

INSTITUTIONAL COMPETITION: A NEW THEORETICAL CONCEPT FOR ECONOMIC HISTORY

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ABSTRACT

The paper presents institutional competition between political authorities as a moving force behind institutional and economic change. It introduces the theoretical concept, stressing the interplay between political and economic actors and the transaction costs that the exit and voice options involve. Subsequently the concept is applied to German premodern economic history. The paper shows how it may help to explain the transformation from an economic order based on a corporate society to a modern market economy. In a final chapter, some possible further areas of research that might prove to be fruitful are outlined.

Introduction

Apart from collectivist or holist approaches that argue with dialectics and similar quasi-laws which are not reducible to the individual, there seem to be basically two approaches to explain major developments and trends in economic history. One argues with changes of the individual's value system and maintains that these are responsible for a tendency to frequent technical innovations, for a rise in investment, or for expanding trade. The other argues with changing rules of behavior which account for the same developments. Of course, usually economic historians do not restrict themselves to this rigid framework but draw on a number of other factors, too.¹ Still, if pressed most would probably come down either on the one side or on the other.² The concepts they apply - values on the one hand, rules on the other — correspond closely to what is called preferences and restrictions in the economist's jargon.

There are several reasons why it is more feasible to argue with changing restrictions of economic behavior than to argue with changing values. Human or cultural values may certainly change and this may certainly influence economic performance. However, to establish a plausible link between values and individual decisions seems to be extremely difficult.³ Furthermore, values are difficult to observe. When sources show that an individual's economic behavior was changing, this can be explained as the effect of changing values. However, these values can usually only be reconstructed from observing economic behavior. Here, it seems to be difficult to avoid tautological arguments.⁴ Restrictions — not only physical restrictions, but also humanly devised restrictions of human behavior, that is, institutions⁵ — are much more easy to observe. What needs to be studied are their effects on the economy and the causes of their change.

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Basically, there are two links between institutions and the economy. Rules of human behavior influence the incentives for productive activities, and they determine how costly it is to transact and to capture the gains from trade.⁶ How and why do institutions change? Obviously, there may be a number of reasons, but the concept presented here is stressing one factor, namely competition among political authorities for mobile factors of production, that is, for capital or labor. Here, the competitive parameters are the institutions valid in the competing jurisdictions.⁷

Basic tenets of the concept of institutional competition

The idea underlying the concept of institutional competition is that it is possible to analyze the behavior of governments just as that of firms in the market. Like firms, governments supply a number of goods and services. Still, there is one important difference. States provide public goods - usually at least military security and some mechanism to settle disputes - which can be defined by jointness of supply and impossibility of exclusion.⁸ Because of this, there is an incentive for every individual to use public goods supplied by the state while not bearing the costs. The suppliers are consequently interested in having coercive means at their disposal which they need to extract payment from individuals who would otherwise freeride.

When studied closely, it becomes apparent that competition between states consists of two separate but interlocked processes. On the one hand, there is a process of exchange which links both sides of the market, that is, supply and demand, and on the other hand, there is a parallel process which consists of the actions of actors on the same side of the market. In the process of exchange, buyers choose goods or services provided by the sellers. In the parallel process, sellers try to improve their situation vis à vis their competitors.⁹

The process of exchange depends on the fact that economic actors are in control of resources the use of which yields different results in different jurisdictions, due to, among other things, different institutions valid there. They are therefore interested in being provided with an institutional system which allows them to use their assets to their best possible advantage. If they have the chance to exit to another jurisdiction, it is possible to choose between suppliers much as on any market.¹⁰ A precondition for this is acquiring information about alternatives. However, to become informed is costly, just as becoming informed about opportunities to do business on product markets gives rise to transaction costs. All this restricts the chances of individuals freely to choose among polities.

The higher these costs are, the more important does another way of action become. Instead of exiting when dissatisfied with the institutions supplied by political actors within the jurisdiction, it is possible to resort to voice. In the sense Albert O. Hirschman first used this term, it comprises all activities which are aimed at changing conditions instead of just escaping from them.¹¹ Ultimately, voice gains weight because it is backed by the threat to choose the supply of different political actors either by exiting, as shown above,

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or by changing the government within the polity. How costly it is depends largely on the form it takes and on the relevant institutions applying in the jurisdiction concerned.

Even when individuals are prepared to bear all these costs, the intensity of competition depends on another factor. The economic actors' chance to choose among polities, that is, among institutional systems, is itself influenced by institutions. These so-called meta-rules determine for example the conditions under which individuals are allowed to exit from their jurisdiction or to invest outside their polity.¹² Though they have been formulated by the political actors themselves - frequently with an eye on preventing the exit of either capital or labor or both — competition among polities may limit the power governments have over economic actors. The costs of *perfectly* enforcing institutions are prohibitive so that exiting to a less repressive polity is never completely impossible. If economic actors make use of this chance, and if political actors realize that they cannot prevent them, the fear of losing capital or labor will restrict the governments' freedom of action. Then, competition helps to preserve liberty.¹³

There are a number of ways how suppliers of institutions can improve their situation in the parallel process, that is, *vis à vis* their competitors. They can experiment with institutional innovations or spend resources on acquiring information about the preferences of the economic actors making use of their supply or about the institutions provided by other authorities. In all cases competition functions as a procedure to discover new or hitherto unused knowledge.¹⁴ Changes or innovations may either affect abstract rules which apply to an unknown number of future cases, or concrete rules with the help of which concrete objectives are pursued.¹⁵ Usually, the latter, that is, privileges, special rights, entitlements, etc., hamper economic growth because they protect privileged individuals and groups from the effects of economic competition. Thereby they delay or prevent the disappearance of firms which would not be viable in a competitive environment and reduce incentives for innovative activities. Commonly, political authorities which concentrate on abstract rules that are not as problematic achieve a higher economic growth rate.¹⁶

Furthermore, institutional changes may, of course, apply to the meta-institutions mentioned above. As Walter Eucken noted, anybody who is subject to competition is always interested in avoiding it¹⁷ — this holds true for firms in product markets just as well as for political authorities competing with each other. And just as firms, authorities may try to gain monopolies or to form cartels. Closing ones borders, preventing exit as far as possible and thereby forcing economic actors to make do with the institutions supplied within the polity, is comparable to attempts to gain a monopoly, while harmonizing the institutional supply and the prices — that is, the tax-rates — corresponds to forming a cartel.¹⁸

In sum: Competition between polities can be subdivided into a process of exchange and a parallel process. In the process of exchange, the users of the institutions supplied by political authorities chose where to allocate their resources. In the parallel process, authorities put under pressure by exit or voice of economic actors may try to improve their

position relative to their competitors by modifying the institutions they provide. The basic assumption is that this induces them to discover new institutions which in the long run are conducive to economic growth.¹⁹

Applying the concept in history: the case of early modern Germany

The concept introduced in the preceding section was developed by economists who had modern conditions, characterized by a plurality of nation states, in mind. To apply it to history is therefore not always easy; it becomes the more difficult, the further back one goes and the more different the political system was. The striking thing about the premodern German political system was the lack of states in the sense of political organizations with territorially defined monopolies of the supply of military security and legal rules.²⁰ This leads to the questions of how competition worked under such circumstances.

Before these questions are tackled, the premodern political system of Germany needs briefly to be described. In the course of some decades of intensive research it has become clear that nineteenth-century notions about constitutional history relied too heavily on terms and concepts borrowed from contemporary public law.²¹ Instead of a state which had delegated some of its functions to subordinate authorities, the political system was hierarchically built up of numerous autonomous authorities all of which provided certain public goods for individuals and authorities below them, beginning with the nobleman's or artisan's household and ending with the Reichstag, the emperor and the pope. Along the same lines, society was divided into rigidly separated corporate orders the members of which adhered to specific institutions. Peasants, burghers, noblemen and clergy, the principal orders, all were subject to specific restrictions of the freedom of contract on product markets.²² Peasants, for example, would be forbidden by their lords to sell their crops directly to exporting merchants, artisans' apprentices would be denied the chance to open shops of their own, etc. Altogether, such restrictions severely reduced the premodern economy's potential for growth: they hampered a further division of labor, they made it difficult to specialize and consequently prevented gains in productivity. Moreover, they constituted barriers to the access to markets; prices developing there could not accurately reflect the relations of scarcity so that resources were systematically misallocated. Because social orders were at least partly structured hierarchically, individuals responsible for economic decisions that proved to be harmful had frequently the chance to recoup their losses by political means. Finally, for the same reason contracts between members of different orders were risky. The higher ranking partner always had the better chances to break the contract with impunity.²³

This system was well established in the later Middle Ages. It developed in the preceding centuries when society seems to have been much more open, but also more insecure, so that military security was the most important good supplied by authorities. If the way this was done is considered, it becomes clear why a feudal hierarchy developed.

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Evidently a single landlord would have had few chances of protecting a village against e.g. plunderers.²⁴ The good he provided did not consist simply of security but rather of organizing the defensive efforts of his peasants or of other noblemen. Moreover, the landlord may have had a castle to which the peasants might flee. Noblemen who had several castles could, in a similar way, organize the defensive efforts of lesser nobles. What matters is that practically nobody who fulfilled a purely economic criterion was excluded from providing security: anybody able to support a household with relatives and servants could establish himself as a political authority.²⁵ As in principle anybody who met this criterion could conclude agreements about the provision of military security, political relationships were in this respect characterized by freedom of contract. It was this freedom on which feudalism as a political system was based.²⁶

It is here assumed that political authorities were primarily interested in maximizing their income. This assumption seems to be all the more plausible because political actors always were economic actors, too, that is, because part of their income stemmed from economic activities of their own. Apart from this, landlords originally received mainly agricultural or military services. Under these conditions, their income or revenue depended primarily on the number of people who labored and fought for them.²⁷ A landlord who was interested in maximizing his income therefore had a strong incentive not only to concentrate on working his demesne but also to try and gain as many subjects as possible. As the number of these was limited, competition among feudal authorities was inevitable.

This leads to the question of whether it was necessary for authorities to realize that they were competing with each other. Obviously, in an age without statistics they were at best partly able to register whether the number of their subjects grew or decreased. Economic literature is silent on this question. Still, it is frequently stressed that the income of participants in product markets contains information about their relative success - information, however, that is encoded.²⁸ A decreasing income does not only not show what exactly is wrong with the goods supplied but can be attributed to any number of other causes as well. Similarly, when a political authority's revenue decreased, it did not matter whether the authority correctly interpreted this development. What mattered was that whoever acted as a political authority reacted by modifying the institutions he provided. In order to behave competitively he just had to perceive a decrease in his revenue but not the exit of his subjects. It is no surprise, then, that in the twelfth and thirteenth centuries territorial princes tried not only to organize more efficient protection but to create rules which made it easier for their subjects to be economically successful, for example by granting privileges to merchants who founded towns. This was the direct effect of competition for mobile resources.²⁹

Apart from gaining new rural or civic subjects, there was another way the providers of security and institutions could maximize their income. Even when it is assumed that originally they and the demanders of these goods had about the same bargaining strength, this frequently changed as soon as the contract had been concluded. The demand-side,

be it a peasant or a lesser knight, depended on the organizational effort of the provider of security, whether this was a landlord or a member of the higher nobility. The supply-side was interested in the services gained in exchange, too, but did not become as dependent. There are two reasons for this. On the one hand, most lords did not specialize to the same extent as their subjects: they did not only provide security and institutions but kept at least parts of their demesnes which made them economically more independent.³⁰ On the other hand, noblemen received the services of several peasants or other knights who had to overcome a problem of collective action in order to put pressure on their lord.³¹ As Mancur Olson showed, to solve this problem incentives are needed which influence every individual selectively, but only if he or she takes part in the collective activity.³²

The greater the part of the lords' income was which they gained from economic activities of their own, and the less their subjects were able to act collectively, the more independent were the lords. Where the demanders of the goods they provided got into a position of dependency, the authorities found a new way to increase their income. They could employ a special kind of rent seeking strategy by restricting the freedom of contract of their subjects, thereby excluding them from product markets which the authorities regarded as essential for themselves. This strategy allowed the authorities to raise the prices of the goods they were supplying in excess of the level reached under competitive conditions. Restrictions created in this way became constitutive for the corporate social orders which formed premodern society.

Apart from that, restrictions of the freedom of contract might apply to agreements concerning the supply of protection and institutions, too. When a political authority restricted its subjects' freedom to authoritatively provide collective goods of their own, this strategy was obviously an alternative to the restriction of the freedom of contract on product markets. In both cases political authorities aimed at reaching monopolistic positions. In the terms of the concept described above, political authorities modified a special kind of meta-institutions. Today, these just define the economic actors' exit chances; additionally, in premodern times, institutions were relevant which restricted their freedom to invest in the production of public goods like for example military security.

For the subjects it was frequently impossible to evade these restrictions. This was especially true when, in the territory into which they wanted to migrate, they claimed rights of action which allowed them economically or politically to compete with their prospective new authority. Therefore, in premodern society institutional competition was severely hampered; it cannot even be taken for granted that authorities were interested in investments from abroad, quite apart from immigrants. This was only the case when they did not regard investors or immigrants as political or economic competitors whose freedom of contract was to be restricted at least as much as in their home territory.³³

The increasing restrictions of some economic actors' freedom to supply public goods of their own slowly turned premodern political authorities into organizations with territorially defined monopolies for the supply of legal rules and military security. Here, those

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authorities were most successful who were relatively independent because their subjects were too many or too heterogeneous to act collectively. By the end of the eighteenth century, the premodern political order was usually modified so far that each respective supreme authority could determine which collective goods could be supplied at what price by its subordinate authorities. The state therefore did not emerge because some landlords conquered the manors of others until they ruled a territory big enough to be called state, as suggested by Norbert Elias' concept of competition between feudal authorities.³⁴ The state and a society divided from it rather developed because more successful and therefore higher-ranking authorities restricted the freedom of contract of lower authorities where agreements over the provision of certain collective goods were concerned.

This can be demonstrated by the example of peasant communities which in the fourteenth century enjoyed far-reaching political autonomy but later were subjected to their territorial lordships, eventually being reduced to administrative units of the absolutist state.³⁵ The development shows that the validity of institutions depends on consent - not, of course, everybody's consent, but the consent of the "relevant others" who, in cases of doubt, are powerful enough to enforce the disputed rule.³⁶ It is no surprise, therefore, that the change described above did not come about without violent conflicts. Indeed, the most bloody war ever fought in Europe before the twentieth century must be seen in this context: the Thirty Years War was, among other things, a war about the organizational level of the emerging states.³⁷

States evolved, in other words, because of the efforts of premodern political authorities to avoid competition with each other, that is, primarily with their own subjects who initially could act as political authorities of their own. Paradoxically, the result of this process gave competition among the surviving authorities a new quality. Eventually, this caused the removal of the restrictions of the freedom of contract on product markets mentioned above, thereby paving the way for the modern economic system the growth potential of which is much greater than that of the older system.

One of the factors which hampered the exit, or rather the entry, of the owners of mobile factors of production in premodern times had been the fact that political authorities tended to regard them as economic competitors. The more the authorities specialized in the provision of public goods, at the same time reducing their own participation in product markets, the less did they compete with their own subjects. This came about with the introduction of regular taxes which became possible after the lesser authorities had been subordinated in the way analyzed above. As a consequence, the remaining authorities lost the incentive to avoid competition by creating discriminating institutions for product markets. Instead, the immigration of tax-payers became increasingly attractive. Absolutist governments were as interested in promoting immigration as in preventing the exit of capital or labor. For prospective emigrants, their efforts to keep their population where it was resulted in a significant rise in transaction costs. On the other hand, the political fragmentation of Germany contributed to lowering these costs.³⁸

For peasants, information about political alternatives to their own ruler was inexpensive; migration itself, too, was not costly. Language barriers were no problem within Germany, so that the costs of becoming socialized within one state did not constitute a specific investment that was without value in other polities.

However, even under such conditions it cannot be taken for granted that competition between political authorities leads to the result suggested by the concept introduced above. After the Thirty Years War, the princes of all larger German territories tried to repopulate their lands by conferring privileges to immigrants. At least until the middle of the eighteenth century, mercantilist policies provide abundant examples for the fact that governments used to grant privileges or subsidies to immigrants or investors who threatened to emigrate.³⁹ Even craft guilds practiced a similar policy: There were guilds which granted special bonuses to apprentices who enlisted with them, thereby trying to attract the scarce labor potential away from less generous guilds.⁴⁰

Hitherto it has not been analyzed under which conditions the providers of institutions turned to modifying abstract rules rather than granting privileges. However, Viktor Vanberg's and James Buchanan's distinction between constitutional interests and constitutional theories is helpful.⁴¹ Constitutional theories are abstract expectations about the results a specific institution is going to have, while constitutional interests depend on the subjective evaluation of how these results will affect the judging individual. On the interest-level, agreeing on the introduction of an institution becomes easier when the uncertainty about the result the institution will have is growing, that is, it is the easier the more abstractly the rule is formulated.

In eighteenth-century Germany, institutions were frequently the result of negotiations, for example between a prince and the territorial estates. Vanberg's and Buchanan's argument suggests that this may have been important for the shift from granting privileges to introducing abstract institutions. It was easier to overcome the diverging constitutional interests and to reach an agreement when nobody could know for certain whether the new rule would harm or benefit him.⁴² However, the estates that took part in formulating rules held themselves numerous privileges, and occasionally early modern German territorial diets are interpreted as forums for the rent seeking activities of the members of the estates.⁴³ It is plausible to assume that the estates represented there were interested in gaining new privileges for themselves but opposed the granting of privileges to anybody else because this would diminish the value of the rights they already held. This assumption is borne out by sources from the duchy of Württemberg.⁴⁴

As far as the traditional privileges of the estates are concerned, constitutional theories seem to have been more important, that is, expectations about the general economic results of new rules. Here, agreement becomes the easier, the better these results can be foreseen, that is, the better informed the participants in the negotiations are.⁴⁵ In fact, in the course of the eighteenth century, momentous changes took place: Political actors became much better able to interpret exit (and entry) not only as a reaction to institutional conditions within their jurisdiction and to draw conclusions which eventually led

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to the introduction of institutions favorable to economic growth. During the first half of the century, cameralist and mercantilist authors began to denounce privileges granted to immigrants or foreign investors as harmful.⁴⁶ Just as the influence of physiocrat and early liberal thought, this contributed to the fact that political actors became less responsive to rent seeking and ceased to try to attract capital or labor by increasing legal inequality. Physiocratism and early liberalism were of decisive importance for the efforts to reduce rank-based institutional differences which began about the middle of the eighteenth century.⁴⁷

All this amounts to the hypothesis that in Germany the competition between the states emerging in the course of the early modern age was a crucial factor in the development of the modern economic system. The lack of a universal empire made it more difficult for political authorities to increase their revenues by arbitrarily raising taxes because, within certain limits, economic actors had the chance to evade political pressure. Political actors who wanted to increase the governments' revenues were therefore forced to try and create institutions which allowed individuals to make use of their personal knowledge and to base their decisions on information gained from prices which reflected the relative scarcity of goods traded in the market. Transformation was not a process planned in advance. Even though expectations about the different economic consequences of alternative institutional sets influenced the decisions of early-modern political authorities, nobody knew in advance what the result of the institutional changes would be. Here, too, the competitive process functioned as a discovery procedure.

Conclusion and outlook

The transition of the premodern to the modern economic system in Germany shows that the concept of institutional competition gives rise to questions that hitherto have been treated only in part and without connection. Of course, important results have been achieved, but there are nonetheless a number of problems which merit closer attention than it was possible to give them within the scope of this article.

Until now, for example, there is no comprehensive answer to the question of who made economic policies in premodern Germany. More general, the question which needs to be answered is: who was competing institutionally with each other? In the context of modern history this question is easy to answer. States have monopolized the power to create and enforce legal rules, thereby constituting the supply-side of the market for this kind of public good, while private individuals and firms appear on the demand side. In premodern history, however, distinctions are not as clear. The concept of institutional competition suggests that it is insufficient to concentrate on a number of larger territories that allegedly alone were able to practice effective policies.⁴⁸ Every political authority practiced effective policies in so far as it influenced incentives to economic activities and transaction costs. Traditional economic history has little to say about this problem, but constitutional history, hitherto frequently neglected by economic historians, has plenty

to say.

While the exit and entry of mobile factors of production were obviously influencing the authorities' supply of institutions, within the scope of this paper it was impossible to give the necessary attention to the effect the factor voice had. Current research on premodern political resistance and on the litigation of subjects against their lords is rather concentrating on what the members of the lower orders thought about legal questions and on the reception of revolutionary ideologies from France.⁴⁹ As yet, there are few studies on the problem of how voice influenced the rule-systems authorities supplied.⁵⁰ Here, legal history is therefore no great help; field studies are necessary.

Likewise, there are numerous open questions about the institutional changes initiated because of exit or voice. There are no empirical studies about the problem of the shift from competition by privileges to competition by abstract institutions. Vanberg's and Buchanan's theoretical approach which was briefly introduced above makes it possible to formulate the questions more precisely, and suggests some possible answers. However, this does not exclude the possibility that the authors abstract from a number of factors which may have been important. How about the rulers' time horizon, for example? When a ruler calculated in the short run, this would suggest that he was interested in quickly maximizing his income and in granting privileges, if the recipients paid for them. Institutional suppliers like absolutist rulers who could expect to govern for life would have had less incentives to granting privileges than the councils of free towns which were only elected for one year. On the whole it does not seem to be very helpful to contrast absolutist and non-absolutist authorities too sharply.

These are only a few of the problems to which the concept of institutional competition is leading the historian. It is more than just a pattern to restructure large parts of economic, constitutional and legal history. It rather helps to see new links between these areas of historical research and to read the sources in a new light. Altogether institutional competition seems to be a concept that may be exceptionally fruitful when applied to economic history.

Notes

1. For types of explanations used in history and the contrasting economic methodology see A.W. Coats, "Explanations in History and Economics," *Social Research* 56, no. 2 (Summer 1989): 331-360, esp. 346 f.

2. This is exemplified by the debate about the "moral economy" of early modern peasants, cf. Hilton Root, "The 'Moral Economy' of the Pre-Revolutionary French Peasant," *Science and Society* 54 (1990): 351-361.

3. Cf. Paul Münch, "Grundwerte der frühneuzeitlichen Ständegesellschaft? Aufriss einer vernachlässigten Thematik," in *Ständische Gesellschaft und soziale Mobilität*, ed. Winfried Schulze and Helmut Gabel (Munich: Oldenbourg, 1988): 53-72, 54.

4. Erich Weede, *Wirtschaft, Staat und Gesellschaft* (Tübingen: Mohr, 1990): 35.

5. Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge et al.: Cambridge University Press, 1990): 3.

6. North, *Institutions*, 61 ff.

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7. See the seminal work by Albert O. Hirschman, *Exit, Voice, and Loyalty* (Cambridge/Mass.: Harvard University Press, 1970); Michael Wohlgemuth, "Institutional Competition: Notes on an Unfinished Agenda," *Journal des Economistes et des Etudes Humaines* 6 (1995): 277-299; Manfred E. Streit, "Systemwettbewerb und Harmonisierung im europäischen Integrationsprozess", in *Entstehung und Wettbewerb von Systemen*, ed. Dieter Cassel (Berlin: Duncker & Humblot, 1996): 223-244.
8. Russel Hardin, *Collective Action* (Baltimore and London: John Hopkins University Press): 17 ff.
9. Cf. Erich Hoppmann, "Wettbewerb als Norm der Wettbewerbspolitik," *ORDO* 18 (1967): 77-94, 88 f.
10. For the importance of the exit option in competitive processes see Hirschman, *Exit, Voice and Loyalty*, 21 ff. I am indebted to Jonathan J. Bean for the indication that there is, in fact, another way of exit that does not involve physical withdrawal of capital or labor from a jurisdiction: the creation of a so-called "informal sector", that is, of an area of economic activity that is not regulated by the institutions devised by the government but by institutions that are intentionally or unintentionally developed by the economic actors themselves. In this way, economic actors have the chance to "opt out of the legal system". However, it should be noted that due to the difficulty to enforce contracts transaction costs tend to be high in the informal sector.
11. *Ibid.*, 30 ff.
12. Wohlgemuth, "Institutional Competition," 281.
13. This is by no means a new idea. It was probably first noted in 1776 by Edward Gibbon, *The Decline and Fall of the Roman Empire* (Harmondsworth: Penguin, 1985): 111. Without referring to Gibbon, Milton Friedman, *Capitalism and Freedom* (Chicago and London: University of Chicago Press, 1982): 3, is making a similar point.
14. Cf. Friedrich A. von Hayek, "Competition as a Discovery Procedure," in: *ibid.*, *New Studies in Philosophy, Politics, Economy and the History of Ideas* (London: Routledge & Kegan, 1978): 179-190.
15. For this distinction see Friedrich A. von Hayek, *Law, Legislation and Liberty, vol. 1: Rules and Order* (London: Routledge, 1982), 48 f.
16. Streit, "Systemwettbewerb," 233.
17. Walter Eucken, *Grundsätze der Wirtschaftspolitik* (Tübingen: Mohr, 1990), 31.
18. Streit, "Systemwettbewerb," 234.
19. *Ibid.*, 227; cf. Eric Lionel Jones, *The European Miracle* (Cambridge: Cambridge University Press, 1993): 114 ff. See also Mancur Olson, *The Rise and Decline of Nations* (New Haven: Yale University Press, 1982): 140 f., who notes that international factor mobility may disrupt privilege-based distributional coalitions.
20. Rudolf Vierhaus, "Deutschland im Zeitalter des Absolutismus (1648-1763)," in *Deutsche Geschichte, vol. 2: Frühe Neuzeit*, ed. Bernd Moeller, Martin Heckel, Rudolf Vierhaus and Karl Otmar Freiherr von Aretin (Göttingen: Vandenhoeck & Ruprecht, 1985): 355-512, 450 f.
21. The discussion about the "medieval state" had immense significance for the development of German historiography. Initially, the existence of a state was assumed and described in terms borrowed from nineteenth-century public law, authors like Rudolph Sohm, *Die altdeutsche Reichs- und Gerichtsverfassung* (Weimar 1871, repr. Leipzig: Zentralantiquariat der DDR, 1971), Georg von Below, *Der deutsche Staat des Mittelalters* (Leipzig 1914, repr. Leipzig: Zentralantiquariat der DDR, 1975), and later Heinrich Mitteis, *Der Staat des hohen Mittelalters* (Weimer: Böhlau, 1953), being prominent proponents of this approach. Its weaknesses were first demonstrated by Fritz Kern, *Kingship and Law in the Middle Ages* (Oxford: Blackwell, 1948), who noted the lack of legislative functions of medieval rulers. It was Otto Brunner who gained wide acceptance for his new approach which relied on terminology and concepts adopted from contemporary sources, and who realized that the concept of a monopoly of force does not make sense in respect of premodern society: Otto Brunner, *Land und Herrschaft* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1990), trans. *Land and Lordship* (Philadelphia: University of Pennsylvania Press, 1992).
22. Oliver Volckart, *Stabilität und Wandel der Ständegesellschaft aus institutionenökonomischer Perspektive* (Max-Planck-Institute for Research into Economic Systems Jena, Discussion Paper 07-97), Jena 1997, 11.
23. *Ibid.*, 20 ff.
24. Stefano Fenoaltea, "The Rise and Fall of a Theoretical Model: The Manorial System," *Journal of*

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- Economic History* 35 (1975): 386-409, 388.
25. Brunner, *Land und Herrschaft*, 252.
 26. Oliver Volckart, *The Open Constitution and its Enemies* (Max-Planck-Institute for Research into Economic Systems Jena, Discussion Paper 05-98), Jena 1998, 7.
 27. Karlheinz Blaschke, "Steuer, Geldwirtschaft und Staat in vorindustrieller Zeit," in *Wirtschaftskräfte und Wirtschaftswege, vol. 1: Mittelmeer und Kontinent. Festschrift für Hermann Kellenbenz*, ed. Jürgen Schneider (Stuttgart: Klett-Cotta, 1978): 31-41, 34.
 28. Manfred E. Streit and Gerhard Wegner, "Information, Transactions and Catallaxy," in *Explaining Process and Change*, ed. Ulrich Witt (Ann Arbor Mich.: Michigan University Press): 125-149, 143.
 29. Cf. Ulf Dirlmeier, *Mittelalterliche Hoheitsträger im wirtschaftlichen Wettbewerb* (Wiesbaden: Steiner, 1966): 3-24.
 30. François Louis Ganshof and Adriaan Verhulst, "Medieval Agrarian Society in its Prime: France, The Low Countries, and Western Germany," in *The Cambridge Economic History of Europe, vol. 1: The Agrarian Life of the Middle Ages*, ed. Michael M. Postan (Cambridge, New York, New Rochelle, Melbourne, Sidney: Cambridge University Press, 1966): 291-339, 310 ff.
 31. Mancur Olson, *The Logic of Collective Action* (Cambridge/Mass. and London: Harvard University Press, 1965): 11.
 32. *Ibid.*, 51.
 33. Volckart, *Stabilität und Wandel der Ständegesellschaft*, 28.
 34. Norbert Elias, *Über den Prozeß der Zivilisation, vol. 2: Entwurf zu einer Theorie der Zivilisation* (Frankfurt: Suhrkamp, 1990): 133 ff. (trans. *The Civilizing Process* (New York: Urizen Books, 1978)).
 35. Peter Blickle, *Deutsche Untertanen* (Munich: Oldenbourg, 1981): 40-43.
 36. James S. Coleman, *Foundations of Social Theory* (Cambridge/Mass. and London: Balknap, 1990): 58.
 37. Cf. Johannes Burkhardt, *Der Dreißigjährige Krieg* (Frankfurt: Suhrkamp, 1992): 27.
 38. Eighteenth-century peasants in the small principality of Hohenzollern-Hechingen in southwestern Germany, for example, used to exit to Austrian territories to put pressure on their lord who wanted to restrict their freedom to hunt and to increase socage. Volker Press, "Von den Bauernrevolten des 16. zur konstitutionellen Verfassung des 19. Jahrhunderts," in *Frühneuzeitliche Obrigkeiten im Wettbewerb*, ed. Oliver Volckart (Baden-Baden: Nomos, 1997): 99-125, 104.
 39. Cf. Rudolf Forberger, *Die Manufaktur in Sachsen vom Ende des 16. bis zum Anfang des 19. Jahrhunderts* (Berlin: Akademie-Verlag, 1958): 40; Stefi Jersch-Wenzel, "Preußen als Einwanderungsland," in *Preußen: Beiträge zu einer politischen Kultur*, ed. Manfred Schlenke (Reinbek: Rowohlt, 1981): 136-161, 145 f.; Rudolf Endres, "Wirtschaftspolitik in Ansbach-Bayreuth im Zeitalter des Absolutismus," *Jahrbuch für Wirtschaftsgeschichte* (2/1994): 97-117, 99; Barbara Dölemeyer, "Die Aufnahmeprivilegien für Hugenotten im europäischen Refuge," in *Das Privileg im europäischen Vergleich*, ed. *ibid.* and Heinz Mohnhaupt (Frankfurt: Vittorio Klostermann, 1997): 303-328, 324 f.
 40. Friedrich Lütge, *Reich und Wirtschaft* (Dortmund: Gesellschaft für Westfälische Wirtschaftsgeschichte, 1961): 9.
 41. Viktor Vanberg and James M. Buchanan, "Interests and Theories in Constitutional Choice," *Journal of Theoretical Politics* 1 (1989): 49-62.
 42. *Ibid.*, 54.
 43. Rolf Walter, "Merkantilpolitische Handelshemmnisse (im territorialen Vergleich) am Beispiel eines territorial relativ zersplitterten Gebietes," in *Frühneuzeitliche Obrigkeiten*, ed. Volckart, 212-243, 233.
 44. *Ibid.*, 231.
 45. Vanberg and Buchanan, "Interests and Theories," 60.
 46. Cf. for example Johann H.G. von Justi, *Die Grundfeste zu der Macht und Glückseligkeit der Staaten, vols. 1 and 2* (Königsberg and Leipzig 1760-61, repr. Aalen: Scientia, 1965): 239, 447; *ibid.*, *Grundsätze der Policey-Wissenschaft* (Göttingen 1756, repr. Düsseldorf: Verlag Wirtschaft und Finanzen, 1993): 39.
 47. Gustav Otruba, "Englische Fabrikanten und Maschinisten zur Zeit Maria Theresias und Josephs II. in Österreich," in *Frühneuzeitliche Obrigkeiten*, ed. Volckart, 186-196, 195; Hans Jaeger, *Geschichte der*

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48. Cf. for example Fritz Blaich, *Die Epoche des Merkantilismus* (Wiesbaden: Steiner, 1973): 142.

49. Cf. Wolfgang Schmale, "Enlightenment Philosophy and Peasant Ideas on Fundamental and Human Rights," in *Human Rights and Cultural Diversity*, ed. ibid. (Goldbach: Keip Publishing, 1993): 163-182.

50. For an exception see Winfried Schulze, "'Geben Aufruhr und Aufstand Anlaß zu neuen heilsamen Gesetzen.' Beobachtungen über die Wirkungen bäuerlichen Widerstands in der Frühen Neuzeit," in *Aufruhr, Revolten und Prozesse*, ed. ibid. (Stuttgart: Klett-Cotta, 1983): 261-285.

