

# Klaus Vogel Lecture 2021: Unbundled Tax Sovereignty – Refining the Challenges

**This lecture argues that globalization is altering the interaction between states and their constituents. Taxpayers' mobility and their ability to consume public goods and services a-la-carte threatens to transform taxpayers from equal members of a political community into consumers of public goods and services. States should therefore reconfigure their social contracts with their constituents to ensure the continued legitimacy of their sovereignty.**

## 1. Introduction

The sovereign power to tax seems obvious:<sup>1</sup> at least in a closed economy, the monopolistic power of the sovereign state to tax its subjects is taken for granted. From the traditional perspective, we envision a group of constituents ruled by a sovereign that is entrusted with exclusive tax legislative powers aiming (at least ideally) to maximize the welfare of its taxpayers—constituents and justly (re) distribute it, while reinforcing the underlying normative values shared by the group. A crucial part of the role of that sovereign is to guarantee certain public goods and services. In a closed economy, such public goods and services are provided as a bundle and are paid for by the state. Paying for this bundle is one of the key roles of taxation, which uses the coercive power of the state to make us pay for non-excludable, non-rivalrous goods that the market alone could not adequately provide. Hence, the coercive power of the sovereign state is a crucial feature of taxation. Under the forces of globalization, however, this power is

at risk of unravelling.<sup>2</sup> Globalization allows individuals to explore opportunities beyond state borders. Such opportunities are, of course, crucial for people's liberty as well as for human flourishing. They also allow individuals to consume and pay for public goods and services across multiple jurisdictions – to consume them à la carte rather than be limited to the (bundled) “fixed menu” offered in a single jurisdiction. But, if left unchecked, this process of unbundling threatens to challenge the normative basis of the power of the state to tax. Honouring the legacy of Klaus Vogel in international taxation is a particularly apt occasion to adopt a global perspective and re-examine the role of the tax state under globalization.

One of the consequences of globalization is that states now compete with one another by using their public goods to attract resources as well as residents. To the extent that they do so, tax becomes the currency of competition. This market-like competition could affect sovereignty in a number of important ways. It may affect the tax “price” states can levy for their public goods and services. It may also affect the kinds and levels of public goods and services they provide. And, since taxpayers are mobile, competition may affect the size and the constituency of the group that is subject to taxation, if and when residents choose to relocate to jurisdictions that offer superior “deals” on public goods and services for a more favourable tax “price” (as is predicted under the Tiebout model).<sup>3</sup> Finally, under many countries' regimes, taxpayers are allowed to unbundle the public goods and services offered by the state (i.e. to consume them selectively and pay for them separately), thus providing current as well as future constituents with the opportunity to spread their various interactions with political communities across national borders and to “pick and choose” among the public goods (economic as well as social) that they offer.

This ability to unbundle interactions with the state, which is the focus of this lecture, has major implications for (tax) sovereignty. For better or worse, opening the door to such unbundling is changing the way we think (and should think) about the social contract: it is transforming our perception of the tax state and forces us to rethink the nature of the interaction between states and their constituents.

Fragmentation – the ability to unbundle state-provided goods and services – offers a lot of flexibility for both

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1. Tax sovereignty is often discussed in the context of the independence of the state when faced with external pressure from other sovereign states or international organizations seeking to affect its tax policies. For a recent review of the literature, see Y. Brauner, *BEPS, Sovereignty, and the Future of the International Tax Regime*, in *Tax Sovereignty in the BEPS Era* (A. Sergio, A. Rocha & A. Christians, eds., Kluwer 2017). See also A. Christians, *Sovereignty, Taxation and Social Contract*, 18 *Minn. J. Intl. L.*, p. 99 (1999). The focus of my discussion here is different. In discussing tax sovereignty, I focus on the exclusive power of the state to tax its own subjects – the individuals who are subjects under the domain of tax law – and ask how globalization is transforming this power. I maintain that tax sovereignty under globalization is at risk of unravelling.

2. Compare D. Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (W.W. Norton 2011), who argues that democracy, national sovereignty, and global economic integration are mutually incompatible.

3. C.M. Tiebout, *A Pure Theory of Local Expenditures*, 64 *J. Political Econ.*, p. 416 (1956).

taxpayers and states. Think, for example, of non-dom or other favourable in-patriate regimes that offer high-net-worth individuals the option to reside in a given country and enjoy many of the appealing public goods and services it offers (such as its green parks, culture, arts, law and order, and so on) for an extended period of time. At the same time, it allows them to locate other aspects of their lives (their business activity, their higher education, their property and investments, their bank accounts, their citizenship and voting rights, for instance) and, importantly, much of their tax base in various other locations overseas. Or, to take another example: consider individuals who ordinarily live, work, study or do business in one country, but chose to go back to what they consider their home country during the pandemic – thereby benefiting from the public health services, welfare system and public funds that those home states spent (and will probably collect from the taxes paid by future generations).

Fragmentation effectively allows certain taxpayers to tailor the package of public goods they consume to their own preferences and to shop for the best tax “offers”. Hence, in addition to potentially benefitting taxpayers, it can lower governmental waste in producing public goods for which there is little or no demand. At the same time, fragmentation subjects state-provided goods and services to market logic. Thus, it entails not only the benefits of the market but also its drawbacks. Competition and fragmentation commodify the state–constituent interaction and undermine the ability of the former to promote distributive justice. What is important for our analysis is the focus that the invisible hand of the market places on the elasticities of taxpayers’ choices. The more elastic such choices are, the better the “deal” they can expect. In seeking to pursue attractive taxpayers, necessary resources and desirable activities, the state is more likely to offer taxpayers whose choices are more elastic superior public goods and services at more attractive tax “prices”. Under globalization, elasticity is a function of one’s ability to relocate certain connecting factors – factors that render individuals subject to states’ coercive powers or entitle them to state benefits – to more attractive jurisdictions. Fragmentation makes this more likely to happen, at least more likely for some taxpayers.

In other words, while some taxpayers are able to opt out of the system, leverage on competing jurisdictions and diversify their membership in the community, others are not. Unbundling, therefore, creates new factions within society – between those who are in a position to opt out of the system and others who are less able or less inclined to do so; and between some who are relatively free to diversify their interaction across many jurisdictions and others who have to bundle all of the aspects of their lives and tie them to a single jurisdiction.

The effect of competition and fragmentation on states’ tax sovereignty is considerable: not only may a social contract that entrenches such new factions become unstable, its very legitimacy is also debatable. Hence, the need to renegotiate the social contract to support a stable system of public-goods provision and to do so equitably while preserving the (political) communities we live in. This need

becomes more acute than ever in times of crisis, such as the recent global COVID-19 pandemic, in which we are reminded of the importance of the state as we look to it to provide long-term solutions.

The challenge for tax policy, I argue, is how to preserve the opportunities that globalization offers without undermining the sustainability of a sufficiently robust political community, one that provides all of its constituents with the public goods they need for the pursuit of human flourishing. One way to achieve this, I argue, is to abandon the binary distinction between a closed economy versus completely fragmented competition. Instead, states should offer “bundled competition” – where they bundle together a basic package of public goods and services in return for “membership fees” in the form of taxes that are charged on members’ ability to pay rather than their use of those public goods and services.

This lecture will proceed as follows: section 2. explores the normative basis on which fiscal sovereignty stands, divorced from globalization. Section 3. then explains the effects of globalization, focusing on two of its main features: (i) mobility – that is, the capacity of certain individuals to move, relatively freely, across national borders (mostly because many states find them attractive); and (ii) fragmentation – the capacity of certain people to diversify their fiscal interactions with states, selecting from among the public goods and services of multiple jurisdictions. For each of these features, I will describe their implications and normatively evaluate them. I will explore the benefits inherent in competition and fragmentation but also explain why I believe that, if left unchecked, they may eventually undermine the very basis of the power of the state to tax. Finally, in section 4., I will outline a very preliminary potential solution to this bind and highlight some major caveats.

## 2. Tax Sovereignty

### 2.1. Introductory remarks

Sovereignty – the powers vested in the state to pursue collective self-determination – endows the state with the exclusive authority to coerce its constituents in order to pursue their collective will. The authority of the state originates in its constituents, as these constituents combine their independent capacities to co-author a regime that promotes their collective will in ways that would not have been possible individually.

But the state’s authority demands justice. According to some, it is the coercive power of the state that is key in demanding justice. Thomas Nagel (2005), for example, often refers to coercion as both ensuring cooperation “because it doesn’t take many defectors to make such a system unravel”<sup>4</sup> and, at the same time, requiring legitimation. Nagel contends that:

4. T. Nagel, *The Problem of Global Justice*, 33 Phil. & Pub. Aff. 2, p. 120 (2005).

The state makes unique demands on the will of its members... and those exceptional demands bring with them exceptional obligations, the positive obligations of justice.<sup>5</sup>

Others, although concurring that the state produces especially stringent demands of distributive justice, do not emphasize coercion as the only reason for imposing obligations of justice. As Sangiovanni (2007) notes, “the argument does not require the coercive imposition of ‘societal rules’. All that is required is that the system of societal rules be nonvoluntary for those subject to it”. The state:

must give each of us special reason to accept its laws strong enough to rebut any objection we might have to them. The justification, in turn, must show that the law could reasonably be seen as acceptable from within each person’s individual point of view, although no one consents to it.<sup>6</sup>

One way to present this idea of sovereignty as a locus of collective self-determination is through the artifact of the social contract. Under the social contract, people endow the state with the exclusive power to coerce them, and exchange some of their independence for membership in the political system. Thus, the power to coerce the people for the people inherently entails major limitations. Key among these limitations, and the one I am going to focus on here, is the duty of justice the state owes its constituents.

The translation of these general principles into the fiscal context sounds familiar to anyone who has studied tax: taxes are the coercive instrument that the state uses to pay for the collective goods and services it provides. This power to coerce the people for the people is inherently constrained. This is why we demand that good taxes should be both efficient and equitable. Simply put, if the social contract is assumed to be created by the people and for the people, it ought to serve their mutual interest and treat each of them with equal concern and respect. The following will explain in more detail the goals of tax sovereignty and its basic limitations.

## 2.2. Supplying public goods

If not paid for by taxation, public goods and services will be undersupplied by the free market, despite their desirability. Their non-excludable nature encourages consumers to free-ride them and prevents their suppliers from collecting payment for them. Tax allows us to overcome these problems by using the coercive power of the state to collect payments and use the funds for the provision of public goods and services.

This reasoning for the collection of taxes is, in a nutshell, the economic basis for the social contract:<sup>7</sup> under the social contract, we, the people, entrust the state with the exclusive power to coerce us to pay for its services and to make a collective decision as to what goods and services will be publicly provided and the level of taxes imposed. Ideally, the state will provide public goods efficiently –

5. Id., at p. 130.

6. A. Sangiovanni, *Global Justice, Reciprocity, and the State*, 35 Phil. & Pub. Aff. 1, p. 3, at p. 15 (2007).

7. This lecture does not engage with other aspects of the contract, such as political governance.

that is, the benefits it provides will be greater than their costs, making the social contract well worth engaging in.

## 2.3. Equal concern and distributive justice

As mentioned in section 2.1., there are inherent limitations as to the kinds of powers that should be vested in the state, and how they can be legitimately used. First, and quite obviously, is the duty to treat each of the state’s constituents with equal concern and respect.<sup>8</sup> As Nagel argues:

states not only foster cooperation by coercively enforcing rules but implicate the will of those subject to their coercive authority by making, in the name of all, regulations that apply to them all.<sup>9</sup>

According to Cohen and Sabel (2006), will implication is significant since “it is impermissible to speak in someone’s name... unless that person... is... given equal consideration in making the regulations”.<sup>10</sup> Regulations made by the state must, therefore, be justified to their co-authors. “And not just any justification will do... the justification must treat each person... in whose name the coercion is exercised – as an equal”.<sup>11</sup> Second, as John Rawls (1971) has taught us, inherent in any plausible social institution is the precondition of fairness in the allocation of the increased social welfare. We can, of course, debate what level of fairness is required for the social contract to be acceptable,<sup>12</sup> but, unless one subscribes to strict libertarianism, most would agree that some level of distributive justice is necessary – or else, behind the veil of ignorance, stakeholders would simply not have agreed to a contract that treats them unfairly.

This is the reason why we (at least, I) insist that a good tax would not only increase our collective welfare by making us pay for public goods but also be distributively just, and – importantly – treat each of us with equal concern and respect. In other words, even if we cannot always agree on the desirable level of distributive justice, the very consideration of justice is – or should be – a crucial part of any tax discussion in the domestic setting.

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8. Otherwise, under the social-contract notion, there would be no reason to assume that they have committed to this agreement. This, of course, is an oversimplification of the concept of consent to the social contract. See, for example, J. Wolff, *An Introduction to Political Philosophy* 3rd edn., pp. 42-46 (Oxford U. Press 2015) for a general survey of the debate.
  9. J. Cohen & C. Sabel, *Extram Republicanam Nulla Justitia?*, 34 Phil. & Pub. Aff. 2, p. 160 (2006), available at [https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/Extra\\_Rempublicam\\_Nulla\\_Justitia.pdf](https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/Extra_Rempublicam_Nulla_Justitia.pdf) (accessed 15 June 2022).
  10. Id.
  11. Id.
  12. Rawls, of course, has a specific prescription for what fairness requires. See J. Rawls, *A Theory of Justice* (Harvard U. Press 1971). Others have different views on that. But – without going into the specific details of what might constitute a fair arrangement – it is reasonable to assume for the sake of this argument that, in the absence of globalization, many (if not all) states would be able to establish tax regimes that adhere to a minimal standard of fairness, a standard that would render the coercive power of the state legitimate. In the ideal case, such a regime would not only promote efficiency by providing desirable public goods but would also do so fairly, by adhering to some level of distributive justice. Needless to say, different countries adopt different taxation regimes; and, even though these differ from one another, many, if not all of them, may be legitimate.

The key point of the present analysis is that the two key aspects of a good tax (collecting revenues to pay for the state and promoting justice) are inherently entangled. The coercive power to tax is what enables the state to operate and allows for the provision of public goods. At the same time, the coercive power of the state is what makes the demand for justice so crucial for tax law. Justice – equal respect and concern including distributive justice – provides the coercive power of the state with its necessary legitimacy.

#### 2.4. Membership in a political community

Inherent in the concept of the political community of the state is the idea of membership. Parties to the social contract become members of a political community. The social contract, by definition, not only determines the duty to pay taxes and the responsibility of the state to act fairly but also defines (or rather assumes) the group that is subject to such rights and duties. In order to run the thought experiment of the social contract, we have to assume who the stakeholders are – that is, which people become parties to that contract. Like the founding members of a club, a community or a corporation who declare themselves members, and, thus, claim their entitlement to certain benefits and assume certain duties, the social-contract metaphor envisions a group of members in the political community of the state, who, by belonging to such a community, subject themselves to the rights and duties it confers.

Like many other clubs, states also interact with non-members. They can offer them the opportunity to join under specific terms (for example, to immigrate and become full members of the political community) or they can rent out some of their goods and services for a fee. Just as tennis clubs can sell day passes or allow guests to use the tennis courts for a fee, states can permit foreigners to visit, rent, purchase assets, establish businesses in the country, trade with locals, work, study or even get married without becoming full “members”. These arrangements are substantively different from membership. Investors, visitors and business owners all pay market prices (in taxes) for their use of the country’s resources rather than pay their fair share toward financing its operation as members would.

Membership, on the one hand, and day passes (or permits to use the facilities), on the other, represent the two possible ways to interact with the state. The latter is a choice-based consumeristic approach that represents a use-based interaction between the state (as a provider of public goods and services) and its taxpayers–consumers. Users do not belong to the political community, nor do they have a voice in shaping it or a unique commitment to other stakeholders. Their interaction with the state is limited to market interaction, and rightly so, as the market interaction fully captures their relationship with the state. Both users and the state are focused on maximizing mutual economic benefits.

Membership, on the other hand, represents a personal affiliation between the state and its stakeholders – one that

involves financial aspects (paying taxes), but is not defined by them. People need political communities not only to attain various material or other ends but also for identity and self-reference purposes. For members, the political community is a means of satisfying the human need for social stability and belonging.<sup>13</sup> Members of the political community are not merely users of the public goods and services provided by the state, and are not only subjects under its coercive regime; they are also parties to the social contract, and, thus, co-authors of its regime. Their membership in the political community allows them to create and be part of a larger social project. To borrow Nagel’s terminology, they are part of a unique “coercive co-authorship” or, as Cohen and Sabel explain, “individuals are both subjects in law’s empire and citizens in law’s republic”.<sup>14</sup> As such, they enjoy unique privileges and have special duties. They have a voice – at least ideally – to determine the level of tax as well as the kinds and level of public goods the state offers. They also take up unique commitments to the community of which they are part: to obey its rules and to support its just institutions.

### 3. Introducing Globalization

#### 3.1. Introductory remarks

The traditional analysis of tax sovereignty I have, thus far, described envisions a state that is ruled by a sovereign entrusted with exclusive tax legislative power over a set group of constituents seeking (at least, ideally) to pursue normatively desirable goals. The shift to an open, competitive economy under globalization changes all that. In the global economy, many individuals operate in more than one capacity. They operate beyond their original states’ borders. They can (and do) explore opportunities overseas, consume public goods in foreign jurisdictions, and engage with those jurisdictions on multiple levels. Many are both members in one state and users in other jurisdictions, and many are members of more than one state. This is where the problem becomes convoluted.

States can obviously trade with non-members. Such interaction ostensibly does not affect their domestic governance, as states are – supposedly – still entrusted with the same coercive powers under the same old social contract to provide public goods and services to a set group of constituents.<sup>15</sup> In reality, however, competition among states, along with trade between states and non-members, creates a reality of fragmented competition that unsettles the basis of states’ tax sovereignty.

Two features of fragmented competition are particularly relevant to our understanding of tax sovereignty and specifically important for analysing the interaction between

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13. J. Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics* pp. 74-155 (Oxford U. Press 1994) and C. Gans, *The Liberal Foundations of Cultural Nationalism*, 30 Can. J. Phil 3, p. 441 (2000).
  14. Cohen & Sabel, *supra* n. 9.
  15. Compare W. Schön, *Taxation and Democracy*, 72. Tax L. Rev., p. 235 (2019) and Working Paper of the Max Planck Institute for Tax Law and Public Finance No. 2018-13 considering the relationships between democracy and taxation, where globalization and tax competition undermine the “congruence” between those who vote on the tax, those who pay it, and those who benefit from it.

states and their constituents in the era of globalization: people's mobility and the fragmentation of public goods and services. These are discussed in sections 3.2. to 3.5.

### 3.2. Competition for members

People are increasingly mobile, which enables many to choose from among alternative jurisdictions for relocation. States often encourage such mobility by offering certain privileges and incentives to desirable potential taxpayers. Members-in-demand relocate to more appealing jurisdictions, as states increasingly lure away young and talented individuals as well as high-net-worth ones.<sup>16</sup> The classic example of this phenomenon is, perhaps, the sale of visas or even passports.<sup>17</sup> Tax and public policies have also become subject, to a considerable extent, to the rules of market supply and demand for states. In its extreme version, tax competition changes taxation (as well as other regulation) from a mandatory regime to one that is basically elective for some. For some taxpayers, tax has become a price they are willing to pay for the public goods they consume, in place of a civil obligation they should fulfil.

Consequently, policymakers increasingly find it necessary to “think like firms” – to take into account considerations that would maximize their benefits from “their” taxpayers. Policymakers target the most “valuable” taxpayers and those most likely to relocate for superior bundles of public goods and services for lower taxes. Curiously enough, and quite disturbingly, states need to invest less effort in retaining the ones who are most committed to the country. By contrast, they pursue taxpayers that will deliver the most benefits to the state, such as jobs, innovation, capital investments, spillover of technological and managerial skills, larger contributions to the national insurance schemes, and simply talent. In terms of tax (and other) policies, this means offering the public goods and services that are the most attractive to such constituents and lowering taxes for the most mobile. Thus, for example, states may grant attractive subsidies and lower taxes to attract the rich or highly talented individuals, offer visas for young individuals with special promise or design their labour laws to be attractive to employers.

In short, competition for members focuses states' attention on assembling the most attractive “team” of constituents by offering the most attractive packages of public goods and services at an attractive tax “price”. This is very different, of course, from sovereignty that seeks to provide the best possible public services to a set group of constituents who share common goals and dreams and that wields the power and legitimacy necessary to accomplish this using coercive measures, thereby preventing collective-action problems.<sup>18</sup>

16. This is also true, of course, for corporate headquarters and other forms of corporate residency, but this is beyond our discussion here.

17. T. Dagan & T. Fisher, *State Inc.*, 27 Cornell J. L. & Pub. Policy 3, p. 661 (2018).

18. For an articulation of the differences, see Dagan & Fisher, *supra* n. 17.

### 3.3. Competition for members evaluated

In order to normatively evaluate the competition for members, I will now look at four relevant criteria: (i) the efficiency of such competition; (ii) the liberty and human flourishing it fosters; (iii) justice (in holdings); and (iv) equal membership.

Let us first consider efficiency. The marketized version of the state–constituent interaction entails some gains, as suggested by theories of tax competition. The classic Tiebout theory alludes to (local) governments that compete with one another for residents by offering bundles of public goods and services for a tax “price”.<sup>19</sup> Taxpayers either join the club (by moving into the jurisdiction), and pay the tax “price” or not. The greatest virtue of such competition – according to this model – lies in bridging the gap between taxpayers' preferences and the provision of public goods. Taxpayers vote with their feet, thus, providing information as to the value they ascribe to public goods.<sup>20</sup> Such a selection process, though not perfect, provides taxpayers with more choice and, therefore, better matches public goods with individual preferences. In other words, it promotes efficiency. That said, inter-jurisdiction competition is also a source of inefficiencies. Thus, as some have argued, competition may drive tax rates down to a sub-optimal level, where states will be forced to under-provide public goods.<sup>21</sup> Externalities, free-riding and tax avoidance further exacerbate such inefficiencies.<sup>22</sup>

Next, we turn to liberty and human flourishing. The availability of alternative jurisdictions supports constituents' liberty. The ability of taxpayers to exit is important, as members must have the option to cut their ties with their community and join another. Importantly, the power of exit limits the power of the majority to use the coercive power of the state to unfairly tax some but not others.<sup>23</sup> Moreover, the availability of alternative jurisdictions is crucial for human flourishing, as people who are restricted to their state of origin cannot fully pursue their autonomous goals.<sup>24</sup>

However, exit and inter-jurisdiction competition present some serious constraints for justice in holdings. We can assume that there is a limit to how much tax a state can

19. Tiebout, *supra* n. 3.

20. In contrast, in the absence of competition, the provision of public goods suffers from a lack of information, as there is no reliable way to assess residents' preferences where non-excludable public goods are concerned.

21. W.E. Oates, *Fiscal Federalism* p. 143 (Harcourt Brace Jovanovich 1972), cited in J.D. Wilson, *Theories of Tax Competition*, 52 Natl. Tax J. 2, p. 270 (1999). See also M. Keen & K.A. Konrad, *The Theory of International Tax Competition and Coordination* (Max Planck Inst. for Tax L. & Pub. Fin., Working Paper No. 2012-06, 2012), available at [www.tax.mpg.de/RePEc/mpi/wpaper/Tax-MPG-RPS-2012-06.pdf](http://www.tax.mpg.de/RePEc/mpi/wpaper/Tax-MPG-RPS-2012-06.pdf) (accessed 10 July 2022) (reviewing the literature).

22. For a further review of the arguments and related literature, see T. Dagan, *International Tax Policy: Between Competition and Cooperation* pp. 137-139 (Cambridge U. Press 2018).

23. See, similarly, Schön, *supra* n. 15, at pp. 56-57.

24. The power to exit is also crucial for state governance alongside mechanisms of voice. See A.O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations and States* (Harvard U. Press 1970).

impose before pushing its wealthy residents to relocate,<sup>25</sup> and the very threat of exit often limits states' political power to push for such increased taxation even further. Tax competition, thus, brings pressure to bear on states to reduce their taxes and restrict redistribution or else pay a welfare price. Despite several factors that serve as counterweights to competition's downward pressure on redistribution, taxpayers' mobility implies that states (should) weigh the benefits of redistribution against the potential costs of driving away wealthy residents. If they choose to reduce taxes in order to keep the rich, justice is undermined. If they do not, and the rich indeed leave, they run the risk of paying a cost in the form of reduced combined welfare. Furthermore (and this, of course, is an empirical question),<sup>26</sup> if, as a result, the state has to limit the public goods it provides (since the group becomes too small or too poor to pay for them), this may in turn limit not only the welfare but also the opportunities available to other residents – namely, the immobile ones.

Competition for members might further undermine civic membership. By providing packages of public goods for attractive tax “prices”, such competition emphasizes the use value of the state as well as the consumeristic self-interest considerations of its members. This may undermine members' sense of solidarity and belonging, which, for many, constitute an important part of their personhood.

And yet, one key feature of competition for members is the binary choice it provides for individuals: they can choose to either stay or leave. While the choice of some to leave undermines collective welfare, may challenge distributive justice, and emphasizes the use value of the state for them, the ones left behind are (whether by choice or by the lack thereof) full members of the community. Fragmentation, as will be discussed in sections 3.4 and 3.5., dramatically changes this aspect of the state–constituent relationship.

### 3.4. Fragmented competition

The mobility of residents – and the accompanying marketization of the government–constituent relationships it entails – are only the tip of the iceberg. No less significant (and too often overlooked) is the ability of (certain) individuals and businesses to reassemble packages of sovereign goods tailored to their specific needs. In the current market of states, individuals and businesses are able not only to shop for their jurisdiction of choice en bloc but also to “buy” à la carte fractions of regimes of different state sovereignties. Well-known examples include the phenomenon whereby taxpayers split their time while alternating between jurisdictions, or where they become residents of

25. This is an empirical matter. Discussing the responses to wealth tax, Advani & Tarrant (2021) observe: “On balance, the existing evidence suggests that migration responses to all forms of taxation are small relative to potential revenue, and there is little support for the view that the emigration of wealthy taxpayers poses a significant threat to progressive taxation”. Income tax, however, seems a little different: “Personal income taxes are generally found to induce small although statistically significant responses among wealthy taxpayers, with the elasticity of the stock of wealthy taxpayers ranging from 0.03 to 2.109”. See A. Advani & H. Tarrant, *Behavioral Responses to a Wealth Tax*, 42 *Fiscal Stud.* 3–4, pp. 531–532 (2021).

26. *Id.*

one country while remaining citizens of another. Indeed, in the tax context, we often see residents deliberately structuring their relationships with such jurisdictions to minimize their taxes and maximize their benefits.

But fragmentation can also occur without physically moving across jurisdictions. Rather than relocating, taxpayers can diversify the packages of public goods and services they can enjoy by subscribing to fractions of regimes in different states.<sup>27</sup> Thus, they can independently “consume” a foreign state's corporate governance regime, by incorporating overseas, or use another jurisdiction's intellectual property (IP) regime by registering their IP elsewhere. They can benefit from a foreign legal system (its contract, trust or bankruptcy laws, for instance) by using choice-of-law mechanisms, litigating in foreign courts, and securing entitlement to foreign passports by complying with certain requirements (sometimes by simply paying or investing enough money). They can secure marriage licences, enjoy more lenient surrogacy regulation, benefit from the thriving research environment or higher education in a foreign destination or take advantage of an innovative financial system elsewhere – all from the convenience of their home. They can own a factory in a foreign country and take advantage of its lax environmental standards. And – as the recent pandemic's restrictions made us realize – they can even make use of foreign labour markets or arts-and-culture scenes through digital platforms, all without leaving their base.

The reasons that render this possible are threefold, starting with the capability (coupled with desire) of people and businesses to operate in fragmented, flexible ways and benefit from (and associate themselves with) pluralistic engagements with multiple jurisdictions, communities and environments. On the business side, this means that capital can, and does, move separately from its owner, IP shifts separately from the technology it manufactures, production can be separated from sales, risk can be separated from investment, and corporations separated from their stakeholders. On the personal side, it means that taxpayers can establish many of their personal affiliations in foreign jurisdictions: they can belong to religious, national or social communities that are not necessarily linked to their (or any) territory, they can study abroad, and their family can be located elsewhere or spread around the world.

Second, technology flattens the world for us, making engagements overseas entirely possible without our physical presence. Third, legal technology allows for different factors to trigger the affiliation with, and the application of, different duties and rights – again, often without the physical presence of the parties concerned. Some rights and duties are extended to residents (and these are defined in different ways in different jurisdictions); others apply to property owners, consumers, investors or citizens of certain states. Many of these rights and duties are related

27. See, for example, K. Pistor, *The Code of Capital* (Princeton U. Press 2019) and T. Dagan, *The Global Market for Tax and Legal Rules*, 21 *Fla. Tax Rev.* 1, p. 148 (2017).

to a person's permanent place of residence, their place of abode or their primary place of business. Others are connected to citizenship, to the location of one's property, to one's (even temporary) presence or specific actions within the state's jurisdiction, or to a specific registry (such as the registration of a corporation as incorporated in the given state, of a financial instrument, of a vessel or of a vehicle).

Thanks to globalization, states allow people and businesses to detach these factors from one another. In some cases, this involves the relocation of actual resources or activities, while, in others, it is merely a matter of using a certain technology or even signing specific documents or issuing some paperwork. Indeed, people no longer have to reside or even be physically present in the place where they do business or where their workplace is located; the corporate structure enables them to set up residency for business purposes in any number of locations; and people can own property, open bank accounts, invest and consume in various locations simultaneously. As a result, they can establish residency or be physically present in the location that offers them the physical environment most compatible with their preferences, while, at the same time, investing, studying, conducting business, consuming or even working in other locations.

If residing in one jurisdiction does not mean one has to give up one's entire affiliation with another state, and if former residents have the option to use certain public goods and services in their state of origin upon demand, even if they no longer reside in the country, it makes it easier for them to relocate. Thus, for example, if one has the right to "return home" to use the domestic health system, to undertake further study or to be eligible to work, the risk in relocating is small.

While, in the absence of this jurisdictional fragmentation, the alternative strategies for individuals and businesses wishing to improve the public goods and services offered by the state or affect their tax "prices" are essentially either voice (using their political power to shape state policy) or exit (relocating to a jurisdiction that offers a more favourable regulatory "package"),<sup>28</sup> they now have another option that will maximize their benefits: to diversify their state-related interactions. Tax rules are no different in this respect. International tax laws are notorious for the variety in the conditions that determine their application. While residency is key, it, too, can be determined by very different requirements in different jurisdictions; the location of property (real and intellectual) also plays an important role in the application of tax laws, as do the place of active business, research and development (R&D), production and, recently, consumer markets. And yet, because states compete for residents, investments and businesses, they often offer taxpayers of other countries convenient tax rules and rates in return for their residency, investments, R&D, and sometimes even fractions of their tax payments. The outcome is, again, a fragmented international tax landscape, where taxpayers can assemble the tax regime of their choice, combining the residency rules

28. Hirschman, *supra* n. 24.

of one jurisdiction, the source rules of another, the deductions allowed in a third, the tax rates of a fourth, and the withholding rates set in treaties between some of these jurisdictions. Hence, taxpayers (at least those whom states seek to attract) can often assemble the different components into a tax regime that does not necessarily correlate with those governing their other affairs.

Some of the features of this fragmented international tax and regulatory regime are the result of "base erosion and profit shifting" (BEPS) arrangements, as they are termed in the OECD's reports of 2015 on the matter. That is, they are a result of active planning (to exploit gaps and loopholes in the system in order to avoid certain taxes, duties or regulations) rather than the realities of income production. Indeed, the OECD's BEPS Action Plans have attempted to tackle many of these deliberate techniques.

But fragmentation is not only a bug in the system. It is, in fact, a structural feature that is the direct result of allowing taxpayers to separate various aspects of their lives, combined with the decentralized market of states. Fragmentation would, thus, continue to occur even if profit-shifting-type tax planning were eliminated. Hence, handling base erosion alone does not even attempt to address the fundamental implications of fragmentation for the social contract.

### 3.5. Fragmented competition evaluated

#### 3.5.1. Opening comments

Fragmentation, as we have just seen in section 3.4., exacerbates the implications of competition for members. In what follows, I will evaluate the additional effects of fragmentation, employing the four criteria: (i) efficiency (*see* section 3.5.2.); (ii) liberty and human flourishing (*see* section 3.5.3.); (iii) justice (in holdings) (*see* section 3.5.4.); and (iv) equal civic membership (*see* section 3.5.5.).

#### 3.5.2. Efficiency

Starting with efficiency: as my analysis of competition for members suggested, market mechanisms have efficiency gains as well as costs. Similarly to competition for members, fragmented competition supports preference satisfaction and users' choice-making capacity.<sup>29</sup> The ability to pick and choose among state-provided goods and services allows taxpayers to better tailor the packages of public goods they consume to their own preferences and provides the government with valuable information about such preferences. It also prevents the government from strategically bundling essential goods and services together with over-priced ones. In that, it presumably increases efficiency. Efficient fragmentation requires, however, that states find ways to enforce payments for such goods and services. Enforcement cannot work for regimes that individuals can freely opt out of. Hence, in order to have taxpayers pay, the state has to link such payments to attributes they cannot (or do not wish to) avoid. The stick-

29. *See*, for example, T. Dagan & T. Fisher, *Rights for Sale*, 96 Minn. L. Rev. p. 90 (2011) and the references therein.

ier such attributes are, the better chances the state has of enforcing payment. This is why personal traits such as citizenship, residency or domicile are relatively effective tools for imposing tax, because taxpayers will be less inclined to opt out of them. But linking each and every public good to immobile factors is hard (if not impossible) to do. In other words, fragmentation may entail increased enforcement problems for “items” that are hard to locate.<sup>30</sup>

There are two further reasons to suspect the efficiency of fragmentation. First, fragmentation increases the risk of free-riding. While charging for some public goods and services may be possible (such as for-fee corporate registration, passports or permits of various kinds), it is clearly impossible for pure public goods – such as a country’s contract laws or public art. Moreover, long-term investments raise special concerns. Thus, for example, it is often impossible for states to tax the benefits from their long-term investments in public goods when those who have benefited from such public goods in the past opt to reside, incorporate or produce their income elsewhere (the brain drain may be an extreme example, where people actually leave the country in their productive years). Similarly, it is often impossible for states to charge current non-member beneficiaries for investments in public goods such as health, education or innovation, which are designed to create positive externalities, or for risky investments in public goods, such as supporting basic science or overcoming a pandemic. If, without bundling, states are less capable of charging individuals for some services, they run a greater risk of under-provision of public goods and services as they cannot internalize the entire benefits from their investment.

### 3.5.3. *Liberty and human flourishing*

Turning to the second criterion, liberty and human flourishing, similarly to competition, fragmentation supports (some) taxpayers’ liberty and human flourishing by adding to the options available to them. The availability of alternative jurisdictions to which to relocate effectively supports their right of exit. The ability to diversify adds to that, by allowing many of them to opt for some goods and services that may be lacking where they reside (think, for example, of a person seeking higher education elsewhere, or individuals seeking surrogacy or adoption services that are prohibited in their country of origin). Diversification also allows them to avoid using goods and services that they find unnecessary, assuming they can also avoid paying for such services (by tax planning, for instance, or by moving overseas for the years in which they do not need such services).

The same features that increase the ability of some to opt out of the jurisdiction may limit opportunities for others. For example, since fragmentation limits states’ long-term investments in public goods, it might, eventually, undermine the liberty of those left behind. Thus, a lack of

30. Note that “effective” taxation still does not guarantee efficient results. Efficiency is promoted if the government uses the taxes being collected in ways that improve collective welfare, but taxation can also undermine efficiency if governmental use is wasteful.

investment in innovation, infrastructure or education, for instance, may significantly limit the future options available to constituents in years to come.

### 3.5.4. *Justice*

Fragmentation can also challenge justice in holdings, as the options it opens for some undermine states’ ability to cross-subsidize public goods and services. On the one hand, bundling allows the state to link together public goods that are favoured by some (for example, opera) with the consumption of other public goods and services (for example, theatre or popular culture). It allows it to bundle parks with good schools, and welfare with investment in higher education. Thus, for example, the majority may support opera if they are interested in popular culture, and the rich may pay for welfare if they are interested in education and parks. On the other hand, by allowing taxpayers to opt out of the system, fragmentation may force countries into providing only those public goods that are popular with their taxpayers. While this may maximize preference satisfaction, it may also undermine long-term goals and interests, and limit the plurality of available options.

If – as I suspect – the more mobile taxpayers and the ones more likely to diversify their interaction by picking and choosing their public goods and services are also the wealthier ones, fragmentation could push states to prioritize those public goods and services favoured by the rich (such as law and order, parks and clean air) over others (such as welfare, public education or an excellent public health care system).<sup>31</sup> This could increase inequalities, in cases where those who benefit most from some public goods and services cannot pay for them, and those who can pay for them do not wish to and can avoid doing so.

Needless to say, where tax fragmentation opportunities are available, they act as further constraints on states’ ability to redistribute wealth. In other words, the state will find it harder to collect taxes for the public goods and services it provides, the greater the tax planning opportunities available via tax fragmentation.

### 3.5.5. *Civic membership*

Fragmentation also challenges our fourth criterion, the idea of equal membership in a political community. The model of the sovereign state we started from essentially viewed the state as a means for satisfying the human need for stability and belonging to a political community. The political process is designed to combine individual members’ decisions, to prioritize them based on a common set of normative goals, and to translate them into a joint project that promises to outlive its members, and, thus, sustain their long-term commitments toward each other.

Fragmentation erodes this ideal of the state as a stable hub of such civic membership. It exacerbates the commodifi-

31. This may encourage specialization among countries. Again, this may be a good thing in terms of efficiency, as the division of labour usually is.



cation of membership by positioning the sole function of the state as the provision of individually curated public goods and services for a good “price”, thus ignoring the significance of combining and prioritizing such goods and services in the joint project of the state. Membership in this marketized version of the state is fundamentally instrumental. It allows members to conceive of themselves as consumers, as rational maximizers of their utilities who choose to conform to a set of rules and activities in order to facilitate their ends and preferences. Allowing each of them to create the package of public goods they desire undermines cooperation and relieves them of the need to collectively prioritize or to surrender (some of) their own preferences to serve the current or future interests of others in the civic community. This may be true even if promoting such long-term interests increases collective welfare or advances important normative goals. The unique cooperation between members in the political regime requires assurances over the stable participation of others because it does not take many defectors to make such a system unravel.

Such an individualistic approach, if permitted, further deprives the political community of some of its essential features, namely the ability to fall back on the resources and support of fellow members in times of crisis, to promote their long-term interests, and the added value of belonging to a civic community that contributes to one’s sense of identity.

\*

This normative analysis demonstrates how both fragmentation and competition for residents seriously undermine the normative basis of the sovereign state. Where fragmented competition rules, states’ coercive powers are not imposed equally. Whereas immobile taxpayers, low-demand taxpayers and taxpayers with little or no tax planning leeway are subject to the state’s coercive power, the better-off taxpayers (those who could actually support the state’s duties of justice, were they to bear their full tax burdens) can often opt out of the domestic goods, services and duties they find less attractive or necessary. Under such a regime, the result is that states can de facto enforce their tax laws predominantly on the immobile segments of society and on those segments that are incapable of effectively opting out of the system.

The shift away from political participation and toward market norms in formulating regulation calls into question the state’s ability to give equal consideration to all its members. Treating some constituents (those with other options available to them) more favourably than others undermines the state’s unique position as speaking in the name of all. With its inability to provide assurances for the provision of justice and with its diminishing capacity to equally pronounce its constituents’ collective will in the provision of public goods and services, the state’s ability to provide public goods and to support justice – and, thus, its legitimacy in applying its coercive power – wanes. Fragmented competition, thus, destabilizes the very basis for state tax sovereignty: one that legitimizes the use of coercive power by equal respect and concern that render all

of the states’ constituents equal co-authors of its collective project.

#### 4. Toward a New Social Contract

In lieu of a conclusion, this final part offers some preliminary thoughts as to a possible way forward. The challenge is, of course, substantial, and its significance for state governance in tax matters cannot be overstated.

The competitive and fragmented reality of the state under the forces of globalization is transforming tax sovereignty. It is undermining the coercive power of the state and, increasingly, changing the state from a coercive institution designed to enforce the collective will of its subjects into a market-like actor that treats its taxpayers like “clients” who need to be catered to. This process has many virtues in promoting individual liberty and in increasing collective welfare and the welfare of some individuals. And, yet, if it continues unchecked, it poses the risk of eroding the very basis for tax sovereignty.

Tax sovereignty, as we have seen, demands coercion. At its most basic level, the state is a long-term commitment by a group of members to abide by their co-authored rules in serving their collective will. The long-term nature of a joint project demands enforceable commitments, or else – as noted here – it runs the risk of opportunistic behaviour that would destabilize it. Given that public goods and services are an essential part of this project, paying for them almost inevitably demands taxation because, otherwise, such public goods and services will be undersupplied. And, since for people to subject themselves to such long-term coercive powers they need to be reassured that the state will tax them justly, taxation demands justice – both distributive justice and equal concern and respect.

Fragmentation – the ability of some taxpayers to opt out of features of the state that they favour less, especially if others do not enjoy the same opportunities – undermines these rationales. It encourages opportunistic behaviour and leaves those who are not in a position to pick and choose more vulnerable when the state cannot ensure the provision of certain goods and services for them. Moreover, when state coercion is limited to certain people and not to others, in inverse relation to their elasticity, it creates an imbalance in the allocation of the burdens of financing the state. When payments for the costs of government increasingly resemble a price more than a tax, states may gradually lose the capacity to provide some public goods and to support members of the political community that cannot afford such prices. This becomes imperative in times when the state is called to provide public goods that are essential for the human predicament. Indeed, as the recent pandemic has taught us, in times of crisis, the welfare state proves essential, and its ability to offer long-term, publicly provided solutions for the entire population becomes critical.

Thus, if states allow mobility and fragmentation to dominate, they may find themselves struggling in their efforts to promote the goals of taxation. Sustaining the redistributive function of taxation may involve serious trade-

offs in terms of reducing states' welfare. In the extreme case, exit power may prevail over voice and loyalty. Equal respect and concern may give way to considerations of stakeholders' potential costs and benefits, and the duties of justice could succumb to market forces. Mobility and fragmentation may not only erode the provision of public goods and services but also undermine civic membership. All of this challenges not only the ability of the state to support the goals of taxation but also the very legitimacy of tax sovereignty.

Yet, important as the preservation of civic membership and the just provision of public goods and services are, it is crucial not to "throw the baby out with the bathwater". We need to keep in mind the virtues of mobility and fragmentation in supporting individual liberty and human flourishing, in promoting efficiency, and in sustaining exit as a shield against governments' excessive coercive power. Against this background, we need to rethink the relationships between states and their constituents, as well as between constituents and their fellow members in the political community.

The challenge for states under competition is, thus, considerable, in terms of how to balance the trade-offs: to preserve the virtues of a cohesive, all-inclusive social contract, one that can provide people with the security they crave and the meaning they require, while at the same time supporting their agency in exploring new opportunities elsewhere and linking some of the aspects of their lives with different jurisdictions.

It would be presumptuous of me to attempt to offer a blueprint for facing these challenges in a brief lecture. That would require a separate effort, which would have to wait for another day. Notwithstanding, it may be helpful to mention one possible direction that may be worth exploring. States could consider bundling together a minimal "package" of public goods and services for members only. This would enable them to set the core benefits they provide (the public goods they believe each member should be entitled to), bundle these core benefits together and set a "shrink-wrapped" tax "price" for them. Members of the state would then have to "purchase" (and only members can purchase) and pay for the core membership package in its entirety, whether they use it or not.<sup>32</sup>

As for the tax "price" of such core packages of public goods and services, this should follow a justice-based formula rather than being pegged to the elasticity of members' choices or the use value of the package they consume. The key point, again, is that the same package would be available for the use of all members (and only members), and taxes would be equally imposed based on taxpayers' ability rather than on their use of such goods and services.

Setting such bundles, of course, would not be a trivial task, if at all possible. It would face significant difficulties on both the domestic and the international levels, making me pessimistic as to the chances of it succeeding. On a domes-

32. Other goods and services that are not part of the core membership package could be purchased from other states (or the free market).

tic level, it requires agreement as to what such a "core membership package" should include – and the spectrum is wide (between a full-blown Scandinavian welfare state model and a much thinner one). Such a solution would require states to enforce their personal-based taxation, taxing members on their worldwide income and allowing no price discrimination among them. Thus, states should equally enforce the same standards of taxation on mobile and immobile constituents, on current members and sought-after newcomers alike, and be ready to pay the price of some members leaving for other states, as well as some sought-after newcomers choosing not to join.<sup>33</sup>

This reality involves some thorny issues. To name just a few: for expatriates, states should consider a cooling-off period or some other mechanism to prevent opportunistic behaviour upon departure, and decide what exactly counts as renouncing membership<sup>34</sup> (being granted a new membership elsewhere? renouncing citizenship? establishing a new domicile?). Similarly, states should decide at which point newcomers become members<sup>35</sup> (should a limited "welcome" period prior to establishing membership be allowed and, if so, for how long?). Which items, if any, could states sell (and price) individually, without undermining bundling? For instance, could isolated public medical services be sold to foreigners as opposed to comprehensive health insurance (the latter being offered to members only)?

The inter-nation level, too, raises concerns. First and foremost, curtailing fragmentation raises a collective-action problem among states. Because public goods are non-rivalrous, offering them to newcomers at a low price may seem to come at no cost to states hosting these individuals or providing such services. Thus, if some countries adopt a strict membership package arrangement (allowing identical services for members and prohibiting price discrimination), other countries may have an incentive to attract wealthy individuals by offering them a home and public goods for low taxes (as do non-dom regimes such as Cyprus, Greece, Malta and the United Kingdom). And – assuming non-dom regimes exist – other countries might have an incentive to offer specific public goods à la carte. This may leave countries that insist on a bundled regime of public goods for members worse off (as some of their more sought-after members might prefer the fragmented alternative).

33. Note that my focus in this lecture is predominantly on high-net-worth individuals. But I should say outright that poor newcomers, too, should be entitled to the core bundle of public goods and services in its entirety. Who should be admitted into the country is a separate question. My sense is that all those admitted should be treated with equal respect and concern and should thus be entitled to the full core package of public goods and services. But this, again, requires further discussion that is beyond the scope of this lecture.

34. Compare Schön, *supra* n. 15, at p. 63. Importantly, Schön discusses the links between voting, paying taxes, and consuming public goods and benefits.

35. Compare E. Chamberlain, *Who should pay a wealth tax? Some design issues*, 42 *Fiscal Stud.*, Special Issue on a Wealth Tax: Time for Another Look? p. 559 (2021), available at <https://ifs.org.uk/publications/15813> (accessed 10 July 2022) (in the context of wealth and inheritance taxes).

A multilateral agreement may sound like a plausible solution. If all states agreed that certain features can only be purchased as part of a membership package (yet the quality and level of such goods and services could be set independently by each state), unbundling could presumably be prevented or at least curtailed.<sup>36</sup> If the world's most popular residency destinations were to commit to such an arrangement, it might ostensibly create a standard stable enough to stop this race toward fragmentation.<sup>37</sup>


However, the likelihood of such cooperation being attained and sustained is probably low. Not merely because this is a cartel waiting – like any cartel – to unravel. The problem of collective action here goes to the root of the interna-

tional arena. It exposes, once again, the lack of mechanisms for meaningful deliberation on the international level. While, at the domestic level, such deliberation – the ability of constituents to voice their preferences – is a key component of states' governance, the international arena does not provide such mechanisms. This makes any agreement as to the core membership package, let alone its enforcement, highly challenging to achieve.

Let me conclude, then, where I started. I have argued here today that, in the face of globalization, states should re-establish their social contracts with their constituents. Such a renewed contract should allow current and future members, whether mobile or immobile, to lead the kind of lives they would each settle for behind the veil of ignorance. The new social contract would achieve a balance between the coercive nature of the state and taxpayers' freedom to choose to associate some aspects of their lives with other jurisdictions: between the conflicting, yet essential, goals of stability and freedom, which they need in order to thrive.


One approach that might be considered, I have suggested, is a core “deal” of bundled goods and services for members only. Taxpayers could buy into this bundle en bloc by joining the political community, and could leave if they choose to join another community. The viability of this idea would be a subject for a separate discussion. But the trade-offs for the core goals of taxation, if fragmented tax sovereignty persists, are real and demand our attention.

- .....
36. Let me say up front that I do not disapprove of a Tiebout-style competition for residents among countries. I believe it is crucial to allow members to leave a given state for a different jurisdiction that offers them better opportunities to flourish. This starting point makes competition for residents inevitable, as far as I am concerned. But, as I have sought to explain in this lecture, for such competition not to be destructive, it cannot be completely fragmented. The restriction I consider here – bundled competition – endeavours to balance the benefits of open borders with the risks of fragmentation. And, yet, it would still face a collective action problem.
  37. Importantly, a minimum tax – such as the one currently being discussed – is not enough (even if extended to individuals). A minimum tax could, indeed, encourage states to provide the most attractive packages for that minimal price. However, if some taxpayers are more elastic and/or mobile than others, states will, again, attempt to offer them more and better services. In other words, the problems of redistribution and commodification will only be shifted to the goods being offered rather than their price.



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