The Status Quo in Contractarian Constitutionalist Perspective. Veröffentlicht in: Constitutional Political Economy, Vol. 15, 2004, p. 153-170.

03/6 **Vanberg, Viktor J.:** Bürgersouveränität und wettbewerblicher Föderalismus: Das Beispiel der EU. Veröffentlicht in: W. Schäfer (Hrsg.): Zukunftsprobleme der europäischen Wirtschaftsverfassung, Berlin: Duncker & Humblot 2004, S. 51-86.

03/5 **Pelikan, Pavel:** Bringing Institutions into Evolutionary Economics: Another View with Links to Changes in Physical and Social Technologies. Veröffentlicht in: Journal of Evolutionary Economics, Vol. 13, 2003, p. 237-258.

03/4 **Nau, Heino Heinrich:** Reziprozität, Eliminierung oder Fixierung? Kulturkonzepte in den Wirtschaftswissenschaften im Wandel. Veröffentlicht in: G. Blümle u.a. (Hrsg.): Perspektiven einer kulturellen Ökonomik, Münster: Lit-Verlag 2004, S. 249-269.

03/3 **Vanberg, Viktor J.:** The Rationality Postulate in Economics: Its Ambiguity, its Deficiency and its Evolutionary Alternative. Veröffentlicht in: Journal of Economic Methodology, Vol. 11, 2004, p. 1-29.

03/2 **Goldschmidt, Nils / Berndt, Arnold:** Leonhard Miksch (1901–1950) – A Forgotten Member of the Freiburg School. Veröffentlicht in: American Journal of Economics and Sociology, Vol. 64, 2005, p. 973-998.

03/1 **Vanberg, Viktor J.:** Die Verfassung der Freiheit: Zum Verhältnis von Liberalismus und Demokratie. Veröffentlicht in: N. Berthold, E. Gundel (Hrsg.): Theorie der sozialen Ordnungspolitik, Stuttgart: Lucius & Lucius 2003, S. 35-51.