



**Leonhard Miksch (1901-1950) -
A Forgotten Member
of the Freiburg School**

Nils Goldschmidt
Arnold Berndt
03/2

Freiburger
Diskussionspapiere
zur Ordnungsökonomik

Freiburg
Discussion Papers
on Constitutional Economics



**Leonhard Miksch (1901-1950) –
A Forgotten Member
of the Freiburg School**

Nils Goldschmidt
Arnold Berndt
03/2

**Freiburger Diskussionspapiere zur Ordnungsökonomik
Freiburg Discussionpapers on Constitutional Economics**

03/2

ISSN 1437-1510

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

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

Leonhard Miksch (1901–1950) –

A forgotten member of the Freiburg School

By Nils Goldschmidt and Arnold Berndt*

- I. Introduction
- II. Some Biographical Notes: Journalist – Political Advisor – Professor
- III. Market Forms and Competition As-If
- IV. Basic Types of Order
- V. Competition, Democracy, and Justice
- VI. Eucken – Miksch – Buchanan: The Freiburg School and Constitutional Economics

Abstract:

German economist Leonhard Miksch's ideas on Ordo-Liberalism have so far received little attention in the history of economic thought. This is surprising as Miksch provides insights into the debates within the so-called "Freiburg School of Law and Economics" in its early phase and, moreover, gave impulses that were essential to the further development of this economic approach. In addition, as a close advisor to the "political father" of the German "Social Market Economy", Ludwig Erhard, his influence on German post-war economic policy was considerable.

Furthermore, Miksch's thinking on the combination of market forms and market constitution, as formulated primarily in his habilitation thesis on "Competition as Task" (1937), supervised by Walter Eucken, is unique and inventive. We will show that his ideas on economic policy culminating in the reference model of "competition as-if" as well as the connection he established with the economic foundation of democracy are of enduring relevance. The latter insight characterizes Miksch as an (overlooked) precursor of Constitutional Economics, which was later developed independently by James M. Buchanan.

* Nils Goldschmidt <goldschmidt@walter-eucken-institut.de>, Walter Eucken Institut, Goethestrasse 10, 79104 Freiburg, Germany.

Arnold Berndt <arnold.berndt@bav.admin.ch>, Bundesamt fuer Verkehr / Federal Office of Transport, Bollwerk 27, 3003 Bern, Switzerland.

This paper is based on research for two essays in German; cf. Berndt and Goldschmidt (2000a and 2000b). All original German texts are translations by the authors.

I Introduction

It is one of the tragedies of German post-war economics that Leonhard Miksch, professor of economics and finance at the University of Freiburg, died suddenly on September 19, 1950, only six months after ordoliberalist economist Walter Eucken's death. The "Freiburg School of Law and Economics" thus had lost its seminal figure;¹ and the 'research and teaching community' of Freiburg's economists and jurists created in the early 1930's had finally ceased to exist. In contrast to Walter Eucken, who continues to be referenced for economic theory and hence is established as a central figure in the history of economic thought, Miksch appears to be considered irrelevant in today's discussion among German scholars and hence overlooked as a key figure in the evolution of ordoliberal to constitutional economics. In what follows, we will attempt to focus on key aspects of the life and work of Leonhard Miksch. After a biographical overview, we will discuss Miksch's contribution to the theory of market forms, which is remarkable because of its link to the theory of market orders. This linkage illustrates Miksch's perspective on state interventions in the market, a concept which has been expressed as "competition as-if". Miksch's most original contributions to economics are probably his reflections on the market system: the reduction of economic-theoretical and economic-political processes to the principles of internal and external coordination. He applies these principles predominantly to economic phenomena, but in addition proposes that his theory can be similarly applied to the political process: competition, democracy, and justice which hence have been uniformly analyzed as part of Miksch's work. It is precisely the realization of the similarities of economic and political processes that enables Miksch to break out of the "orthodox" ordoliberal concept of Walter Eucken and become, in a very real sense, a predecessor of constitutional economics, which was to be developed later by James M. Buchanan.²

II Some Biographical Notes: Journalist – Political Advisor – Professor

Born on May 20, 1901, in Teplitz-Schönau, Bohemia, Leonhard Miksch spent his first three years at Prague and Tübingen studying chemistry which may explain his mathematical and scientific perspective which was unusual for early Ordoliberalism. During the winter semester 1923/24, Miksch changed his major to economics, for which he earned a degree in 1926 and a doctorate in 1929. His doctoral thesis *Gibt es eine allgemeine Überproduktion? (Is There A General Overproduction?)* was supervised by Walter Eucken, who had been teaching in Tübingen since 1925. From the beginning, Eucken was Miksch's mentor, but he increasingly became his friend and patron in later years. Beginning in 1929, Miksch worked for 15 years as a publicist at the *Frankfurter Zeitung*, a German newspaper, where he managed the economic policy section and published many articles on economic issues until the Nazis shut down the newspaper in 1943. He also developed a colorful and pointed style of writing, a characteristic trait of his later academic work.³

At the same time, Miksch actively advanced his academic career. In 1937, he completed his post-doctoral thesis, *Wettbewerb als Aufgabe – Grundsätze einer Wettbewerbsordnung* (*Competition as Task – Foundations of a Competitive Order*), again under the supervision of Walter Eucken. In his report Eucken viewed Miksch's thesis as an "outstanding work", because it "combines knowledge of economic details with sound fundamental thinking in an exemplary way" (Archives of the University of Freiburg, personal file on L. Miksch, B110/77).

The end of World War II brought about a time of reorientation for Miksch. He switched from journalism to administrative and economic policy tasks when he became an assistant at the Central Office for Economic Affairs of the British occupation zone in Minden, Germany, in July 1946. Later, he assumed a position with the office for the "administration of the economy", a predecessor of today's Federal German Ministry for Economic Affairs. As director of the department for "basic questions of price competition and business administration", Miksch became a close assistant to Ludwig Erhard, who had been director of the office for the administration of the economy since 1948 and would later become minister of economic affairs and, ultimately, chancellor of the Federal Republic of Germany.

There, Miksch not only was the primary designer of regulative policy, but also a prominent member of those who called for price decontrol being coupled with simultaneous currency reform. For example, the so-called "Guiding Principle Law" (*Leitsatzgesetz*) was authored primarily by Miksch; Ludwig Erhard – in violation of instructions by the Allied Forces – used this law to initiate price decontrol simultaneously with currency reform. In retrospect, this measure can be considered the primary factor for the success of economic policy in post-war Germany. Erhard used to refer to Miksch as "the main campaigner for the return to a free market economy" (reference on L. Miksch by L. Erhard, State Archives Freiburg, C 25/2, No. 137), and it was a well-known fact at the time that Erhard was more scared by Miksch and his ideas than by the Americans – a circumstance that underlines that Miksch was without doubt an outstanding personality with an uncompromising commitment to the necessary economic reform.⁴

Beginning in 1947, Miksch concentrated on publishing in economic journals. When the Mannheim School of Economics reopened, he was appointed as full professor of economics. At the same time, Miksch was still hopeful that Adolf Lampe's Freiburg faculty chair in fiscal economics would become available upon Lampe's death in February 1948. In March 1949 he was offered the position, but due to bureaucratic difficulties, he could not be officially appointed until October 20, 1949.

During his time as Freiburg full professor, which would only last a few months, he conducted numerous studies to develop a regulative policy concept, based on Eucken's work, which forms a uniform analytical tool for categorizing and judging economic and political systems.

III

Market Forms and Competition As-If

Essential to Miksch's academic work is his above-mentioned post-doctoral thesis on "Competition as Task", where Miksch seeks to overcome what was called the "great antinomy" (*große Antinomie*): the gap between the approaches of Classical Economics and the German Historical School. Because both, the faith in an indestructible harmony as well as the belief in an irresistible (teleological) development, will lead to a corrosion of competition, Miksch demands that a "free economy can only be an economy which is organized by the

state according to liberal principles” (Miksch 1937:9). Competition, hence, is a “game that is regulated by the state” (1937:9) – which is, after all, a tenet that could actually be considered the creed of the Freiburg School.

For structural reasons, Miksch develops a scheme of market forms to classify economic phenomena (as a necessary starting point of economic activity). His classification of supply and demand into competition, oligopoly and monopoly is a refinement of Heinrich von Stackelberg’s work (1934) in that Stackelberg’s criterion for categorization is expanded in two ways: (1) Miksch, in his scheme, includes partial monopolies and, in the second edition of his post-doctoral thesis, partial oligopolies as well.⁵ (2) In addition, Miksch relates the number of market participants to the market size, i.e. to the conditions of uniform markets, uniform goods and sufficient market transparency (cf. Miksch 1937:50).

Using this scheme of market forms, Miksch assigns market orders to the respective markets:

It is the task of competition policy to endow each market with the appropriate market order. Doing that, attention must be paid to the existing market form; market forms cannot be changed by legislative means at all, but only by economic policy, and even so only in restricted scope and in a long-term time frame. (1942:99)

Competition, then, is the primary regulative principle for Miksch, because only in an environment of competition can economic actors optimally unfold their creativity and coordinate it in voluntary decisions. Accordingly, all markets which are characterized by the market form of “perfect competition”, or where this market form can be established, must be safeguarded by the market order of “free competition”. Here, the state should only intervene by way of a proper execution of general competition law. Nonetheless, on markets that are characterized by “imperfect competition” the state must actively intervene to establish a market order of “ordered regulated competition” (*geordnete gebundene Konkurrenz*), for only state interventions in the market can remove market disruptions and “maintain the general societal interest”. The same applies for monopolies.

Table 1 may illustrate this point:

Table 1:

Combinations of Market Form and Market Order According to L. Miksch

<i>Market order</i>	<i>Free competition</i>	<i>Private market regulation</i>	<i>Ordered regulated competition</i>
<i>Market form</i>			
<i>Perfect competition</i>	No changes	← transition to free competition	← transition to free competition
<i>Perfect competition achievable</i>	↑ removal of market disruptions	↑ implementation of perfect competition	↑ implementation of perfect competition
<i>Imperfect competition</i>	Transition to regulated competition →	Transition to regulated competition →	No changes

It is apparent that Miksch's approach requires a specific type of competition law to implement "regulated competition" and to regulate monopolies. "Any satisfying management of the monopoly issue and of 'regulated competition' requires the state to practice at least part of the rigor which markets, organized in freedom, would practice themselves" (1937:76). As a consequence, market orders must be formed in a way so that the exchange process is *emulated* where it does not work: "This objective justifies us to speak of an economic policy *as-if*" (1949a:333).

Apart from the many weaknesses in the concrete formulation of the concept of competition "as-if", Miksch succeeds in reminding us that any economic policy measure needs a normative reference point to uncover and restrict private market power.

With scholars in the tradition of the Freiburg School assuming that competition generates desirable results although there is a tendency to self-corrosion inherent in competition, what is ultimately required is an exact conceptualization of the causes and consequences of this tendency. In order to identify market power, economic theory and economic policy necessarily need a normative and idealistic "as-if" reference. For Miksch, the prospect for a comparison between markets with and without market power is the equilibrium-theoretical analyses of Alfred Marshall and Léon Walras as well as the discussion of monopoly power by Augustin Cournot.⁶ Only by juxtaposing market results can an as-if point of reference for imperfect markets be deduced. At the same time, Miksch is very well aware of the limitations of this strategy, as can be seen from the numerous references to the dynamics of many markets and to the heterogeneity of products traded on these markets. As a consequence, Miksch regards a competition-political evaluation of Edward Chamberlin's studies on monopolistic competition as being inevitable (cf. 1937:22). Moreover, references to analyses by Edward Chamberlin (1933), Joan Robinson (1933), and Arthur Burns (1936) on imperfect competition makes the relativity of any theoretical as-if point of reference evident. For competition policy, there is no general and eternally valid reference model which would make it possible to separate markets with potential for competition from those with no potential for competition. Rather, it is important to constantly resort to current state-of-the-art economics. Nonetheless, the necessity of having such an as-if point of reference to discover and delimit market power is obvious.

IV

Basic Types of Order

Focusing on the interplay between economic activity and state regulation, Miksch captures these two poles by way of combining market form and market order and advances this concept in studies published after 1945. "There are only two ways of coordinating individuals to form an entity. Order is either achieved autonomously by collaboration of those forces which are active in individuals, or it is forced by a superordinate power" (Miksch 1948b:175). Leonhard Miksch, thus, takes Eucken's abstraction of invariant forms a step further.⁷ He claims that those structural elements which help coordinate individual units in the economic process can be ultimately reduced to two basic principles – termed as 'internal' and 'external coordination' (1950a:30). These two forms of coordination are general principles of order that constitute a polarity precluding any other possibility:

Any societal economic process requires a coordination of individuals based on the division of labor. This coordination can be accomplished in two ways only: externally

through an institution that is superordinated to individuals, or internally due to those forces that are effective in individuals themselves. External coordination, thus, is due to power, internal coordination due to freedom. (1950b:85).

These two basic and irreducible principles are the basis for those two polar economic systems which, as true ‘ideal types’, can be extracted morphologically: “exchange economies, based on perfect competition – henceforth ‘pure exchange economy’ (*reine Verkehrswirtschaft*) –, and completely centrally directed economies – henceforth ‘pure planned economy’ (*reine Befehlswirtschaft*)” (1948b:175). Internal and external coordination are the basic principles by which these ideal types are supported and determine the type of coordination between economic subjects. Exchange economies and planned economies are just an ‘expression’ or ‘manifestation’ of these principles (e.g. 1950a:30). All concrete and real embodiments as well as abstract models of economic systems are therefore located somewhere in between these two ideal types and, the ordering principles of internal and external coordination exhibit the same type of tension. Practically as well as theoretically, it is necessary to resort to combinations of these two principles, which is why regulative policy will also inevitably be subject to such tension: “What is clear from the knowledge of these two polar principles is that it should be the task of economic policy to create for each case the optimal combination of internal and external coordination” (1950a:31; cf. also 1950b:85). Simultaneously, it is clear for Miksch that these two mutually exclusive principles do not allow for every combination, in the same manner that economic theory cannot propose a combination that determines an eternally valid economic order. This is made impossible by a set of data which is changing due to technological developments and, predominantly, altering individual preferences. The quest of regulative and economic policy for optimal combinations of internal and external coordination remains a “task that will be perennial” (1950a:31).

That these two principles require completely different economic coordination does not mean, however, that individuals are guided by different motives in each case, or that they pursue goals that are not reconcilable. Rather, for internal as well as external coordination, the economic principle will be applied, “because it is part of the economic concept” (1950a:37). Correspondingly, for regulative theory, “the economic principle as a formally logical tenet is indifferent ethically” (1950a:37).

What is essential to internal coordination is adaptation to a “neutral medium” (1950b:87), that is, prices. In order for them to have a coordinating effect, according to Miksch, a *large number* of market participants who cannot exert influence on the market by their behavior individually is necessary. In addition, Miksch interprets the law of large numbers in such a way that “only average behavior is relevant for the economic process” (1950b:87). This is also consequential for economic theory:

Man, as an object of inquiry, is always to some extent incalculable. In any concrete, given situation, we can predict a certain behavior as likely to occur, but never as certain to occur. The law of large numbers means that the degree of likelihood increases with the number of participating objects. (1948b:184)

Hence, given a sufficiently large number of individuals, it is predictable within the laws of probability calculus which goals these individuals will pursue while following the economic principle. Nothing else is relevant for the economic process (e.g. 1950b:87–88). This is where Miksch creates the link to neoclassical equilibrium theory, so that the competition inherent in

internal coordination is “nothing else than this tendency towards an equilibrium, viewed under an economic policy aspect” (1937:32) and will lead to the balance of personal interests. External coordination, according to Miksch, can be characterized in a twofold way. On the one hand, it is a requirement for internal coordination which “requires at least a legal system, but if such a thing exists we are already confronted with a combination of both coordination types, for laws are a form of external coordination” (1950b:89). This holds because a legal system can only be implemented by invoking power or a “superordinated instance” (1950a:40). Economic policy, therefore, must also be viewed as a form of external coordination. On the other hand, however, external coordination poses a danger to internal coordination. This is the case whenever external coordination does not restrict itself to implementing functioning internal coordination but also encroaches on internal relationships. Then, the plans of internal relationships will no longer be determined by the market; instead, “what emerges is power of man over man. This is completely incompatible with a just delimitation of the spheres of freedom, and, besides, this power is not restricted because it is mingled with internal coordination, so that a combination of arbitrariness and chaos will ensue” (1950a:47). Obviously, then, the law of large numbers will be devoid of relevance, there will be no equilibrium tendency and economic power turns into political power (cf. 1948b:193). To prevent this from happening, it is imperative to establish the appropriate economic order.

V

Competition, Democracy, and Justice

But how, then, can an economic constitution like that be achieved and be backed up without being subjected to the immediate danger of being corroded by the arbitrariness of external coordination? Even if Miksch’s conceptualization of the economic constitution recurring to the political system has remained fragmented, a number of propositions suggest that on the political level, only large numbers can prevent arbitrariness from thriving. For in this way only, “questions of order, of balance and of equilibrium between conflicting powers and interests” can be answered adequately:

It is evident that economic policy must be conducted from a level that is representative of the entirety and not of one-sided economic interests. It is not specialized, but regional bodies that should be responsible for economic policy; that is, regional bodies within the state, the state itself and supranational organizations. They and only they can form a general will, which is the same as the reasonable, moral will of the individual. (1950a:47–48)

Accordingly, democracy is referred to as the political equivalent of a pure exchange economy: “Pure exchange economies are thus in all details the economic equivalent of political democracy” (1948b:194) – and Miksch considers this to be absolutely true for the converse as well.

Parliamentarian control, however, is only possible if legislation is confined to general rules which delimit the scope of individuals. Control becomes impossible whenever specialized and regional authorities or administrations are allowed to enact discretionary decisions. These “practically result in the delegation of legislative competences, which is how bureaucratic

despotism is generated” (1948b:195). In discretionary decisions, arbitrariness and unpredictability are inherent; they endow some with power over others.

Therefore, only a synthesis of democracy and pure exchange economy is apt to “replace the concrete power of man over man by the abstract power of law. That way, the concept of self-limiting freedom is expressed much more purely” (1950a:59). According to Miksch, the ultimate benchmark for the legitimization of a legal system is the individual: “Any socio-ethical measure must thus resort to the reasonable, individual will, where it must be rooted as well – even if that might be burdensome sometimes” (1950a:60). The protection of individual freedom, in relation to the limitation of one’s own sphere of freedom in order to protect the freedom of others, can only be framed adequately with regard to the order based on internal coordination and the democratic principle: “Nowhere else is the flawless parallelism between the political principle of democracy and the economic principle of internal coordination as apparent as when it comes to recognizing the free, individual will as a yardstick of what is going on” (1950b:93).

At the same time, however, such an order also warrants the realization of maximal justice: “The *Leistungsprinzip* (achievement principle) and internal coordination as a whole correspond to the concept of exchange justice” (1950a:58), which for Miksch is the only form of justice proper. Internal coordination alone makes a sufficient evaluation of and compensation for services possible, by way of the latter being in correspondence to individual or average, respectively, demands.

Therefore, “the concept of a combination of personal freedom and social justice” (1950b:91) can be realized in a pure exchange economy and democracy: “The delimitations of one’s sphere of freedom exclusively through the neutral medium of a pricing system warrants a maximum of individual autonomy: the merit principle is the most fundamental expression of justice” (1950b:91). As a consequence, the maxim of such an order, oriented to the functional mechanisms of internal coordination, is unambiguously determined: “It is hence proven that it is not the maximization of the social product which is the decisive tendency inherent in internal coordination, but the synthesis of freedom and justice” (1950a:56). Both, then, must be considered “requirements for and results of an universal order basic to an exchange economy” (1949b:338).

VI

Eucken – Miksch – Buchanan: The Freiburg School and Constitutional Economics

If these political aspects in Miksch’s work are considered, it can be shown that his variant of ordoliberalism can more easily bridge the gap to constitutional political economics in the tradition of James M. Buchanan than is possible with the Freiburg research program in a strictly Euckenian way. It is not our intention, however, to deny that as far as the general philosophy of science is concerned, Eucken’s *Ordnungsökonomik* can very well be reconstructed from a constitutional political economics perspective (e.g. Vanberg 1988 and 1997) – even if the relevance of economic criteria for a systematic understanding of the Freiburg School will remain a point for discussion (e.g. Blümle and Goldschmidt 2000).

Having said that, we will focus in what follows on some considerations that might hint at why Miksch’s later concept can indeed be likened to objectives of constitutional political economics. Hence, we will start with five points that should make this categorization easier to understand:

1. The *aim* of Eucken's *Ordnungsökonomik* is the search for the 'true' order, which is a (normative) order of essence and therefore humane (Eucken 1952/1990:14). Eucken's approach, then, is certainly a 'program of freedom' – at least according to *Grundsätze der Wirtschaftspolitik (Principles of Economic Policy)* – but at the same time it is embedded in and subordinated to a constitutionally-theoretical set of conditions. Order, therefore, becomes a prerequisite for freedom. In contrast, Miksch's reduction of all constitutional-political considerations to the "reasonable individual will" (Miksch 1950a:60) has a different emphasis. The preference for a specific order, in Eucken's sense, is rephrased by Miksch as the implementation of an economical constitution in which freedom is an end in itself for individuals (cf. 1950a:67). Thus, individual freedom is the (socio-ethical) yardstick for the order to be established, meaning that the moral will of individuals must translate into the implementation of a moral, general constitutional order through the formation of a general will (cf. 1950a:70). This consistent alignment of (constitutional) choice to individual preferences elucidates this theory's affinity to "normative individualism" as "raison d'être" (Buchanan 1987:83) in constitutional political economics. The setting of constitutional rules which are based on the individuals' voluntary agreement (e.g. Buchanan and Vanberg 1994) are the prerequisite and aim of this concept: "Rules define the private spaces within which each of us can carry on our own activities" (Brennan and Buchanan 1985:3).

2. Similarly, it is the *approach* which makes it possible to distinguish the logical underpinnings of Miksch's and Eucken's research. Eucken prefers a methodical approach that is based on phenomenological methods and focussed on discovering "an objective, general truth ... evident in the light of reason" (Eucken 1934:29). As is well known, this approach is combined by Eucken with the program of "pointedly distinguishing abstraction" or "isolating abstraction", laid out in *Die Grundlagen der Nationalökonomie (The Foundations of Economics)*. Eucken explicitly roots his approach in Edmund Husserl's ontological paradigm as "absolutism in transition" (cf. Herrmann-Pillath 1994), and it is certainly true that this is affirmatively adopted by Miksch. He advances this working method to accommodate the basic principles of internal and external coordination, where "the human mind has to proceed from experience to abstraction" (Miksch 1950a:33). Internal coordination moreover – when viewed in isolation – is a process that can be repeated endlessly, and that could also be called "non-history" (Miksch 1950a:40). Nonetheless, the term 'coordination' already hints at another understanding, which is independent from an absolute, ultimate truth. Finding the optimal combination of internal and external coordination cannot be accomplished once and for all but is necessarily an "eternal task" and captured in the "historical process" (Miksch 1950a:31). It follows that the economic process is a constant mediation task with regard to changing and changed data: "an equilibrium as final outcome does not correspond ... at all to the dynamics of economics" (Miksch 1937:32). An approach like this can be understood as a continual adaptation and mediation task; it corresponds somewhat better to 'procedural' liberalism, which has been propagated by constitutional political economics and which is based on voluntary exchanges on the marketplace, than to the 'end-state' liberalism of Eucken's approach, which judges constitutional settings according to exogenous criteria (e.g. Barry 1989). Even if this distinction can be questioned on a methodical level (e.g. Vanberg 1997:712), voluntary and consensual exchange acts do constitute the central paradigm and basic idea of work in the Buchananian tradition. As such, they appear to correspond to Miksch's concept of coordination and combination rather than to the "setting of an order" (Eucken 1952/1990:374), which is made possible by pursuing a phenomenological research method.

3. What, then, does characterize Miksch's *mechanism* which results in the establishment of an order? It is internal coordination being backed up by the principle of large numbers and its link to equilibrium theory. That means that a desirable order will find its expression in the imaginative model of a pure exchange economy if and only if it is generated by a large number of market participants. As has already been seen, Miksch applies this mechanism as well to the preferable form of external coordination. This point of view can be distinguished from constitutional political economics as well as from Eucken, although both Eucken and Miksch focus on the conscious decision for a specific constitution as a mechanism to set up an order. In contrast, when it comes to a functional economic constitution, Eucken focuses on constitutional political decisions realized in constituting principles and the logical necessity to "subordinate all legislative, administrative, and judicial measures to it" (Eucken 1949:11). The actual shaping of economic policy is thus linked to the implementation of a presupposed order through constitutional principles. Buchanan and constitutional political economics, too, focus on the conscious decision to establish an order; but they do not recur to the state as an entity generating order (as a 'weakly external' criterion). Instead, their approach recurs to societal consensus by those concerned as an "internal criterion" (e.g. Vanberg 1994:203) without having to resort to "supra-individual value norms" (Buchanan 1986:240). Hence the decision is of individuals in a contractual agreement (in the sense of a hypothetical construct) which enables them to enjoy those advantages that are brought about by the existence of an order. In this respect, Miksch can be seen to be in the middle ground between Buchanan's and Eucken's perspective. In analogy to Eucken, Miksch combines the construction of an order with a supra-individual and neutral medium: Eucken's constituting, ontological principles are related to Buchanan's subjective individualism in the same way as Miksch's (seemingly) natural criterion of large numbers. On the other hand, the criterion of large numbers makes possible a stronger association with individual participants in the sense of constitutional political economics, as is made clear by Miksch's note concerning the 'co-operative-republican way' (Miksch 1950a:59) on the basis of individual agreements.

4. It is one of the outstanding achievements of the Freiburg School to have elaborated on the relationship between economic and legal as well as political order: "that is, so to say, an attempt to translate the classical body of economic theory from the language of economics into the language of the legal sciences", as Franz Böhm (1933/1964:IX) had already pointed out in his postdoctoral thesis on *Wettbewerb und Monopolkampf (Competition and Monopolistic Struggle)*. Therefore, the *relation between the economy and politics* is an important objective in Eucken's as well as Miksch's research. Having dealt with the issue of power and the ensuing understanding that economic and political orders are mutually conflicting, Eucken sought to arrive at a mode of thought that would overcome 'punctualism' and advance a scientific concept which would "see all issues against the background of the entire economic process, economic order and the interdependence of orders" (Eucken 1952/1990:345). This is why economic and political tasks cannot be solved in isolation – instead, the "interdependence of economic and state order makes it necessary to tackle the establishment of both orders simultaneously" (1952/1990:338). This understanding is advanced consistently by Miksch. Acknowledging the interdependence of both orders – which he accommodates in the combination of internal and external coordination –, Miksch conceptualizes the transfer of the economic principle of large numbers already discussed to political decisions: an exchange economy in its pure form is considered the equivalent of political order (e.g. Miksch 1948b:194). This is another issue where Miksch can be compared

to the constitutional political economics approach and the concept of applying the idea of consensual exchange acts to the political process. That means that the idea of consensual exchange acts on the one hand becomes a positive means of analysis for political decisions ('public choice') while on the other hand it turns into a normative criterion for non-market decisions.

5. Finally, because of the aforementioned relationship between the economy and politics (which is ultimately due to different conceptions as to the mechanism), different *conceptions of the state* ensue. Eucken's conception of the state is predominantly functional, as an entity which should "dissolve economic power groups or to limit their function" through state policies (Eucken 1952/1990:334). What is actually the antithesis of Eucken's conception of the state is the disastrous economic policy of the Weimar Republic, which was not least a consequence of the "transformation of the liberal state into an economic state" (Eucken 1932:307). Hence, "the state, by being strongly intertwined with the economy, lost its ability to autonomously develop its agenda, which, however, constitutes the *conditio sine qua non* of its existence" (Eucken 1932:307). It is independence from economic power groups and separation from the economic process which are the essential characteristics of a functional, strong and effective state. At the same time, Eucken does (at the very least) not answer the question of the concrete type of the state; in this vein, it must be conceded that a radical opposition of the state to economic power groups cannot be the sole solution in the reality of a modern, pluralistic democratic system. Nevertheless, one should not confuse the issue of a 'strong' state with an "authoritarian liberalism" (Haselbach 1991), particularly because the strength of the state ensures its functional potency to defend the liberty of the individuals and the market.

As a consequence of his exclusively functional perspective, Eucken does not make any reference whatsoever to the analogy between the rules of competition and democracy. As has already been seen, this analogy can be shown to exist for Miksch: "The freedom of individual citizens to participate in politics is essential for democracy. It is certainly true that the individual citizen is only minimally involved when it comes to the political decision-making of society as a whole. Nonetheless, his or her freedom is rooted in this participation" (Miksch 1947a:431). Especially due to the experiences with the National-Socialist Regime in Nazi Germany, Miksch argues that "political freedom is nothing else but the free disposition of one's own person within those laws which oneself, as an individual citizen, has helped to create" (1947a:431). This is why "the rules of competition are in accordance with the goals – as long as they are rightly understood – of democracy" (1947a:432). Hence, the central question is one of "economic policy in a democracy" (1947b).⁸ In a similar manner, constitutional economics has the conceptual goal that a free market system and consensual collective choice become feasible and durable in a democracy. Along these lines – and due to the link to a mechanistic world view – unanimity in the sense of consensual democracy comes to be regarded as being of pivotal importance (e.g. Buchanan and Tullock 1962). Moreover, majority rule can become possible on a sub-constitutional level, but in the framework of democracy: "Majority rule may very well emerge from contractual agreement entered into by all citizens" (Buchanan 1986:243). It is beyond the scope of this paper to discuss the advantages and difficulties of this approach in any detail here. What is essential, however, is that Miksch as well as Buchanan see the logic of the economic paradigm as being related to democracy.

The following schematic overview illustrates the aforementioned five points:

Table 2:

Miksch's 'Constitutional Economics Approach'

	<i>Eucken</i>	<i>Miksch</i>	<i>Constitutional Political Economics</i>
<i>Objective</i>	'true' order (as a requirement for freedom)	Freedom (in order)	Freedom (normative individualism)
<i>Methodology</i>	Ontological (phenomenology)	Procedural (tendency towards equilibria)	Procedural (exchange acts, consensus)
<i>Mechanism</i>	Constitutive principles create order	Large numbers generate order	Agreement by those concerned constitutes order
<i>Relation between economy – politics</i>	Interdependency of orders	Internal co-ordination as a complement to democracy	Concept of consensual exchange acts is transferred to the political process
<i>Understanding of the state</i>	'strong' state	(majoritarian) democracy	(Consensual) democracy

From a systematic perspective, a further characteristic should be mentioned in conclusion, which differentiates Miksch from both Eucken and from constitutional economics, yet at the same time offers a link to today's discussion of *Ordnungsökonomik*. Constitutional economics links its approach of "micro-funded macro analysis" to a socio-philosophical (contractarian) perspective, and Eucken uses a philosophical approach as well (albeit bearing in mind a rather metaphysical view). Miksch, on the contrary, orients his research program almost exclusively on a purely (neoclassical) economic paradigm. What at first looks like a reduction – which it might actually be, because it is remarkably devoid of normative reflection for a piece of social science – opens new horizons for constitutional economics in the economic theory forum. Miksch's concept implies that on the one hand, constitutional economics and politics must not cease to resort to intradisciplinary tenets, and that on the other hand, models of economic theory must retain their relevance for real life. The constant relaying of constitutional-theoretical results to applied economic policy is realized in the unambiguous allocation and delimitation of what the state is supposed to do (Miksch 1948a:2):

Indeed, we should for once note that there is no clearer symptom for corruption and decay than the constant delegation of duties, which would have to be carried out by a society organized in a state, to the non-organized and anonymous community of those who are meaning well, who are ubiquitous and nowhere.

Notes

1. The term “Freiburg School of Law and Economics” was coined by Manfred Streit (1992) and has in the meantime become established in the Anglo-American literature; e.g. Vanberg (1998). The German term which is commonly used, “Freiburger Schule” (Freiburg School), is often employed imprecisely. To avoid confusion, the “Freiburg School” (or ordoliberalism “in a narrow sense”) should be understood as referring only to the research and teaching community that was active at the University of Freiburg in the 1930s and 1940s, with Walter Eucken, Franz Böhm, and Hans Großmann-Doerth as their pivotal members; cf. Böhm (1957). In contrast, ordoliberalism “in a broader sense” stresses the necessity of basic principles to implement an economic order (to counteract tendencies to neutralize competition), thus accepting certain regulating interventions. These two characteristics make the latter type of ordoliberalism decidedly different from other liberal currents; representatives are, for instance, Alexander Rüstow, Wilhelm Röpke, Alfred Müller-Armack, and Ludwig Erhard. Furthermore, it is possible to name representatives of a “Freiburg (teaching) tradition” who are dealing with questions of “economic order” as Eucken did, albeit with differing evaluations. Suffice it here to mention Friedrich August von Hayek, Erich Hoppmann, Manfred Streit, and Viktor Vanberg.

2. Due to space limitations, the ordoliberal approach of the Freiburg School and especially of Walter Eucken can not be discussed in this paper. Beside the innumerable essays available in German, there are some publications in English. We would like to refer the interested reader to Riha (1986), Grosseckler (1989), Karsten (1992), Rieter and Schmolz (1993), Vanberg (1998), Peukert (2000), Broyer (2001), and Weisz (2001). Likewise, it will not be possible to discuss Buchanan’s approach in any depth; here as well, Vanberg – e.g. especially Vanberg (1988) – and Leipold (1990) illustrate the links between the constitutional economics approach and the ordoliberal research program, albeit with other intentions than the ones that are basic to this paper.

3. The manifold journalistic essays of Miksch in these years can unfortunately not be analyzed here. They comprise detailed studies on specific goods and economic sectors as well as questions of war time economy in general and the possibility of competitive elements in it – even though Miksch belongs to the “national wing” of the *Frankfurter Zeitung* (cf. Gillessen 1986:430). Accordingly, Miksch – living in Berlin – did not belong to the core of the “Freiburg Circles” – three different, but overlapping academic groups opposing the Nazi-Regime and working on plans for the social and economic order after the war; among others, Eucken was an influential member of these circles (Rieter and Schmolz 1993). Nevertheless, it is beyond dispute that Miksch, too, “discreetly continued to produce theoretical works favouring the reactivation of the market economy” (Nicholls 1994:110). A fine example of these works is Miksch’s (1942) essay “Potentials and limits of regulated competition” (*Möglichkeiten und Grenzen der gebundenen Konkurrenz*).

4. This impression will be completed by the fact that Miksch was a member of the German Social Democratic Party – a fact absolutely uncommon for ordoliberal thinkers. We could not clarify his reasons for this membership satisfyingly. As Helga Serrano-Miksch (the daughter of Leonhard Miksch) told us, the membership of her father was kept secret from the public; probably because Miksch was offered a position as a State Secretary by Konrad Adenauer in 1948/49. Miksch rejected the position in order to spend all his time on his scientific carrier. More information could probably be found in his diary, which is kept at the Walter Eucken Archiv in Frankfurt – but the diary is still unpublished and non-accessible to the public. Nicholls’ (1994:252) guess is that Miksch “joined the SPD in the hope that he could teach Social Democrats some sensible economics”.

5. With Miksch’s scheme comprising oligopolies, the market form schemes of Eucken and Miksch are identical (e.g. Eucken 1940/1989:111). Nonetheless, there are gradual differences in their substantiations: Miksch, in the classical manner following von Stackelberg, focuses on the *number* of market participants while Eucken views the *planning data* as decisive criterion (cf. Meijer 1987:146–

151). Hence, Miksch could be seen as belonging to a group “whose members regard market form as a structural organization of markets that takes place according to given criteria” (Brandt 1964:109). Eucken, in contrast, is one of those who “link the subjective aspect of market planning with the structurally determined set of data for individuals”. Karl Brandt, then, is certainly right in stressing that this is actually a discussion where only the emphases are put differently.

6. Large parts of his post-doctoral thesis (Miksch 1937) as well as some later studies (e.g. Miksch 1948b) discuss equilibrium theory and price theory very much like textbooks do. This is why Miksch can very well be considered a translator of Anglo-Saxon microeconomics into the German economics of his time (e.g. Brandt 1993:430). In his last published article, Miksch (1951) expanded his equilibrium theory to a “theory of spatial equilibrium”. Miksch finds that on a market where supply and demand are dispersed in space, “the whole economy will consist of local markets only whose scope is limited; competition will be imperfect, but the supply monopoly will be too weak to neutralize the tendency towards an equilibrium” (1951:14–15). Miksch, then, argues that the relation between company size and transportation cost is correlated to the impact of location on the equilibrium.

7. Cf. Eucken (1934:1–51); Eucken (1940/1989): Part II and III. For an overview, see Weisz (2001).

8. It is undisputed that Miksch is not the only economist of his time who took the importance of democracy for a free society into consideration – as Hayek’s “Road to Serfdom” (1944) shows. However – in contrast to Hayek – in this context Miksch focuses not on the antagonism to collectivism but rather on the similarity of the market process to democracy. In this way one can draw a parallel to the neoclassical view of public choice as presented by Arrow (1951) and esp. Downs (1957) as well as Buchanan’s variant of political economy (e.g. 1959). One might connect Miksch’s ideas with the Schumpeterian “competition for leadership” (Schumpeter 1942/1987:269), even though Schumpeter – like the later Hayek – has a much more evolutionary theory of democracy than Miksch (Wohlgemuth 2002). Another noteworthy parallel can be found in Mises’s “Human Action”, when Mises writes: “It would be more correct to say that a democratic constitution is a scheme to assign to the citizens in the conduct of government the same supremacy the market economy gives them in their capacity as consumers” (Mises 1949/1996:271).

References

- Arrow, Kenneth J. (1951). *Social Choice and Individual Values*. New York: Wiley & Sons.
- Barry, Norman P. (1989). “Political and Economic Thought of German Neo-Liberals,” In *German Neo-Liberals and the Social Market Economy*. Eds. Alan Peacock and Hans Willgerodt. London.
- Berndt, Arnold and Nils Goldschmidt. (2000a). “‘Wettbewerb als Aufgabe’ – Leonhard Mikschs Beitrag zur Ordnungstheorie und -politik,” *ORDO* 51:33–74.
- . (2000b). “Leonhard Miksch (1901 – 1950). Leben und Werk,” *Institute for Economic Research, Department of Mathematical Economics, Discussion Paper No. 24a*. Freiburg.
- Blümle, Gerold and Nils Goldschmidt. (2000). “Zur Normativität ordoliberalen Denkens,” In *Freiheit und wettbewerbliche Ordnung. Gedenkband zur Erinnerung an Walter Eucken*. Eds. Bernhard Külp and Viktor Vanberg. Freiburg, Berlin, München.
- Böhm, Franz. (1933/1964). *Wettbewerb und Monopolkampf. Eine Untersuchung zur Frage des wirtschaftlichen Kampfrechts und zur Frage der rechtlichen Struktur der geltenden Wirtschaftsordnung*. Unaltered photomechanical reprint, Berlin.
- . (1957). “Die Forschungs- und Lehrgemeinschaft zwischen Juristen und Volkswirten an der Universität Freiburg in den dreißiger und vierziger Jahren des 20. Jahrhunderts. (Das Recht der

- Ordnung der Wirtschaft),” In *Aus der Geschichte der Rechts- und Staatswissenschaften zu Freiburg i. Br.* Ed. Hans Julius Wolff. Freiburg.
- Brandt, Karl. (1964). “Methodologische Bemerkungen zur Marktformenlehre,” In *Systeme und Methoden in den Wirtschafts- und Sozialwissenschaften. Erwin von Beckerath zum 75. Geburtstag.* Eds. Norbert Klotten et al. Tübingen.
- . (1993). *Geschichte der deutschen Volkswirtschaftslehre. Band 2: Vom Historismus bis zur Neoklassik.* Freiburg.
- Brennan, Geoffrey and James M. Buchanan. (1985). *The Reason of Rules. Constitutional Political Economy.* Cambridge et al..
- Broyer, Sylvian. (2001). “German Contemporary Analysis of the Economic Order: Standard Ordnungstheorie, Ordoliberalism and Ordnungsökonomik in Perspective,” In: *Institutional Economics in France and Germany. German Ordoliberalism versus the French Regulation School.* Eds. Agnès Labrousse and Jean-Daniel Weisz. Berlin et al.
- Buchanan, James M. (1959). “Positive Economics, Welfare Economics, and Political Economy,” *Journal of Law and Economics* 2:124–138.
- . (1986). *Liberty, Market and State. Political Economy in the 1980s.* Brighton.
- . (1987). “Constitutional Economics,” In *The New Palgrave: The Invisible Hand.* Eds. John Eatwell, Murray Milgate and Peter Newman. New York, London.
- Buchanan, James M. and Gordon Tullock. (1962). *The Calculus of Consent. Logical Foundations of Constitutional Democracy.* Ann Arbor.
- Buchanan, James M. and Viktor Vanberg. (1994). “Interests and Theories in Constitutional Choice,” In *Rules and Choice in Economics.* Ed. Viktor Vanberg. London, New York.
- Burns, Arthur Robert. (1936). *The Decline of Competition. A study of the evolution of American industry.* New York.
- Chamberlin, Edward H. (1933). *The Theory of Monopolistic Competition.* Cambridge, Mass.
- Downs, Anthony. (1957). *An Economic Theory of Democracy.* New York.
- Eucken, Walter. (1932). “Staatliche Strukturwandlungen und die Krisis des Kapitalismus,” *Weltwirtschaftliches Archiv* 36:297–323.
- . (1934). *Kapitaltheoretische Untersuchungen. Mit einer Einleitung in die Sammlung: Was leistet die nationalökonomische Theorie?* Jena.
- . (1940/1989). *Die Grundlagen der Nationalökonomie.* 9. ed. Berlin. (*The Foundation of Economics.* Translated by T. W. Hutchinson. Berlin et al., 1992).
- . (1948). “Das ordnungspolitische Problem,” *ORDO* 1:56–90.
- . (1949). “Von der alten zur neuen Wirtschaftspolitik,” *Frankfurter Allgemeine Zeitung*, December 31, 1949:11.
- . (1952/1990). *Grundsätze der Wirtschaftspolitik.* 6. ed. Tübingen.
- Grosseckler, Heinz G. (1989). “On Designing an Economic Order,” In *Perspectives on the History of Economic Thought. Volume II: Twentieth-Century Economic Thought. Selected Papers from the History of Economics Society Conference.* Ed. Donald A. Walker. Aldershot, Brookfield.
- Haselbach, Dieter. (1991). *Autoritärer Liberalismus und Soziale Marktwirtschaft. Gesellschaft und Politik im Ordoliberalismus.* Baden-Baden.
- Hayek, Friedrich August von. (1944). *The Road to Serfdom.* Chicago.
- Herrmann-Pillath, Carsten. (1994). “Methodological Aspects of Eucken’s Work,” *Journal of Economic Studies* 21:46–60.

- Karsten, Siegfried G. (1992). "Walter Eucken: Social Economist," *Journal of Social Economics* 19: 111–125.
- Leipold, Helmut. (1990). "Neoliberal Ordnungstheorie and Constitutional Economics. A Comparison between Eucken and Buchanan," *Constitutional Political Economy* 1:47–65.
- Meijer, Gerrit. (1987). "The History of Neo-Liberalism: Affinity to Some Developments in Economics in Germany," *International Journal of Social Economics* 14:142–55.
- Miksch, Leonhard. (1929). *Gibt es eine allgemeine Überproduktion?* Jena.
- . (1937b). *Wettbewerb als Aufgabe. Grundsätze einer Wettbewerbsordnung*. Stuttgart, Berlin. (2nd ed., Godesberg, 1947).
- . (1942). "Möglichkeiten und Grenzen der gebundenen Konkurrenz," In *Der Wettbewerb als Mittel volkswirtschaftlicher Leistungssteigerung und Leistungsauslese*. Ed. Günter Schmolders. Berlin.
- . (1947a). "Das Problem der künftigen Wirtschaftsformen: Gedanken zur Wirtschaftsordnung," *Der Wirtschaftsspiegel. Wirtschaftspolitische Halbmonatsschrift*: 401–455.
- . (1947b). "Wirtschaftspolitik in der Demokratie," *Die Zeit*, July 3, 1947:5.
- . (1948a). "Wirtschaftsmoral und Wirtschaftsordnung," *Wirtschaftsverwaltung* 1/14:2–5.
- . (1948b). "Zur Theorie des Gleichgewichts," *ORDO* 1:175–196.
- . (1949a). "Die Wirtschaftspolitik des Als-Ob," *Zeitschrift für die gesamte Staatswissenschaft* 105:310–338.
- . (1950a). "Die sittliche Bedeutung der inneren Koordination," *ORDO* 3:29–73.
- . (1950b). "Die Verstaatlichung der Produktionsmittel in der Morphologie der Wirtschaftsordnungen," In *Untersuchungen zur sozialen Gestaltung der Wirtschaftsordnung*. Ed. Walter Weddige. Berlin.
- . (1951). "Zur Theorie des räumlichen Gleichgewichts," *Weltwirtschaftliches Archiv* 66/I:5–50.
- Mises, Ludwig von. (1949/1996). *Human Action. A Treatise on Economics*. 4th rev. ed., San Francisco.
- Nicholls, Anthony J. (1994). *Freedom with Responsibility. The Social Market Economy in Germany, 1918–1963*. Oxford.
- Peukert, Helge. (2000). "Walter Eucken (1891–1950) and the Historical School," In *The Theory of Capitalism in the German Economic Tradition. Historicism, Ordo-Liberalism, Critical Theory, Solidarity*. Ed. Peter Koslowski. Berlin et al.
- Rieter, Heinz and Matthias Schmolz. (1993). "The Ideas of German Ordoliberalism 1938–45: Pointing the Way to a New Economic Order," *The European Journal of the History of Economic Thought* 1:87–114.
- Riha, Thomas J. F. (1986). "Ordo – the German Neoliberal Model of Economic Order," *Economia Internazionale* 34:31–47.
- Robinson, Joan. (1933). *The Economics of Imperfect Competition*. London.
- Schumpeter, Joseph A. (1942/1987). *Capitalism, Socialism, and Democracy*. 6th ed., London.
- Stackelberg, Heinrich von. (1934). *Marktform und Gleichgewicht*. Wien.
- Streit, Manfred E. (1992). "Economic Order, Private Law and Public Policy. The Freiburg School of Law and Economics in Perspective," *Journal of Institutional and Theoretical Economics* 148:675–704.
- Vanberg, Viktor. (1988). "'Ordnungstheorie' as Constitutional Economics – The German Conception of a 'Social Market Economy'," *ORDO* 39:17–31.

- Vanberg, Viktor. (1994). "Liberal Evolutionism and Contractarian Constitutionalism," In *Rules and Choice in Economics*. Ed. Viktor Vanberg. London, New York.
- Vanberg, Viktor. (1997). "Die normativen Grundlagen von Ordnungspolitik," *ORDO* 48:707–726.
- Vanberg, Viktor. (1998). "Freiburg School of Law and Economics," In *The New Palgrave Dictionary of Economics and the Law 2*. Ed. Peter Newman. London.
- Weisz, Jean-Daniel. (2001). "A Systematic Perception of Eucken's Foundations of Economics," In *Institutional Economics in France and Germany. German Ordoliberalism versus the French Regulation School*. Eds. Agnès Labrousse and Jean-Daniel Weisz. Berlin et al.
- Wohlgemuth, Michael. (2002). "Evolutionary Approaches to Politics," *Kyklos* 55:223–246.

Freiburger **Diskussionspapiere** zur Ordnungsökonomik

Freiburg **Discussion Papers** on Constitutional Economics

- 98/1 Vanberg, Viktor J.:** Markets and Regulation – On the Contrast Between Free-Market Liberalism and Constitutional Liberalism. Published in: Constitutional Political Economy Vol. 10 No. 3, October 1999, p. 219-243.
- 98/2 Pejovich, Svetozar:** Toward a Theory of the Effects of the Interaction of Formal and Informal Institutions on Social Stability and Economic Development.
- 99/1 Vanberg, Viktor J.:** Standortwettbewerb und Demokratie. Veröffentlicht in: S. Frick, R. Penz, J. Weiß (Hrsg.): Der freundliche Staat. Kooperative Politik im institutionellen Wettbewerb, Marburg: Metropolis 2001, S. 15-75.
- 99/1A Vanberg, Viktor J.:** Globalization, Democracy and Citizens' Sovereignty: Can Competition Among Governments Enhance Democracy? Published in: Constitutional Political Economy, Vol. 11, No. 1, March 2000, p. 87-112.
- 99/2 Vanberg, Viktor J.:** Ordnungsökonomik und Ethik. Zur Interessenbegründung von Moral. Veröffentlicht in: B. Külp, V. J. Vanberg (Hrsg.): Freiheit und wettbewerbliche Ordnung, Haufe Verlagsgruppe: Freiburg, Berlin, München, 2000, S. 579-605.
- 99/2A Vanberg, Viktor J.:** Constitutional Economics and Ethics – On the Relation Between Self-Interest and Morality. Published in: G. Brennan, H. Kliemt, R. D. Tollison (eds.): Methods and Morals in Constitutional Economics – Essays in Honor of James M. Buchanan, Berlin, Heidelberg: Springer 2002, S. 485-503.
- 99/3 Cassel, Susanne:** Die Rolle von Think Tanks im US-amerikanischen Politikberatungsprozess. Veröffentlicht in: ORDO, Bd. 51, 2000, S. 203-230.
- 00/1 Sideras, Jörn:** Systems Competition and Public Goods Provision. Veröffentlicht in: Jahrbuch für Neue Politische Ökonomie, Band 19, Tübingen: Mohr Siebeck, 2000, S. 157-178.
- 00/2 Vanberg, Viktor J.:** Markets and the Law. Published in: N. J. Smelser, P. B. Baltes (eds.): International Encyclopedia of the Social and Behavioral Sciences, Vol. 14, Amsterdam et al.: Elsevier 2001, p. 9221-9227.
- 00/3 Vanberg, Viktor J.:** F.A. von Hayek. Published in: N. J. Smelser, P. B. Baltes (eds.): International Encyclopedia of the Social and Behavioral Sciences, Vol. 10, Amsterdam et al.: Elsevier 2001, p. 6482-6486.
- 00/4 Vanberg, Viktor J.:** Der konsensorientierte Ansatz der konstitutionellen Ökonomik. Veröffentlicht in: H. Leipold, I. Pies (Hrsg.): Ordnungstheorie und Ordnungspolitik - Konzeptionen und Entwicklungsperspektiven, Schriften zu Ordnungsfragen der Wirtschaft, Band 64, Stuttgart, 2000, S. 251-276
- 00/5 Vanberg, Viktor J.:** Functional Federalism: Communal or Individual Rights? On B. S. Frey's and R. Eichenberger's Proposal for a "New Federalism". Published in: KYKLOS, Vol. 53, 2000, p. 363-386
- 00/6 Zoll, Ingrid:** Zwischen öffentlicher Meinung und ökonomischer Vernunft: Individuelle Meinungen über Globalisierung und Wettbewerb.

- 01/1 Sideras, Jörn:** Konstitutionelle Äquivalenz und Ordnungswahl. Veröffentlicht in: ORDO, Bd. 52, 2001, S. 103-129.
- 01/2 Märkt, Jörg:** Knut Wicksell: Begründer einer kritischen Vertragstheorie? Veröffentlicht in: ORDO, Bd. 52, 2001, S. 189-214.
- 01/3 Stamm, Hansueli:** Institutioneller Rahmen des Electronic Commerce: Eine ordnungsökonomische Analyse am Beispiel der digitalen Signatur.
- 01/3A Stamm, Hansueli:** Institutional Framework of Electronic Commerce: A Constitutional Economic Analysis of the Problems With Digital Signatures.
- 01/4 Vanberg, Viktor J.:** Evolutorische Ökonomik: Homo Oeconomicus, Markt und Institutionen.
- 01/5 Vanberg, Viktor J.:** Rational Choice vs. Program-based Behavior: Alternative Theoretical Approaches and their Relevance for the Study of Institutions. Published in: Rationality & Society, Vol. 14, 2002, p. 7-53.
- 01/6 Vanberg, Viktor J.:** Citizens' Sovereignty and Constitutional Commitments: Original vs. Continuing Agreement.
-
- 02/1 Vanberg, Viktor J.:** F. A. Hayek und die Freiburger Schule.
- 02/2 Pelikan, Pavel:** Why Economic Policies Need Comprehensive Evolutionary Analysis.
- 02/3 Märkt, Jörg:** Armutsexternalitäten: Verfassungsökonomische Rechtfertigung einer kollektiven Grundsicherung.
- 02/4 Märkt, Jörg:** Zur Methodik der Verfassungsökonomik Die Aufgabe eines vertragstheoretisch argumentierenden Ökonomen.
- 02/5 Vanberg, Viktor J.:** Rationalitätsprinzip und Rationalitätshypothesen: Zum methodologischen Status der Theorie rationalen Handelns.
- 02/6 Schnellenbach, Jan:** The Evolution of a Fiscal Constitution When Individuals are Theoretically Uncertain.
- 02/7 Wohlgemuth, Michael:** Schumpeterian Political Economy and Downsian Public Choice: Alternative economic theories of democracy.
- 02/8 Fischer, Christian:** Europäisierung der nationalen Zivilrechte – Renaissance des institutionellen Rechtsdenkens?
-
- 03/1 Vanberg, Viktor J.:** Die Verfassung der Freiheit: Zum Verhältnis von Liberalismus und Demokratie.
- 03/2 Goldschmidt, Nils / Berndt, Arnold:** Leonhard Miksch (1901–1950) – A Forgotten Member of the Freiburg School.