



A Game of Give and Take? Public Expenditure and Tax Legitimization

Christine Osterloh-Konrad

Tax Law Colloquium, 10 January 2025, Vienna



A renaissance of the benefit principle?

Benefit principle (e.g., *Hobbes, Rousseau*)

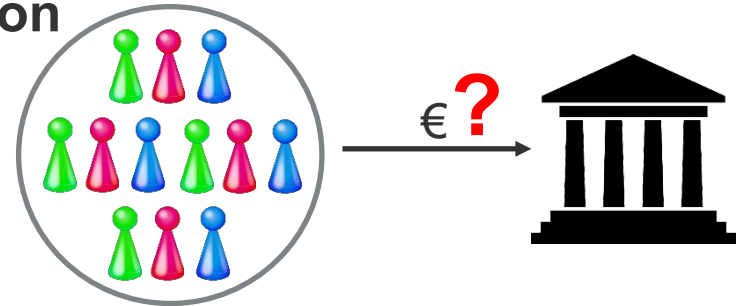
vs.

Ability-to-pay principle (e.g., *Mill, Smith*) (< **equal sacrifice**)

- Today: tax legitimization mostly based on ability to pay, but:
- Renaissance of the benefit principle?
 - Benefit principle for taxing non-citizen residents (*Avi-Yonah*)?
P: no congruence **vote** – pay – benefit
 - Benefit principle relevant for slicing the international tax pie?

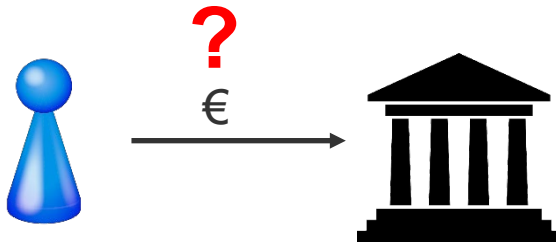
Different dimensions of tax legitimization

- Does a particular authority legitimately raise taxes? → legitimization of the **“if” of taxation**

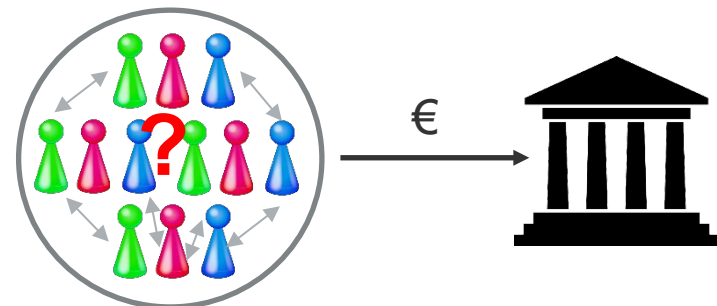


- How much does a particular taxpayer have to pay? → legitimization of the **“how much” of taxation**

How much does he have to pay in absolute terms? → **upper limits of taxation**



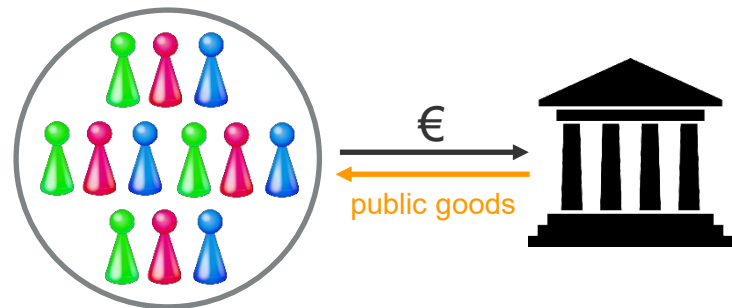
How much does he have to pay in relation to others? → **tax equality**



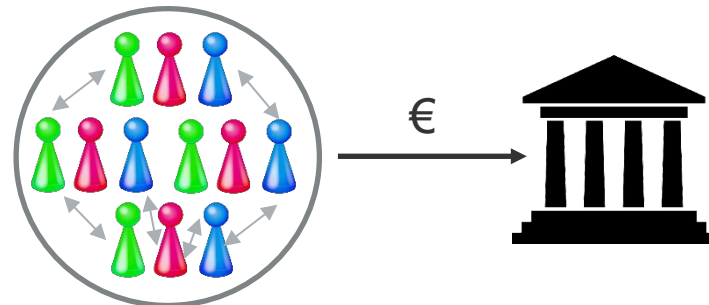


The nation state as the paradigm

- Social contract theory – legitimization by consent (?); consent is feasible because all citizens benefit from a centralized state authority
 - ➔ Legitimization of the **“if” of taxation** vis-à-vis the **community as a whole** by the benefit principle



- Distributing the fiscal burden among taxpayers: **equal sacrifice / ability to pay** as tax-specific standard of equality ➔ the **“how much” of taxation in relation to others**





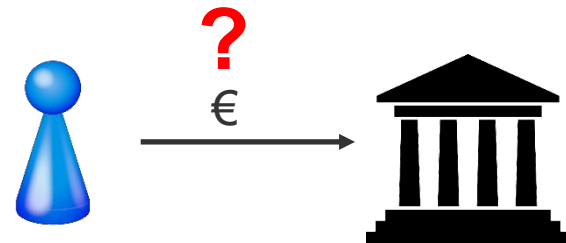
The nation state as the paradigm

- The **standard of equal sacrifice** requires / presupposes duties of solidarity; those duties arguably only arise within a community (co-membership as the basis of enhanced duties of justice)

Cf. the discussion on global justice: humanitarian duties vs. redistribution

➔ **Which individuals belong to a particular community?**

- Legitimizing (and limiting) the individual tax burden in absolute terms ➔ **upper limits of taxation?**

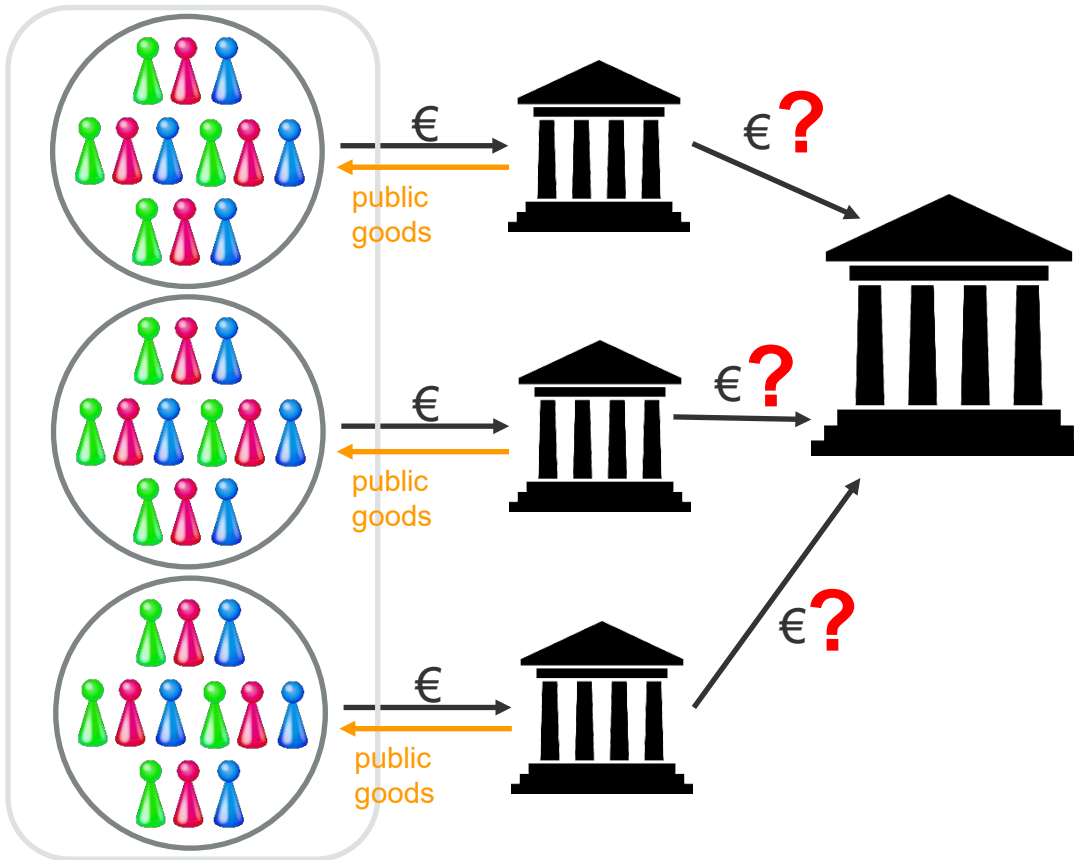


P: evaluation depends on the amount of public goods financed by the state (minimal state vs. welfare state), thus on **public spending**



Challenge I: multi-layered structures

Example: multinational structures like the EU



- Legitimization by the benefit principle?
community = the member states?

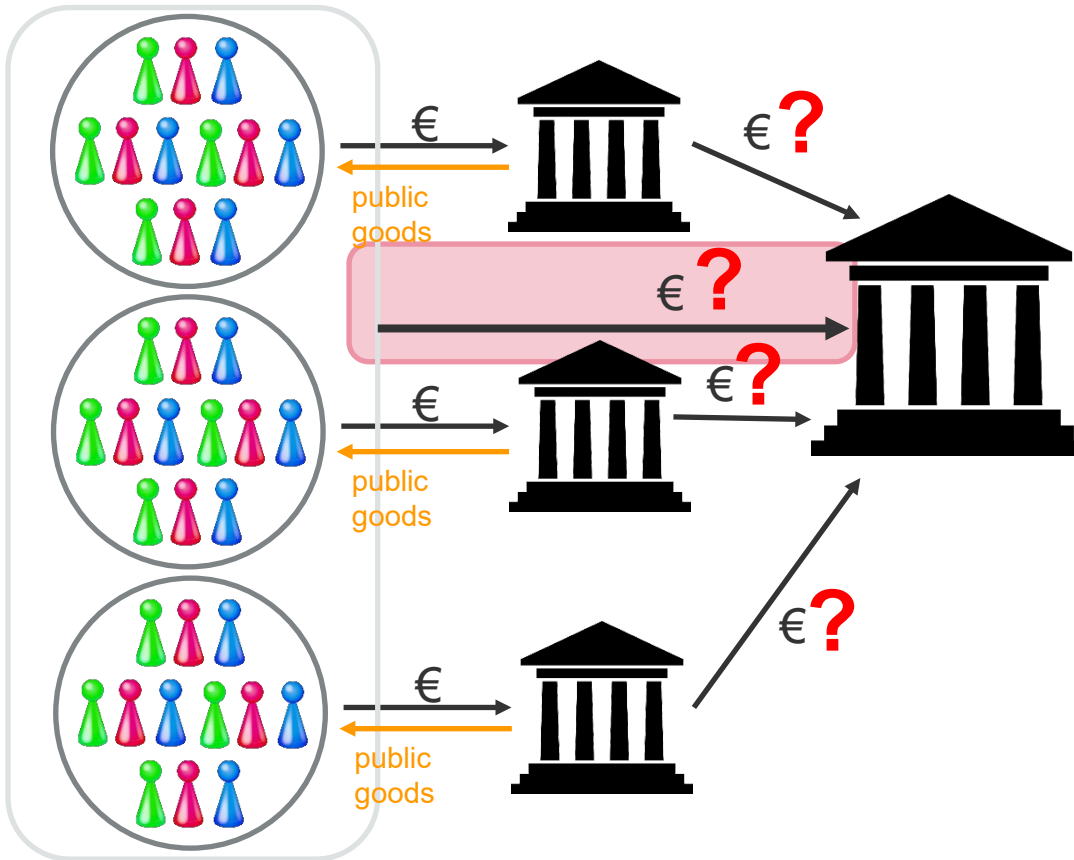
Currently, the justification for taxing individuals does not align with the redistribution key at the European level

- Redistribution within the community of member states → sufficient basis for enhanced duties of justice?



Challenge I: multi-layered structures

Example: multinational structures like the EU



Discussion on European taxes → shifting perspective for tax legitimization?

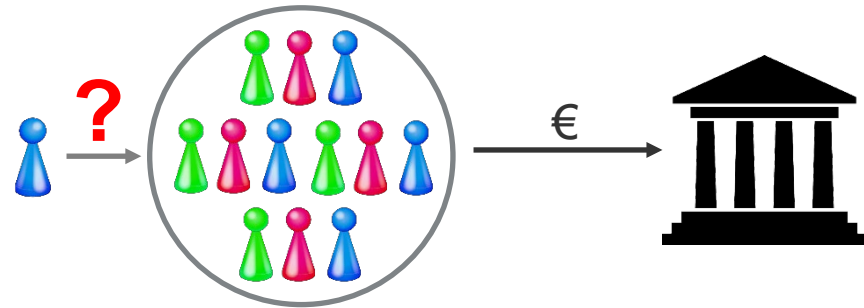


Challenge II: international taxation

➤ Taxing non-citizen residents...

... on the basis of the benefit principle?

... on a different basis (P: voting rights?)



! Distinguish between the “if” and the “**how much**” of taxation (→ which individuals are bound by which particular duties of justice?) **!**

➤ Dividing the international tax pie of **MNEs’ global profits**

- Benefit = public goods provided to the respective MNE?

P: persuasiveness for the “how much” in addition to the “if”?

P: criterion does not cover the relation to other states

- Benefit = slice in the tax pie?

P: persuasiveness of a distribution based on burdens born by the states?



Thank you for your attention!