

THE BIRTH OF AUSTERITY

GERMAN
ORDOLIBERALISM
AND CONTEMPORARY
NEOLIBERALISM

EDITED BY THOMAS BIEBRICHER
AND FRIEDER VOGELMANN

The Birth of Austerity

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German Ordoliberalism and Contemporary Neoliberalism

Edited by Thomas Biebricher
and Frieder Vogelmann

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Chapter 1

Introduction

Thomas Biebricher and Frieder Vogelmann

As the smouldering European Debt Crisis was about to heat up once more in spring of 2015 and relations between Germany and Greece in particular were becoming ever more strained over the tension-fraught question of how to deal with the latter country's skyrocketing amount of public debt, *The Economist* offered a surprising explanation for the enduring conflict: Germany's resistance against any 'haircut' or fundamental debt restructuring as well as its insistence on fiscal rules that would have to be applied rigorously not only to Greece but all members of the European Monetary Union was not so much due to any material interest, it was rather attributable to a particular German heritage in economic thought named *ordoliberalism* – a tradition probably entirely unknown to the large majority of the journal's non-German readership.¹

In the same year, debates among scholars working in the *Governmentality Studies* would frequently draw on the French philosopher Michel Foucault (1926–1984) and his analysis of ordoliberalism in their attempts to come to terms with contemporary neoliberalism, the latter being conceptualized not as an economic doctrine or ideology but as a political rationality of government: 'As Foucault saw it, the neoliberal governmentality first developed by the Ordoliberals in and around the 1930s in Germany had become the explicit program of most governments in capitalist countries by 1979 when he delivered his lectures'.² As exemplified by a statement from Johanna Oksala, the reference to ordoliberalism as a crucial step in the development of current neoliberal practices of government was already a well-established common place among Foucault scholars and the *Governmentality Studies*, although how to interpret the ordoliberal tradition as well as Foucault's analysis of it is still a subject of a lively debate.³

How is it that ordoliberalism, which is represented almost exclusively by German thinkers and originated in the 1930s, is discussed in such widely diverging intellectual contexts as *The Economist* on the one hand and *Foucault Studies* on the other in the year 2015? And what exactly is this ordoliberalism in the first place, which is practically unknown in the Anglo-American world and has been largely relegated to obscurity even in its intellectual country of origin until fairly recently? What are its specific contours as a current within the liberal tradition, and what are its core tenets if there are any? These are the basic questions that this volume seeks to address, with part I being devoted to the second, where we present a selection of seminal ordoliberal texts either in their entirety or in the form of excerpts, some of them available in English for the first time. Part II of the book seeks to illuminate the first question with four chapters that assess the contemporary significance of ordoliberalism in various contexts from the *Governmentality Studies* to the political economy of the European Union with the politics of austerity being the common denominator. Both parts hang together: We believe that both of these interrelated discussion threads that revolve around the question of what it means to govern according to ordoliberal precepts, whether in the European or other spatio-temporal contexts, are worth pursuing further as the potential of these discussions is far from realized yet. However, these debates, especially when they take place between the continental European and the Anglo-American world, have been severely hampered because many of the classical ordoliberal texts are either not translated into English or, when they are, they are next to unavailable as books have gone out of print and articles are buried in obscure journals. This makes for an unfortunate situation where it is often difficult to assess the claims made about ordoliberalism in the various contexts for lack of access to the primary sources. We seek to alleviate this situation and thus facilitate the discussions surrounding ordoliberalism by making some seminal ordoliberal texts or excerpts thereof available to English-speaking readers, some of them translated for the first time. We hope that these sources together with the four original chapters will provide the base for an even more productive discussion of ordoliberalism in the future. In the rest of this introduction, we will outline ordoliberalism and the two debates in which it has re-appeared, focusing on the relation between ordoliberalism's *Ordnungspolitik* and the politics of austerity.

WHAT IS ORDOLIBERALISM?

Ordoliberalism was born in Weimar Germany over the course of the 1930s, and its genesis must be understood in this particular spatio-temporal context and the perspective its main protagonists took in analysing it. For the most

part of its relatively brief existence the Weimar Republic was crisis-ridden in any number of ways. From the very beginning, the newly found republic was confronted with heavy clashes between various political factions, and when these oftentimes violent conflicts subsided the country faced severe economic difficulties related to the war reparations resulting in the runaway inflation of the early 1920s that left significant strata of the petit bourgeoisie in particular traumatized as they lost their savings. Yet it almost goes without saying that, economically and politically speaking, the worst was yet to come, as the Great Depression hit Germany along in 1929 and spelt socio-economic disaster for a country that had only just begun to stabilize itself in the latter half of the decade. The economic crisis, finally, created a political crisis that had already been built into the structures of the Weimar political system and that, in combination with a polarization of the party system and a widespread failure to identify with a pluralist parliamentary democracy, would ultimately result in the collapse of the republic as the Nazis came into power and swiftly transformed the system into a totalitarian dictatorship. The ordoliberalists were all keenly aware of both the economic and the political problems of Weimar and were convinced that one could not be addressed without the other, which committed them to a view on society that was self-consciously non-economistic in the sense of treating the various spheres of society and the problems occurring therein as interrelated.

But who were the ordoliberalists that we focus on in this volume? First and foremost, ordoliberalism is associated with Walter Eucken, who spent most of his academic career as a professor of political economy at the Albert-Ludwigs-Universität where he was central figure of the so-called Freiburg School. In addition to Eucken, the nucleus of this school was personified by the Franz Böhm and Hans Großmann-Doerth. The latter was a professor of law in Freiburg, and the former received his training in law there before he moved to the university in Jena, only to return to Freiburg briefly after World War II as a professor in this field. The remaining ordoliberal we focus on in this volume is Alexander Rüstow. Rüstow, who had received his doctorate in philosophy but had also studied political economy and other social sciences, was never institutionally affiliated with the university in Freiburg but was in particularly close intellectual exchange with Eucken ever since the late 1920s and provided ordoliberal thought with some key ideas and theorems. Although there were different emphases and specific arguments in the respective agenda of all of these scholars, they are commonly and rightly referred to as the core personnel of the ordoliberal tradition.⁴

As is often the case, the label ordoliberalism was not invented nor claimed by those to whom it refers to, but, nevertheless, it is an apt one as it gives a fairly accurate indication of where its proponents positioned themselves in the fierce intellectual and political struggles on the eve of the Weimar

collapse. So what are the convictions and tenets they shared and which thus constitute the substantive core of this tradition? The first basic conviction has already been mentioned earlier; it is a perspective on society that puts a particular emphasis on functioning markets as the indispensable precondition for the material reproduction of society but is equally adamant that functioning markets in turn rely on certain societal preconditions. Therefore, the ordoliberal perspective is an explicitly interdisciplinary one with the fields of law and political economy at its centre. Not the least because of the resulting complexities of such a broad scope of their approach, the ordoliberals are also convinced that science, and only science, is capable of developing an accurate analysis of the multiple interdependencies between the economic and the non-economic spheres of society and thus of offering apt diagnoses as well as corresponding therapeutic recommendations. This, in turn, implies that social science, according to the ordoliberals, has to be practical in the sense of having a responsibility to inform political decision making; it must not be practised for its own sake, and this view is a testimony to the ordoliberals' view of themselves as being called upon to act as a stabilising 'rational' factor in the crisis-prone context of Germany in the 1930s.

As already indicated, the ordoliberals were of a broadly liberal persuasion when it came to the superiority of markets over other modes of societal coordination for the purpose of material reproduction. This is to say, conversely, that they were particularly opposed to all kinds of collectivism, especially Soviet communism but also the collectivist elements in Fascism and National Socialism, for both normative reasons, that is, the resulting restrictions on individual freedom, but also functional ones: Central planning could not work, as Friedrich August Hayek and other neoliberals had already argued over the course of the Socialist Calculation Debate that dated back to the 1920s.⁵ Without a properly functioning price mechanism as the functional core of markets, allocation could not even remotely approximate efficiency, and the key to the particular *ordoliberal* way of spelling out this *neoliberal* core conviction, which is ultimately rooted in the marginalist revolution led by Carl Menger and his adherents in the Austrian school around Hayek and Ludwig Mises, is already contained in the very name of this tradition, namely *ordo*, or *order*.

The ordoliberals subscribe to a social ontology according to which society can be conceived of as an 'interdependence of orders', and, accordingly, the basic maxim of an ordoliberal understanding of its object of inquiry must be 'thinking in terms of orders' (*Denken in Ordnungen*).⁶ Whatever the social sphere in question, be it the economy, the political system or the legal system, all of them are constituted by some kind of *order* that may be functioning, malfunctioning or, possibly, in complete disarray. Needless to say, the task, from an ordoliberal perspective, is to identify the elements and structures of

functioning (and otherwise desirable) orders, and in the case of the economy this would be the so-called *competitive order*, which safeguards proper competition and, by the same token, the functionality of the price mechanism. What is of crucial importance, then, is what the ordoliberals call ‘the politics of ordering’ (*Ordnungspolitik*), that is, what kind of economic policy is implied by such an understanding of functioning markets. On the one hand, the emphasis on a market order puts some distance between the ordoliberals and their classical liberal forebears to the extent that the latter were willing to stand by and leave markets to themselves under the banner of ‘*Laissez-Faire, Laissez-Aller!*’ This is a position at times fervently criticised by the ordoliberals, who claim that this misguided kind of liberalism has indirectly paved the way for the collectivisms of the twentieth century. On the other hand, it obviously sets them apart from these collectivisms but also other interventionist policy paradigms such as Keynesianism, which was already in its ascent in the early days of ordoliberal theorising in the 1930s. Against Keynesian demand management, the ordoliberals emphasise that *Ordnungspolitik* is not to intervene directly into markets but must only be directed at the *framework* of markets, sometimes referred to as the ‘economic constitution’ (*Wirtschaftsverfassung*). This is to say that *Ordnungspolitik* must constitute, enforce and whenever necessary adapt the respective rules and regulations so competition and price mechanism can function *properly* – which means that not just any kind of competition but only competition based on performance (*Leistungswettbewerb*) is acceptable. Economic policy thus is to embark upon what the ordoliberals shrewdly promulgate as a ‘Third Way’ between capitalism and communism that is neither confined to mere stoic passivity in the face of economic upheaval nor intended to subject the economy to the plans of a central administration. But how and why does the postulation of this Third Way as an alternative in economic policy making mark the ‘birth of austerity’ invoked in the title of this volume?

ORDOLIBERALISM AND THE POLITICS OF AUSTERITY

According to Mark Blyth who has written its authoritative intellectual and natural history, austerity can be understood as ‘a form of voluntary deflation, in which the economy adjusts through the reduction of wages, prices, and public spending to restore competitiveness, which is (supposedly) best achieved by cutting the state’s budget, debts, and deficits’.⁷ How does a politics of ‘voluntary deflation’ relate to *Ordnungspolitik*? We argue that the relation is best seen by scrutinising the role of the state in ordoliberalism, particularly with regard to economic crises and general social policy, and by looking at the role ordoliberalism envisions for itself with regard to the state.

To begin with, if the ordoliberalists want to maintain their position that supposedly transcends the feud between planners and interventionists on the one hand and laissez-faire advocates and Manchester libertarians on the other, they obviously have to affirm that the state has some positive functions vis-à-vis the economy, but they have to clarify how these tasks differ from what Keynes and liberal socialists let alone communists propose. In other words, they need to define and demarcate the state's agenda and non-agenda in its various aspects, that is, the kind of state action as well as the scope of it that is acceptable and, arguably, even indispensable. Conversely, this ought to provide them with a clear line of demarcating certain kinds of actions and societal spheres and contexts that are off limits for the state. As an aside, we should also note that the ordoliberalists realise that the appropriate economic policy may presuppose a particular political order, that is, a certain state structure that is indispensable for the successful implementation of *Ordnungspolitik*, but while some of the ordoliberal texts in this volume elaborate on this issue, we will not pursue it further here.⁸ Instead, let us draw on what we already know about the politics of ordering and identify what kinds of policies are *ruled out* by it because they would impede the workings of the price mechanism and performance competition. First of all, this would be a deliberately expansionary monetary policy along the lines of what Keynes suggested as one instrument of stimulating the economy. Flushing markets with cheap money artificially boosts demand and thus leads to sales when, in actuality, goods would normally only sell at cheaper prices or increased quality. Consequently, this leads to a distortion of the price system, and the same goes for the inflationary effects that may be the result of an expansionist monetary policy.⁹ Eucken in particular argued that an intact monetary system was of the utmost importance for functioning markets.¹⁰ Accordingly, manipulating the value of money, be it internally or externally through currency policy, that is, devaluation, is not considered a viable option from an ordoliberal perspective. It is therefore no coincidence that especially in the work of Wilhelm Röpke, who is the most internationally oriented ordoliberal, the gold standard is occasionally still lauded for its workings although Röpke harboured no hopes of revitalising it ever since the 1930s.¹¹ After all, one of the prime effects of the gold standard was that it precluded any deliberate monetary/currency policy and instead established a system that would ideally adjust trade balances through the quasi-automatic contraction and expansion of the monetary system. According to Röpke, the best available alternative after the gold standard has become untenable is an independent central bank that wisely protects the monetary system and resists any short-term political instrumentalisation.¹²

For similar reasons, a policy of fiscal stimulus would have to be ruled out because its effects amount to a state subsidy to enterprises that are no longer

competitive and competition only truly works if it creates winners and losers, with the latter ultimately being forced off the market. In short, ordoliberalism generally rules out policies to stimulate the economy either through fiscal or monetary means along the lines of what Keynes would have suggested. In a crisis, companies may go out of business, and employees may lose their jobs. But while Eucken concedes that our 'social conscience forbids us to tolerate mass unemployment', he still insists that 'the policy of full employment [Keynesian demand management; TB & FV] makes for an instability on other markets, which is extremely dangerous, and, in addition, forces economic policy in the direction of central planning'.¹³

In effect, this means that the ordoliberal politics of crisis management are at times indistinguishable from the stance of Hayek or Mises during the 1930s in treating crises as a necessary phenomenon in the creative destruction of capitalism that cleanses the markets of uncompetitive actors and reduces the overabundance of supplies built up during economic boom times. In general, the ordoliberal economic policy focuses on the enforcement of the competitive order, and the only politics that the state should engage in in response to a crisis is not Keynesian demand management but what the ordoliberals call liberal interventionism, which is not aimed at decreasing or moderating the volatilities of capitalist reproduction through crises but rather hasten the respective transformations.¹⁴

Aside from the (non-)politics of crisis management, what is the state's role in other policy fields such as social policy and particularly labour market policy? The ordoliberals are not in principle opposed to social policy,¹⁵ but it must not interfere with the price mechanism and proper competition on labour markets. So while a system of unemployment insurance and basic poor relief is certainly conceivable, a minimum wage would be unacceptable. What we find here could be described as workfare *avant le lettre*: Since social policy must not interfere with the functioning of competitive markets, it must not de-commodify those unemployed yet able to work. Instead, it must activate them as potential participants in markets, first and foremost the labour market. Hence, turning them into independent entrepreneurs and retraining them for different jobs are social policies favoured by the ordoliberals and quite in line with what is known as the 'activating' welfare state.¹⁶ The ordoliberals' critique of traditional social policy also falls in line with this proto-workfare vision: Eucken explicitly blames rigidities on labour markets due to union power for various economic problems in the 1920s¹⁷ and also alleges that the 'corporative structure of the labor market' together with the policy of full employment 'resulted in a marked tendency towards central control of the economy'.¹⁸ Again, the general maxim of *Ordnungspolitik* is to restore and safeguard the price system and competition, and this holds for the labour market as for any other market. If cartels can artificially bolster prices for

goods, and unions can do the same for the price of labour power, this amounts to a distortion of the price mechanism and, therefore, a consequent politics of the competitive order must hold both kinds of economic power that threaten proper competition and distort prices in check.

The agenda of the ideal ordoliberal state then, in sum, is defined by the aim of securing the proper functioning of the price mechanism on the basis of a functioning monetary order and desirable forms of competition. Anything that would jeopardise these overriding *teloi* of ordoliberal economic policy must be abstained from: from fiscal stimuli to expansionist monetary policy and from excessive debt/deficits that would crowd out private investment and may also have adverse consequences for the currency to all kinds of redistributive policies that may decrease the effects of competition ranges the *non-agenda* of ordoliberal policies. But this means that while none of the ordoliberals has ever explicitly called for austerity and while ordoliberal economic policy cannot be entirely reduced to nothing but austerity politics under another name, under certain conditions and in certain contexts, *Ordnungspolitik* will amount to a politics of austerity, not in all but many respects – and the European Union and the Sovereign Debt Crisis arguably is one of such contexts.

Yet before we turn to it, we want to highlight another relation between ordoliberal *Ordnungspolitik* and a politics of austerity that has to do with the role science should play for the state according to ordoliberalism. First of all, ordoliberalism argues time and again that science must have more influence on the state in all policy fields. For ‘the modern state is not a sufficiently order-establishing power [ordnende Potenz]’ Eucken writes in his *Grundsätze der Wirtschaftspolitik* (Principles of Economic Policy), ‘yet it might become one’¹⁹ – but only with the help of science. Not just any science, of course, but only a science that has grasped the ‘interdependence of orders’ – the entanglement of the different normative orders within a given society – is able to give the state the rational and systematic foundation for its interventions that it currently lacks. The authority of ordoliberal science is what strengthens the state so that it might overcome the conflicting social parties and their interests.²⁰ The moral tone in which the requirements of self-restraint and determination for the state to become a strong one are voiced is not accidental to the tradition. For ordoliberalism does not just give a rational and systematic account of what the state should (not) do and how (not) to do it, but it thereby directly empowers the state by giving it normative guidance. In this at-times moralistic tone, we find a second relation to today’s politics of austerity: While it might be defined as an economic policy set for ‘voluntary deflation’ with regard to its desired outcomes, its mode of legitimising the necessary measures is moralism: The emphasis on personal responsibility, the moral condemnation of debts (often in the name ‘of our children’) or the

rigorism with which it defends the absolute necessity of ‘playing by the rules’ and ‘doing one’s homework’ – all these moral notions partly disguised as economic doctrines are if not taken straight out of ordoliberalism’s rhetoric then at least well prepared by it.

THE ORDOLIBERALISATION OF EUROPE?

As mentioned earlier, Part II of this volume seeks to address the question why it is that ordoliberalism is being discussed again nowadays but not necessarily by historians of economic thought but by Foucaultians and political economists analysing the current problems of the Eurozone. Let us begin with a look at the significance of ordoliberalism in the context of contemporary Europe. In response to the financial crisis but especially in reaction to the Sovereign Debt Crisis that followed, the European Union introduced a number of reform packages to deal with countries on the verge of bankruptcy, such as Greece, Portugal and Ireland, but also, more generally, to safeguard the future existence of the euro. The result is a yet-evolving regime of economic governance, the main elements of which are the following: Countries in urgent need for funds to avoid insolvency are given financial support through the European Stability Mechanism. However, this money comes with strings attached as the countries in question are given help only under the condition that they commit themselves to ‘structural reforms’, the implementation of which is being monitored by the ‘Troika’ of European Central Bank (ECB), International Monetary Fund and the European Commission. The contents of these structural reforms obviously vary, but they do so around a core set of measures that aim at a reduction of state expenditure and have the de facto effect of reducing wages, rents, health care coverage and so on – in other words, it is the politics of austerity as described by Blyth in the preceding quote. More generally speaking, the regime in the making seeks to increase EU-influence on national fiscal policy, and to this effect new rules and regulations have been introduced through the so-called Six-Pack and the Two-Pack. One of the main goals of both of these reforms is to tighten the rules already contained in the Stability and Growth Pact from 1997 that was to stabilise the soon-to-be-introduced euro through a strict capping of state deficits and debt. Reining these in is, finally, also the rationale behind the introduction of so-called debt brakes through the Fiscal Compact that introduce balanced-budget amendments on the constitutional level of the signee states.

How is this related to ordoliberalism? The debate in the media was first triggered by the need to find an explanation for the apparent rigorism of the German-led crisis management, which not only alienated those countries that

found themselves subjected to the directives of the Troika but also raised eyebrows elsewhere. Especially in the United States, both politicians and political commentators in the media urged Europe and Germany as the new ‘indispensable nation’ in Europe that it became over the course of the Sovereign Debt Crisis to ease the austerity requirements for debtor countries and pursue an overall more expansionary course.²¹ The strictly functional argument underlying this demand states that if it is the goal of reforms to reduce debt and restore investor and financial market trust in a particular country, austerity is simply a poor strategy to achieve this goal because in the short term its impact flies in the face of the latter: Economic growth slows down, state revenue dwindles and investors and markets, consequently, put even less trust in the economic health of a country. Ordoliberalism was invoked as an explanation for the stubborn insistence on behalf of the Germans that austerity had to be followed through even if would take Greece a hundred years to pay off its debt – assuming an annual growth rate of roughly three per cent.²²

Over recent years a debate has thus been triggered over the significance of ordoliberalism as the default economic policy perspective of German elites²³ for the austerity regime in Europe, and it is this debate that two of the chapters contained in Part II of this volume aim to contribute to. Those who affirm the ordoliberal influence point to the substantive content of ordoliberal thought that emphasises competition/competitiveness, individual liability and fiscal discipline and highlight the parallels that exist with the thrust of the existing regime: All reforms are supposedly designed to restore the competitiveness of the country in question, but because they are supposedly individually responsible and in order to avoid ‘moral hazard’ they have to accept full responsibility for their financial obligations, and therefore cutting the debt is not an option (and neither are Eurobonds for the future) but only fiscal discipline on the basis of budget cuts.²⁴ Furthermore, one can also refer to the preferred technique of ‘rules plus sanctions’ as a decidedly ordoliberal facet of the European economic governance regime in the unmaking. After all, what is being modelled and remodelled through the various reforms is what the ordoliberals would have called the economic constitution of Europe. And needless to say from an ordoliberal perspective it is imperative that rules are adhered to. Finally, one can also point to the political framework in which the revised governance regime is being shaped and search for parallels to ordoliberal ideas. In this regard reference could be made to the less-than-ideal democratic arrangements in the EU in general but especially when it comes to the issues of debt and fiscal discipline with the Troika and the European Commission being the most important actors in this field who also happen to be actors who do not excel when it comes to democratic legitimation and accountability. The ordoliberals also at least considered the possibility that a truly ordoliberal economic policy may presuppose a state or a

federation that can insulate itself to a certain degree from democratic pressures, and with a view to the EU's evolving regime of fiscal oversight and debt management it would seem that this has been achieved at least to a considerable degree. Finally, one could add that the technocratic aspect of the reforms corresponds to strong belief in the powers of science (political economy, law, etc.) to generate truths and its responsibility to inform political decision making.²⁵

However, on the other side of the debate, already the premises are being doubted. Far from acting irrationally driven by the obscure ideas of ordoliberalism Germany has actually been acting according to its national interests so there is no need to invoke ordoliberalism for an explanation because there is nothing unusual to explain.²⁶ Obviously, implicit in this argument is a much bigger issue that we can only hint at here, namely, how we try to explain purposive action: Are actors motivated by certain ideas and discourses that they may not even be fully aware of or, are they driven by preferences and interests or a combination of both? Assessing the ordoliberal significance in the reshaping of Europe presupposes that this question is addressed as well.²⁷

Furthermore, those sceptics with regard to the ordoliberal influence, which includes many of the leading protagonists of the contemporary incarnation of the tradition that has come to call itself *Ordnungsökonomik* instead of ordoliberalism, point to various aspects of the current situation in Europe that are hardly in line with ordoliberal tenets: first and foremost the policies of the ECB that amount to an indirect financing of ailing states through purchase of their bonds. At the more fundamental level the sceptics argue that if ordoliberalism is all about the inviolability of rules and their strict enforcement, Europe at the moment is far from an ordoliberal utopia as many of the reforms passed over the last five years are contested in court and the overall situation rather resembles a continued state of emergency.²⁸

The two chapters by Christian Joerges and Brigitte Young in this volume contribute to this debate. Young's contribution sets out with a look at the relation between the traditions of ordoliberalism and neoliberalism and concludes that the term 'neoliberalism' in the way it is used contemporarily represents almost the complete opposite of what ordoliberalism stands for. Both, therefore, should be kept separately and not conflated with each other. On the basis of this groundwork Young then addresses the questions at the heart of the debate. She reviews a number of aspects of the European crisis management and assesses to what extent they could be considered to be ordoliberal in nature. Her conclusion puts her more on the side of the sceptics in the debate. Germany, Young contends, may have acted egoistically and may have shown a lack of solidarity in the way it shaped the crisis management, but ordoliberalism should not be blamed for this, because the precepts for the various policy designs could be found not only in ordoliberal thought but in

any mainstream economic textbook. Young's chapter concludes that ordoliberalism is not to blame for European austerity but rather should be used as a theoretical resource against a deregulatory neoliberalism.

In his chapter Christian Joerges starts out with a look at the origins of ordoliberalism in the 1930s and how it fared in and influenced the early Federal Republic of Germany. Joerges then turns to the development in the European economic community and tries to illuminate to what extent the European Union in its various incarnations exhibited ordoliberal characteristics from its very inception. In his view, the Maastricht Treaty manifests a turning point in the history of the EU, and he chronicles the further economic integration through law leading up to the common market. Joerges contends that integration through law, which, in principle, is in accordance with ordoliberal views, reached its limits in the case of the Economic and Monetary Union because although it was designed along ordoliberal lines, the structures in place soon proved to be insufficient. More importantly, with a common currency the member states had largely given up their individual crisis-management toolbox without a European equivalent being available. Thus the Financial and Sovereign Debt Crisis had to be dealt with on the basis of ad-hoc measures often bordering on the extralegal. Accordingly, Joerges concludes that what we see in the contemporary European Union is not a triumphant but a defunct ordoliberalism.

ORDOLIBERALISM AND GOVERNMENTALITY

Let us now turn to the other field in which ordoliberalism has shown up even more surprisingly than in the political economy of the Eurozone, namely the *Governmentality Studies* inspired by the work of French philosopher Michel Foucault. Foucault, who is known as a theoretician of power, discourse and the subject, embarked upon a new path in thinking about these issues at the end of the 1970s when he proposed to understand power relations as relations of government. With this new vocabulary Foucault tried to get a grasp on the interplay of self-government and the government of others and, among other things, to capture the role of the state in societal power formations. For this purpose he introduced the neologism governmentality, which can be described as a reflected practice of governing and a combination of a particular governing rationality and corresponding governing technologies.²⁹ In his lectures at the Collège de France from 1978 to 1979 Foucault set out to develop a history of governmentalities that spans back to early European modernity and then traces its development through the governmentalities of Reason of State, Physiocratic doctrines and liberalism up to contemporary German ordoliberalism and American neoliberalism. The fate of these

lectures is a curious one because while the concept of governmentality in combination with one or two of the over twenty lectures already was known to the academic community by the early 1990s, spawning an entire research field, namely the *Governmentality Studies*, the bulk of the remaining lectures would only be published in English thirty years after Foucault delivered them in 2007/2008.³⁰ While it had been known that Foucault touched on neoliberalism in his lectures, it must have been a surprise to many Foucaultians to find out that the philosopher had devoted a third of his lecture class entitled *The Birth of Biopolitics* to the tradition of ordoliberalism, just as it must have been a surprise to his listeners in 1979 when he stated in one of his lectures that ‘today I would like to try to finish what I began to say about post-war German neo-liberalism, that is to say, the contemporary neo-liberalism which actually involves us’.³¹

So where did Foucault see the significance of the ordoliberalism that he apparently took to have an immense impact on his present thirty years ago? Foucault was interested in the political rationality of governmental practices: the conceptual resources to think about how and why to govern, the objects and subjects to be governed as well as the subjects governing, and, finally, the strategies with which to propagate *this* political rationality against other modes of thinking about governmental practices. Yet in what respect do the ordoliberals have anything original or innovative to offer to this question of how to govern?³² For Foucault it is, first and foremost, the ordoliberal conceptualisation of the market that is a novelty when compared to the views of ‘classical’ liberalism. In Foucault’s reconstruction liberal government conceives of the market as a natural phenomenon of harmonious exchange. They arise out of the natural propensity of man to ‘truck, barter and exchange’ in the famous words of Adam Smith and provide the opportunity for voluntary exchanges that satisfy everybody’s interest. As such already well-ordered institutions they are not in need of stately regulation and supervision but are best left to themselves. The problem for liberal government then is mainly how to abstain from governing too much; consequently there is not a lot of reflection on how to positively govern markets. Instead, classical liberalism invents a whole new field of governable objects and subjects to avoid ‘theoretical passivity’³³: civil society. Here, various governmental programmes – pauper management, hygiene programmes, medical service, education or measures against crime – can be formulated without interfering with individual interests that must be left alone to naturally constitute the free play of supply and demand on markets.

The ordoliberals, however, have a completely different view of markets, Foucault contends, as they view them as wholly artificial sites, not so much of exchange but rather competition. Built into markets there is a persistent conflict of interests between market actors, and accordingly the natural tendency

of markets is to destroy themselves by subverting the logic of competition, for example, by forming a monopoly. From this the ordoliberalists derive a much more activist agenda (including a non-agenda) for the state that we are already familiar with to a certain extent. For them, the old liberal categorical distinction between state and market as autonomous entities no longer holds since they are mutually intertwined. Markets do not arise out of thin air, they have to be constituted by states in the first place and it is only the government of the state that keeps markets from collapsing in the long run. On the other hand, market competition becomes a ‘veridical’ practice, a ‘site of verification-falsification for governmental practice’:³⁴ the market is the most important indicator whether any policy is viable. So, while markets cannot function as sites of competition without the state providing the necessary institutional framework, the state will not be able to judge the quality of its policies without really competitive markets. For the ordoliberalists, rationally governing states and competitive markets are co-constitutive.

In this reconceptualisation of markets, a new governing rationality has emerged and with it come its corresponding governing technologies. In the case of ordoliberalism the main technology of governing is the law and more specifically what we already know as the economic constitution. For Foucault, this constitutes a novel, indirect way of governing markets because in the ideal ordoliberal world, government would never intrude directly into economic processes but only adjust and re-adjust the economic constitution and, furthermore, aim to shape the society surrounding markets, not the least through so-called *Vitalpolitik*.³⁵ Yet Foucault is also interested in what kind of subjects are created through ordoliberal government and argues that as a consequence of the novel conceptualisation of the market, ‘the *homo oeconomicus* sought after is not the man of exchange or man the consumer; he is the man of enterprise and production’.³⁶ Ordoliberalism interpellates and thus constitutes subjects as enterprising subjects who have to take risks, be prudent and disciplined, exhibit creativity and, inevitably, assess their own performance vis-à-vis others with whom they are competing. The political project contained in ordoliberal governmentality thus can be summed up in the following way: ‘It is a matter of making the market, competition, and so the enterprise, into what could be called the formative power of society’.³⁷

The two chapters by Johanna Oksala and Lars Gertenbach in this volume seek to contribute to this discussion, but what they share with Young’s and Joerges’ chapters is a perspective that is interested in the link between ordoliberalism and austerity.

Oksala’s chapter proceeds in two main steps. The first is a reconstruction and assessment of Foucault’s interpretation of ordoliberalism understood as a political rationality or governmentality. She emphasises that ordoliberalism is an activist rationality of government the task of which is to enable

competition and entrepreneurial behaviour throughout society. In a second step Oksala probes the ability of the governmentality perspective to serve as an analytical framework for scrutinising the EU. Oksala argues that this perspective does not only help to illuminate the rationale of the recent austerity measures but can also shed new light on some of the more structural problems of the EU such as the notorious democratic deficit. Her chapter concludes that in order to democratise the EU, not only must its (economic) constitution be written anew but it would also require ‘a radical revolution in our governmentality’.³⁸

The chapter by Gertenbach begins with a look back to the birth of ordoliberalism and the ‘Freiburg School’ in particular in the year 1933, when the collaboration between Walter Eucken, Hans Großmann-Doerth and Franz Böhm began that would culminate in their joint authorship of the *Ordo Manifesto of 1936* that makes up chapter 1 of this volume. With reference to this text as well as others from the ordoliberal tradition Gertenbach proceeds to identify five key elements of ordoliberal thought from the anti-economistic viewpoint of political economy to the crucial distinction between the economic constitution and the economic process and the overall telos of competition – which, in Gertenbach’s view, is also shared by at certain versions of neoliberal thought. He then turns to Foucault’s lectures on ordoliberalism and highlights four key aspects of the latter’s discussion before he broadens the scope of his own analysis in order to assess the relation between ordoliberalism and neoliberalism. If Foucault is taken seriously, Gertenbach contends, ordoliberalism is not just a variety of neoliberalism and, contrary to the argument of Young’s chapter, ordoliberalism cannot be pitted against a radically deregulatory neoliberalism: ‘Foucault undermines this distinction’ by pointing out that ordoliberalism ‘must rather be understood as the epitome of its [neoliberalism] political rationality’.³⁹ Gertenbach concludes that through the political rationality of ordo-/neoliberalism ‘everything can be economized’ and governing through market mechanisms, from the individual subject that must practice ‘prudential entrepreneurialism’ to the state that must practice the politics of austerity.

NOTES ON THE TEXTS

All translations of the ordoliberal texts in part I of the book have been edited by us, and wherever necessary obvious mistakes and mistranslations have been corrected. Since these texts often have a publication history of their own, we here list their original publication in German and, where available, their English translation. At the beginning of each section of part I we provide readers with a brief summary and a contextualisation of the various texts.

Chapter 2, ‘The Ordo Manifesto of 1936’ by Walter Eucken, Franz Böhm and Hans Großmann-Doerth, was originally published as ‘Unsere Aufgabe’ (*Our Task*) in *Frankfurter Zeitung*, 29 November 1936. The translation we reprint here has been published in *Germany’s Social Market Economy: Origins and Evolution*, edited by Alan Peacock and Hans Willgerodt, 15–25. New York: Palgrave 1989.

Chapter 3, ‘Structural Transformations of the State and the Crisis of Capitalism’ by Walter Eucken, was originally published as ‘Staatliche Strukturwandlungen und die Krisis des Kapitalismus’, *Weltwirtschaftliches Archiv* 36 (1932), 297–321. The translation is by Keith Tribe.

Chapter 4, ‘The Different Types of Economic System’ by Walter Eucken, is an excerpt from his book *Die Grundlagen der Nationalökonomie*. Jena: Fischer, 1940. It has been translated into English by T. W. Hutchison as *The Foundations of Economics. History and Theory in the Analysis of Economic Reality*. London: William Hodge, 1950, reprinted Berlin: Springer, 1992. Our excerpt comes from part III: Scientific Understanding of Economic Reality, Chapter II: The Different Types of Economic System, 117–20 and 129–33.

Chapter 5, ‘Competition as the Basic Principle of the Economic Constitution’ by Walter Eucken, was originally published as ‘Wettbewerb als Grundprinzip der Wirtschaftsverfassung’ in *Der Wettbewerb als Mittel volkswirtschaftlicher Leistungssteigerung und Leistungsauslese*, edited by Günter Schmölders, 29–49. Berlin: Duncker & Humblot, 1942. The translation is by Keith Tribe.

Chapter 6, ‘What is the competitive order?’ by Walter Eucken, is an excerpt from his posthumously published book *Grundsätze der Wirtschaftspolitik*, edited by Edith Eucken and K. Paul Hensel. Tübingen: J.C.B. Mohr (Paul Siebeck), 1952. Our excerpt is from Book Four: The Economic Constitution and Its Realisation, Chapter XV: Die Politics of Competitive Orders – Introduction, Section II: The Decision, Subsection B: What Is the Competitive Order? and Section III: ‘Principle’ and ‘Moment’, 245–55. The translation is by Michelle Everson.

Chapter 7, ‘Economic Ordering as a Problem of Economic Policy and a Problem of the Economic Constitution’ by Franz Böhm, is an excerpt from his book *Die Ordnung der Wirtschaft als geschichtliche Aufgabe und rechtschöpferische Leistung*. Stuttgart/Berlin: Kohlhammer, 1937. Our excerpt is from part I: Summary of the Content and the Meaning of the Term: Economic Constitution, Section I: The Economic Constitution as the Normative Order of the National Economy, 54–61. The translation is by Michelle Everson.

Chapter 8, ‘Decartelization and De-concentration: A Problem for Specialists or a Fateful Question?’ by Franz Böhm, was originally published as ‘Kartellaufösung und Konzernentflechtung. Spezialistenaufgabe oder Schicksalsfrage’, *Süddeutsche Juristen-Zeitung* 2 (1947), 495–505. The translation is by Michelle Everson.

Chapter 9, ‘State Policy and the Necessary Conditions for Economic Liberalism’ by Alexander Rüstow, was originally published as ‘Freie Wirtschaft – Starker Staat (Die staatspolitischen Voraussetzungen des wirtschaftspolitischen Liberalismus)’, in *Deutschland und die Weltkrise. Verhandlungen des Vereins für Sozialpolitik in Dresden, 28. und 29. September 1932*, edited by Franz Boese, 62–69. München: Duncker & Humblot, 1932. Our text is from the republication in *Alexander Rüstow. Rede und Antwort*, edited by Walter Hoch, 249–58. Ludwigsburg: Hoch, 1963. The translation is by Daniel Steuer.

Chapter 10, ‘General Sociological Causes of the Economic Disintegration and Possibilities of Reconstruction’ by Alexander Rüstow, was first published as an appendix to Wilhelm Röpke, *International Economic Disintegration*, 267–83. London: William Hodge, 1942. The excerpt we reproduce is from pp. 268–78.

Chapter 11, ‘Social Policy or *Vitalpolitik* (Organic Policy)’ by Alexander Rüstow, was originally published as ‘Sozialpolitik oder Vitalpolitik’, *Mitteilungen der Industrie- und Handelskammer Dortmund* 11 (1951), 453–59. The translation is by Daniel Steuer.

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NOTES

1 See Ralf Atkins, ‘Germany and Economics: Of Rules and Order’, *The Economist*, 9 May 2015.

2 Johanna Oksala, ‘From Biopower to Governmentality’, in *A Companion to Foucault*, ed. Christopher Falzon, Ted O’Leary and Jana Sawicki (Chichester: Wiley 2013), 333.

3 A pioneering study is Thomas Lemke, “‘The Birth of Bio-Bolitics’”. Michel Foucault’s Lecture at the Collège de France on Neo-Liberal Governmentality’, *Economy and Society* 30. 2 (2001). Two recent contributions are Matthew G. Hannah, ‘Foucault’s “German Moment”. Genealogy of a Disjuncture’, *Foucault Studies* 13 (2012) and Serge Audier, ‘Neoliberalism through Foucault’s Eyes’, *History and Theory* 54. 3 (2015).

4 Wilhelm Röpke also belongs to these core personnel, and we intended to include excerpts from his *The Social Crisis of Our Time* (Chicago: University of Chicago Press, 1950) in this volume. Unfortunately, the lawyer representing the heirs of Röpke who hold the rights to his books at some point completely stopped communicating with us. Fortunately, Röpke is the one ordoliberal whose books – or at least some of them – have actually been translated into English; furthermore, *The Social Crisis of Our Time* is available on the website of the Mises Institute.

5 For a short summary, see Günther K. Chaloupek, ‘The Austrian Debate on Economic Calculation in a Socialist Economy’, *History of Political Economy* 22. 4 (1990).

6 Walter Eucken, *Grundsätze der Wirtschaftspolitik* (Tübingen: Mohr Siebeck, 1960), 16.

7 Mark Blyth, *Austerity: The History of a Dangerous Idea* (Oxford: Oxford University Press, 2013), 2.

8 See particularly chapters 3 and 9 in this volume. See on these issues also Werner Bonefeld, *The Strong State and the Free Economy* (London: Rowman and Littlefield International, 2017).

9 Looking back at the inflationary periods in recent German history, Eucken writes that ‘inflations destroy the price system’. See Walter Eucken, *This Unsuccessful Age, or, the Pains of Economic Progress* (Edinburgh/London: William Hodge, 1951), 73.

10 Eucken, *Unsuccessful Age*, 68.

11 See Wilhelm Röpke, *A Humane Economy: The Social Framework of the Free Market* (Chicago: Henry Regnery, 1960), 196.

12 See Röpke, *A Humane Economy*, 215.

13 Eucken, *Unsuccessful Age*, 65, 66.

14 See chapters 9 and 10 for Alexander Rüstow’s discussion of the specifics of liberal interventionism. The only notable exception from this general ordoliberal position on the politics of crisis management comes from Röpke, who concedes that there might be a kind of crisis that he refers to as a ‘secondary’ crisis, which would necessitate expansionist measures along Keynesian lines. He also took this position as a member of the so-called Brauns Commission that was to advise the German government on how to deal with the lingering economic crisis in the early 1930s. See Wilhelm Röpke, ‘Die sekundäre Krise und ihre Überwindung’, in *Economic Essays in Honour of Gustav Cassel* (London: Frank Cass, 1967 [1933]).

15 See chapter 11 in this volume where Rüstow discusses the limits of conventional social policy and how it should be complemented by an ‘organic policy’ (*Vitalpolitik*).

16 See Stephan Lessenich, ‘Constructing the Socialized Self. Mobilization and Control in the “Active Society”’, in *Governmentality. Current Issues and Future*

Challenges, ed. Ulrich Bröckling, Susanne Krasmann and Thomas Lemke (New York: Routledge, 2010).

17 Eucken, *Unsuccessful Age*, 58.

18 Eucken, *Unsuccessful Age*, 60.

19 Eucken, *Grundsätze der Wirtschaftspolitik*, 338.

20 See especially chapters 3, 9 and 10 for the diagnosis of a weak state that must find the strength for self-restraint vis-à-vis demands from all social groups.

21 The most vocal critics of European austerity are Paul Krugman and Martin Wolf who are columnists for the *New York Times* and the *Financial Times*, respectively.

22 See Ralf Atkins, 'Germany and the Eurozone: Marked by a Miracle', *Financial Times*, 20 September 2011; idem., 'Germany and Economics'; Hans Kundnani, 'The Eurozone Will Pay a High Price for Germany's Economic Narcissism', *The Guardian*, 6 January 2012.

23 For the influence of ordoliberal ideas on German elites and the consequences for European policy see Peter Nedergaard and Holly Snaith, "'As I Drifted on a River I Could Not Control': The Unintended Ordoliberal Consequences of the Eurozone Crisis", *Journal of Common Market Studies* 53 (2015); Wade Jacoby, 'The Politics of the Eurozone Crisis: Two Puzzles behind the German Consensus', *German Politics and Society* 32 (2014). For a more skeptical view see Kenneth Dyson, 'The Ordoliberal Tradition: How German Is It?' (paper presented at the Conference 'Ordoliberalism: An irritating German Idea' in Berlin, 13–14 April, 2016).

24 See on these points Sebastian Dullien and Ulrike Guérot, 'The Long Shadow of Ordoliberalism: Germany's Approach to the Euro Crisis', Paper ECFR/49, European Council of Foreign Relations' (2012); Peter Bofinger, 'German Macroeconomics: The Long Shadow of Walter Eucken'. VoxEU.org 2016; Michal Moszynski, 'Ordoliberalism and the Macroeconomic Policy in the Face of the Euro Crisis', *Equilibrium* 10 (2015).

25 See on these points Thomas Biebricher, 'Europe and the Political Philosophy of Neoliberalism', *Contemporary Political Theory* 12. 4 (2013).

26 See, for example, Philip Manow, 'Germany in the Eurozone: An Ordoliberal Economy/Polity?' (paper presented at the Conference 'Ordoliberalism: An Irritating German Idea' in Berlin 13–14 April 2016).

27 On the research agenda regarding the ordoliberal significance for the reshaping of Europe see Thomas Biebricher, 'The Return of Ordoliberalism in Europe. Notes on a Research Agenda', *i-lex* 21 (2014).

28 On these points see particularly Lars P. Feld, Ekkehard A. Köhler and Daniel Nientiedt, 'Ordoliberalism, Pragmatism and the Eurozone Crisis: How the German Tradition Shaped Economic Policy in Europe', *CESifo Working Paper* 5368 (2015); Nicolas Jabko, 'Re-Problematizing Neoliberalism', *Contemporary Political Theory* 12. 4 (2013).

29 For an introduction to the governmentality perspective see Thomas Biebricher, 'Governmentality', in *The Routledge Handbook of Interpretive Political Science*, ed. Mark Bevir and Rod Rhodes (New York: Routledge, 2015).

30 Michel Foucault, *Security, Territory, Population. Lectures at the Collège de France 1977–1978* (New York: Palgrave, 2007); Michel Foucault, *The Birth of*

Biopolitics. Lectures at the Collège de France 1978–1979 (New York: Palgrave, 2008).

31 Foucault, *Birth of Biopolitics*, 101.

32 This reconstruction follows Frieder Vogelmann, ‘Neosocial Market Economy’, *Foucault Studies* 14 (2012).

33 Foucault, *Birth of Biopolitics*, 294. For ‘society’ as a ‘transactional reality’ constituted by liberal governmentality see Mitchell Dean, *Governmentality. Power and Rule in Modern Society*. 2nd ed. (London/Thousand Oaks/New Delhi: Sage, 2010), 146–154 and the special issue of *Foucault Studies* on civil society, especially Miikka Pyykkönen, ‘Liberalism, Governmentality and Counter-Conduct. An Introduction to Foucauldian Analytics of Liberal Civil Society Notions’, *Foucault Studies* 20 (2015).

34 Foucault, *Birth of Biopolitics*, 32. A thorough interpretation of this claim and an interesting demonstration of its diagnostic usefulness is offered by Ute Tellmann, ‘The Truth of the Market’, *Distinktion* 4. 2 (2003).

35 See chapter 11.

36 Foucault, *Birth of Biopolitics*, 147.

37 Foucault, *Birth of Biopolitics*, 148. See Ulrich Bröckling, *The Entrepreneurial Self. Fabricating a New Type of Subject* (Los Angeles: SAGE, 2016).

38 Chapter 15, p. 192.

39 *Ibid.*, p. 252.

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Part I

SOURCES

Contextualisation 1

The Ordo Manifesto

The opening text for part I is an obvious choice. It is a programmatic statement written jointly by Franz Böhm, Hans Großmann-Doerth and, mostly, Walter Eucken that was originally entitled *Our Task (Unsere Aufgabe)* but has been translated into English under the far more ambitious, yet equally fitting title *The Ordo Manifesto of 1936*. Needless to say it serves as a good starting point of any selection of ordoliberal texts. To be sure, there are others included in this volume that contain quintessentially ordoliberal ideas and were written years before 1936, but the *Manifesto* for the first time refers to a common interdisciplinary agenda the goal of which is the analysis of the totality of society or what would later be called the ‘interdependence’ of economic, legal, political and social orders. The text was written as the editorial for a book series called *Ordnung der Wirtschaft* (Order of the Economy) that was to serve as the main outlet of ordoliberal ideas. Not only did it lay out some of the basic coordinates of what would only later be called ordoliberalism. It also documented the political ambitions of the three scholars who were eager to have an impact beyond the confines of academic ivory towers. In a sense then, the text marks the official birth of ordoliberalism and, more specifically, the so-called Freiburg School (although Böhm was teaching in Jena at the time).

The text begins with an assessment of the status quo that is characterised by what the authors see as a marginalisation of both political economy and law in the decision-making processes on economic policy. While in the past both disciplines wielded significant influence over these matters, their ‘dethronement’ (p. 27) has supposedly had deleterious effects to be elaborated on below that prompt the intervention by Böhm, Eucken and Großmann-Doerth. They proceed with a diagnosis of how this decline of the two disciplines came about. The main problems they identify are aberrations

within both fields that weakened their intellectual prowess as well as their political impact potential. The two key developments in question are the rise of historicism and what is referred to as ‘fatalism’, not only, but especially in the form of Marxist ideas about historical determination. The background to this analysis is the so-called *Methodenstreit* between historical-inductive and abstract-deductive approaches in the social sciences and, particularly, political economy. While Eucken would later try to sketch out a position for himself that claimed to have overcome the ‘great antinomy’ between these schools of thought, the *Manifesto* almost exclusively chides historicism for its inability to generate robust general and abstract knowledge about economic issues as its insights supposedly barely went beyond simple common sense and, consequently, it could no longer claim to serve as a provider of expertise for either the general public or political decision makers. In the grips of historicism the sciences of law and political economy turn into rudderless ships that drift into the seas of relativism. Against such tendencies the Freiburg School scholars insist on principled thinking that overcomes the arbitrariness of historicism with the help of a clear anchoring point, which is the ‘idea of the economic constitution’ (*Wirtschaftsverfassung*) (p. 36).¹ This is a core idea of the ordoliberals, which is also referenced in other texts in this volume. Among other things, it suggests that any single question regarding economic and social policy must be evaluated and answered against the background of the interdependence of different normative orders – political, legal, moral and so on – and must never be treated in isolation to avoid all kinds of unintended and unfavourable consequences. This is obviously a complex task, and only science is equipped with the methods and theories needed to provide the expertise required for a truly coherent policy. The sciences of political economy and law that the ordoliberals envision thus are capable of generating knowledge that is on the one hand more general than what the historicists have to offer but can still speak to the actual practical problems of economic policy and thus make themselves indispensable as policy consultancies that can enlist the authority of science. But it is not just their superior theories and methods that qualify the ‘men of science’ (p. 27) for their task. Eucken and his collaborators suggest that it is also due to the lack of any immediate economic interests that they are particularly capable of identifying the truth in socio-economic matters. What has happened as a consequence of the dethronement of the two disciplines, however, is that it is no longer scientifically discovered truth, which informs policy making but rather interested parties and the ideologies they use to justify their particularistic demands. The ordoliberals, thus, show a remarkable faith in the powers of science – if it is practiced in the way they practice it – and they leave no doubt about their ambitions for political influence. While it must be recognised that the trenchant critique of historicism contains an implicit critique of the regime, which

looked rather favourably at historicism, it is hard to deny that in 1936, the claim to influence on policy making by the ordoliberalists meant offering expert advice to the Nazi regime, arguably hoping to shape the economic order more according to their own idea(s).

NOTE

1 The translation of *Wirtschaftsverfassung* into 'economic constitution' is quite common. Yet, it is important to point out that the meaning of the term goes beyond a written constitution, although technical rules and actual laws are also part of it. For the most elaborate discussion of the meaning by Franz Böhm see chapter 7 in this volume.

Chapter 2

The *Ordo Manifesto* of 1936

Franz Böhm, Walter Eucken and Hans
Großmann-Doerth¹

**Translated by David Hunniford, Elaine Wagner,
Alan Peacock and Hans Willgerodt**

Nowadays complaints are widespread that law and political economy are lagging behind events, that they do not make any formative contribution and that they no longer constitute an intellectual force. To disregard such criticism is to fail completely to appreciate the gravity of the situation, for it is true that in Germany these two sciences no longer exercise any appreciable influence on fundamental decisions of a politico-legal and economic nature. Anyone who asserts that this has always been the case is mistaken. Law and political economy were once formative forces which exercised considerable influence – for instance, on the reconstruction of the legal and economic system which has taken place in all civilised countries since the end of the eighteenth century. Only in the course of the nineteenth century and the early twentieth century did they gradually forfeit their leading positions.

DECLINE IN ECONOMIC SCIENCE

There is now no possible doubt that the consequences of this dethronement of the two sciences have been extremely harmful. Men of science, by virtue of their profession and position being independent of economic interests, are the only objective, independent advisers capable of providing true insight into the intricate interrelationships of economic activity and therefore also providing the basis upon which economic judgments can be made. They are also the only ones who, on the strength of their intimate knowledge of those interrelationships – a knowledge which is constantly being expanded and refined by the continuing penetration of new ideas – are capable of forming an objective judgment, independent of their own immediate economic interests, about economic measures appropriate in particular circumstances.

If men of science relinquish this role or are deprived of it, then other less competent advisers take over – the interested parties. They are certainly expert in the technical details of their professional field, but equally certainly they are not, nor can they be, competent to assess overall economic interrelationships. Moreover, they are incapable of divorcing themselves from their own economic interests which, as a rule, inevitably results in the welfare of their own professional field being confused with that of the national economy as a whole. If the state follows the advice of such interested parties, then politico-economic and legal decisions, which are based on a precise knowledge of the great organising principles of economic activity and which fit into this general system and derive their importance from it, are replaced by decisions which run counter to the systematic analysis of the economy and reduce a well-regulated system to chaos. “What we are experiencing today throughout the entire world”, wrote Albrecht Forstmann in 1935, “is simply nothing more than a virtually unmistakable declaration of bankruptcy of the method of those who claim to solve the most extensive political-economic problems from the worm’s-eye view of private-economic experiences.”²²

Accordingly, the authors consider that the most urgent task for the representatives of law and political economy is to work together in an effort to ensure that both disciplines regain their proper place in the life of the nation. This is not only for the sake of science but, more important, in the interests of the economic life of the German nation.

Yet how can this goal be reached? What must be done in order to restore these two sciences to their former status? The real answer is contained in the series itself. A scientific programme is no substitute for detailed work on the subject in hand. The statement contained in these words of introduction concerns not so much the content of the work as the intellectual attitude with which the task must be approached. To be clear about this, it must first be realised why law and political economy ceased to be guiding influences in the life of the German nation.

In Germany during the nineteenth century law and political economy were affected by that intellectual movement which permeated the whole of scientific and non-scientific thought: historicism. Although historicism has attracted waves of criticism, it has prevailed until the present day. Historicism is much more than a scientific point of view – it denotes a specific scientific attitude. Romanticism and the school of historicism have destroyed the belief in a natural system in both law and political economy. In their entirely justifiable endeavour to comprehend reality and life itself they were bound to come across the changing nature of all human institutions, concepts and ideas. The idea of evolution penetrated these sciences also. There can be no disputing the fact that an understanding of law and political economy based on their historical development considerably extended scientific horizons. It is undeniable

that credit must be given for this to men such as Friedrich von Savigny, Friedrich List and others. The historicist movement also exposed the two sciences to grave dangers, however, which were initially felt only slightly, later much more, and which now pose a serious threat to their status – indeed, to their very existence. It might be said that they lost the Archimedean Point from which reality can be comprehended.

“The law grows”, said Friedrich von Savigny, “with the nation, develops along with it and finally fades away in the same way as the nation loses its specific identity.”³ The law should be further developed “by inner silent forces, not at the discretion of a legislator”. By saying this Friedrich von Savigny denied that in his own time and, for that matter in any other age, there was any need for professional legislators.

This confidence in the inner silent forces seemed innocuous but, in reality, as later events demonstrated, it proved extremely dangerous. Relativism and fatalism were nurtured by it and were to determine the politico-legal attitude of many generations of German lawyers right up to the present.

RELATIVISM AND FATALISM

Legal historicism gradually lost its hold. It could only observe historical change in the substance of the law and without further ado ultimately arrived at the view that the idea of the law followed the substance of the law. In this way, the idea of the law also became relative and thereby lost its dignity. The “inner silent forces” which, in Friedrich von Savigny’s opinion, had the right to fashion the law, fundamentally changed in nature in the course of the nineteenth century. Massive economic power groups emerged on the grandest of scales and these power groups fashioned the law in an entirely one-sided manner. One example is the way such power groups created conditions for delivery and payment which invalidated important sections of the current Law of Obligations for broad sectors of the economy. Apart from a few exceptional cases, legal science and the concept of legal jurisdiction succumbed to this extremely harmful development. This self-made law governing economic relationships seemed (of necessity) to grow out of historical development and it was, and still is, professed by skillful and expert business lawyers. How could a legal system which made historical development into an absolute and which, moreover, no longer acknowledged any fundamental standards – how could such a system not recognise such deformities for what they were? All genuine legal criticism from men of science was bound to waste away, confronted with relativism such as this.

The other danger to which the school of historicism and also that of legal sociology fell victim was fatalism. In his fight against supporters

of natural rights, Friedrich von Savigny had repeatedly asserted that the views and will of the lawyer were bound by the views and living conditions of his people and of his era. History shows that in this respect he was partly, though only partly, correct. In times when jurisprudence was in decline as, for instance, in the post-Diocletian Roman Empire, the lawyers did in fact fail to display any creative force. In eras when it was strong, however, as in the first two centuries AD, it was precisely the Roman lawyers who shaped the legal views and institutions of their era and also of their people, thereby exercising a profound influence on their living conditions. Friedrich von Savigny's legal fatalism, however, was in keeping with the spirit of his own times of the century to follow. In particular, economic conditions appeared to the lawyers of this era as ineluctable facts, to which the law had to adapt itself. The prevailing view was that "the private law in force at any given time, as the system of private interrelationships between citizens, represents at all times the spirit of the prevailing social and economic situation."⁴

The politico-legal task of science can only ascertain in each case the most recent social and economic situation and make recommendations as to how the law should adapt itself to this situation. Confronted with such a fatalistic attitude the lawyer can only adjust to the economic conditions. He does not feel that he has the strength to shape them. The formation of cartels, for instance, was accepted by the Imperial Court as an unalterable fact since the indicative and fateful decision of 4 February 1897. No attempt at all was made to formulate a law controlling cartelisation by using the principles embodied in the commercial code. Alternatively, one need only think of the company law which enabled economic power groups virtually to ignore the stringent constitutional law. This subversion of company law, the dire consequences of which the German nation subsequently had to bear, was only possible because legal science and its jurisdictional principles took it for granted that actual economic development must be accepted as a datum.

"Capitalism has at all times found ways and means of succeeding, *de lege, praeter legem et contra legem*."⁵ With these words Werner Sombart gave expression, as he so often did, to the widespread mood of the times. He was speaking as a political economist. Historicist thought in Germany also penetrated political economy and engendered a fatalist-relativist attitude in many generations of scholars. Viewed in more precise terms, there was and still is, within historicist political economy one group which is more strongly influenced by fatalism and a second one which is characterised more by relativism. These two groups, however, overlap with each other in many respects.

KARL MARX AND FATALISM

The former group received its greatest inspiration from Karl Marx, even though he was certainly not its founder. Karl Marx believed in a law of development in modern society and in his thinking historicism and naturalism intermingle. As he states in the Preface to *Das Kapital*:

“And even when a society has got upon the right track for the discovery of the natural laws of its movement – and it is the ultimate aim of this work, to lay bare the economic law of motion of modern society – it can neither clear by bold leaps, nor remove by legal enactments, the obstacles offered by the successive phases of its normal development. But it can shorten and lessen the birth-pangs.”⁶

The aim was to establish the developmental tendencies which are necessarily at work in capitalism, to facilitate their success and thereby hasten the death of capitalism – neither science nor politics can achieve more than this. It was not only Karl Marx who helped such a fatalist belief in development or in decline to gain widespread victory. Even today many regard such a belief as the obvious foundation for their thinking, up to and including the “Tat-Kreis”⁷ which before 1933 had such a strong impact on younger generations. To perceive early the symptoms of new trends pressing towards a breakthrough then to await the future and pave the way for this future, even if it may look unpleasant, it is the only acknowledged task. This fatalistic view of history gives rise to an attitude of wary resignation which nevertheless frequently embraces the heroic gesture. “To anticipate which path fate has chosen for it” is regarded by Oswald Spengler for instance as the final great task of western culture. Fatalism and scepticism are always close to one another. Such a fundamental attitude makes it seem pointless or foolish to pit oneself against the relentless course of events or to stand up for an idea.

We are historians enough to take historicist fatalism for what it really is: a sign of weakness on the part of certain intellectuals. Feeling their intellect to be insecure, they can no longer summon up the strength to tackle the job of shaping events and consequently, they retire to the role of observers. In their attempts to justify their attitude they regularly work with historical constructions and doctrines which are totally unrealistic. Above all, they fail to appreciate the huge variety of forces which shape history. It is therefore no coincidence that the prognoses upon which the fatalists focus all their thoughts and wishes almost always prove to be false.

Totally inadmissible simplifications of the pattern of history have already been perpetrated by Karl Marx, who was only able to arrive at his fatalist

doctrine of development by regarding technico-economic development as the sole determinant of all historical progress. The whole of social, political, and intellectual life then appears as “superstructure”. Consequently, Karl Marx also exercised an influence extending far beyond the circle of his closest disciples. Thus Werner Sombart wrote:

“ . . . now we must realise that political events generally do not determine the course of economic development but that the development of capitalism in particular is almost totally independent of the great political revolutions of the last centuries.”⁸

Certainly, this thesis is historically incorrect. It reveals an astounding blindness to the impact of political desiderata. For instance, in the times of Napoleon I, Reichsfreiherr vom Stein⁹ and Count von Bismarck, up until World War I and the peace treaties which ended it, structural changes in government, foreign and domestic political events have decisively influenced the course of economic development. A non-doctrinaire and truly universal view of history, however, is essential in order to observe correctly the interactions of political and economic events and to discern that they take on different forms in different countries and at various times, depending on the strength of the forces which were and still are active in the areas of both government and the economy. A historicism prone to arbitrary simplification is incapable of perceiving such things. Truly, its fatalism cannot be justified on the basis of historical experience. Unfortunately, it undermines the power of science to be a life-force. How can the intellect shape events when it accepts them as inevitable?

INFLUENCE OF GUSTAV SCHMOLLER

In respect of political economy, German historicism also developed, as has already been indicated, another stronger stem which was earlier referred to briefly as relativistic. At the head of its supporters was Gustav von Schmoller. Both directly and through his pupils, he has exercised a lasting influence on the economic thought of broad and important sections of the German nation until the present day. Gustav von Schmoller’s professional interests lay in political economy and social policy. He wanted to make political economy into a moral science. He pronounced, *inter alia*, on the labour problem, the reform of the industrial code, the housing problem and the protective tariff problem. He did not believe that the course of history was inevitable and that no one can successfully intervene. Frequently, he was disposed to call for state intervention. Nevertheless, he certainly did not fulfil the needs of his

time. Gustav von Schmoller must take a considerable portion of the blame for the fact that, in Germany, political economy lost its former power as a truly formative influence. It must now be asked how this came about.

First, when in 1872 at Eisenach, Gustav von Schmoller and his friends developed their programmes for social policy in response to the increasing gravity of the labour problem, it was still the great issue of the fundamental conflict with the prevailing conditions that guaranteed them power and influence. The entire social system formed the subject of discussion. The courage to pose questions of principle, however, soon vanished. For instance, one need only read Gustav von Schmoller's speech on the reform of the industrial code of 1877 in which he takes particular issue with free competition. His chief concern was to eschew any decision of principle; each issue would be decided on its merits. At this time fundamental thinking seemed to him doctrinaire, a mistake which caused serious damage. The immense diversity of historical development and historical facts made such an impression on him that, as a realist, he believed he had to avoid coming to general conclusions. Nor, is he by any means alone in this respect, either in his own times or ours. Almost everywhere general lines of thought were gradually superseded by questions and thoughts on specific points. Thereby Gustav von Schmoller and his disciples believed that they were assuming a realistic attitude and were paving the way for realistic policies.

In reality, they were destroying the basis from which political economy specialists are able to comment in realistic terms upon the major issues of practical economic policy. Even the identification of the problems involved became too narrow. Typical, for instance, is the attitude assumed by Gustav von Schmoller and his school towards the formation of monopolies which had been growing in the German economic system at an increasing rate since the closing decades of the nineteenth century. The fundamental and, at the same time, practical question as to whether the overall system of the economy is destroyed by the formation of monopolies was touched upon but not seriously posed. Had this been done, then they would have realised what the permeation of the economy by private power groups means. Workable politico-economic measures could have been proposed, the entire discussion could have been elevated to another level and much serious damage which later became apparent could have been foreseen. Science would then have fulfilled its duty. The Historical School yielded, however, by its genuinely relativistic opportunism, to the established fact of the existence of monopolies; the crucial question was avoided and issues were dealt with at a superficial level. It is therefore no accident that the last 50 years in Germany are rich in the growth of monopoly organisations but lacking in useful radical scientific questioning of this tendency.

It is precisely the effort of posing questions which clearly distinguishes science from everyday thinking. By forgetting how to ask fundamental

questions, this Historical School was essentially no longer capable of transcending everyday experience.

Second, in his efforts to comprehend historical reality, while never losing sight of continual change, Gustav von Schmoller did not know how to use the abstract thinking apparatus of political economy. He did not see that unless this apparatus is utilised it is impossible to arrive at any true understanding of the interdependencies within the economic system. There are admittedly several, frequently cited utterances of his which show his respect for theoretical research, but what matters is not statements such as these but only the research itself: The disastrous thing was that under his leadership German political economists forgot how to apply theory, how to improve it and how to carry out economic analyses. For that reason, they also forgot how to understand the working of the complex economic system. In short, they lost touch with reality and committed precisely that mistake which they most abhorred, for reality is not an accumulation of unrelated facts. Thus a German economist emerged whose type is still prevalent today. He strives to find economic reality, but does not know how to do so. He respects theoretical research but does not know what to do with it. He wants to help shape the economy, but is unable to do so, because he does not understand economic interrelationships. Such a view of political economy was bound to fail once the great problems of economic life such as, for instance, the German inflation or the transfer problem had to be faced.

The political economy of the Gustav von Schmoller variety had not discerned that, all-in-all, relativism was cutting the ground from under its own feet. Consciously or unconsciously, the widespread belief in general progress gave it some support. It was no accident that Gustav von Schmoller concluded his greatest work, *Grundriss der Allgemeinen Volkswirtschaftslehre*,¹⁰ with a solemn acknowledgement of a general belief in progress. "Man has made infinite physical intellectual and moral progress", he stated, thereby showing how much he, as a child of his time, under-estimated the demonic passions and egotistic instincts of mankind, which any economic policy has to take into account. Eras of decline, so he believed, would also be merely transitory in the future. He did not perceive the dangers of chaos. In the final analysis, all opportunism is to be explained by this fundamental belief in progress, according to which the actual development of the economic system and the economic process ultimately and necessarily leads to something better.

In both sciences, therefore, in jurisprudence and political economy, a similar drama was and is still being enacted in Germany. As historicism gains ground they are losing their foothold. The idea of law and the idea of truth are becoming relative concepts, being adapted readily to changing facts and opinions. Thereby each of them is ceasing to be an intellectual and ethical force. They are becoming satellites and so economic power groups are able to

pursue their interests with ever-increasing success. The views of science are wont to penetrate gradually via the universities to the wider circle of judges, administrative officials, and others, who were now becoming affected by this opportunistic, non-fundamental attitude of the scholars. The two sciences maintained self-confidence and efficiency only in so far as they offered resistance to historicism. This must be emphasised all the more, as the criticism to which the two sciences have been subjected in Germany of late derives partly from the spirit of historicism and is therefore worthless.

OUR PROGRAMME

The task before us may be defined as one involving critical analysis. We need only to turn our criticism into a positive force in order to identify clearly the lines along which we must work if we are to return law and economics to their proper place.

First, we note the conviction that rational thought and creative action are irreconcilable opposites, that thought impedes the energy and thereby also the success of the deed. This idea has had ever-increasing currency since Friedrich Nietzsche formulated his doctrine of the superman and his creative primitive instincts. Friedrich Nietzsche wishes the person who acts heroically to be ever “will-less”¹¹ and also unscrupulous. Blind to rational deliberation, he should give himself up to the demon of his passion.

This antithesis is entirely false. It has no historical foundation. It is bound to have a disastrous effect. A Frederick the Great would have dismissed as totally absurd the idea that it was possible for the statesman or general to see things too clearly. Indeed, he was troubled whenever he was unable to grasp things sufficiently clearly and to discern causal connections. All major figures in the political and military history of the world have been just like this. They became great precisely because their irrational force of will and their force of reason together overcame difficulties which appeared insuperable. Only the inwardly weak man sees reason as a threat, becomes uncertain and divided within himself because of it and, out of fear of the sober world of established facts and reason, rushes headlong into the intoxication of the irrational, into feverish ecstasy. The strong man, however, feels his strength increase whenever he is able to apply reason to illuminate the darkness surrounding the acting agent and to the exercise of his powers. Using this conviction as our point of departure, which is based on historical experience, we wish to bring scientific reasoning, as displayed in jurisprudence and political economy, into effect for the purpose of constructing and reorganising the economic system.

Second, we set against historicism which, as already described in detail, has failed with its relativist and non-committal attitude, our fundamental

principle. This consists in viewing individual economic questions as constituent parts of a greater whole. Since all sectors of the economy are closely interconnected, this fundamental approach is the only one which does justice to the subject. The treatment of all practical politico-legal and politico-economic questions must be keyed to the idea of the economic constitution. In this way relativist instability and fatalist acceptance of facts are overcome.

Third, radical rejection of historicism, which is entirely beyond redemption in any shape or form, does not mean that we disregard historical facts. It is precisely by approaching history with fundamental questions that we shall understand it better, penetrate deeper and learn more from it than historicism has. The historical experience of the last decades and centuries must be our starting point. "History will have nothing to do with those gentlemen who will have nothing to do with history" (H. Grimm).¹²

We must push forward through the mist of intangible ideologies to the constituent facts and the requirements of the subject matter. Ideologies of economic prophets and dogmas which violate the facts, ingenious edifices of ideas which defy rational control, are just as impracticable as the ideologies of interested parties which they not infrequently touch upon. All conceptual speculations which, today more than ever, play an important part in law and also in political economy, have a disastrous effect because they lure us into becoming doctrinaire and unrealistic. Facts and not legal or economic concepts must be studied. The problems that must be solved are practical ones. Fear of reality, which Count von Bismarck scoffed at, must be overcome in our field more than any other. The problems of the economic system can be comprehended and brought to a solution, if realism and fundamental thought are combined, difficult though that might be.

Fourth, the economic constitution must be understood as a general political decision as to how the economic life of the nation is to be structured. Adherence to this idea alone provides the means of acquiring truly reliable and conclusive rules for interpreting many aspects of public or private law. This applies not only to the basic laws, but also particularly to special laws relating to economic matters. Hitherto, for instance, the Bankruptcy Act was treated chiefly from the perspective of the law of procedure. This point of view, however, is undoubtedly one-sided and certainly does not reveal the full sense of the law. On the contrary, it is absolutely essential to understand Bankruptcy Law as a part, indeed an important part, of the economic constitution which determines when and how enterprises are eliminated from the prevailing exchange economy. Only when the structural principles of this economy have been understood is it possible to comprehend Bankruptcy Law, the stipulations and administration of which in turn are extremely important for the functioning of the entire economic constitution and for the regulation of

production. The same applies, *mutatis mutandis* to the law of obligations, real estate law, family law, labour law, administrative law, and all other parts of the law. Similarly, in the development of further legislation, the basic idea of the economic constitution must be borne in mind.

The problem of understanding and fashioning the legal instruments for an economic constitution, however, can only be solved if the lawyer avails himself of the findings of economic research. If, for example, the legal practitioner or legal scientist has to deal with a question of unfair competition, then it is certainly not enough for him to investigate the ethical views of the commercial profession and, proceeding from the "sense of propriety of all fair and just-minded people" to declare one group to be just within the law and another as just outside it. On the contrary, it is imperative, particularly in this instance, to reason out the problem in accordance with the provisions of the economic constitution, for free competition is an essential structural principle of the present-day German economy. Free competition must not be stopped on the erroneous grounds of alleged unfair practice. On the other hand, it must not be allowed to degenerate into truly unfair competition either. How the line is to be drawn between unfair and permissible competition, whether there is free competition or not, whether competition is restricted, whether competition is efficient or obstructive, whether or not price-cutting contradicts the principle of the system – all these issues can only be decided by investigations conducted by economists into the various states of the market. The collaboration of the two sciences, which in this respect still leaves much to be desired, is clearly essential.

Complaints about the specialisation of the individual sciences are levelled at the sciences of yesteryear. There are strong forces at work everywhere which are overcoming this problem of specialisation. Indeed, it is the work being carried out on the problems themselves and not unhelpful methodological reflection, which is linking the individual sciences together again at a new level. Today physics, chemistry, mineralogy, physiology and other natural sciences no longer stand apart from one another. On the contrary, the physiologists are now compelled to employ the methods and results of chemistry, and the mineralogists and chemists those of physics. In the wide area of the humanities also a process of reconciliation on the part of the individual sciences is taking place everywhere. The division of the humanities into political, economic, intellectual, ecclesiastical and art history has proved to be untenable. The deeper the historian digs historically, the more he is forced to adopt a universal view of history. The sciences of law and economics are also involved at various points in such a process of reconciliation. Those problems which form the subject of the papers in our series demand that the methods of reasoning and research of both sciences be used, but not in the sense that

we let “their boundaries . . . run over into one another”, to use Immanuel Kant’s words. Immanuel Kant was quite correct when he expected this to produce “not an improvement but a deformation of the Sciences”.¹³ Each must preserve its individuality if it is to achieve anything. But whenever the subject demands the use of both, then this must be done. We hope to follow the dictates of true science by doing the same.

NOTES

1 In the original version, there were neither notes nor references. These have been added by the editors in the translated version in so far as it has been possible to identify them (translator’s note). We have added some more references (editors’ note).

2 Albrecht Forstmann, *Der Kampf um den Internationalen Handel* (Berlin: Haude & Spenersche Buchhandlung, 1935), 5. The author adhered first to National Socialism but changed his mind comparatively early. This book was a somewhat peculiar hidden attack on National Socialism with the author using phrases which seemingly praised the regime. After a while, Forstmann was put into a concentration camp, but he survived and became Professor of economics in Berlin.

3 Friedrich Carl von Savigny, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* (Freiburg im Breisgau: J. C. B. Mohr [Paul Siebeck], 1892), 7 and 9.

4 Karl Geiler, ‘Die wirtschaftsrechtliche Methode im Gesellschaftsrecht’, *Beiträge zur Erläuterungen des Deutschen Rechts* 68 (=NF 5), 596.

5 Within the law, notwithstanding the law and outside the law.

6 Karl Marx, *Capital, Vol. 1*, Karl Marx and Friedrich Engels, *Collected Works*, vol. 35 (London: Lawrence & Wishart, 1996), 10.

7 This was a group of intellectuals who published a monthly periodical entitled *Die Tat*. They were radical Nazis. For further details see Wilhelm Röpke, *The German Question* (London: Allen & Unwin, 1946), 65–66.

8 Werner Sombart, *Der moderne Kapitalismus*, vol. 2 (München and Leipzig: Duncker & Humblot, 1917), 4.

9 Karl Reichsfreiherr Karl vom und zum Stein (1757–1831) was a Prussian minister who introduced comprehensive reforms in Prussia after the defeat in 1807 by Napoleon I.

10 Gustav Schmoller, *Grundriss der Allgemeinen Volkswirtschaftslehre*, Part II (München and Leipzig: Duncker & Humblot, 1923), 774.

11 The quote given by the authors does not appear verbatim anywhere in Nietzsche’s works. They probably refer to Friedrich Nietzsche, *Human, All Too Human* (Cambridge: Cambridge University Press, 1996), Volume I, §164: Peril and profit in the cult of the genius (editors’ note).

12 The reference is most likely to the historian of art Herman Grimm (1828–1901), but we could not find the exact quote (editors’ note).

13 Immanuel Kant, *Critique of Pure Reason* (Cambridge: Cambridge University Press, 1998), 106 (B viii).

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Contextualisation 2

Walter Eucken

Born in Vienna in 1891 as the son of philosopher Rudolf Eucken, Walter Eucken studied history, political economy and ‘science of the state’ in Kiel, Jena and Bonn, where he added law as an additional field. He received his doctorate shortly before he joined the military in 1914. After the war he began teaching political economy in Berlin and then became a professor in Tübingen before he moved to the Albert-Ludwigs-Universität in Freiburg in 1927 where he became the centre of what would come to be called the ‘Freiburg School’. Eucken did not emigrate when the Nazis assumed power, and his role during the reign of National Socialism from 1933 to 1945 remains a matter of heated dispute:¹ While Eucken’s active participation in various intellectual resistance circles is well documented, critics point out that Eucken could freely publish and also took part in the deliberations of ‘Class IV’ of the Academy of German Law (*Akademie für Deutsches Recht*) that was founded in 1933–1934 and advised the regime on economic and legal matters. After the end of the war Eucken continued his scholarly work and became one of the most influential voices of (neo-)liberalism in post-war Germany. In 1950 he died unexpectedly in London, while giving a series of lectures at the invitation of Friedrich August Hayek.

The texts/excerpts chosen span almost twenty years of Eucken’s work, from the eve of the National Socialist takeover in 1932 through World War II to post-war Germany at the end of the 1940s (the book *Grundsätze der Wirtschaftspolitik* was actually published posthumously in 1952). The first text is an article published originally in the journal *Weltwirtschaftliches Archiv* in 1932 and bears the title *Structural Transformations of the State and the Crisis of Capitalism*. The starting point of Eucken’s analysis is the crisis of capitalism exemplified, of course, by the Great Depression. His own assessment of the root causes of this crisis is prefaced with a dismissal of

alternative accounts of capitalist crisis, from the decline of entrepreneurialism to a stalling of the capitalist logic and its transformation into a non-dynamic economic regime unable to survive. Eucken argues that these diagnoses are mistaken, not the least because they wrongly extrapolate from observations of the monopolistic sectors to the economy in its entirety. Wherever the ‘lash of competition’ (p. 52) is actually doing its work, capitalism is as dynamic and innovative as ever, Eucken maintains. Still, this is no consolation because the lash of competition decreasingly holds sway over markets, and it is Eucken’s central thesis in this article that the reason for this has nothing to do with capitalism itself but rather a particular ‘organisation of peoples in state and society’ that ‘seriously obstructs the functioning of the capitalist mechanism, limiting or even making its development impossible’ (p. 55). Eucken sees a transformation of the relation between state and society over the course of the preceding fifty years, and the culmination of this development is what he terms the ‘economic state’ (p. 56): While state and society used to be separate from each other, the economic state represents a condition ‘in which state and society became entangled with each other’ (p. 56). The end point of this process creates a state of affairs that raises concerns throughout the cosmos of *ordo-* and neoliberal thought: Social forces, interest groups and mass movements seek to influence the state on behalf of their particular interests or political projects, not the least of which consists in avoiding the lash of competition and engaging in other attempts of what today is commonly referred to as rent-seeking. The result is almost paradoxical: The masses project their hopes and desires onto the state in an almost religious fashion; Eucken thinks secularisation is partly to blame for this because the decline of religion ‘created an unbearable vacuum’ which now must be filled by the allegedly ‘all-powerful state’ (p. 58). However, overburdened with a plethora of demands the state is far from omnipotent as it finds itself doing the bidding of contradictory societal interests. This situation has all kinds of negative repercussions, the most deplorable of which are the distortive effects of interest-driven economic policy on markets, competition and price formation. If proper competition is to secure functioning markets again, Eucken concludes, the state must find ‘the strength to free itself of the power of the masses and to distance itself in some way from the economy’ (p. 68f.).

Eucken’s article from 1932 is rightly considered to be one of the founding documents of ordoliberalism, if not neoliberalism more generally – despite the fact that both terms were not invented yet. What is striking, first of all, is that the text has surprisingly little to say about economic matters narrowly speaking and instead discusses world history, international politics, state and society. The reason is, of course, that Eucken was adamant that markets could only function in the appropriate environment, that is, a certain kind of state or society, which shows clearly that the ordoliberals did not harbour any

economistic fantasies about disembodied and self-regulating markets. To the contrary, it is the infrastructure in which markets are embedded that preoccupies Eucken for the better part of his article.

The text is also noteworthy because it sets the tone for perspectives on state and society that would be formative for neoliberal thought for years and decades to come. What kind of state is required to prevent its own 'dissolution' at the hands of vested interests? It is a strong state that disentangles itself from the societal grip and insulates itself against attempts at influencing it in order to safeguard the unity of its will formation and to acquire the 'real independent power to make its own decisions' (p. 60).² This is a state that has seemingly shed all but the most rudimentary processes and institutions of *pluralist parliamentary* democracy and in the light of this it comes as no surprise that Eucken blames not only the rise of the economic state but the destruction 'of the political order of Europe' and the 'old international politics of equilibrium' on the democratisation of the world' (p. 69). The central demand of the article then amounts to a call for a (liberal) authoritarian state,³ trading pluralist parliamentary democracy for technocracy as its unified will formation would ideally be informed by the 'men of science' of the *Ordo Manifesto* of the preceding chapter whose indispensable expertise is already asserted by Eucken in his 1932 article (p. 70).

The two excerpts that make up the next chapter come from Eucken's seminal *Foundations of Economics*, first published in 1940, which gave its author the stature of one of the prime contemporary economists if only in the continental European context. The book is very much concerned with methodological questions and whether it is actually possible to practice economics or political economy as a science. Eucken sets up his argument against the 'great antinomy' of 'individual-historical' and 'general-theoretical'⁴ approaches in the social sciences and argues for a science that is ambitious enough to generate general knowledge (even truth) but is at the same time rooted in the actual economic problems and takes these as the starting point of its inquiries and reflections. Eucken argues that a morphology of market forms and economic systems based on these as well as the respective typologies are the key ingredients for such a science and proceeds to develop a taxonomy of ideal types which supposedly captures all existing economic forms and should be of crucial help in analysing and alleviating the problems related to them, especially that of economic power.

In the two short excerpts included here, Eucken introduces the reader to his typology of basic economic systems: The 'exchange economy' (*Verkehrswirtschaft*) and the 'centrally administered'⁵ economy' (*Zentralverwaltungswirtschaft*) (p. 74), of which there are two kinds, namely, the individual household and a consequent collectivist system for an entire society, in which all socio-economic decisions are made by some central agency. The exchange

economy, on the other hand, is more varied in its specific character since there are manifold possibilities of different market forms both on the supply side and on the demand side according to Eucken. The dichotomy of these two systems is crucial for Eucken's argument because according to his judgement all intermediary subtypes of economic orders are unstable in the long run and so for Eucken the choice comes down to one between the two basic economic systems. While this explicitly normative question is only hinted at towards the very end of *Foundation of Economics*, in subsequent works, especially *Grundsätze der Wirtschaftspolitik* (Principles of Economic Policy), Eucken leaves little doubt that choosing the centrally administered economy is a real possibility but can result only in economic and political disaster. Not just because of the centrality of this distinction are the respective passages included here but also because, according to many critical accounts, this is the weak link in Eucken's argumentative chain. Even his friend and collaborator Alexander Rüstow pointed out early on that Eucken's use of the Weberian terminology of ideal types was misleading,⁶ and other critics also wonder about the criterion for Eucken's distinction between the two types, namely, the number of planners. Nowhere does Eucken justify why the number of planners is of such crucial and apparently even singular importance for economic systems. Furthermore, the way he applies this criterion appears skewed. After all, he concedes that there are centrally administered economies with limited freedom in consumption and/or limited freedom in occupational choices, but as there are obviously more than one planner in such systems it is unclear while they remain subsumed under the type of centrally administered economy.⁷

The third text selected here is one of Eucken's more controversial ones because it is based on a talk Eucken gave when he was participating in the deliberations of the section 'price policy' of the aforementioned Class IV of the Academy of German Law that was published together with other lectures in 1942.⁸ The task of the section 'price policy' in particular was to offer advice to the Nazi regime in economic matters pertaining to the specificities of a war economy but also to develop plans for a post-war economic order. This does not make Eucken an intellectual collaborator, but it shows that at least some of the ordoliberalists who remained in Nazi-Germany – and many of them participated in the activities of the Class IV – showed a certain pragmatism when it came to working with the regime and did not necessarily abstain from any cooperation out of principle even when they were personally strongly opposed to it.

In his talk, Eucken, whose *Foundations of Economics* had been discussed extensively in the section 'political economy' of the Class IV, focuses on the question of the post-war economic order and predicts apodictically and rather candidly that the present economic system with its strong elements of

a ‘centrally administered economy’ cannot and will not persist once the war is over. Eucken’s argument draws on the Socialist Calculation Debate, and it also resembles, in certain aspects, Hayek’s *Road to Serfdom*, when he argues that a centrally administered economy is not only undesirable but simply unfeasible. In a war economy, ‘planning’ may work for a while because all efforts are focused on certain war relevant goods and therefore the allocation problem is less salient than normally. However, in a post-war setting, production will have to be much more diversified to meet the demand for consumer goods. In an almost Hayekian formulation Eucken notes that ‘central administrations cannot register these multifarious needs, cannot evaluate them, nor successfully manage their satisfaction’ (p. 83). Therefore, there will have to be a return to the price mechanism and functioning markets as the arbiters of the proper allocation of resources.

But how is this to be achieved? In a characteristic move for ordoliberals Eucken rejects the simplistic demand for a ‘free economy’ as oblivious to the power relations that exist especially in an economy that has seen tremendous processes of concentration before and especially during the war. To be sure, some cartels will dissolve and some corporations will break up with the end of the war economy – but not all of them. Eucken is concerned about ‘powerful private bodies’ that will dominate the post-war economy and thus ultimately make it ‘insupportable’, especially if the still-existing central administrative structures were to ‘fall into the hands of private industrial powers’ (p. 87). He suggests the following strategy. In some sectors of the economy that have not been as heavily concentrated, a return to the price system will, in time, yield what Eucken calls ‘perfect competition’ which figures as the regulative idea of his entire approach. Perfect competition, which is an ideal type, would mean that no market actor can dictate the modalities of a transaction in any way and all market actors accept market prices as a datum. We will return to this notion later, but in this text Eucken is more preoccupied with what should be done about those sectors that will not be amenable to perfect competition. It is here in particular that the state is called upon to deal with monopolies or other manifestations of accumulated economic power in the appropriate way – there is no panacea according to Eucken. However, he is adamant that the entire economic and legal policy must be aimed at preventing as far as possible the future formation of monopolies.

Eucken’s text offers the quintessential neo-/ordoliberal perspective regarding the dysfunctionality of a centrally administered economy during peace time and a plea for the superiority of an exchange economy or what Eucken usually calls *Verkehrswirtschaft*. It also illustrates the fairly aggressive stance taken by Eucken and other ordoliberals when it comes to the ills of monopoly and economic power more generally speaking. Perfect competition, Eucken

writes elsewhere, is the only market order in which economic power all but disappears – although this might be a questionable claim. What makes for a fairly unique constellation is, of course, that the critique of a centrally administered economy is formulated against the backdrop of an actually existing economy that is centrally administered to a significant degree, and that, while it is never explicitly mentioned, it must be assumed that the addressee of Eucken's economic advice is the Nazi government, although Eucken probably would have given the same advice to any other post-war regime.⁹ Again, this does not make Eucken an intellectual collaborator of National Socialism. What the text shows, in our view, is that Eucken and other ordoliberalists were continuing to vie for influence on the political decision makers in line with what they had laid out in the *Ordo Manifesto*; even in 1942 Eucken hoped to have some say as an expert when it came to thinking about a post-war order. Obviously, this was directed at the current powers that be, but Eucken did not exactly pander to the official ideology of the war economy. His rejection of the centrally administered economy as a long-term solution is clearly at odds with this official ideology but, of course, this critique is guised as the strictly objective assessment of an expert.¹⁰ What leads us to a final noteworthy aspect, namely, that Eucken once again stresses the importance of science in a number of passages as well as the crucial significance of science-based policy exhibiting the kind of coherence necessary in order to steer the difficult terrain of interdependent orders (p. 92)? The anchoring and orienting point in all of this is, once more, the 'economic constitution' (p. 93).

The final excerpt we have included is from Eucken's posthumously published *Grundsätze der Wirtschaftspolitik (Principles of Economic Policy)*. While *Foundations of Economics* aimed to prove that political economy could be a scientific discipline and established Eucken as one of the leading economists of his time, *Principles of Economic Policy* might have had an even bigger impact as it contained the definitive recipe of *Ordnungspolitik*, or, the politics of the competitive order.¹¹ In the excerpt we have selected, Eucken introduces the notion of the competitive order that is to ensure the proper functioning of markets, that is, perfect competition. Here Eucken also adds another important normative element of *Ordnungspolitik*, namely, the idea of *Leistungswettbewerb*, a form of competition based on performance or simply 'performance competition' (p. 100). With this concept, Eucken wants to distinguish a desirable form of competition that results in better and/or cheaper products or services for consumers from a form of competition that is based on impairing one's competitors in some way and thus debase their market position without any improvement for consumers. Eucken believes that perfect competition leaves no other option for market actors than to compete in ways

that ultimately benefit consumers and to a certain degree the normative justification of a competitive order rests in these alleged benefits that accrue to consumers, that is, everybody. However, Eucken adds another normative argument in likening the competitive order to the rule of law: 'Like the rule of law, the competitive order should also create parameters within which the free actions of an individual are limited by the sphere of freedom of other individuals such that a balance is attained between human rights to freedom' (p. 102f.).

In the following section Eucken once again emphasises that any single measure or action in economic policy must be considered in the context of the overall economic order as its effect and meaning change fundamentally with this context. Eucken concludes from this that a basic decision with regard to the overall economic order is required before any meaningful concrete economic policy can even take place. Needless to say Eucken leaves no doubt that the only reasonable decision is to opt for the competitive order,¹² which, incidentally, is not to be thought of as an abstract 'one-size-fits-all' framework but rather as a set of principles that must be implemented with a view to the specific characteristics of a given economy. In addition, Eucken cautions his readers that an economic policy based on principles must not lead to a doctrinaire understanding of the former. Rather, principles have to be implemented in accordance with the 'moment' a particular economy is in: 'Economic policy cannot be divorced from the historical context of individual nations' (p. 104). Eucken proceeds to identify the various principles and distinguishes between those that are constitutive of the competitive order (e.g. sound money, private property and personal liability) and those that are to regulate and maintain it (especially an aggressive anti-trust policy).

The excerpt contains a number of key ideas (e.g. the competitive order and performance competition) of Eucken's and ordoliberal thought more generally. It also offers a glimpse of the basic ordoliberal approach to economic policy, that is, an approach that puts a premium on principles, frameworks and rules. However, it also shows that at least Eucken himself did not want his vision of a rule-based economic policy to turn into dogmatic rigorism and instead highlighted the importance of contextual factors that would have to be taken into consideration in implementing the principles of the competitive order. Finally, while the excerpt does not contain the actual discussion of the various principles, we can already see that the state/government is not only called upon when it comes to constituting markets; it must also, on the basis of the various regulative principles, continuously tend this competitive order to prevent its corrosion: Markets, as Eucken and the ordoliberals envision them, require continuous monitoring and regular adaptations of the framework of the competitive order by the state.

NOTES

1 See Dieter Haselbach, *Autoritärer Liberalismus und soziale Marktwirtschaft. Gesellschaft und Politik im Ordoliberalismus* (Baden-Baden: Nomos, 1991); Ralf Ptak, *Vom Ordoliberalismus zur Sozialen Marktwirtschaft. Stationen des Neoliberalismus in Deutschland* (Opladen: Leske+Budrich, 2004) and Uwe Dathe, “Walter Eucken’s Weg zum Liberalismus (1918–1934),” Freiburg Discussion Papers on Constitutional Economics 9/10 (2010) for both sides of the debate.

2 In the ordoliberal literature this is routinely dismissed as a misinterpretation because the strong state is simply understood as a ‘lean state’ that no longer accepts responsibility for socio-economic problems and thus frees itself from influence of societal actors. Yet while this is part of the ordoliberal argument, it does not capture and deliberately disregards passages in the text suggesting that Eucken envisioned at least a semi-authoritarian and rather de-democratised state. See on this issue Brigitte Young’s contribution to this volume in chapter 15.

3 It is also worth noting that Eucken’s diagnosis of an entanglement of state and society as well as the call for a strong state shows significant correspondences with the contents of a lecture also delivered in 1932 by Carl Schmitt, whose book *The Guardian of the Constitution* is briefly referenced in Eucken’s article. See Carl Schmitt, “Strong State and Sound Economy. An Address to Business Leaders,” in Renato Christi, *Carl Schmitt and Authoritarian Liberalism. Strong State, Free Economy* (Cardiff: University of Wales Press, 1998).

4 Walter Eucken, *The Foundations of Economics: History and Theory in the Analysis of Economic Reality* (Berlin: Springer, 1991), 34, 37.

5 The translator of *Foundations of Economics* chose to translate *Zentralverwaltungswirtschaft* as centrally directed economy, but usually it is translated as centrally administered economy. We have therefore adapted the terminology accordingly.

6 See Alexander Rüstow, “Zu den Grundlagen der Wirtschaftswissenschaft,” *Revue de la Faculté des Sciences Economiques de l’Université d’Istanbul* 2 (1940).

7 See on this Eucken, *Foundations*, 122–16; Haselbach, *Autoritärer Liberalismus*, 104–5; Ptak, *Vom Ordoliberalismus zur Sozialen Marktwirtschaft*, 109–22.

8 See Günter Schmolders, ed., *Der Wettbewerb als Mittel volkswirtschaftlicher Leistungssteigerung und Leistungsauslese* (Berlin: Duncker & Humblot, 1942).

9 Still, we must note that before and after the war, Eucken typically decries that the state is (not yet) capable of what he refers to as an ‘ordering potency’ that could actually implement all the required policies. This concern was conspicuously absent in the talk from 1942.

10 See on this Ptak, *Ordoliberalismus*, 61–62; Haselbach, *Autoritärer Liberalismus*, 94–99.

11 Commercially speaking, *Grundsätze der Wirtschaftspolitik* was remarkably successful. No fewer than seventeen editions have been published over the past half century.

12 “Shorn down to its most important characteristics, and applied with due respect to the given historical context, the competitive order is in fact our only hope for solving the political problem of [economic] ordering” (p. 103).

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Chapter 3

Structural Transformations of the State and the Crisis of Capitalism

Walter Eucken

Translated by Keith Tribe

The question of the current situation of capitalism – questions of where the source of its difficulties lie, whether or not it has further prospects for development, whether today’s economic order is moving towards a new ‘planned economic order’ for which Russia is the model – none of these are purely economic problems. It is for this reason that analyses based purely on economic history, the kind made time and time again under the influence of Marx, cannot reach proper and complete solutions, must always remain one-sided, and disregard much which is of importance. It is instead necessary to place these problems within the framework of *universal history*. Close relationships do exist between economic affairs and those of state politics; reciprocal relationships that have become especially decisive for the situation of capitalism today. It is not enough to investigate just those developmental forces and technical possibilities that capitalism still has at its disposal; it must also be asked whether it still rests on the same foundations in state and society.

I. DEVELOPMENTAL FORCES AND TECHNICAL POSSIBILITIES

A. It is well-known that entrepreneurs were the agents of economic development in the era of fully-developed capitalism: they translated all technical and organisational innovations into the economic world, they introduced and established all the new combinations of material and human means of production. And so it was right to raise the question: do the same kind of entrepreneurs exist today, in full possession of both the will and the ability to lead economic development?

In the case of Germany, many observers answer this question in the negative. They assure us that the entrepreneurial type who guided the great industrial expansion dating from the middle of the previous century is dying out. There has in recent times been a shift in economic sensibility, whereby rational thinking has increasingly displaced audacity, the speculative spirit that is necessary to seize on innovations and put them to work. Instead, today's entrepreneur seeks certainty and consistency. In large industrial concerns and cartels the entrepreneurial class is becoming bureaucratised [*eine Verbeamtung der Unternehmerschaft*]; gone is the genuinely capitalistic and restless spirit to be up and doing, and so today the real motor of economic development is missing.

This description fits one section of the German economy; but it is false when applied to entrepreneurs in general. It fits all monopolistic industrial sectors; hence everywhere that the formation of trusts, the creation of rigorous cartels, patents or secret agreements has fractured the force of competition, or substantially weakened it. Where these monopolistic powers have existed for some time, let us say for decades, entrepreneurial character is slowly changing: the earlier type of flexible entrepreneur disappears and bureaucratisation takes over. We can clearly observe the kind of shift in economic sensibility that leads to the bureaucratisation of economic management in, for example, the German coal industry, in iron-making, in cement and chemicals, in potash mining – that is, in industries that have long enjoyed a monopoly position. There are nonetheless individuals in this group of businesses who are capable of directing significant economic development, and implementing wide-ranging technical innovations – this is evident from the recent history of the chemical industry. In this regard, the picture outlined above must be revised, although for the remainder this does fit very well the entrepreneurial spirit in those industries where monopolies have long existed. Here, where the lash of competition is absent, the ossification or feudalisation of entrepreneurship is real enough.

But wherever long-term monopolistic powers have not been gained, in industrial sectors where identical or similar goods are widely available, where cartels either do not exist, or where they assume a looser or more temporary form, this entrepreneurial type does not in Germany tend to develop. This is true for the greater part of manufacturing industry, for instance the machine tool industry, metal-working, precision engineering, the textile, clothing and foodstuff industries. In these cases we find only here and there mature cartels dating back more than one or two decades; and this mostly involves cartels applying uniform terms, cost agreements or retail price maintenance, none of whom achieve anything like monopolistic control of the market. The constant emergence of new goods, something especially true for the majority of machinery and textile markets, as well as the related continual shift in needs

and in demand, this all completely excludes the possibility of entrepreneurial sclerosis. The prime requisite for successful business management is still today adaptability and flexibility; rigid rule-following and bureaucratisation lead to failure or collapse, whether this involves private firms or companies. Entrepreneurial profit derives here not from the acquisition and consolidation of monopoly powers, but from innovation.

In this part of the economy we thus find an entrepreneurial *type of competition* closely related to that of the nineteenth century, although the increasing complexity of management has made increased internal administrative activity necessary. Here a quite different kind of spirit prevails to that found in monopolised industries. Granted, this entrepreneur finds little time, given the constantly increasing demands of the firm, to present himself in public in the way that his opposite numbers in monopolistic businesses do, by making a name in employers' associations, or presenting himself in government offices. That might also explain why today many writers are aware only of the "captains of industry", the greatest leaders of monopolistic industries; instead they either completely fail to notice the continued existence of entrepreneurs in the competitive economy, or simply declare them to be "dead". One glance at the real economy would show them how economically (although not politically) important this type remains in Germany, and that the greater part of German industry is managed by its representatives. They would see that this entrepreneur played an influential part in German post-war industrial development, and that he *could* still today be an agent of development – so long as any chance of success was not ruined from the start.

B. Today the wealth of *inventions* offers entrepreneurs in most industrial sectors sufficient incentive to innovate and reorganise. For, much more so than in the last century, the strongest impulses for the development of the economy come from the reconfiguration of technical knowledge. The tempo of invention has quickened. True, the heroic era of the inventor is past, but the systematic exploitation of small changes made today has increasing results. As was also true before, many of these inventions are more to be admired for their technical aspects than treated as economically significant; many prove to be unusable and economically irrelevant, given the present price structure – they are simply not profitable. But the economy itself teaches us that during the last few decades and even years there has been a significant number of especially profitable, and hence economically-relevant, inventions. Only in a few branches, as for instance the fabrication of woven goods is there a degree of technical stability; otherwise branches change with unusual speed, as in coalmining, grain production, sugar-making and petroleum, to give just a few examples. Before the war it was usual in most industries to base the calculation for the depreciation of a machine on its longest possible period of technical employment, and only in isolated cases was this principle not followed

in practice. Today procedures are different: machines and whole works are overtaken much more quickly than hitherto by improvements to equipment, and economic obsolescence very often significantly pre-empts any technical obsolescence; firms find themselves having to write off investments at a much higher rate than was the case two decades ago.

At the same time that the increased tempo of technical improvements and inventions puts almost all executives in the majority of economic sectors under pressure, many writers tell us that the age of invention is more or less gone. *Either* this claim expresses an actual state of affairs – in which case it is obviously false; *or* it presents a prognosis, relating however to a distant future and so of no interest for an understanding of the current situation of capitalism.

C. If in the future the driving forces of capitalism were to permanently slacken; if, in particular, bureaucratisation took hold, and entrepreneurs were displaced by rentiers; all coupled with a reduced pace of technical invention – none of this would mean that the end of capitalism was nigh. All that would happen would be that a more static form replaced the dynamic one. Since Marx and Sombart it has been widely accepted that the inner law of capitalism consists of its constant extension, a constantly-expanding dynamic; from which it is then concluded that any possible end to this development also meant the end of capitalism itself. Marx experienced in the mid-nineteenth century the sudden rise of capitalism in England, his German students its more important years of growth in Germany; it is thus understandable how the legend of the necessarily dynamic nature of capitalism could take root. Of course, it was not hard for later writers to conclude that Marx's thesis was wrong. One glance at history could have taught that there was another, undynamic, form of capitalism, as for example in The Netherlands and France that could rob the entrepreneur of initiative and with it the real motivational force of capitalism. This is what happened in England during the later years of the nineteenth century, but without the country ceasing in any way to be capitalistic. In addition, modern economic theory had demonstrated that Marx's theoretical proof of this necessary dynamic is false. We have not the slightest cause to conclude, without further argument, that the possible slowing of developmental forces marks the close of the entire capitalist era.

For Germany however this question is no longer today an acute one. As we have shown, here the entrepreneurial forces still exist that would be capable of making use of the great innovations of the present, and restlessly seek to do so. It is of course probable that, even if these forces were free to develop, the tempo of German economic development would be slower than hitherto, given the modest growth in population and the shortage of capital. But it is not this that is the decisive influence on the situation of capitalism today in the old capitalist countries, but rather a quite different set of circumstances.

The older organisation of peoples in state and society, an order that provided the framework for the development of capitalism, has decayed; in its place there is a new and different organisation that seriously obstructs the functioning of the capitalist mechanism, limiting or even making its development impossible. The position of capitalism today can only be properly understood in the light of these historical and political processes.

II. THE ORGANISATION OF STATE AND SOCIETY

A. The transformation of the internal structure of states

1. *The Old State.* The state of developing and mature absolutism, or the mercantilist state, was an entity that had a life of its own life, *alongside* the people, *alongside* the nation. Its sovereignty was recognised by its citizens and, following bitter struggle, also by the nobility; but European monarchies did not succeed in completely eliminating those ranks and estates that had survived from the Middle Ages. Even at their peak they neither wished to guide and direct all social life, nor were they capable of doing so; quite the contrary, "By the end of the period there was a quite artificially balanced division of labour and separation between war and peace, the army and the life of the people, power politics and a pacific bourgeois civilisation."¹ The economic policy of the ruler did of course intrude into many areas of economic life, and he in many ways became the promoter and agent of economic progress. But the mercantilist ruler had absolutely no intention of seeking to guide the economic activity of his subjects, based as they were in town and country upon ancient traditions and allegiances. If he intervened it was to build manufactories, to create settlements, prohibit exports or imports, anything that seemed to advance state interests. Besides this, he left the economy to itself, and during this period it changed very little. And so right up to the end of the absolutist epoch, the division between state and society was in no respect done away with.

We should instead see this division and its subsequent connection more as a basic problem of a later period in the life of the state, a problem resolved in two stages. The first was completed with the French Revolution and the democratisation of the state. In theory, democracy sought to make people and state identical; in practice conscription and universal male suffrage brought individuals into close contact with a state which, given the removal of the estates, now had new possibilities for the extension of its power. But it made little use of these; indeed, economy and state became more clearly distinct than they had been during the mercantilist period, since a politically influential liberalism succeeded to extend the private sphere of the individual, and

because only a few powerful groups in the economy demanded state intervention. Insofar as the liberal nineteenth-century state clearly separated state and economy from one another and left economic leadership almost entirely to private enterprises, it formed the basis from which capitalism could flourish – something that has been described often enough.

2. *Emergence of the Economic State.* However, in the course of the last half-century the liberal state gradually changed into an economic state, through the convergence of state and economy and the politicisation of the economy – this is the second stage of the great historical process in which state and society became entangled with each other. In some countries like France this transformation is only just beginning; while in others, such as Germany and England, it is already very advanced.

In Germany it was the *state* that, on its own initiative, first broke through the partition separating the spheres of economy and of the state. So long as German economic policy was still directed by Bismarck it was entirely dominated by the idea of reason of state. Bismarck quite consistently, with a rigour bordering upon dogmatism, subordinated all questions of economic policy to the leading ideas of his own policy. His liberal trade agreements of the 1860s were linked to his aim of creating a united Germany without Austria; just as his abandonment of liberalism, his embrace of protectionism at the end of the 1870s, was linked to his domestic struggle to secure the Imperial finances, although this was also related to his efforts to weaken parliament by raising major economic issues on which there was no agreement within influential parties. To give yet another example, even Bismarck's social policy was dominated by reason of state, its motives and spirit having nothing to do with the social policy of later decades. The aim of social insurance legislation was for example to reinforce the Reich by creating an interest on the part of the individual worker in its perpetuation. This is a motive that is clearly expressed in the individual terms of the related statutes. Bismarck's intervention was therefore interventionism driven by reason of state; when he left government a new era began. For even though there was a degree of continuity in economic policy, this should not lead us to mistake the fundamental difference between Bismarckian and post-Bismarckian economic policy. With the departure of Bismarck the key political idea, force and commanding will that had dominated all particular domains, including economic policy, simply disappeared; the *relation of state and economy gradually began to alter*, and the economy began to take the lead in their relationship.

The motives guiding the demands for intervention that the economy made of the state and met with increasing success in achieving were and are of a quite contradictory nature. For the most part it is a case of individual economic groups; entrepreneur and worker induce the state to intervene in order to strengthen their position within the framework of the capitalist economy. The

state is supposed to make use of its power, but not to displace the capitalist economy: on the contrary, it is supposed to lend support to individual groups or even individual firms engaged in the capitalist economic struggle. With firms, this in part involves groups that feel threatened by modern economic development and so demand special protection from the state – retailers faced with competition from department stores, or craftsmen suffering from factory competition, or farmers suffering from more efficient foreign producers. To these can be added entrepreneurs who are themselves in the forefront of development, but seek its acceleration through state intervention, something that has frequently happened in the history of the German iron and steel industry. Or this also involves large capitalists in danger of succumbing to competition, and who therefore demand state aid, and who are often are successful in so doing. Across a broad front, therefore, entrepreneurs lay claim to state protection and promotion. Not all are equally successful: so far large-scale industry and agriculture have been most successful, while small and medium-size firms, and farmers, have been less successful – this is all very clearly demonstrated in the course of German trade policy.

Over the past decade the techniques of intervention employed in this collaboration of firms and the state have become extremely refined; an especially striking example is the development of German rye policy and rye production. This not only involves protective tariffs and import licences, but also various kinds of compulsory usage, the monopolisation of a competing fodder and valorisation, for which the state has developed an extremely complex price policy. Or one could consider that, as in the artificial silk industry, protective tariffs for infant industries and standing tariffs have become pool quota duties that support domestic interests in the struggle for market share between international cartels. Here state economic policy and the representation of business interests here blend into a tightly co-ordinated unity.

Since the war, the fight by broad masses of workers and salaried employees for better pay and working conditions has also involved demands for state assistance that have generally been successful, and such efforts derived in part from the same motives as those of entrepreneurs: the masses demanded of the state intervention in their favour, since the state can be a powerful ally in the labour market. As far as the masses are concerned, the wages struggle and the struggle for power in the state amount to the same thing, since it determines how high incomes for worker and employee in the capitalist economy can be.

But here we encounter a *second* complex of motives unconnected with the first, although the individual often does not notice the difference. Intervention is not only demanded in order to improve the position of one group within the capitalist market; the radical adherents of interventionist policy are in fact the opponents of the capitalist economic order. For example, the worker demands

state intervention hoping both to improve his present economic situation, and also to bring about the future supersession of today's economic order. Here we can see a historical fact of major significance: for the mass of workers and employees that the development of capitalism has created turn against capitalism and in this struggle make use of the state, where they have gained influence.

Quite obviously, the reasons for the anti-capitalist attitude of the masses cannot be found in any deterioration of their living conditions brought about by capitalism, for, on the contrary, their living conditions in capitalist countries have been more greatly improved than ever before in history. Nor can they be found in any ongoing intensification of the differences between rich and poor, for Pareto's demonstration that no such intensification has taken place during the existence of capitalism remains unchallenged. The turning of the masses against capitalism is rather a phenomenon that can only be understood in terms of the sensibilities of modern man, and from the interaction of all recent intellectual, political and economic movements. In our investigation here we have to accept this as a fact, and should only ask why the anti-capitalist mass movement not only seeks to make the state an instrument in its struggle against capitalism, but in addition, why they wish to make the state the means of realisation [*Träger*] of a non-capitalist economic order.

The older anti-capitalist movement associated with Marx saw a stateless socialist society as its goal, the state being only temporarily important for its achievement; modern anti-capitalism by contrast seeks to overthrow capitalism through a total state, a state that is as autarchic as possible, a state that has engorged the economy. This transformation is in part caused by external political events, events that in Germany necessarily prompted the striving for a powerful national state. But also such causes have a longer history, and can be traced back to the collapse of the traditional way of life that began in the eighteenth century. Religion played an ever smaller part in lending meaning to the life and the economic activity of individuals; it ceased to be the foundation of life and became instead a part of life like any other, and this slowly but surely altered the attitude of man to the state. Since the elimination of religion from the centre of life created an unbearable vacuum, man looked for something that could replace it and lend meaning to his life. The history of the last one and a half centuries shows that such a replacement was found in a wide variety of forms: belief – in society, in mankind, in culture – waxed and waned. Today a belief in the state has become simply the latest substitute for religion: and it is a belief in the total, all-powerful state. Many Germans see in the total state of the future a superhuman entity capable of everything, in relation to which the individual possesses no rights. Passionate demands are made of this state – that it take in hand the organisation of the economy, proposing and implementing the total planning of the economy. Such belief

in the state is of course not everywhere so radical, but all the same, the state plays a more prominent role in general thinking than hitherto. Once man treated economic misfortune as fate; today the farmer, like the employee and the worker, is inclined to make the state responsible for such misfortune, and treat any assistance as a perfectly natural right. The interventionist currents of the last few decades have developed out of a quite particular mixture of economic interests, anti-capitalist sentiment, national political aspirations and quasi-religious convictions.

The urgings for state intervention that originate in the economy met with ever weaker resistance from the post-Bismarckian state. Of course, during the Great War, and faced with an immediate threat, the state resumed temporary control, organised the mobilisation of all economic forces and so took the initiative in binding the economy to it. But at the end of the war the relationship immediately reversed; business did in part manage to maintain and reinforce the close relationships that it had forged with the state during the war. But the chief factor was that the simultaneous process of *democratisation* lent the parties, and the masses and interest groups that they organised, much greater influence over the management of the state, and so upon economic policy.

The transformation of the liberal state into an economic state had great significance for the life of both *state* and *economy*. It has often been described how in this process the size of the state apparatus grew so extraordinarily, its budget swelled, interfering much more than hitherto in the provision of an individual's income through subsidies, duties, import prohibitions, quotas, moratoriums, its mediation and increased demand for tax revenue – state activity underwent a substantial expansion.² Nonetheless, these factors should not distract our attention from another aspect of the matter: that this process of expansion, a process that in the post-Bismarckian period was initiated and developed by the economy, did not result in the strengthening of the state, but rather by contrast in its weakening; bringing with it, indeed, even the danger of state dissolution. Unlike the liberal state, the economic state is very closely connected with the current state of the economy; today, every serious economic depression rocks the state itself, demonstrating the shackling of state to economy. Nevertheless, much more serious is the way in which close integration with the economy *has undermined independent decision-making on the part of the state*, something upon which its very *existence* depends. Its actions come to depend on the wishes of economic groups that increasingly use it simply as an instrument. Of course, it is true that today's state plays a major role in determining the wages of millions through arbitration and the regulation of working hours; but, quite unlike in the Bismarckian period, this state acts not on its own judgement alone, but much more under pressure from external interests. All recent economic policy clearly demonstrates this corrosive process: it amounts to a plethora of measures, each of which can be

traced back to the wishes of different powerful economic groups but which, taken together, have no coherence and are entirely lacking in system. In its conduct of economic policy the economic state confines itself to meeting the demands of the powerful interest groups upon which it depends; only rarely is it in a position to realise purely state interests. The power of the state is therefore today no longer only at the disposal of its own will, but depends instead on that of interest groups, something that even the best public officials can do little to alter. The state of fifty years ago was cautious in using its powers, but made its own decisions; today, by contrast, it makes substantial and wide use of its powers, but lacks the real independent power to make its own decisions.

The development of the economic state is also deeply unsettling from the point of view of the economy, something that has been felt since the beginning of the century but which now is a threat to its existence. For one thing, over the course of time and in an established capitalist country like Germany, an extremely complex capitalist economic apparatus based on the division of labour has been developed, made up of numerous firms producing countless different kinds of goods. This very involved economic mechanism possessed, in the price system, a sensitive and effective regulator that could guide its movements with great precision, setting to work all available productive forces – as long as the prices were for the most part competitive prices. Not only did the capitalist economic order fully develop during the era of the liberal state, it also presupposed a process of price formation that was unobstructed by state intervention – for this would have robbed prices of their guiding function.

But today, given the historical development already outlined, we no longer have a liberal state, but an interventionist economic state – which is the second issue that is here important for any fundamental judgement of the situation of capitalism. The economic state does not only restrict the initiative of the entrepreneur, shackling in this way the forces for development – quite apart from extremely high taxation of all kinds. More importantly, it cripples the former regulator of the economy, the price system. The emergence of individual monopolies and monopolistic structures had already obstructed the functioning of the price mechanism, leading to dangerous errors in the placement of capital. The tariff and cartel policy of the state in particular made it much easier for monopolies to emerge and become established, and it is only thanks to this that they today enjoy such positions of power. This itself indirectly contributed to the regulating force of the price system. The state also directly set prices in labour, capital, housing, food and many other markets, with the result that the amounts supplied and those demanded failed to balance. And then where price changes dictated market adjustments, it repeatedly sought to slow this process through subsidies and exemptions from due process.

The course of history has therefore itself led to a discrepancy in the current state of affairs: capitalism developed in the context of an arrangement of state and society that has subsequently been destroyed by a historical process, the emergence of the economic state. In this way a form of capitalism ordered and guided by the price system has become a capitalism tied to the state, relinquishing any usable form of guidance. The real tendency to full employment of all labour and plant, something previously embedded in the economic mechanism and which made use of every movement in competitive prices, was in effect switched off. The politicisation of price formation meant that the process of production and distribution became dependent upon the whim of whichever political grouping had power, in this respect rendering the economic order anarchic.

B. Transformations of foreign policy

1. *The Old System.* The liberal state structure of nineteenth century states was the indispensable condition for the rapid development of contemporary capitalism, but the structuring of the external relationships of these state systems had a major influence on the character of this development.

The construction of this nineteenth century state system was the outcome of a process reaching back many centuries, in the course of which certain basic principles of foreign policy were introduced through diplomatic practice and on which the relationship among the states rested. The first of these principles was the principle of distinguishing peace from war³ which became generally established in the eighteenth century, and which persisted until 1919 with one remarkable interruption. In the sixteenth and seventeenth centuries war and peace were not yet clearly distinguished; instead of definitive peace treaties it was often the case that truces for a fixed period were agreed, or hostilities would suddenly break out in peacetime, while on the other hand diplomatic relations were maintained during a war. The full establishment of states, in particular, the creation of standing armies and the wish to do away with almost constant hostilities, forced diplomatic practice in the eighteenth century to arrive at a real condition of peace after the end of a war, dealing with all those matters arising from the war and so make a clear distinction between peace and war. It was for this reason that high levels of reparations arising from the war, associated as they were with long periods of occupation in foreign territory, were already uncommon by the time of the French Revolution.

The development of the “principle of peace” first created the possibility of bringing order to early modern European states; but at the same time peace had to be secured and embedded within the state system. It was for this reason that the doctrine of the balance of powers, something already familiar at

the beginning of early modern times, became ever more central to foreign policy, and by the eighteenth century its guiding motive: in 1713 the Treaty of Utrecht (between Spain and Great Britain, Article II) called it the “surest and most effectual” method for mutual friendship and lasting general harmony. Recent historical work has quite rightly emphasised how often the principle of the balance of powers was used to conceal the brutal violation of rights; but this alters nothing in its general significance. Employed in particular by English diplomacy in its own interest during the struggle with Louis XIV, it became recognised as the basis of the system of states by other major European powers seeking the security and maintenance of their own power. Following the period of the French Revolution and Napoleon’s Empire, when peace treaties once more assumed the form of truces, and the principle of the balance of powers was not employed, the older form of diplomacy once more asserted itself, for as Metternich noted, the struggle against Napoleon was one against an European universal monarchy and sought to further a “system of equilibrium, of independence and security.” The Paris peace treaties, and the decisions of the Congress of Vienna which reordered Europe, fully realised the two linked principles of the older diplomacy: in the newly-established balanced system of European states, defeated France was immediately re-installed as a great power of equal standing with the others. Its own territory was recognised and no military restrictions imposed upon it, nor any other restrictions of its sovereignty; a small sum for war reparations was imposed that was quickly paid off, and within a few years all occupying forces had left French soil. In this way there developed a system of equilibrium between European states that acquired such international political standing, far beyond Europe’s frontiers, that England’s power in overseas continents and on the seas of the world was both secured by this balanced system of states, while in turn being a guarantee of the system itself.

Foreign relations were conducted within this framework for one hundred years, for even Bismarck never thought of destroying it; he reshaped it with the solution of the German question, reinforcing it if anything, and certainly not eliminating it. His aim was to constrain and shape those popular forces that tended towards chaotic conditions, achieving his ends with the tools and principles of established diplomacy. Up until 1871 his foreign policy was aimed at a reconstruction of the existing equilibrium, and so until the solution of the German Question. In the same way the Frankfurt Peace Treaty envisaged the restoration of France’s position as a great power, with a speedy winding up of the war and the prompt removal of occupying forces, the rapid payment of reparations, and with no attempt to limit French sovereignty. After 1871 Bismarck sought to secure and enforce this new equilibrium.⁴

It was no coincidence that the century during which this international order of states continuously existed was also the century of capitalism’s most

vigorous expansion. For the stability and security of foreign relations created the basis of trust for the commerce of international capital, and made it possible for a network of long-term trade treaties to be developed that hindered the sudden interruption of international trade, and so eased the intensification of the international division of labour. This all gave a substantial boost to the growth of capitalism in countries such as England and Germany.

2. *The New Situation.* When at the close of the Great War it became necessary to embody a new state order in the peace treaties, it became evident that the diplomacy of the dominant powers was quite incapable even of identifying the problem, let alone suggest solutions. The origin of this transformation, one which was in every respect so fateful for states and individuals, can be found in the fact that, with the democratisation of the world, foreign policy came under the dominating influence of people and their passions, interest groups, and the chaotic forces of the masses. The leadership of foreign policy fell into the hand of people who, more demagogues than diplomats, whipped up the feelings of the masses while at the same time becoming dependent on them, with the outcome that any forces for order disappeared from the lives of peoples. As Burckhardt said in 1878, "Since politics has become founded upon the inner turmoil of peoples, all certainty has come to an end"; at the time he was only partly right, but for the present situation his statement is entirely fitting.⁵ Just as the internal structure of states was primarily reshaped under pressure from the masses, giving rise to the economic state of today, the established state system has been destroyed through the growing influence of the masses that have nothing to put in its place.

And this is the leading characteristic of the Paris peace treaties for, unlike the treaties created by an earlier diplomacy, but like those of the French Revolution and of Napoleon, there is a complete lack of organising political principles. To begin with, the idea of peace itself is completely abandoned: the idea of a clear separation between war and peace, and using a peace agreement to eliminate all elements of the war. Quite the contrary, today's peace treaties are used by the victors to perpetuate the favourable military situation they find themselves in at the end of the war; instead of re-imposing a state order, they seek to shackle the defeated opponent, creating the strongest tensions, making a liquidation of the peace through the work of the treaties impossible. Also given up is the principle of equilibrium; in place of a balanced order of great European powers, there is now a fragmented Continent in which France is the hegemonic power and numerous and dangerous hotspots have been created. The idea of a European balance of powers even disappeared from English foreign policy, although for the establishment and maintenance of Britain's standing in the world this was, and remains, of decisive importance.

In all of the significant terms of the Versailles Treaty the absence of the older organising principles is in evidence: in the destruction of Germany's position as a great power through territorial and military prescriptions; in the imposition of war reparations, which because of their size cannot be as rapidly paid off as they could during the eighteenth century, but remain a reminder of the war for years to come, serving the purpose of the long-term weakening of the enemy; in the argument about war guilt which – a novelty in modern peace treaties – comes from the sentiment of a moralising mass and demagogues, and militates against a complete revocation of wartime sentiment. Hence it is not the war that is responsible for the disintegration of foreign relations, as so often and wrongly claimed – but rather the poor design of the peace treaties, which should have put an end to the war and establish a new and balanced state system. The treaties now in force are not the outcome of the principles of an older power politics, as is likewise said quite wrongly; instead, the treaties have brought about a destruction of a balanced state system that had only temporarily been abandoned during the era of the French Revolution. This system has now been replaced by a collection of states lacking equal rights, between whom there are very great tensions. In the eighteenth century it was customary to vilify the conduct of foreign policy, and with some justice; today we are not competent to make such a judgement, since our politics fail even to achieve the level of eighteenth-century politics.

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The preservation of so many elements left over from the war in the current “peace” coupled with the destruction of external political stability has, as demonstrated above, provided a severe shock to the necessary political foundation of international economic relations. It has proved impossible to build a system of long-term trade agreements on such insecure foreign relationships, and in this way provide a solid foundation for international trade. In addition, with changes to the domestic state structure, the transformation of liberal states into economic states gave interest groups an ever-increasing influence on trade policy, forcing the adoption of a reinforced, but unsystematic, protectionism. Internal and external forces have here combined to push in the same direction, bringing about a shift in trade policy that was intended to make international trade much more difficult, and has succeeded in so doing. For both of these reasons, international capital markets can no longer develop as they once did. Overseas investment now seems very risky, given the uncertainty of a world riven with the greatest international contradictions, and also in view of a fact first evident during the war, then embodied in the peace treaties and the post-war order: that the modern economic state often fails to respect the sphere of private property in the way that the liberal state did, and is easily moved to appropriate foreign property. As a result,

international capital markets periodically cease to function, or short-term credit is preferred; while the sudden withdrawal of this credit leads to serious problems with trade and currency, in this way presenting a lasting obstacle to the continuation of existing international economic relations.

But the peace treaties have not only helped destroy the conditions necessary for the existence and development of the international division of labour; they have also become an enormous burden on the economic apparatus of capitalism, in fact, overburdening it, as demonstrated by the facts. Two important examples of this are the way in which newly-drawn national borders have hobbled established economic regions, and German war reparations, which have lacerated the economy despite the flexibility of capitalism.

III. CONCLUSION – WORLD-HISTORICAL PERSPECTIVES

A. During the initial mercantilist epoch of modernity capitalism was created by the state itself; then, during the second epoch, the liberal separation of state and economic spheres made the further development of capitalism possible, while at the same time the maintenance of a strong international political system opened up the space for it to do so. *But in the third epoch a discrepancy emerged between the political conditions that a now fully-developed capitalism of necessity required, and existing domestic and international conditions.* The problems with which capitalism is now confronted were not its immediate creation; in a country such as Germany, for example, there is no lack of the entrepreneurial activity or of the technical opportunities needed for capitalism to develop further. And while the lack of population growth and shortage of capital can of course slow its tempo of development, they are not capable of blocking its functioning. Instead, it is the way in which state and society have developed, that have led to its degeneration. It was and is ultimately the masses whose influence upon domestic and international politics has, during the third epoch of capitalism, been the driving force in the destruction of the established state structure in leading capitalist countries, the establishment of the economic state, and the dissolution of the old system of state relationships without the provision of any substitute. *The framework of state and society within which capitalism had emerged, and without which it can neither unfurl its great powers nor enable them to function, was destroyed.*

This discrepancy is visible everywhere in the economy, as evidenced by both the overall structure and individual parts. In general, as was demonstrated, the maturing economic state gradually transforms a precisely ordered economy into an anarchic one, which is furthermore severely affected by the international order. In an economy disorganised in this way by the state, it

is only through sheer chance that equilibrium can be established in markets; as a rule there will be imbalances, something that is confirmed not only in the labour market. In time *capitalism becomes a quagmire*. This is evident in *unemployment*, which is never eliminated in a boom, in the shrinkage of *production* with the long-term closure of plants, and in the reversion to older and less productive enterprise forms, which can clearly be seen in the *diversion* of industrial labour into domestic agricultural production.

How this discrepancy is also apparent at work in individual events is shown by Britain's exit from the Gold Standard in 1931. This did not happen because the familiar and classical mechanism of the Gold Standard broke down internally, but rather because the social and state environment that the Gold Standard requires had been destroyed. Britain returned to the Standard in 1925 at an exchange rate that was high in comparison with other economies trading on world markets, and this required ongoing deflationary policies for the rate to be sustainable, lowering British prices even further. The increased political influence of the masses rendered the implementation of this classical, certainly unpleasant but tried and tested policy impossible; and so the economic state obstructed the prosecution of a consistent monetary policy and endangered the pound sterling. At the same time, the disarray in the international order and the consequent unease led to an abnormally high inflow into Britain of short-term credit. When it flowed out again the weak pound collapsed. The combination of domestic and international changes there resulted in sand being thrown into the works of a machine that had worked well before the war, putting strains upon it that led to its breakdown.

B. The historical process in which today's state and economic order emerged in Western and Central Europe is only one part of a major *world-historical evolution*, part of the development of the modern state and modern capitalism. Only in the older capitalist countries of Europe have the three epochs followed one another, and even here this has taken different forms.

At the same time capitalism has considerably extended itself in space, a process that has in no respects come to an end, but which so far has hardly touched distant lands; in particular, those of Asia. Today the world is made up of older capitalist and also pre-capitalist countries, plus those in which the expansion of capitalism is under way. In these last cases two stand out: the United States and Russia. Both cover huge areas and possess large natural resources. But the USA was colonised by people who brought a capitalist sensibility with them, and who could set to work untroubled by past economic ideas and a traditional economic order. The agent of development was therefore the individual entrepreneur, and capitalist expansion here took a *liberal* form.

Russia was however an agrarian country with a long history, with a population that produced goods mainly for their own consumption, not for the

market; they also thought in a traditional way, as depicted by Gogol and other important Russian writers. Peter the Great's industrial policy had no longer-term consequences. Even in the nineteenth century capitalist expansion remained small-scale, since the liberal foundation that it needed was missing, unlike in the USA. It was only at the beginning of this century that the state took decisive steps to shake the population up, primarily through agrarian reforms. But up until the war Russia remained for the most part a pre-capitalist country, in which a few capitalist oases were scattered.

The 1917 Revolution and its associated events – the radical elimination of the established state, the purging of its political elite, the anti-capitalist ideology of the new leaders, the opposition to private enterprise – all this has given rise to the view that in Russia an emergent capitalism has been destroyed, and a new economic order formed in its place. *This is a widespread view, but a false one.* During the early years of the Revolution the expansion of capitalism was interrupted, but not terminated. Methods have altered, but the general direction of travel remains the same. Of course, even today all the measures introduced by the new leadership seek the realisation of socialism. But from the point of view of economic history, it is not the intention of economic policy that counts, but what it actually brings about. And in Russia today, insofar as Russian politics is focussed on building up, and not simply tearing down, we see the advance of capitalism. Anti-capitalism indelibly marks public opinion, in writing and in party programmes – but not in the real economy. If a radically anti-capitalist political leadership seeks to force capitalism on a pre-capitalist country, this represents the “ruse of reason” that has often enough occurred in history. “It is a common error of people faced with great disturbances and agitation to expect too much of personal intentions, or to fear them too much. But the movement flows with its own powerful current, even dragging along with it those who appear to guide it” (Ranke).

Hence Russia's present economic order has certain similarities both with the expanding lands of North America, and with the older capitalist countries of Europe as they were long ago in mercantilist times. It resembles America insofar as Russia has a similar economic sensibility, expansionary and suffused with the worship of technology. It also has similarities with state-capitalist mercantilism, because in both cases the state deliberately seeks to uproot its traditional course. The familiar saying of an eighteenth-century cameralist, that “the plebeian will never stop doing the same old thing over and over until he is dragged by nose and arm to something new and to his advantage” could today be said of a Russian economic policy-maker. In both cases we find the independence of government from the people, forced industrialisation, the use of foreign workers, the state direction of workers into industry. There are other similarities in trade policy. The disregard for cost accounting in the new Russia is likewise nothing new, but was a familiar

part of mercantilist policy; particular branches of production are opened up without regard to the costs involved, which naturally leads to large-scale misallocation of capital. There are however major differences, since the policy of the new Russia is conducted with far greater self-consciousness and digs deeper into the pre-capitalist economy. By contrast with its mercantilist predecessors, they have in this way introduced a form of central planning that has resulted in great devastation for the overwhelmingly pre-capitalist economy of Russia. Nor is the radical impetus with which agriculture is “industrialised” very mercantilist, investment driven onwards in industry, and the industrial proletariat enlarged. Mercantilist policy steadily built a new path for the economy at a time of great cultural development; Russia by contrast seeks to destroy all culture in order to pass along a path of economic development down which other peoples have long since travelled.

Since that time the older capitalist countries have entered a completely different stage of development; they are not now in the initial phase of development, but the third. Germany possesses a well-developed economic apparatus that has yet to be developed for Russia; in Germany, there is ample potential for development in entrepreneurship; in Russia there is none. Germany also has highly-skilled workers and employees, whereas in Russia they are just starting to create them. The masses exert great influence in Germany over the state and its economic policy, whereas the Russian state is entirely separated from them. During the last few decades the German state has restricted capitalism through intervention. The struggle against capitalism that the Russian state claims to be leading can only forcibly drive a pre-capitalist economy into a capitalist one. Germany and other established capitalist countries are not drifting towards a state capitalist economy on the Russian model, but quite the opposite: the Russian experiment represents an attempt to join the ranks of capitalist countries. In an *extremely complicated economic mechanism* like we have in Germany experience teaches that any attempt on the part of the state to intervene will prompt unforeseeable disruption; hence there is no question of successfully introducing a planned economy. In Russia, by contrast, there is a primitive economy that once shaken up by the state, does undergo great damage in many places, but is all the same forced to move forward.

In the older capitalist countries there are accordingly *only two possibilities* for further development.

If intervention continues as a result of pressure from the masses and the applause of academic supporters of the planned economy, then long-term misallocations will continue, and with general impoverishment capitalism will sink even further and *revert to older enterprise* forms. If however the state recognises the dangers arising from entanglement with the economy, if it finds the strength to free itself of the power of the masses and to distance

itself in some way from the economy; if it further succeeds in establishing a balanced international order in place of today's international political chaos created by the Peace Treaties – then the way is prepared in all capitalist countries for the powerful further development of a reshaped capitalism.

DIGRESSION: IDEOLOGIES

Major historical processes are always accompanied by ideologies that wish to seem good and sensible. So it was with the reconstruction of the international system of states and the domestic state structure, whose decisive impact upon on the current situation of capitalism we saw was wrapped in ideologies that sought to justify and promote it. For these ideologies there is a curious explanation. *They affirm and promote movements that achieve exactly the opposite of that which ideologists hope from them.*

The democratisation of the world and the consequent unleashing of the demonic powers of peoples eliminated the old international politics of equilibrium, destroyed the political order of Europe and the world, sidelined the principle of peace, and created general insecurity. The ideologists who, following Spinoza's example, were opposed by an older politics and diplomacy, expected the exact opposite. "Once all nations are as free as we are, there will be no more wars" declared Rollet in 1790, with the general agreement of the Constituent Assembly. They believed in the natural harmony of men and peoples, the solidarity of interests and friendship between nations, hoped for eternal peace and general security – if only all peoples, organised in democracies, could arrange their own affairs. The peace treaties of the democracies during the era of the French Revolution, more so those of 1919, have proved this whole ideology to be an illusion.

The destruction of liberal states, likewise forcibly brought about for the most part by the masses, was accompanied by ideologies that approved of them and sought to promote them. These were interventionist ideologies that are of interest as symptoms of the time, as reflexes of the moral, spiritual, political and economic condition of Germany – but the same is true of these. Interventionists either want to strengthen the state, or bring order to the economy, or both at once; and so they fight against the liberal state and advocate interventionism and the economic state, which again leads to exactly the reverse of what they had sought: the weakening of the state and the disorganisation of the economy.

In that those in favour of a planned economy anticipate that their efforts will result in a *strengthening of the state*, they ignore the experience of the past few decades. They do not see that a state that develops in step with a

finely-tuned modern economy loses its freedom of movement and the ability to reach its own decisions, and so faces the danger of its own dissolution. The total economic state would be a weak state. Many interventionists do not think at all about the political consequences of their strivings; for example, they demand intervention in the wages struggle, as though the state were an unvarying entity, and as if the state and its entire political existence would not be transformed by a wages policy of this kind.

Today's ideologists of the planned economy are not on the other hand capable of seeing that interventionism transforms an orderly economy into chaos; they do not understand the language that facts speak, and think that they are building up the economy when all they do is destroy it. This attitude is explained, if not solely explicable from economic interests or from emotion, by *two reasons*.

First of all, a rigorous training in economic theory is needed to be able to understand the order in the economic processes that exist in a free capitalist economy, but which is destroyed in the transformation of the state into an economic state. The lay person has no such training, but most ideologists of the planned economy also think they can do without it, and one even sees that it is missing in such an eminent economic historian as Sombart. From this there follows a whole catalogue of errors, from which we can here name a few. First, the claim that the capitalist economy is a chaotic, anarchic, unplanned economy that is in need of state regulation – whereas in truth the price system fulfils the task of bring into balance the countless economic plans of individuals and forging a robust order. Second, the view that has recently assumed various shapes, that capitalist economies of today lack the non-capitalist space into which they could sell some of their goods, and the closely related view concerning the necessity of general overproduction. Both of these arguments, from which a whole range of interventionist demands have been made, are refuted by Say's Law. Third, the idea that consumers and the satisfaction of their needs are quite secondary in free capitalism, which likewise brings about state intervention, whereas it is precisely consumers who draw to themselves productive forces in the most varied uses through the work of the price mechanism, one of the great achievements of modern theory having been to show in detail how this works. Fourthly, there is the related error of contrasting an acquisitive and a subsistence economy, from which it is concluded that the state has to replace the former with the latter. This contrast rests on a misunderstanding of the function of the acquisitive drive in a free capitalist economy; it is logical nonsense, and has to be replaced with the conceptual couple: acquisitive economy/centrally-managed economy (both of these meeting needs). Fifthly, the view that has recently become widespread, that cost calculation is a harmful quirk of capitalism that has to be eliminated through the introduction of a planned economy; even though one can easily find out about the need for cost calculations in all economic orders

in the textbooks of modern theory. Sixthly, there is the idea that the foreign trade of a country is disorderly and subject to chance if not guided from a state bureau according to a plan. Here we should note the way in which the price mechanism governing those countries trading with each other regulates very exactly mutual exchange in a manner that is far from accidental. And seventhly and finally, the widely accepted mistake of failing to recognise the unwanted consequences of interventionism for what they are, but instead seeking their cause in the free play of economic forces.

The second reason is that the ideologists of the planned economy can only come to adopt the positions they do because they simply ignore the important question, or fail to deal with it seriously: whether the administration (*Leitung*) of a specific state, bound as it is into all kinds of internal and external ties, is at all capable of dealing with the overwhelmingly difficult task of conducting partial or total central planning in a modern economy based on the division of labour. Mostly a state is implicitly presumed that is all-powerful and all-knowing; and so an entity that resembles in no respect any real state, and which could never take action to bring order to an economy. This is usually linked to a lack of knowledge, or an underestimation, of the enormous difficulties involved in the central management of a historically-formed, highly complex economy in the older capitalist countries. And in this point, too, the ideology of the planned economy proves itself incapable of seeing historical and political problems. There is no sense for political facts; there is a lack of rigorous economic thinking. What can be expected for economic policy of ideas that have developed on the basis of such entangled errors?

NOTES

1 Friedrich Meinecke, *Die Idee der Staatsräson in der neueren Geschichte*, 3rd edn. (München: Oldenbourg, 1929), chapter 5; for the older Prussian state see Gerhard Ritter, *Stein. Eine politische Biographie*, vol. 1 (Stuttgart: Deutsche Verlagsanstalt, 1931), chapter 6.

2 Besides the relevant economic and financial writings see also from the constitutional literature: Carl Schmitt, *Der Hüter der Verfassung* (Tübingen: Mohr, 1931), 72 ff.

3 Besides the text by Meinecke cited earlier, see Isaak Bernays, 'Die Diplomatie um 1500', *Historische Zeitschrift* 138 (1928); H. Kraus, 'Friedensverträge (vom juristischen Standpunkt)', in *Handwörterbuch der Staatswissenschaften*, vol. 4, ed. Johannes Conrad and Ludwig Elster, 4th edn. (Jena: Fischer, 1927).

4 On Bismarck see Johannes Lepsius, Albrecht Mendelssohn Bartholdy, Friedrich Thimme, eds., *Die Große Politik der Europäischen Kabinette 1871–1914. Sammlung der Diplomatischen Akten des Auswärtigen Amtes*, 40 vols. (Berlin: Deutsche Verlagsgesellschaft für Politik und Geschichte 1920–1927); see especially the Decree to Schwelnitz of 25 February 1887 in vol. 6 (1922), 177 f. Also Otto von Bismarck,

Die gesammelten Werke, vol. 4–6, ed. Friedrich Thimme (Berlin: Stollberg, 1927–1930). From the extensive literature on the Vienna Congress see the book by Heinrich von Srbik, *Metternich. Der Staatsmann und der Mensch*, 2 vols. (München: Bruckmann, 1925).

5 On the whole question, besides the many remarks of Bismarck, see Alexis de Tocqueville, *De la démocratie en Amérique* (Paris: Gosselin, 1835), parts 2 and 3.

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Chapter 4

The Different Types of Economic System

Walter Eucken

Translated by T. W. Hutchison

INTRODUCTION

The basis constituent forms cannot be precisely and systematically worked out by relying on speculative generalisations or by laying down axioms. This would only widen the gap between the historical facts and our theoretical investigation. Arbitrary model-building is a serious, though a common[,] error. We can only make this new step in the analysis if we keep in close touch with the real economic world. We must continue to stick to the path we have been following. For the task that now faces us we must start from our previous results in the historical field and penetrate further into the structure of particular individual economic units.

Pursuing our investigations in greater detail on these lines, we shall come very soon to a conclusion which will later be shown to be of great consequence. The actions of any director of an economic structure or unit are always based on an economic plan. If we ask why the peasant is ploughing a field today, the answer is because it is part of his economic plan. Why the agricultural worker is ploughing on a large farm? Because of the economic plan of the estate manager. Why does the housewife buy a hundredweight of potatoes today? Because it is part of her economic plan. Why does B work as a metal worker in a machinery factory? Either on the basis of his own economic plan, or, if on the orders of the state authorities, in order to carry out the economic plans of those central authorities. Similarly, if the administrators of the St. Gallen monastery in A.D. 980 planted particular kinds of fruit, they did so on the basis of their economic plan. Just the same holds for the controller of an Egyptian temple economy in 500 B.C. At all times and places man's economic life consists of forming and carrying out economic plans. All economic action rests on plans. The precision and the temporal range of the

plans are very different with different people, as we shall discuss later. But none of men's economic actions are without a plan.

The individual plan and its formulation must be the first objective of the following investigation. This is necessary if we are to determine systematically what are the pure structural elements out of which all actual economic units or structures are built up.

In this way we shall obtain a precise conception of the two pure elemental forms which are to be met with in whatever periods we study: they are, the ideal type of economic system we call the *centrally administered economy*, in which there is no exchange, and the type of system we call the *exchange economy*. The characteristic of the centrally administered type of system is that the control of the entire everyday economic life of the community follows the plans of a central authority. If the economy of a society consists of two or more independent economic units each of which is formulating and carrying out economic plans, then there is an exchange economy.

No other types of economic system, or even traces of others – besides these two – are to be found in economic reality past or present. It is hardly conceivable that others can be found.

I. THE CENTRALLY ADMINISTERED ECONOMY: ITS TWO FORMS

Some modern economists have asked whether a completely centralised control of the economy of a great community is practicable, and there are grounds for doubting this indeed. In particular, it has been contested whether, if prices are not formed in the course of the economic process itself, economic calculation of a precise and significant kind is possible (and that without calculation the economic authority in preparing its plans is simply groping in the dark). Were it not possible, the directors of a great centralised economic body would be faced with an insoluble task. Such arguments play an important part in contemporary discussions of economic policy and touch upon a problem of the greatest importance. Certainly the task of guiding a huge economy of a purely centrally administered type, comprising tens of thousands or millions of men, would eventually meet with the greatest difficulties because of the impossibility of precise economic calculation. Here, however, we must leave the problem of economic calculation by large centrally administered bodies undiscussed. In the real economic world this problem is not met with in its full acuteness for two reasons: the economic structures under central direction are usually small, comprising a single family, or perhaps a few dozen or hundred people, where those in control can personally survey all economic events and themselves estimate directly the values of goods and services,

and quantify their valuations precisely. The *simple centrally administered economy* or the *independent economy or economic unit*, as we shall call this form of small economy, which is of great importance historically, solves the problem of economic calculation in a comparatively simple way.

We must consider now the centrally administered economy which, because of its size, needs a special administrative apparatus, that is, the “centrally administered” economy. In this case, because of the size of the community and the number of goods to be valued, it is impossible to express the values of goods in quantitative terms. While in the exchange economy scarcities of particular goods are expressed by prices and exchange values, the centrally administered economy has no adequate method for ascertaining precisely the scarcities of different products and means of production. Those in control may therefore direct the available supplies of labour and other factors in a direction which does not correspond with the scarcities actually existing. Historically, elements of the centrally administered type of system are usually combined with those of an exchange economy. It may be that only certain agricultural products are produced and distributed on orders from a central administration. Then, the prices of the exchange sector afford a certain basis for economic calculation. The firmer this basis is, the less dominant is the central administration of the economy, which gives way more to elements of an exchange economy. Otherwise, as history shows, economic calculation, and therewith any precision in the control of the economy, encounters the greatest difficulties.¹

Study of the different economic systems in history shows that the centrally administered type of system is and has been realised in two forms, that of the “simple centrally administered economy”, or independent economy or economic unit, and that of the centrally administered economy. It is clear that elements of this type of economic system are not only present in certain countries and at certain times, for example in the Jesuit community in Paraguay, or with the Incas, or in Russia in the fourth decade of this century, but are present everywhere and at all times. Sometimes they are dominant, and at others only supplementary, but they are always combined with *some* elements of an exchange economy. Here we shall extract them in their pure form and use them as ideal types. Both forms of centrally administered economy are found in the following three variants. . . .

II. THE EXCHANGE ECONOMY

Introduction

Let us repeat that we do not understand the concept “exchange economy” as covering *simply* the case of the capitalist economy of the nineteenth century.

In the nineteenth century elements of a centrally administered type of economy were important even in the so-called capitalist countries. Concepts like “Capitalism”, “Communism”, and “Socialism” cannot help the economist in his task. The ideal type of “exchange economy” is simply a pure elemental form (just as is that of the centrally administered economy), which is to be found at all periods of human history, and which is arrived at from precise observation of particular economies and by abstracting their significant characteristics.

An exchange economy of the pure type is made up of firms and households which are in exchange with one another. We shall talk of “firms” and their “managers”, rather than of “enterprise” and “entrepreneurs”, because these latter terms both have a particular historical nuance about them suggesting too exclusively the capitalist period. Such a shade of meaning must be completely excluded from the ideal type of “exchange economy”. “Firms” are to be regarded as economic and not as technical units. They are conceived as producing goods and services for sale by purchasing and combining the services of labour and other means of production. The “household” of the typical exchange economy differs in appearance from the usual German or French household of today. We have just said that historically the family household was usually a small centrally administered economic structure, in which took place an important part of what today belongs to the general process of industrial production. In the “household” of the pure exchange economy no good is produced, cooked, washed or sewn. All goods and services needed by the household are bought ready for final consumption from *firms*, and simply *used* in the household. (It is important to distinguish between the “household” in the sense of actual family economic units, and in the sense of *the consuming unit* in which nothing is produced, in the ideal type of exchange economy.) All traces of central direction are completely excluded from this pure exchange economy. The firms produce and the households consume, and from the households comes a supply of labour or savings which yield income.

The economic plans of the individual firm or household in the exchange economy do not resemble the plans of a centrally administered economic system. In the centrally administered economy in which the economic process of the community is guided from beginning to end by the plan and orders of a single authority, this plan is *complete*, in that the director, as we have shown, takes no account, or only limited account, of other individual economic units and their plans. The economic process of the community is entirely within the range of his power. The director of a firm or household in an exchange economy proceeds quite differently. His individual economic unit is only a small part of the whole process of the social economy. His daily, monthly, and annual plan is therefore “incomplete”. It is a *partial* plan. Each individual of the multitude of managers of firms and heads of households has to live

together with the others in an exchange economy and in all his plans has to take account of the actions of other individuals and of *their* plans. All individual economic units are in a relationship of mutual interdependence one with another. This fact finds expression in every plan of every individual economic unit at all times and places where exchange relationships have existed or do exist, in every household and factory of America today, or with medieval traders, or with farmers at the time of the Roman Empire. In formulating all his plans, the director of an individual economic unit has to consider that he must fit himself into the structure of the exchange economy: "Thus in the exchange economy a new problem arises: the necessity of balancing the parts against one another and of co-ordinating the individual plans" (K. F. Maier). *How does this co-ordination of individual plans and economic actions and thereby of the whole economic process come about under an exchange economy, past or present, in the real world?* This is the question with which the study of the economic system of an exchange economy, and the discovery of its forms, has to start.

Experience provides a twofold answer to this question.

First: in an exchange economy there must always be a *scale of calculation*, or unit of account [*Rechnungsskala*], according to which individual plans are adjusted. Occasional acts of exchange between otherwise closed households were certainly of frequent occurrence in earlier European and non-European history, without the existence of any recognised unit of account. But such cases are of minor interest. As soon as acts of exchange become more frequent, and the directors of the individual economic units take part in exchange, a unit of account becomes indispensable. It is the same in the exchange economy in its pure form. Let us imagine a state of 500,000 people in which corn, bread, wool, cloth, and all other goods are produced by numerous firms and bartered against one another, the wages of the workers being paid in consumption goods. If no unit of account existed, then no manager of a firm or head of a household would be able to formulate practicable economic plans. A weaver, for example, might give a worker as his monthly wage a particular quantity of bread, meat, beer, etc., and sell the cloth for a particular quantity of shoes, bread, and wool. Whether these actions have brought him profit or loss, and whether he should continue them or not, cannot be determined so long as he lacks a unit of account, for he is unable to compare individual goods and services. He cannot tell how and what he shall produce for the market. The economic authority in all individual economic units, and thereby the whole economy, is without a steering wheel.

Historically, men at all times and at all places have dealt with this problem by using some standard good as the unit of account, and by this means have co-ordinated the plans of different individuals. The fact that in older cultures noneconomic or religious considerations have often affected the choice of this

standard good is irrelevant from the point of view of its economic function. In our western civilisation cattle were formerly used as the unit of account. Homer, for example, valued a tripod at 12, a male slave at 100, and a female slave at from 4 to 20 cattle, and a bowl as equal to one ox. Obviously, he had in mind not actual particular cattle, but cattle of an average quality. With most peoples the unit of account was gradually separated off from the standard good, becoming an abstract unit which provided a firm basis for all acts of exchange. These facts force us to include in the *pure* type of exchange economy a standard good as a general unit of account or scale of reckoning, or to introduce *some* unit of account, which may be cattle, fish, or units of precious metal. Only then does the control of the individual economic unit become possible. In the case of the weaver, he is now able to calculate the value of the goods he gives to workers as compared with the value of the goods he gets in exchange for his products. He can ascertain that an ox is equal to 100 grammes of gold, and that in selling his cloth, he is making a profit or a loss. Thereby the economic plans of the individual unit get a firm starting point or basis of co-ordination. The uniform scale of reckoning is an essential attribute of an exchange economy.

Secondly: each individual economic unit which enters into exchange with others either “supplies” or “demands”. (We are leaving robbery out of account.) Whether the flint workers at Ruegen in the later Stone Age exchanged their tools in northern and southern Europe for other goods, or whether a modern iron works sells iron and is paid for it, or whether a housewife buys apples and gives money in exchange, all relationships in the exchange economy proceed by way of supply and demand, and usually meet together in a “market”. Supply and demand are not discoveries of the nineteenth century, but have existed as long as economic exchange between human beings. Here again we must avoid making the mistake of attempting prematurely to lay down scientific definitions of “supply” and “demand” and “market”. Only after a scientific investigation of the conditions can such definitions be arrived at. At the moment, there is no firm foundation for them, and we must still use the words as they are used in everyday life. History shows that the way in which individual economic units “supply” and “demand”, that is, how they enter into relations with one another, differs and has differed very greatly. There is the same multiformity which we found, for example, in medieval manufacture, in the economic system of the ancient world, and in modern economic life . . . , and we must do full justice to it, otherwise the facts of economic history will not be understood. Differences of two kinds are apparent:

1. The power of the individual economic unit is very different in different markets. Often it has to adjust itself to conditions on the market, as did the head of a household in 1910 in a large town when buying bread or meat. Often the individual economic unit can decisively influence market events, as did the wholesalers or “putters out” in Augsburg in the later Middle Ages, on

whom the clothmakers were dependent. Again, the *form of market* will affect the position of the individual economic unit, and this will have an important influence on the whole process of the exchange economy. This leads us on to a large group of problems.

2. Either exchange takes the form of barter, or the individual economic units make use of a generally recognised means of exchange called money. The shoemaker exchanges shoes for other goods, or receives for his shoes some general means of exchange. Why men often use a general means of exchange has often been discussed. It is easy to show that an exchange economy that makes use of money is more effective than one without money. Every individual economic unit taking part in an exchange economy in which money is used has to hold a certain stock of money, which is of importance in his economic plans. Money has taken very different forms in the course of history. In this field too the pure forms have to be discovered from the wealth of historical material, by abstracting the salient distinguishing characteristics. The basic forms of monetary economy and monetary systems provide the *second* great group of problems. The co-ordination of economic plans, and the whole economic process, takes place differently according to the *form of market* and the form of *monetary system* and of *monetary economy*. This is a brief formulation of the groups of questions with which we now have to deal. . . .

NOTE

1 On the problems of the direction of a centrally administered economy see Friedrich August von Hayek, ed., *Collectivist Economic Planning* (London: Routledge, 1935), and Ludwig von Mises, *Socialism. An Economic and Sociological Analysis* (London: Cape, 1936). The attempts of recent decades to solve these problems practically in many industrialised countries have brought them to a new stage. For example, German experience in this field has been very extensive. In Germany, after 1936, various methods were used for overcoming the problem. But it was found impossible to construct a satisfactory machinery for economic calculation in the centrally administered economy, in so far as this type of economy was realised. (See also my articles in the *Jahrbücher für Nationalökonomie und Statistik* 159 [1944], and in *Economica* 15.58 and 15.59 [1948].)

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Chapter 5

Competition as the Basic Principle of the Economic Constitution

Walter Eucken

Translated by Keith Tribe

Gentlemen!

The matter I am to address has so many ramifications that I cannot completely present it here. I therefore would like to pose four distinct questions which are however related, and the answer to which should deliver a solution to the problem – although this is a problem that can only be presented as a sketch in a lecture.

I

The first question is a preliminary one in respect of our general problem. It is: what role does competition [*Leistungswettbewerb*] play today? I need only give a brief answer to this question, since Graf Yorck has just provided a clear account of this. I need only state a few basic principles that are, in fact, completely in agreement with Graf Yorck's presentation.

The answer to this question is that, today, competition plays only a subsidiary function in the guidance of general economic processes. This is for two reasons. Firstly: centrally-administered allocations of labour, raw materials, semi-manufactured goods – and not competition – determine what and how much will be produced by industrial firms. It is a matter of quotas and indicators, not price formation in markets. In our economic order it is these elements of a centrally-managed economy that dominate. Secondly: Given the major expansion of credit while prices have generally remained fixed, virtually any good can be sold. Why then engage in competition to improve efficiency, if there is a ready buyer for every good? And there is more. Given the fact that pressure of demand makes it hard to obtain goods, many businessmen find it better to do nothing. Why bother to sell, when it is so hard to buy new goods

with the money that would be earned? In these circumstances, is it not a better idea to leave stock unsold for the time being, keeping it as stock rather than as money? Both elements work together in reducing competition, something that immediately becomes apparent from the study of individual firms in industry and trade.

Of course, there are factors in today's German economic order that do resemble free competition in part. One thinks of the unit prices and discounted bulk prices which are at present very frequently employed when issuing public contracts. An incentive to reduce costs is given where a standard price is paid for delivered goods, the price being calculated in terms of the costs of an efficient firm; or where there is a broad spread of costs standard prices are fixed for a group of firms. Given the unit prices that the supplying firms are given, they try to improve their earnings by reducing costs. In this way an outcome is sought that in some ways resembles the impact of perfect competition. Measures like this do not however alter the character of an economic order in which the economic process is guided in the first instance not by prices, but directly by central agencies, and in which at the same time there is such great pressure originating from the money side that competition is unable to develop effectively.

II

Should we assume that today's economic order will persist into the post-war period? We can answer this question in the negative. There will have to be a complete reorganisation.

Why is this?

1. This economic order has since 1933 been created piecemeal, to deal with particular and temporary issues. Rearmament and warfare were the tasks for which it was created. It was these tasks that gave it the special character that it today has. There was a wish that all productive forces be concentrated upon the solution of *one* task, leaving to one side the many and varied needs of individual consumers and entrepreneurs. This demonstrates the real strength of a centrally-administered economy. It has the means to effect a quick and complete concentration on *one* goal, much more quickly and completely than is possible with the means available to a commercial economy.

Whatever future historical developments may be; if those historians who have said of the twentieth century that it will be a century of war turn out to be right – there will, all the same, be lengthy periods of recovery between wars. During these periods quite different economic tasks will necessarily become more important: the replacement of worn-out plant and machinery, catching up with the work of maintenance and renewal, the procurement of

raw materials to replace those that had been exhausted, resuming the flow of semi-manufactured goods – in the absence of which the apparatus of production would not be able to function. And related to all this: an increase in the supply of consumer goods to the people. Here too there is an imperative to quickly make good that which had been neglected in wartime: the increased provision of food, clothing and housing.

These needs, that will necessarily become ever more evident, do not involve the unilateral tasks of armament production. Instead, there are so many quite varied gaps to be filled in an enormous number of places. A centrally-administered economy is unsuited to this task. While its employment can make possible an especially fast concentration of forces upon *one* aim, it fails when faced with the satisfaction of fragmented, shifting needs. Think for instance of the restoration and renewal of the installed machinery of German industry, for which a very wide range of machines, components and parts are needed. Central administrations cannot register these multifarious needs, cannot evaluate them, nor successfully manage their satisfaction. Experience has shown that one of the many weaknesses of a centrally-administered economy is that it cannot effectively relate needs to production. This weakness is not so obvious so long as the needs of a few state agencies have priority, and the multitude of individual needs neglected. But it does become obvious in the situation towards which we are certainly moving.

One should not maintain that, even in the post-war period, concentrated state demand will still be large, and so the current economic order will persist. In response to this we can say: the prime and most urgent economic task, which, if not dealt with, will make impossible the solution to any other task, is the restoration and renovation of the production apparatus and an increase in the production of consumer goods. *There is no way in which this can be avoided.* And these needs are fragmented into millions of elements; for this reason all attempts by central administration to manage their satisfaction must fail.

But one might perhaps object: are there not at least *some* needs that can also in the future be better satisfied through central administration than through commercial relations? What about, for example, the need for housing? It is often said that this need can be assessed and satisfied centrally. Well: it can be doubted whether any good would be done by letting central administrations build *new housing*, or whether it is not better to rely upon the restoration of the market for construction. In any case, there is no way that central administrations can assess and deal effectively with the unusually large, existing and growing, very important, but fragmented, need for *repair*.

Central administrative institutions are unsuited for the assessment of the really wide range of needs of entrepreneurs and consumers in a modern economy. On top of this, they are not in a position to manage appropriately the

numerous interconnected production processes for a wide variety of goods. If it is a matter of satisfying such fragmented needs, central agencies make poor allocations and allow production to continue in the absence of need. This persists until market, trade and price re-establish effective contact between production and needs, and so re-assume vital functions in the management of the economic process from existing central agencies; as long, that is, as the economic order is not fundamentally reconfigured.

2. It is not just that the tasks become quite different. There is a second element that is just as important: the longer that the present economic order persists, the more apparent a difficulty becomes that is related to the proper guidance of the production process. This is related to the fact that the prices of individual goods no longer express their varied and actual scarcity; we could say that there is no proper *valuation* of individual goods and services.

The price freeze of 1936 fixed prices and relationships between them. Some changes were later made through approved exceptions and through §22 of the Decree on the War Economy. But on the whole the German price framework and relationships between prices were fixed. A price freeze like this could be sustained for some time in an economy that was not developing. But in Germany development has been extremely vigorous, and remains so. Great changes have occurred, and will occur; new procedures and new working materials have been and will be introduced. The existing price relationships are consequently more or less obsolete. One can think of the prices for particular kinds of timber, or particular metals, or types of fuel. The prevailing fixed prices do not allow us to see which types of timber, metal or fuel are, under altered conditions of usage, in short supply, and which are not in such short supply. Economic guidance is here completely in the dark. The real value of means of production is no longer known. Cost accounting no longer represents actual scarcities in the means of production. The costs shown in its calculations are "false". Neither central agencies nor businesses can tell which procedures are economically appropriate, where favourable economic locations are, how existing labour and material means of production should be directed so that needs can be met as well as possible. As a result, the required co-ordination of individual branches of production and stages of production has gone missing.

The problem of economic calculation in the centrally-administered economy has long been recognised and described in economics. *Now* we are experiencing this at first hand. The further that economic development travels, and the more removed it becomes from the economic situation of 1936, the more unbearable will this defect become. It can only be resolved by prices that are once more formed according to the actual scarcity of individual goods, and so accurately indicate these scarcities.

3. Today's economic order presupposes a particular currency policy, and these presuppositions are not eternally given.

So long as total purchasing power is much greater than total supply, practically every commodity is saleable. Customers buy even when what they buy satisfies no immediate need, and when the manufacture of the commodity was actually a mistake. In the long run, however, this discrepancy between total demand and total supply cannot be sustained. It is a consequence of the expansion of credit, and this expansion cannot be continued for any length of time. Once access to credit is less easy, and as soon as total supply once more matches total demand, consumers become much more cautious. They choose goods more carefully and hesitantly; goods that do not meet the tastes of the consumer remain unsold. Entrepreneurs must therefore in turn be very careful in purchasing means of production. Now mistakes in allocation and management on the part of central administrative agencies become apparent, and there is great pressure to limit their range of action, or eliminate them. For this and other reasons it is no coincidence that the emergence of a centrally-administered economy is often linked to credit expansion. And experience also teaches that with the termination of credit expansion, the existing institutional order of a centrally-administered economy regularly breaks up. Let us go back to 1924. Consider the manner in which the stabilisation of the Mark swept away in short order remnants of the wartime centrally-administered economy – for instance, the foreign trade administration – that just a few months before had seemed indispensable. Termination of a credit expansion creates quite new conditions throughout the economy.

These three moments combine together.¹ From them a new situation will emerge. Man is always too much inclined to project current circumstances into the future, treating as permanent what really only belongs to the moment. We must free ourselves quite fundamentally from this attitude. Both the economic tasks, and the conditions under which they will be resolved, will be quite different from today and from the recent past; in time, it will become apparent that economic management using the organs of a centrally-administered economy will become quite unrealisable. *Today's economic order will not last.*

III

But if this economic order will not last – what then?

The usual answer to this third question is usually: free economy. Get rid of paperwork! Get rid of the constraints that exist today; get rid of rationing, indicators and the like. Give entrepreneurs a free hand, as well as mergers. Individual firms, or syndicates, should once again sell as they used to, unrestricted by indicators, quotas or other forms of state intervention.

Whoever demands “free economy” in this way as a rule either ignores or misunderstands various matters of vital importance.

For the most part, the complex of problems that arise with the creation of a large monetary surplus is ignored. These restrictions can only disappear once *currency policy* has created a new order substantially different to the present one and not before. This problem is as large as it is difficult, but here I can only state it, and move on.

However, I must briefly address a second complex of questions. Usually a second circumstance is misunderstood: the enormous *process of concentration* that has taken place in the last decade.

The causes of the recent concentration that we see today everywhere in industry and beyond, and which is a prominent feature of modern German economic history, are not so much due to technological development. More decisive were measures and events related to the economy and economic policy. To quickly name a few: the creation of large works and concerns through the state, for example, the *Göringwerke*; the creation, at the prompting of the state, of new firms by existing firms specialising in the same area, for instance, the financing by the textile industry of factories producing artificial fibres, of aircraft factories by the electrical, machine tool and shipbuilding industries. Moreover: in today's economic order, in which centralised economic administration predominates, large firms have an advantage over small and medium-sized firms. It is easier for central agencies to deal with a few large firms than with many small ones. And in reverse, small and medium-sized firms cannot so easily remain constantly engaged with central agencies as large ones can. And again: subsidiary entities [*Angliederungsobjekte*] are created on a large scale: Jewish firms, and firms in occupied territories. It is also important that the forcible organisation of entrepreneurs favours mergers of all kinds. Finally, and at the moment especially important: the surplus liquidity of firms. Money that cannot be used in any other way is used to buy up firms.

The extent of the recent trend for concentration cannot at present be precisely judged, particularly since individual firms and partnerships are involved. But it is in any case very powerful. The increase in concentration is a fact that has to become the focus of all our discussion and debates. Of course, it is to be expected that after the end of the credit expansion some cartels will dissolve, and some large and small corporations will break up, since they turn out to be economically unviable. There will certainly then be a degree of regression, similar to the regression that occurred after the stabilisation of 1923/1924. But it is not likely that, for this and other reasons, the process of concentration of recent years will go into reverse.

What then follows from industrial concentration for our problem of economic order and competition? That with the simple elimination of the present restraints, the field is dominated by private interests and power: corporations, cartels, trusts. The veil that today conceals these interests will be removed.

Free competition will emerge of its own accord only in a smaller section of industrial markets. It will be an industrial economy that is heavily permeated by private power interests – to a degree stronger than ever before.

An economic order in which powerful private bodies predominate is dangerous, or more precisely, insupportable. It leads to intense tensions within the people. The label “free economy” conceals this fact. In an order of this kind it is not freedom that rules, but power on the one side, and lack of freedom on the other; here a few great powerful interests, there the dependent mass. But besides all of that, it is also bad economically. For two reasons: as is well-known, monopolies do not overcome the naturally existing scarcity of goods in the manner in which they can be. The supply of goods is less than it could be. That is the one issue. No less important is the instability that is inherent in such an economic order. “Monopolistic conflict” constantly breaks out: conflict between a few large oligopolists who serve one market, the conflict of partial monopolists with outsiders, conflict between monopolists of supply and those of demand, to cite only a few instances. Here among experts I do not have to describe the techniques used in these conflicts. Nor need I detail the vital difference between these monopolistic conflicts and perfect competition that the lay person usually misconstrues. All told, in such an economy there is no real flexibility, but in part ossified markets, partly disequilibrium, in short, *group anarchy*.

Occasionally discussion of these questions is cut short by the explanation that the free economy is not an issue here. It is a thing of the past. So there is no point discussing it. No, gentlemen, that is not the situation. There are powerful forces working to create it. The economic powers whose growth we talked of want to exercise their power, which is already today very great, with as little constraint as possible. They set their face against effective direct control by the state, even control of monopoly.

Faced with such pressure, the following circumstance can develop: central administrative agencies remain formally in place, but they increasingly fall into the hands of private industrial interests. In this way a form of economic order develops *apparently* centred upon central administrative agencies, while through them *in fact* private interests rule. This kind of coalescence of monopolistic market forms with a centrally-administered economy is very possible, while at the same time being damaging in every respect. Great vigilance is needed if we are not to drift into an anarchistic economy of this or any other kind, dominated by private interests.

By now the problem that must be resolved practically in the future is apparent. The economic order that we have at present in Germany will not survive. It will have to be totally reconstructed. If however this reconstruction is effected only through the elimination or loosening of today’s restrictions, then the economic order that will form will be inferior, in thrall to private

powers, and unstable, provoking many significant cultural, political, social and economic dangers. *What can be done about this situation?* This is the big question. It is a question that, in other forms, arises everywhere with industrialisation: the question of what is a functional order for the modern industrialised economy. We therefore here encounter a universal problem of our entire epoch. But we do not want here to deal with it as a universal problem. We want only to think about the concrete contemporary relationships in which we find ourselves, and with which we have to deal. Here we have the centrally-administered economy which will have to be dissolved; there we have the anarchic “free” economy, which leads to lifelong tensions and great damage. Is there a third way?

IV

This last question, in which everything culminates, can be answered positively. To find our way we need to forego introducing any kind of thesis. Demands relating to economic organisation are often posed in a way remote from economic reality. Some particular doctrine, deriving from self-interest or personal inclination, is from the outset treated as an *a priori*, and from that point it is deduced how the economy should be guided. There is no way of doing justice to reality and its exigencies here. In contrast, we have to identify the key issue and its imperatives. Ideologies and wishful thinking of any kind must be set to one side. *The discussion of economic policy should not be discussion about doctrines, but about specific organisational tasks.* So let us turn to the facts, those that are there and those we must wait for. Let us study the facts in the light of our question and armed with the instruments of modern science. What do we find?

Even the study of a few firms leads to an apparently simple conclusion, but which in further investigation of circumstances turns out to be fundamental: in individual markets and in individual branches of production there are very different circumstances. From this finding it follows that the organisational task is not unitary, but assumes different shapes.

Take for instance a German factory producing wood-working machinery. What happens here when the entire system of allocations, indicators and rationing ceases? The firm would be “competitive”. The preconditions for the monopolistic merging of many firms are here absent. The individual supplier sees the price that forms in the market as a datum; he is not in a position to devise a market strategy. Since the demand for wood-working machinery is a result of competition among those demanding it, in this market the market form of “perfect competition” will be realised. A similar situation will arise on other industrial branches, although not in very many, following the

termination of the restrictions of the centrally-administered economy – in, for instance, machine tools, or knitwear.

The task of the state in devising economic policy for this perfectly competitive sector is not very demanding. It should see that the law of contract and of bankruptcy is rigorous, ensure that unfair competition is excluded, and in general create the conditions for exact adherence to the rules of *competitive* markets. In this part of the economy that is more or less all that is needed, although in so saying I disregard the special distributional problems that arise in a competitive economy, which are very significant. There is no need to interfere directly in price formation, and there is no point in so doing – for in those branches where perfect competition prevails competition enforces the functions of control and selection. Wherever perfect competition comes about the performance of the supplier is measured, enhanced and guided by competition. Private agglomerations of power are absent. Both older and modern economic analysis explains how the economic process functions in perfect competition, and in our circle I do not need to discuss this. (One thing only: when considering questions of economic policy and organisation we *make use of* the results of the scientific analysis of reality. We have to do that. But we do not *mix up* for instance the investigation of the economic process with the demands of economic policy and organisation; we do not allow the study of the real economy to become mingled with economic policy.)

The marked concentration of recent times that I spoke of above has reduced the number of industrial branches of production that can be treated as existing in perfect competition. Hence this kind of industrial sector is not very large – *at least for the time being*. Later it can substantially expand, and outside industry the introduction of perfect competition is to a great extent both expedient and realisable, especially in agriculture. All the same, *for the time being*, a relatively more significant part of the entire German economy belongs not to this first sector, but to another.

This second sector is distinguished from the first by that way that, after the elimination of the centrally-administered economy, perfect competition does *not* become established. Various other market forms will take root. We can for example turn from the wood-working machinery factory to one of its suppliers, the iron-making industry. In this industry the removal of today's restrictions will create a completely different situation in the many markets of this industrial branch: monopolies of supply, partial monopolies of supply, supply oligopolies and other market forms of "imperfect competition". This is the sector in which powerful private interests prevail, characterised in part by market ossification and instability, a sector of which I have already spoken. The task for economic policy related to this second group of industrial branches is very much more difficult. More precisely: we have here a complex of tasks, a tangle of tasks that can only be untangled with the help

of modern science. The policy problem changes from one market form to another. The collective monopoly of a coal syndicate presents different tasks for economic policy than a shoe-machinery factory enjoying a sole monopoly; and different again for the mutual monopolies of the Reichsbahn on the demand side and a cartel of rolling-stock manufacturers on the other; and again, the supply-side oligopoly of a few independent petroleum refiners. Take from all of these the market forms related to supply monopolies? What kind of economic policy is here appropriate? Should they simply be dissolved, or what else could be done?

The dissolution of monopolies is called for in markets where this can create the conditions of perfect competition – hence involving collective monopolies and cartels that have many members. Outright prohibition here gives rise to something positive: the introduction of perfect competition. Cartels with many members should therefore be dissolved. But where this condition is not present prohibitions have a different effect; when, for instance, the dissolution of a collective monopoly leaves a supply oligopoly. The prohibition of syndicates in the iron and steel-making industry would for example end up in this way. There would be a few large firms in an oligopolistic grouping; their markets would lack equilibrium with all the damaging outcomes for production and supply. Monopolistic conflicts would break out among them, and perhaps in the end just *one* firm would remain as a giant sole monopolist. Banning such syndicates would not therefore result in the creation of a practical economic order. Instead, new and difficult questions would certainly arise regarding the way in which this branch of production should be organised. There would be no point therefore in imposing a ban here. However, where individual firms supply just one market by themselves, where therefore an individual monopolist prevails, a dissolution of this monopoly is likewise inadvisable where the imposition of such a ban would lead to a supplier oligopoly in place of what had previously been united in one independent firm.

So the question arises of what can be done with supplier monopolies which, if dissolved, are not replaced with a workable order for the branch of production. Here the regulation of monopoly is necessary. Where the regulation supplied by perfect competition is absent, a different kind of regulation is needed. How can this be introduced? And this means above all: what should it aim to achieve? To be brief, the response to this important question is: it should prompt the supply monopolist to set its price at *the* point that ensures that it sells, produces and generally behaves *as if* it found itself in a situation of perfect competition. This is the general formulation of the problem. It is indispensable for the practice of monopoly regulation. But that is not quite enough by itself. For the response raises the question: to what point should the monopoly price be pushed down by the regulator so that it is equal to the price that would arise through perfect competition? How far should the prices

of, for example, a syndicate, a collective monopolist, be reduced, so that they correspond to those of perfect competition?

Today this question can only be answered on a case-by-case basis; in an exact scientific investigation of a particular coalmining syndicate, or a particular aluminium rolling mill syndicate. Only later, when we have greater experience and research results, will we be able to make general statements about this, and establish rules of thumb. At the moment the question can only be dealt with and answered in concrete terms. As with most economic problems, its solution is rendered more difficult by a widespread ideology that has also become important to cartel policy, and which must be set to one side. Briefly, it runs as follows: prices must be set in such a way that the enterprise that is most costly to run can remain in production. This will meet all reasonable demands. The cartel prices would then equal those of the marginal enterprise, hence marginal costs, and so would correspond to the competitive prices which themselves are governed by marginal costs. The regulator therefore only needs to establish the level of costs for the marginal enterprise that allow it to stay in production and fix prices accordingly. For example, the prices for a coal syndicate should be fixed so that the colliery most costly to operate can stay in production.

There is a simple logic to this line of thought and it has therefore made an impression. But it is false. Indeed, false in many ways. It mistakes the marginal costs that arise in all enterprises with the average costs of the marginal enterprise at the lowest level of their downward movement. And it suppresses a difference that is very important: that the marginal enterprise in perfect competition is something very different to the marginal enterprise in the cartel. Under perfect competition, which firm is the marginal firm and so is still able to compete is something decided by prices formed in the market. In this way permanent pressure is also exerted on all firms to reduce their costs, so that falling prices do not push them under the boundary and force them to close. In a cartel things are different: a price is sought that covers the costs of the member (the “marginal firm”) whose costs are the highest. The firm that is most expensive to run is simply *there*, and prices are supposed to be unilaterally set according to this member’s costs. This is something that does not happen in perfect competition. Likewise, in a collective monopoly there is not the pressure to reduce costs that exists in perfect competition. It is precisely these elements to which the regulator has to pay attention in price policy. How this can be done? By renouncing this ideology and, for the time being, studying the matter on a case-by-case basis. That deals with collective monopoly.

For the regulation of monopolists operating *one* enterprise the key point is easier to determine. Matters differ here from *oligopoly*, where there is a constant threat of conflict and a lack of equilibrium, as also from *reciprocal*

monopolies, likewise lacking an equilibrium; and so there are different regulatory tasks. But however different they may be: the constant aim of economic policy is to prompt either supplier or demander to act as though they supplied or demanded in terms of perfect competition. In this way a relatively satisfactory system of economic performance is achieved.

True enough: as has been said above, this diverse second sector presents incomparably more difficult tasks for the politics of the economic constitution [*Wirtschaftsverfassungspolitik*] than the first sector. And more: it is not possible to achieve here what can be achieved in the first sector. Price regulation by state authorities cannot be as good as the anonymous regulation of the competitive process [*Leistungswettbewerb*] and so a correspondingly effective selection of suppliers is missing; at the same time, in the second sector the freedom of the individual is much more restricted than it is in the first. The smaller the first sector is, and the larger the second, the greater are the difficulties faced by economic policy as a whole. An economy in which monopolistic suppliers and purchasers predominated would be completely unstable, and it would be impossible to create a workable order. *For this reason the shrinkage of this sector must be a priority.* How can this be done?

Of course, expert and vigorous state regulation of monopolies already works towards this; it reduces the incentive, for example, to move from the first to the second sector by building a cartel, exchanging the rigour of competition for the rigour of state control.

Much more important is that the aim of shrinking the second sector is pursued on a broad front, dealing with the issue from different directions. Almost *all* elements of economic policy must be bent to this end. The economic and legal policy of most industrialised states has greatly suffered by adopting a remarkably ambivalent and contradictory stance here. The numerous directives and statutes of company law, tax law, patent law, bankruptcy law, trade policy, and credit policy have given a decisive stimulus to the process of concentration, giving vital encouragement to the concentration of monopolistic or oligopolistic power especially in industry, perhaps even stimulating it for the first time. If there is some recognition of the damage that these powers can do, there is often a lack of understanding of how to work against it, or even a lack of the power to do so. Instead, it was more usual to promote this process of concentration indirectly, seeking at the same time to limit some of the damage with special legislation aimed at cartels and monopolies. The state often *directly* opposes structures to whose creation, maintenance and expansion it has *indirectly* contributed. This behaviour is like that of a smoker made ill by the enjoyment of nicotine, who takes remedies but carries on smoking just as before. It is no wonder that such behaviour fails to put an end to the illness. And likewise no wonder that, with this general economic and legal policy, concentrations of industrial power continued to expand and that actual

monopoly policy failed to show sufficient success; this is something that the United States and many other industrial countries demonstrate.

The rule applies to Germany too: its entire economic and legal policy has to avoid the indirect promotion of concentrations of power. The law governing shareholding for example should avoid anything that favours the enlargement of enterprises beyond the scale that is technically required. The law governing patents, which is so often employed to support monopolies, must once again be made to serve exclusively its true purpose. It is also well-known that the exclusion of foreign competition through highly-protectionist trade policy has in many countries given a major boost to the development of monopolies. In this and in other parts of economic policy – including the extremely important areas of credit and tax policy – this element has a central part to play: no indirect support for the movement towards concentration and centres of power, while at the same time enlarging the well-ordered sector of perfect competition.

This problem, and its treatment, likewise reveals the cardinal failure of any economic policy that simply *responds* to isolated issues *as they arise*. If the different parts of economic policy – for instance, trade policy, cartel policy, tax policy – are pursued each without reference to the others, then contradictions and failures will arise; or in other words, policy will pull in different directions. The interdependence of all economic measures is not taken into account. If one had become used to seeing this interdependence and to thinking in terms of different economic orders; further, that the creation of a workable economic order depends to a very great extent on the shrinkage of the second sector; and that *all* elements of economic policy must be directed to this aim and acted upon accordingly; then major shrinkage of the second sector is to be anticipated. You will also now understand why I spoke before that the first, perfectly competitive sector would in Germany be *temporarily* smaller than the second, once restrictions had been removed. If all economic policy is subordinated to this goal of the economic constitution, it will in fact only be temporarily smaller, and the relative size of the sectors will soon substantially alter.

This sketches out the desired path. More cannot be said in a lecture; perhaps for this audience it is not necessary to do so.

It is evident from the above: the form of economic constitution capable of resolving future problems of economic order, and which truly secures the inalienable civil liberties of man, presumes the diversity of existing factors. A policy for the economic constitution has to be shaped for each different kind of market form, and so policy will be diverse. But despite this evident *diversity* that we encounter in reality, everything will be focussed upon *one* aim. Although we start out from below registering a concrete diversity, we do eventually arrive at a unitary principle of order that is vital for the functioning

of the economic process within this order. While fully recognising the greatest variety of realised market forms, the economic order takes on a unitary and stable character all the same. Either perfect competition is in practice established; it is then an institution providing guidance to the economic process. Or alternatively, in those branches of the economy where it is unavoidable that market forms deviate from perfect competition – it is controlled in such a manner that conduct of the economic process occurs as if perfect competition existed. Labour markets are to be organised accordingly. In this economic order little effort will be devoted to the direct guidance of the everyday economic *process* by state agencies. The state is of course active, but it works for the most part with indirect means, seeking to create and maintain a workable *order*. Consumers however have a determining influence on the guidance of the economic process. Within this framework the state has another and much more important task. It has to take care of the monetary system, where neither a significant deflation nor inflation must occur. For significant deflation or inflation make it impossible for firms and households to make appropriate economic calculations, and also for other reasons lead to stagnation or serious misguidance; their avoidance is therefore a vitally important presupposition for the proper functioning of the competitive order, whose significance cannot be overestimated.

Of course, there is still a great deal to do with regard to working out the conceptual details of the economic constitution I have sketched out. These are difficult tasks, but their resolution will lie in the necessary investigation of concrete entities – for instance, individual syndicates. And it is very pleasing that, given the historically given situation, there is so much understanding for this basic posture and for individual questions among scientists and academics. Many do still have inhibitions to overcome, and I will say a few words about these.

We think primarily here of a kind of antiquated, familiar and weary scepticism with regard to competition, something which lends comfort to interested parties. It is mostly based on a widespread, but erroneous, assessment of modern technological development. It is thought that modern technology necessarily leads to large-scale and giant enterprises, so shutting down competition and leading to monopoly. Perfect competition is all very well it is said, but in most branches of production either already dead, or dying. This is however a distorted description of technological and economic development, and so an improper and false conclusion. What is the situation actually like? It is true that technological progress in some, but not all, areas tends to strengthen large enterprises, and so can stimulate concentration and the shutting down of competition. But that is only one *aspect* of the matter. At the same time the technical development of the last one and a half centuries has improved conditions for the development of competition. And primarily in a dual manner: the competition for substitutes has been very much intensified by the

invention of ever newer procedures, coupled with the introduction of new raw materials and finished goods, and new uses for well-known raw materials. For instance, iron has become a competitor with wood for construction, coal a competitor with wood as fuel, while oil is now a competitor with coal and other materials. In the last century cotton was a growing competitor to older textiles, artificial silk has later followed suit. New metals like aluminium now compete with older ones. The many kinds of new artificial stone have shaken the older monopoly of the brick industry; producers of porcelain crockery now face competition from crockery made out of other materials. Of course, many of the latest synthetic materials developed in the period of rearmament and war will in the future disappear again. However, throughout the entire process of technological development of the last few centuries, and especially of the last few decades, there has been in general such a continual and diverse increase of types of good, and of their re-use, that competition from substitutes has become for most goods much stronger. This is not a passing phase, but a lasting change. That is the first point.

As for the second: technical progress in transport has likewise strengthened the competitive element in the modern economy. Many regional and local monopolies have been destroyed as a result of the improvement, and reduction in the cost, of transport by railway, canals and rivers, lorries and other means of transport. To give only one example here: if around 50 years ago there were very many demand monopolies made up of employers in local labour markets, in the last few decades it has usually become possible for workers to exploit competition between many employers by using the railway, or motor vehicles, or motorbikes, or bicycles. The radius over which an individual worker can now choose to work is so great that competition between those firms demanding labour has become a reality.

One has to be careful not to become too one-sided in dealing with modern technological development – as if it only worked to kill off competition. Here too it is necessary to root out old, stubborn views. Competition would play a much stronger role in the economic order if it were not constantly resisted and repressed by the organisational measures of interested parties and of states. Nor should we forget that modern industrial concentration is an *economic* fact; it takes the form of the merging and enlargement of firms normally in possession of many enterprises, and not in the increase in size of the enterprises themselves.

There is a second and different kind of consideration that becomes a limitation in the conceptual preparation of a workable and lasting economic order. The requisites of the *transitional* economy are said to be the greatest and most urgent issue – this is the view of many. Hence any thought of a later *permanent* order is only of secondary importance. What later happens is a future, and not a present, issue. This can be answered as follows: yes, certainly the

need for a transition to a new peacetime economy is very important. But this can only be effected if one knows where one is headed. A body of soldiers about to cross a river has to know where to attach the pontoon to the opposite bank, where they want to land. They cannot just begin building a bridge into the blue. Apart from bridge-building technique, one cannot also forget to reconnoitre the other bank, the land on the other side of the river, and the position of the enemy, so that one can decide on the place where one wishes to land. The same is true for economic policy. We face a time of transition. We will only be able to safely navigate our way through it if we know where we want to go. In directing industrial policy, or agricultural policy, or currency policy – to name just a few examples – one also has to know how long the transition will take, and which general economic order will *permanently* exist. Otherwise a mass of separate, temporary short-term solutions will be applied at different points, and they will fail to match up with each other. There will be a chaos of individual economic provisions and, in the absence of a workable conceptual economic framework for the overall economic process, there will be a failure to resolve the great organisational tasks associated with the transformation of a war economy into a peacetime economy. The experiences of Germany and other countries after the previous war with this approach, using such short-term and disconnected individual measures, should serve as a warning. At that time there was a failure to create a functioning international economic order; and neither did a usable, focussed economic policy capable of creating a workable economic order for individual nations emerge. In contrast, and to avoid the serious and unforeseeable damage that was then caused, it is important that, after this war, a politics of the economic constitution is conducted in such a way that the individual elements of policy measures become part of a comprehensive and ordering economic policy, allowing a workable economic order to emerge.

V

The further that one goes into the problem of the coming peacetime economy, the clearer becomes the issue that we have already indicated: that this problem is only one part of the secular problem of the modern economic order. Let us therefore in conclusion step back from the circumstances of the given historical moment of today, and from this perspective consider the concrete situation of the entire era.

The task with which we have to come to terms is as follows: the real industrial revolution began 150 years ago in England, and is still far from ended. It continues to expand across the globe, even in the older industrial countries entering new, hitherto unknown phases. All parts of the economy

are restructured by this revolution, including agriculture. It transforms the entire social structure of peoples, while not being the only force that effects this. At the same time the population of the world has multiplied, and new strata have arisen – above all, that of the industrial worker. In many respects human life has taken on a different character. This modern economy, shot through with constellations of power peculiar to it, has need of an order that is both economically functional and humane. *The creation of such an order* is the task of policy directed to the constitution of our economy. This task is posed by the historical situation, and is one of the greatest, prime tasks of the era. Despite the quite decisive issues that depend upon its solution – issues that are not only of economic importance for men and women, but for their entire life – the urgency of such a solution is rarely recognised; more often in fragmentary fashion, often not at all. And the conceptual preparation necessary to deal with these problems is only in its initial stages. Relativist, historicist thinking, the tendency to focus on isolated issues, a doctrinaire approach – these have all long allowed the concrete task that faces us here to be overlooked and misunderstood.²

At all events, no satisfactory solution has yet been discovered in the practice of bringing order to the constitution of the economy. The so-called “free” economy did indeed at first drive economic development onwards very rapidly, but this eventually led to insupportable conditions, with the widespread promotion of monopolies and monopolistic practices through state policies. The result was an economically, politically and socially unsustainable collective anarchy, with major and uncontrollable concentrations of power. It was this economic order to which the centrally administered economy was contrasted. If economic orders have formed in which elements of this latter economic system dominate, the rapid and comprehensive application of concentrated economic forces to particular tasks has for a time been made possible. But it became evident that they offered no workable and lasting solutions to the problem of order. It is time to call a halt to this alternation between an established “free” economy and a centrally administered economy, and set about constructing a different kind of economic order.

NOTES

1 It is often and rightly observed that the power of private initiative is crippled in an economy where elements of a centrally guided economy predominate; or, what is just as bad, it is misdirected. This issue is extremely important. But it is sufficiently familiar that it is enough to refer briefly to it.

2 The fact that modern industrialisation creates organisational tasks of hitherto unforeseen extent and difficulty has also altered the significance of the findings of scientific and economic research in contributing to their solution. In earlier times, before

industrialisation, common sense was generally all that was needed for the intellectual work that the creation or alteration of an economic order called for. This no longer applies. Of course, common sense remains indispensable for any policy constituting economic order. It is the best remedy for all speculative doctrines. However, common sense alone is no longer enough. The sheer variety in the forms of the industrialised economy is too great, and the relationships in the modern economic process are too complicated to be grasped with common sense alone. In the future we will need to make use of the results of economic research if we are to develop insight into the structure and relationships of the economic world that is to be ordered.

Chapter 6

What is the Competitive Order?

Walter Eucken

Translated by Michelle Everson

1. Price-fixing and economic steering in textile provision, and also far beyond this sector, are shaped significantly by questions of whether the nation's wool mills are cartelised, whether the market is dominated by a few independent companies, or whether many mills compete with one another in order to supply an equally large number of dealers and weavers. Clearly, the nature of macro-economic process is also determined by the manner in which hard currency is created and the mode in which private bank deposits are amassed, in particular, whether this be by means of credit provision, or take place under monopoly or competitive conditions. The same goes for whether there are unions and employer federations, and the extent of their power. The details of production and distribution vary according to the forms in which supply and demand meet on markets and the modes in which prices and wages are set.

We take these everyday happenings as a given. The economic policy which underpins competitive ordering seeks to endow markets with a form of order that meaningfully integrates all parts of the economic process. The individual agriculturalist, industrialist, artisan and worker – i.e., each individual firm and household – should be free to plan and to act. Economic actors do not follow orders. Instead, they seek to deploy their own labour, productive capacity and capital in the manner that seems best to them. The result is not subordination, but rather co-ordination of households and firms. Firms are free to choose what they produce, which technologies they apply, which raw materials they use and which markets they sell to. By the same token, workers are not coerced to a specific function. They possess their own rights of free movement and free contract. But there is no freedom to dictate the rules of the game arbitrarily, or to determine the manner in which the economic process unfolds. And it is here that the policy of ordering [*Ordnungspolitik*] finds its realm of application.¹

2. The competitive order is ruled by the market model of ‘perfect competition’. Ideally-speaking, perfect competition coordinates the planning and decision-making of individual firms and households. Where this is not possible, distinct economic policy interventions are needed. The exact characteristics of national competitive orders are established according to their individual environmental and historical contexts. They manifest differently, for example, in Germany, Belgium, or the United States – an issue to which we shall return. What is common to all ‘competitive orders’, however, is the predominance of perfect competition.

Parallel to perfect competition, ‘economic self-sufficiency’ (a very basic, centrally-administered economy) is and should remain a widespread ordering form, whereby, for example, alongside their competitive purchase of seeds, fertilisers and machines on the market, and their matching sale of potatoes, pigs and vegetables, farmers are contemporaneously self-sufficient in their consumption of potatoes and meat. The two orders collapse naturally into one another in the agricultural sector. The orders are differently interconnected where a metal worker grows vegetables and fruit for his family on his allotment. It is important that self-sufficiency is promoted within economic policy given the considerable problems of establishing adequate ordering within a modern economy which is based on the division of labour. Individuals might thus attain a measure of independence from market forces, giving them a degree of security in times of need. Nevertheless, because self-sufficiency is unsuited to steering industrial economic processes that are dominated by the division of labour, its significance is generally limited to that of a supplementary ordering form. The defining orientation of the modern economic order must be perfect competition.

3. What is perfect competition? It is a specific, exactly-defined market form that should not be confused with the *laissez-faire* market model. It is also to be strictly distinguished from a ‘monopoly conflict’ market which is evident, for example, in the campaign waged by a partially-monopolistic syndicate against external parties who have emerged out of its shadow, or in the conflict between two oligopolistic shipping lines, railroads or petrol suppliers. Within partially-monopolistic or oligopolistic conflicts, embargos are often deployed against the suppliers or clients of the opposition. No embargos are possible within perfect competition. Be it on the supply or the demand side, oligopolists and monopolists pursue market strategies that are never seen under perfectly-competitive conditions. Perfect competition is not constituted within the battle of man against man, but is instead realised through parallel individual performances. It is neither an obstructive nor a destructive form of competition, but is instead founded within a ‘performance competition’ [*Leistungswettbewerb*].²

This fact largely negates historical critiques of competition which conflate the distinct market forms, lumping them altogether under the competitive

appellation. Descriptions abound of personally-ruinous battles between competitors, of how the battle between ‘rival capital waged’ (Marx), of the annihilation of small by large capitalists, of how assets were senselessly destroyed in battle, of how workers were forced into employment dependency and of how, in finalising summary, competition simply constituted a state of anarchy. Granted, such conditions were often present in historical fact. Nevertheless, they are judged wrongly to the exact degree that they are described as competitive outcomes. On the contrary, these are stories about monopoly conflicts and the dependencies created by monopolies and partial monopolies. Even today, the destruction of surpluses is ascribed to competitive forces, even though reality teaches us that this is only a phenomenon within monopolistic markets.

In the meantime, science has developed the discipline of economic modelling. To the extent that this endeavour seeks to describe the existing economy and exactly details the forms which are reproduced within it, it is also able to explain what competition is with precision (the same cannot be said, however, of scientific approaches that construct their own axiomatic models, but fail to seek or to find their reflections within reality).³

A farmer does not consider the response of the wheat market to his sale of wheat when making his business plans because his offer is relatively small. His plans are informed by wheat, pork and vegetable prices; rates which he takes as a given – or as data – even though such prices are fashioned within the market. He may reckon in his dealings with a particular market price, or may believe that he can reasonably anticipate actual prices, or, at the least, can assume that they will stabilise within given parameters. This is competition.

Competition is established between city housewives when they buy groceries, textiles and shoes; or between landlords when they offer tenancies. Competition was realised on many occasions within agriculture and trade, as well as in industry; above all, within processing industries, such as paper-based industries, the various light engineering sectors and the textile industry, to name but a few.

A perfectly-competitive market is realised when suppliers as well as buyers compete with one another and make their business plans in the light of competitive conditions. In other words, it exists when not only supply but also demand for wheat is competitive, or when not only housewives but also city grocers compete with one another. Any individual with relevant knowledge of the industry will similarly tell us that this market form was not only a feature of trade and agriculture, but was also realised within the industrial sector of the late 19th and early 20th centuries.

4. However, this account of the perfectly-competitive market is not yet sufficiently comprehensive for the purposes of our discussion of economic policy. Do methodologies exist upon which the administration might draw in its day-to-day efforts to distinguish between perfect competition and other

market forms? Economic policy requires indicators, or *symptoms*, in order to implement competitive order. It needs rules of thumb. Do these exist? This question can be answered in the affirmative: two methodologies offer themselves.

The easiest, actor-internal method is to ascertain whether business plans are established within individual companies with reference to competition. For example, we can assume the existence of competition if a company plans to construct machines for sale at 500 DM a piece in the light of the fact that this is the price that they command on the market. The market accepts the price. It is not forced upon it by means of a market strategy. Assumptions of this kind are given further credence where empirical studies demonstrate that there are no cartel agreements operating within the market, as well as further supply information about competitors and the size of the market.

There is a second indirect method. Viewed from the outside, for example from the position of a market competitor, particular anti-competitive actions allow us to draw a conclusion that perfect competition is *not* present: For example, embargos on clients or suppliers who trade with third parties, loyalty discounts, loss leading, dumping, or the destruction of surpluses. One further example: Despite a steep fall in the price of raw silk, a company fails to lower the price of its silk products. The firm *cannot* be subject to perfect competition; the price mechanism of perfect competition would force a fall in the price of silk products in line with falling prices for the raw material. The company most likely possesses a partial monopoly. Such indirect methods of market-form-steering are relatively easy to apply and are effective.

5. Perfect competition does not merely serve within the competitive order as a means to increase production. Instead, it also steers the economic process through its pricing mechanism. As our analysis demonstrates, even centralist economic administrations can and do deploy competition in order to improve production. Competition is often created between individual firms. Companies are often awarded prizes. Workers compete with one another, and special prizes are given for outstanding production levels. Competition is deployed as a means to improve production; meanwhile, centralised bodies engage in planned economic steering.

However, under competitive ordering, it is precisely the job of the pricing mechanism of perfect competition, and of private and commercial planning undertaken in the light of prices, to steer economic processes. *Both* economic steering and increased production are undertaken by perfect competition within the competitive order.

6. A wholly different account of the competitive order can be attempted from a second perspective, or from its comparison with the rule of law. Like the rule of law, the competitive order should also create parameters within which the free actions of an individual are limited by the sphere of freedom

of other individuals such that a balance is attained between human rights to freedom. – In truth the desire for competitive order is closely related to the desire for freedom.

However, the simple desire that it can be realised is not of itself enough, just as little as it is enough to agree with and desire a rule of law for it to come into being. A house must be built, and its foundations must be carefully laid.

‘PRINCIPLE’ AND ‘MOMENT’

1. Regardless of whether we are concerned with the enactment of competition law, the amendment of the existing oversight framework for issuing banks, new regulations on the provision of labour, or some other question, the effectiveness of each and every economic policy act is dependent upon the economic order within which it is situated. The meaning of an economic policy only becomes apparent within the context of the overall economic steering plan. For their part, each such measure also changes this economic order to a greater or lesser degree.

Every economic policy act must accordingly be undertaken with an eye to the form of economy that is favoured. If a centrally-administered economic order is sought after, agricultural policy will be directed to the centralised steering of agricultural production, for example, through creation of state-directed, closed-shop agricultural associations. Equally, external trading monopolies will be established and industrial firms will be concentrated in large-scale companies. Such economic policy acts would have no rhyme or reason within, and would only impact negatively upon a competitive order.

Economic policy can only be meaningfully pursued following a comprehensive founding decision on the desired mode of economic ordering; a constitutive ordering decision [*ordnungspolitische Gesamtentscheidung*], which pre-empts each subsequent economic policy measure. This demand is obviously born out of economic experience rather than doctrine: The potential for the meaningful ordering of the modern industrialised economy has proven to be very limited indeed. Shorn down to its most important characteristics, and applied with due respect to the given historical context, the competitive order is in fact our only hope for solving the political problem of [economic; the translator] ordering. Nevertheless, even where a founding decision is made in its favour, one question remains: how is it to be realised?

2. Seeking to answer this question, we are immediately confronted with a dilemma.

Economic policy must pay due regard to prevailing national conditions. For example, the contemporary political situation in the United States is very different from that in England, as are their respective economic contexts and

their existing economic regulation. Should we wish to realise a competitive order in the one as well as the other country, distinct concrete measures would be required. Equally, economic policy problems present themselves with differing degrees of intensity in each country. And the situation is different again in Germany and in France. Each nation starts from a different base-line, presents its own particular constellations of power, possesses its own economic policy potential and faces distinct challenges. Economic policy cannot be divorced from the historical context of individual nations. No common economic policy code, valid for all nations, is conceivable. Were we to join with Rousseau in an attempt to oppose history, we would surely fail in the face of simple empirical fact. The establishment and entrenchment of the economic order demands differently-tailored economic policy measures within the context of each historical 'moment'. Yet, taking a temporal outlook, historical conditions prevailing in different parts of the world will also be different in 1960, as well as in 1980. How is it possible to say anything at all generalizable about the realisation of this order?

However: for all that it would be wrong to disregard the historical moment in all of its unique expressions of power and its individual imponderables, it would equally be dangerous to dispense with fundamental inquiry, and thus to fall again into past grievous error, reactively pursuing an economic policy that is devoid of founding principles. Anyone who thinks that trade, price, patent and agricultural policy, or any other type of economic policy-making can be conducted on the hoof, in accordance only with the mood of the day is, as we know, deeply mistaken. This pattern of behaviour is in large part responsible for our current economic policy crisis.

Economic policy tends either to fall back on unrealistic, doctrinarian thinking, taking no account of the characteristics of each historical context, or to manifest itself in unprincipled, impulsive action that reduces economic policy to a chaos of uncoordinated or contradictory measures. Each time, the goal is missed.

3. How might this dilemma be overcome? Summarising: to the degree that a distinction is made between the *principle* and its application in each historical *moment*.

Economic history and economic policy-making over the last 150 years provides us with the core principles which must be respected if the competitive order is to come into being. Because perfect competition has been realised on a number of occasions, it is possible to describe the conditions under which this took place and can take place in the future. These principles are identified *as follows*: they are not inferred out of axiomatic models, nor are they somehow asserted against the historical flow. Rather they are developed in contemplative historical investigation, and above all, in investigation of economic policy-making and its consequences. They are of a *practical* nature.

They embody general commands whose realisation is necessary if the goal is to be achieved. They thus offer economic policy-making – for example, in the sphere of trade or antitrust policy – the opportunity to make a contextual choice in the light of prevailing conditions.

Fundamental economic policy-making principles, such as the free market principle and the principle of policy continuity, are needed in order to guide the co-ordination of individual acts of economic policy. Just as a master builder must know the structural engineering rule book before he can build a house, the economic policy-maker must learn these principles in order to give concrete form to the architecture of the competitive order. Our experience in other areas, such as the law and public administration, also tells us that concrete order is impossible if first principles have not similarly been worked out. Ancient wisdom speaks true when it argues that orders begin to fall when principles are ignored.

4. The sought-after order will only be established if these principles are likewise *applied* within the context of the concrete historical moment. Application poses its own challenges, and demands case-based reinterpretation. The question of the sequence in which currency, external trade, banking and anti-trust measures needed to be implemented in 1948, in order to stimulate the price mechanism in Germany, was a very particular one, demanding application of core principles in a manner suited to the concrete circumstances. Principles are adapted to changes within a moving target of reality and are applied contextually to the historical moment.

The constitutional evolution of the principle of the division of powers offers us an analogous mode of development whereby its realisation was experienced differently in very many different nations. So, it was argued, this division is indispensable *if* the state is *ever* to achieve its character as being founded in the rule of law. The application of the principle nonetheless differed starkly from country to country and from time to time in accordance with prevailing conditions. We make a parallel argument: *If* the competitive order is *ever* to be realised, we must apply evolutionary principles. Just as the principle of the division of powers has developed out of historical experience of the misuse of executive powers – so too do those principles which constitute the realisation of the competitive order evolve out of our experience of economics and economic policy-making. As is readily apparent, the principle of *laissez-faire* does not create a competitive order. Other principles are required.

It is thus possible to overcome the primary ordering problem [*ordnungs-politische Hauptproblem*] in our contemporary world: Identification of specific principles is the first step; their application a second, an ever changing and always distinct challenge. It was all far easier during those far away historical times when the economic order could be left to its own growing devices. In a complicated world of advanced technology, industrial growth

and population explosion, a different approach must be taken. – Above all, however, we must learn to differentiate between ‘principle’ and ‘application’, and must act accordingly.

5. The issue of the realisation of the competitive order thus coalesces around the identification of these principles whose application must differ from case to case.

Which principles must be applied? – This is not, however[,] an end to the question. Thus, for example, even where the principles that constitute the competitive order are comprehensively applied, certain residual problems must be solved. These problems are twofold in nature. First, we can reckon with the fact that despite the determined policy pursuit of the competitive order, individual markets will not achieve perfect competition and that other market forms will continue to exist. How should economic policy address these production sectors and markets? This is one question. Turning to another: experience and economic analysis show that despite its great utility, perfect competition can still be damaging and incoherent. From this it also follows that the need for economic policy intervention will endure once a competitive order has been achieved.

This results in two groups of principle: constitutive principles and regulative principles. The first set relates to the creation or *constitution* of the economic order; the second group concerns the maintenance of the *functioning* of the competitive order.

NOTES

1 Eli F. Heckscher (in *Der Merkantilismus*, vol. 1 [Jena: Fischer, 1932], 448 ff.) contrasts the economic liberalism of England at the outset of the nineteenth century with mercantilism: ‘The old method would have sought to dam the [economically; the translator] revolutionary tides. The new, victorious method gave them free rein. They accordingly asserted themselves with a violence unmatched in all preceding human economic history. A third alternative would have been not to seek to hinder the floodwaters nor to leave them unregulated, but to steer them into ordered channels instead. This solution was never attempted’.

2 On the problems of oligopolistic or partially monopolistic conflicts as well as on struggles between monopolists see Franz Böhm, *Wettbewerb und Monopolkampf. Eine Untersuchung zur Frage des wirtschaftlichen Kampfrechts und zur Frage der rechtlichen Struktur der geltenden Wirtschaftsordnung* (Berlin: Heymanns, 1933); Fritz Kestner, *Der Organisationszwang. Eine Untersuchung über die Kämpfe zwischen Kartellen und Außenseitern*, 2nd edn. (Berlin: Heymanns, 1927); Hans Möller, *Kalkulation, Absatzpolitik und Preisbildung. Die Lehre von der Absatzpolitik der Betriebe auf preistheoretischer und betriebswirtschaftlicher Grundlage* (Wien: Springer, 1941).

3 On more recent market form methodology, see Heinrich von Stackelberg, *Marktformen und Gleichgewicht* (Berlin: Julius Springer, 1934); Leonhard Miksch, *Wettbewerb als Aufgabe. Grundsätze Der Wettbewerbsordnung*, 2nd edn. (Godesberg: Verlag Helmut Küpper, 1947); as well as Walter Eucken, *Grundlagen der Nationalökonomie*, 6th edn. (Berlin: Springer, 1950).

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Contextualisation 3

Franz Böhm

Franz Böhm was born in Constance in 1895 and studied sciences of state and law at the Albert-Ludwigs-Universität in Freiburg. In 1925 he began working at the Ministry of Economics in the cartel department, which had a lasting impact on his later work. In 1931 he returned to the university in Freiburg where he received his doctorate in 1932 and his Habilitation in 1933. Although he figures as one of the original members of the Freiburg School, his first temporary professorship was in Jena, where his teaching permission was revoked in 1940 by the National Socialist government after there had been a trial against him and his mother-in-law on the basis of the so-called *Heimtückegesetz*, which entailed massive restrictions on freedom of speech, especially with regard to criticism of the government. Like Eucken, Böhm was active in a number of oppositional intellectual circles during the war and thus also stayed in close contact with many Freiburg scholars. After the war he was offered a professorship in Freiburg but stayed for only one year before he moved to the Goethe University in Frankfurt where he served as President from 1948 to 1949. It was also in the post-war years that Böhm began a career as a politician. As early as in 1945 he joined the newly formed *Christian Democratic Union* and became a member of parliament in 1953 where he stayed until 1965. Beyond this, Böhm also served as an expert on the Scientific Advisory Council of the Ministry of Economics, and it is especially due to this position that he is considered to have had a crucial impact on many reforms in economic policy but especially the *Gesetz gegen Wettbewerbsbeschränkungen* from 1957 that introduced restrictions on monopolies and cartels. He died in 1977.

The first text by Böhm is an excerpt from his *Die Ordnung der Wirtschaft als geschichtliche Aufgabe und rechtsschöpferische Leistung*. It appeared as the first publication of the book series *Die Ordnung der Wirtschaft*, edited by

Böhm himself, Walter Eucken and Hans Großmann-Doerth in 1937. *The Ordo Manifesto* also included in this volume is the programmatic editorial to the book, which represents the attempt to engage in scientific inquiry along the lines of what the editors describe as the task and responsibility of science, namely not only to develop general abstract insights but also generate concrete knowledge usable by political decision makers in dealing with actual socio-economic problems. In the excerpt we have chosen, Böhm introduces the concept of *Wirtschaftsverfassung* (economic constitution), which is also discussed in other texts included in this volume, but Böhm's elaborations are by far the most extensive. According to him, one can refer to an 'economic constitution' 'where a politically-established will prescribes a particular mode and form of economic production for the community' (p. 115). The constitution, accordingly, is a system of norms and cannot simply be the normative ratification of the status quo. The economic constitution is the politically sanctioned and enforced framework of an economy; it is, simultaneously, the technical instrument of ordering the economy but also the goal to be reached in ordering the economy (p. 117) – which, needless to say, introduces a major ambiguity into Böhm's conceptual endeavours. He continues to distinguish the economic constitution from the political constitution and proceeds to determine the relation in which they stand vis-à-vis one another. In contrast to the artificiality of the economic constitution, political constitutions, according to Böhm, are much more the result of an organic process and have something to do with the specific mentality of a people. At this point, the reader becomes aware that the year is 1937 because Böhm's reference to the 'blutbestimmte Anlage' when he talks about 'the people' at least pays lip service to the 'völkisch' ideology of the Nazis. Political and economic constitutions cannot be combined arbitrarily; a particular political constitution only allows for a certain range of economic constitutions; still there is a choice as the political constitution does not overdetermine the economic one. The choice, according to Böhm, should be based on considerations of functionality and expediency, and it almost goes without saying that it should be informed by the advice from experts like Böhm himself (p. 119). Then the text switches from the abstract to the concrete, namely, the relation between the current political and economic constitutions. Böhm insists that the National Socialist regime has a range of options when it comes to the ordering of the economy, and he concludes that there has been a decision for a dynamic economic constitution, albeit it with some exceptions, and that it provides political actors with two steering methods. First, there is the indirect steering of markets, that is, markets that function on the basis of competition; second, there is the possibility of directly steering markets based on explicit commands. In the following two sections Böhm proceeds to discuss the relation of the economic constitution to customary law and the economy in its

actually existing form. With regard to the former, Böhm points out that a dynamic economic order and the respective economic constitution eventually must come into conflict with customary law and conventions because a concession of customary claims would amount to a violation of an economic constitution that is focused on creating the most dynamic economic order possible. With regard to the latter, Böhm cautions his readers against caving in to the economic status quo. Wherever there is an incongruence between the normative order of the economy and the economy itself, the former has to assert itself and transform the real economy according to its designs.

The substance of the excerpt is a detailed definition and description of the economic constitution and its relation to the political constitution, customary law and the real economy. But despite Böhm's best efforts, a fundamental ambiguity remains at the heart of this account, since the economic constitution is both the actually existing technical-organizational toolset and framework of the economy and the normative vision giving orientation to all economic policy. Still, the text proves once more the premium ordoliberalism puts on a regime of explicit and rigorous rules as the preferred technique of economic governance. It also confirms the decisionist bent underlying the ordoliberal view of such governance, when Böhm over and over insists that an economic constitution presupposes an explicit *decision*. Finally, Böhm's text documents once more the ordoliberal determination to gain influence on the existing economic constitution and introduce the elements into it that ordoliberal science recommends – to the extent that this is possible. While Böhm acknowledges the 'primacy of the political' in economic governance that was part of the Nazi doctrine and he recognizes that the current economic regime is at best a mixture of market-based capitalism and a command economy – in 1936 the first four-year plan had been passed by the government – he still insists that market-based competition remains a viable option at least for some sectors as long as the regime has not explicitly rejected it (p. 120). Much of the remainder of the book can be read as policy advice with a view to the economic constitution being restructured if only so slightly along more ordoliberal lines. Böhm's book does not make him a Nazi, but neither does it make him part of the resistance. As Haselbach writes, it is simply the text of an 'expert' whose expertise is valuable and usable under widely differing political circumstances.¹

The second text by Böhm we have included is from the immediate post-war era. It is an article that originally appeared in the *Süddeutsche Juristen-Zeitung* in 1947. In *Kartellauflösung und Konzernentflechtung: Spezialistenaufgabe oder Schicksalsfrage?* the recent measures of the Allied Forces to disentangle German cartels in the American and the British zone prompt Böhm to discuss the rationale behind anti-monopoly policies and decartelisation more generally speaking. Böhm, along with the other

ordoliberals and especially Eucken, sees monopolies and so on as manifestations of economic power, and for him not only its abuse but its very existence is problematic, both for normative and functional reasons (p. 124). Wherever there is concentrated economic power, the principle of equivalents being exchanged on markets is violated and the price system as the functional core of markets gets distorted as they are set not through the anonymous processes of the market which registers the results of what Böhm describes as a permanent referendum of consumers that represents ‘the most perfect expression of mass democracy’ (p. 128). Furthermore, the impersonal coercion of the market price is being replaced by the personal coercion of the monopolist, and with this manifestation of market power all those affected by the monopolist’s action trade their freedom of choice for dependence. In addition, an economy with a high level of concentration is dangerous because it can be more easily transformed into an authoritarian economic regime. Böhm cites the case of pre-World War II Germany as proof and also points out that this is the actual reason for the current or recent Allied Forces’ efforts at decartelisation. For all of these reasons, Böhm arrives at a typical ordoliberal condemnation of any accumulation of market power and the endorsement of a policy that strives towards the ideal of perfect competition or, at least, the absence of monopolistic markets. Böhm envisages a large-scale state-led endeavour on all levels to minimise market power by reintroducing and strengthening mechanisms of competition, and wherever cartels and monopolies cannot be dismantled, they have to be brought under the strictest supervision by the state to impose a price policy onto them ‘as if’ they were operating in a functioning market.

Böhm’s article is a detailed reflection on why economic power is both normatively and functionally problematic and what must be done about it from an ordoliberal perspective. While the exclusive focus on monopolies and cartels as the sole sources of power in markets seems slightly one-dimensional, it must be noted that the ordoliberal criticism of market power contrasts strongly – and favourably, many might add – with the indifference, which subsequent generations of neoliberal thinkers since the 1960s showed towards the issue. Still, the ordoliberals may agree with a Marxist critic of monopoly capitalism on the ills of monopolies but, of course, their critique is formulated in the name of increasing and intensifying competition on markets, which Böhm once referred to as one of the prime instruments of disempowerment.

It is also noteworthy that in Böhm’s text as in most others included in this volume, an abstract discussion – in this case the issue of monopolies – eventually is localised in the present context of the authors. After all, ordoliberalism wanted to be both abstract science and truth generator as well as concrete practical economic problem-solver. In this case, the context is post-war

Germany, and Böhm contemplates the preconditions of successfully pursuing a policy along the lines proposed, and he does so before the currency reform and at a time when there was still a governmental price policy in place. Böhm is aware that there are strong forces opposed to this policy of fighting monopolies and contends that it is not enough to rely on some experts for support; instead he concludes that employees and workers in their role as consumers as those with a vital interest in such a policy must be rallied much more if it is to be made politically feasible. The ordoliberals and, indeed Böhm himself, were very active during the post-war years in advising political decision makers and appealing to the public in favour of a robust anti-monopoly regime. But while the *Gesetz gegen Wettbewerbsbeschränkungen* from 1957 contained numerous provisions to the effect of curtailing market power, the ordoliberals still found it wanting.

NOTE

1 Dieter Haselbach, *Autoritärer Liberalismus und soziale Marktwirtschaft. Gesellschaft und Politik im Ordoliberalismus* (Baden-Baden: Nomos, 1991), 93. See on Böhm's book also Ralf Ptak, *Vom Ordoliberalismus zur Sozialen Marktwirtschaft. Stationen des Neoliberalismus in Deutschland* (Opladen: Leske+Budrich, 2004), 90–102.

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Chapter 7

Economic Ordering as a Problem of Economic Policy and a Problem of the Economic Constitution

Franz Böhm

Translated by Michelle Everson

1. THE ECONOMIC CONSTITUTION AS THE NORMATIVE ORDER OF THE NATIONAL ECONOMY

In all political communities, including the most primitive of political communities, particular modes of economic production will hold sway at any given time, such that we may say that they are characteristic of those communities at those times. However, such commonly practiced forms and behaviours are not yet an economic constitution; not even when the common economic activities of individual sectors of the community are organised in pursuit of a single goal. We can only truly speak in terms of an economic constitution where a politically-established will *prescribes* a particular mode and form of economic production for the community. In other words, the community must dispose of a living vision of the mode of production that it *desires*, and a *decision* must have once been taken to transform this vision into a *functioning economic and possibly also political-social system*.

The economic constitution does not embody the reality of economic process. It is instead an *embodiment of norms*; more exactly, those norms whose purpose it is to influence the economic behaviour of individuals and groups, and, above all (upon evolution of an economic division of labour) to *order*, or to regulate, the mutual economic activities of individuals and the subsequent relationships of corporate entities with one another. Anyone wishing to understand whether an economic constitution existed during a particular historical period, and what it looked like, should not restrict themselves to an examination of how the people of the period actually went about their economic business (great caution must be exercised when relating the concrete facts of economic life to its ordering). They must

instead, or above all, seek legal signposts and sources, giving indications as to whether *a legally-binding decision was taken within the community in favour of a particular form of economic production*, and what the *political vision* of the desired mode of economic production was.

The *content* of an economic constitution can be very primitive, even contradictory or irrational. Similarly, the concept of the economic constitution does not require that it aims to foster economic development. State-steering orders that fix economic life at the traditional level and ban all economic progress are also economic constitutions. It is sufficient that norms exist that *regulate* economic behaviour.

Equally however, where historical orders are at issue, factual descriptors such as the term, 'political *decision*', should not be judged too strictly and especially not according to modern standards. The forms in which constitution-creating decisions were taken within the political communities of earlier epochs were very different and, above all, more fluid than those to which modern law and constitutional life refer. Further, historical visions of the general economic interest were a world away from what we today call an economic-political or socio-political 'system'.

It is just as difficult to ascertain the existence, validity and make-up of an economic constitution within a particular political community of early economic history, as it is easy to make this judgment with regard to modern economic development. Certainly, given that they are both full to the brim with modern connotations, one may have justified doubts about the utility or validity of the application of concepts such as 'constitution' or 'political decision' onto far away times. Nevertheless, none would wish to deny that these concepts, amongst others bequeathed to us by contemporary public law, greatly facilitate, or are even indispensable to our understanding of the legal structure of a modern economic order. However, we can only talk about an economic order in its modern sense at the moment when a state *knowingly adopts systematic pursuit of an economic policy*; at the latest, when the state introduces a *dynamic order*. At this point, the concept of the 'economic constitution' accordingly emerges with sharper contours and a particular substance. It may seem extraordinary, but it is true: the more dynamic economic life becomes, the more stable must its order be. A comparison can be made with a machine: the more complex a machine is, and the more intricately-interdependent the movement of its separate parts, the more precise must its construction be. Overly-slick transference between distinct ordering systems, creation of customary law, *contra* or *praeter legem*, as well as lack of clarity in the substantive aims of economic policy goals and methodologies, are wholly incompatible with the substantive challenges posed by the task of organising the functioning national economic totality in line with the correct procedural norms of a single operative idea, such that the reality of this

highly-differentiated and no longer knowable national economic personality is mastered in the entirety of all of its manifestations. The only orders equal to this task are those *generated by a conscious and intelligent political will, and by an authoritative leadership decision founded in expert knowledge*: there is no room here for silent growth, for an ordered fashioning of doings within the bosom of the economy itself, or from the bottom-up. Such social towers of Babel, in all of their exaggerated proportions and accelerated tempos, can result only in a hopeless babble of tongues should the ordering ideal – the sole element seeking to represent unity and to give meaning to the whole in all of its parts – not be grounded in the phrase: everything obeys my command! This strictness is criticised by many, not only by true idealists, but also by pragmatic interests, but is nonetheless indispensable.

The first demand made of a modern economic constitution is accordingly that it is *knowingly founded in a clear and unassailable expression of political will*. Secondly, however, this expression of will must be made valid in an unmistakable act of *dissemination*; being thirdly and simultaneously a *real and substantive choice in favour of a self-referential system of political-economic order*. That is, the moment must be marked by a *concrete attempt to seek an organisational solution* which deploys specified and authoritative methods in order to achieve a clearly defined goal. Clearly, the chosen system might be piecemeal in its genesis, and full of exceptions. In this case, however, exceptions must be strictly delineated and the criteria according to which these exceptions or other methods are applied must be clearly elaborated. Care must also be taken to ensure that although the system might be a combined construct, it is nevertheless ruled in its entirety by a single governing ideal, which guarantees its unity and utility.

By contrast, decisions which *lack a specific, substantive ideal* and which leave the economic process *untroubled by a clear goal and technical order*, do not amount to an economic constitution. Such decisions are also *valid*, but simply create a *legal context*, or a legal context within which happenings within the economy are left to their own devices to a greater or lesser degree, to then be recognised as having occurred in the correct manner. This legal context nevertheless remains wholly beholden to the economy in the matter of what forms the true core of an economic constitution: that is *a steering norm, which guides economic happenings in a politically-desirable direction*.

2. ECONOMIC CONSTITUTION AND POLITICAL CONSTITUTION

The analysis has already revealed the significant differences between the criteria which an economic constitution must fulfil and those that characterise

the *overarching political constitution*. More particularly, difference derives primarily from the fact that the economic constitution must be a *precision instrument* to a degree far greater than is needed, or even acceptable and wished for in the case of the state constitution. In turn, this assertion may be traced back to the fact that the *technical* part of the economic constitution is proportionately far larger and more decisive than is the case for the political constitution. The decisive political decisions made in a constitutive, state constitution are, by their very nature, *moral* in character [*sittlicher Natur*]: the constitution lays down the enduring *telos* of the nation such that the organisational bases are considered not so much for their technical utility, as for their accordance with the spirit and the genius of the nation; a genius which serves in the final instance to signal the form which individual tasks and solutions should take, as well as the inspiration which should permeate them.

This decisively moral element largely precludes the ‘making’ and banal ‘promulgation’ of state constitutions. The great achievement of modern public law is that it has recognised this fact and deepened the concept of the constitution in order to free it from it from an all-too-formalistic straitjacket of legalistic thinking. This has made clear the degree to which living legal persuasion and a particular way of deciding upon good and evil has the power of constitutional *validity* in the context of a people – a people that comes into being over a long period of time through blood and historical-emotional common experience. Autocratic constitutions, imposed in opposition to the particular moral outlook of the people, or to the better self of the nation (alien constitutions), thus generally fall victim to transformation or alienation processes from the very day of their introduction. For so long as the power of the people remains unbroken, such constitutions are unlikely ever to be able enduringly to assert themselves against the popular desire for ‘self-constitution’ [*Eigenverfassung*].

The situation is significantly different with regard to the economic constitution. The challenge of augmenting national economic production is primarily a *practical-technical* one. Moral authority naturally has a vital relevance in the mastery of this challenge, such that economic orders must also be conceived with an eye to its utilisation. But, just as the courage and discipline of an army cannot guarantee victory in war, the good will and social moral standing of the economic community cannot master the national economic challenge on its own. What is required here is *functional rationality within the organisational foundations* of common action: the whole must have a ‘*system*’, or a concretely-purposive system built on a specific campaign plan and to an exact technical blueprint. This concrete technical order is just as important for the economy as are tactical principles and strategic military leadership in times of war. And, just as in war, when the morale of the troops suffers under indecisive and poor leadership, the social morale of day-to-day

economic activity is destroyed by contradictory, technically-incompetent or just impractical economic ordering.

This technical-political element can be viewed as an *addendum* to guiding moral-political foundations and must be seen in their light in order to transform a blanket economic policy-making decision into an economic constitution. The identification of a people of the constitutional form that best reflects them is not yet commensurate with their establishment of a concrete, economic constitution. Rather, they now stand before a specific choice between a *variety* of possible economic orders. The decision in favour of one form above the others, or for a combined system, is now taken primarily in the light of *utility criteria*; at this point, the *technical knowledge* of individuals with extensive economic policy-making experience, together with *theoretical input from trained intellects*, plays a far more significant role than is the case during foundation of the political constitution.

It is clearly not the case, however, that an economic constitution will be constituted *solely* by functional criteria. Instead, the moral ideals that animate the people set more or less clear limits to the isolated consideration of utility. By the same token, the intellectual-moral *teloi* of political constitutions generally pre-empt the boundaries within which technical economic orders may operate. That is: regardless of its individual stipulations, the economic constitution must in any case accord with the dispositive political constitution. Certain technical options for the legal ordering of the national economy may already be precluded by the political constitution. They will no longer be considered, regardless of their utility.

This conclusion should not detract from the fact that a choice may nevertheless generally still be made between a *variety* of ordering systems within the context of a particular political constitution, and that this choice will be informed by contemplation of which is the most practical and functional solution. No one particular form of economic ordering can be, so to say, doctrinally-extrapolated from the fundamental principles of a political constitution; for example, from the elemental constitutional edicts of the National Socialist state. Instead, we can only identify the general contours of the core principles which a National Socialist economic order must *in any case* respect: that is, we can clearly state what economic ordering within a National Socialist order may *not* look like. Nevertheless, this merely furnishes us with an *empty, economic-legal, constitutional vista*; not yet a concrete economic constitution. Transformation of the blank constitutional page into a constitution requires a *second additional decision* in favour of one particular system from amongst the variety of potential technical solutions that are compatible with the overarching political constitution.

In the meantime, the Reich leadership has made its choice, taking an all-embracing decision in favour of a *dynamic* economic constitution (the one

exception to the dynamic principle being a strictly-delineated state exemption regulation for agricultural reform). Technical ordering of dynamic economic operations is safeguarded by the *dual steering mechanisms* of, on the one hand, *indirect market management* by means of legally-governed *exchange and competition* and, on the other, *direct market steering* by methodical means of command. The state chooses which of the two methods to apply, and opts for the competitive principle to the exact degree that it does not dispose of its direct steering competence in individual markets.

This state regulatory framework gives the Reich economic leadership the power to make administrative commands applying either the indirect or the direct steering competence according to need, functionality and political intent. The leadership may go as far it wishes in this regard, for example, by suspending competition-based economic steering and returning to it when appropriate. Nevertheless, we will only be able to conclude that the currently valid economic constitution has been amended if and when an explicit and fundamental rejection of the competitive principle precludes future application of one of the two existing ordering mechanisms foreseen by it.

Chapter 8

Decartelisation and De-concentration

A Problem for Specialists or a Fateful Question?

Franz Böhm

Translated by Michelle Everson

I

What has prompted the demand for decartelization and the de-concentration of firms? Why was provision for the annulment of cartel contracts made as early as 1923 in the German Cartel Regulation (KartellVO¹)? Why have other countries, most notably the United States, taken a stricter line, simply prohibiting cartel agreements and, in a series of significant and prominent cases (e.g. Standard Oil), imposed de-concentration upon those companies who have variously escaped this prohibition? Why has this radical and drastic approach recently also been introduced by military regulations in the American² and British³ zones of Germany?

The answer is as follows: because cartels and firms are *potential holders of economic power*. However, they are not alone in their possession of power. As a result, recent laws do not restrict themselves to measures that are prohibitive of these two phenomena, but seek instead to come to grips with *each and every form of concentration of economic power*, regardless of its organisational construction.

The power which attracts a high degree of mistrust by the state is a very *particular form of power*. No thought is given here to the power endowed by great wealth, or to the social and political influence wielded by successful industrialists. Nor does concern relate to the internal power of direction over workers and employees that is exercised by an industrialist within his own company in employment contracts. The particular form of power that enacted cartel law seeks to inhibit or to delimit is, instead, a power over markets (monopolistic market influence, partially-monopolistic or oligopolistic

power); that is, all those forms of power which we think about in association with the term, ‘monopoly capitalism’.

A dominant position exists where a market participant – acting alone or in concert with others – is in a position *knowingly and perceptibly to influence market price*: in other words, to engage in *price and market strategies*. This can only be achieved through possession of a very high percentage of the supply or the demand within a particular market sector. Economic power is monumental in nature: its existence is mostly easy to identify, or is generally immediately apparent because a powerful market participant reacts and behaves in manner very different from a simple competitor who only adapts to the market and is not in a position to influence it through their own individual action.

II

We can now make our question more distinct: for what reason has it been decided that the *accumulation and possession of economic power* should be limited and combatted?

Peoples who place value upon their freedom, a freedom that was dearly won in bitter internal struggle, are indelibly marked by their enduring suspicion of all forms of unchecked power, and are minded, as a consequence, to view this power as a *constitutional question* which concerns each and every citizen. This is true, above all, for the United States of North America, which were the first and most determined in their application of legislative measures to combat the concentration of economic power. It is undeniable, on the one hand, that the US administration’s battle against cartels, conglomerates and trusts has not always had decisive success, or has not always been pursued with equal energy. And it is similarly undeniable that powerful firms have exercised significant influence over politics. On the other hand, however, battle has always been re-joined, and nowhere has the problem been tackled with equal skill, determination or success as here.

Developments have taken a very different course in Germany. The notion that the cartel problem could be of constitutional concern has barely left its mark here, albeit that the very first opinions given by the *Reichsgericht*, for example the Judgment of 4 February 1897 (RGZ 36, 155), at least hinted as much. German debate has instead been confined to *expert circles*; meanwhile the majority of experts, and above all, leading minds amongst them, remained remarkably well-disposed towards cartels, at least up until the first world war, with a degree of support continuing to be exhibited right up until the promulgation of the KartellVO, and even in the following years. Today, in Germany, the question of cartels continues to be viewed as a *problem for*

specialists and is shaped by the thought that experts are in the best position to judge whether dominant positions are advantageous for or damaging to the national economy.

In any case, legislative action against cartels and other power concentrations in Germany has never attracted popular attention, and has never been given programmatic status by broad portions of the population, influential associations or mass political parties. This is reflected in the history of German cartel legislation. Not a single piece of legislation was given approval within the prescribed plenary sessions of the *Reichstag*. Thus, the KartellVO was approved by the *Reich* administration (Stresemann Cabinet) within delegated legislation made on the basis of enabling law. During Brüning's premiership, the *Reich* President approved the so-called Kartell-NotVO⁴ of 26 July 1930, on the basis of Article 48 of the *Reich* Constitution. Meanwhile the Law amending cartel regulation [*Kartelländerungsgesetz*] from 15 July 1934 was passed by Hitler on the basis of the deplorable Enabling Law from March 1933. In each of these cases, expert reports were simply given the status of law in an act of authoritarian imposition and in the absence of scrutiny by the *Reichstag*. However, and without exaggeration, it may also be said that neither was there much potential for successful passage of any one of these laws through the *Reichstag*; and this because, to the degree that public opinion took any notice at all of the issue, only two opinions had any broad currency. The one argued that the cartels should simply be left in peace, especially and particularly with regard to their private law status. The other demanded their democratization by means of interpolation into their structures of quasi-parliamentary, decision-making bodies constituted by representatives of firms, workers and consumers. Only a very few number of men sponsored the view that accumulation of market power should, insofar as at all possible, be prevented or hindered in order to revive competition, drawing their inspiration for this position from theoretical considerations and experience garnered in administration.

The following analysis seeks to demonstrate that popular delegation of rulings and decisions on economic power to experts represents a lack of political vision and political oversight, as well as why this is the case. Certainly, it is helpful when experts contribute and their views are heard. Nevertheless, far greater powers must be amassed than those offered by a 'brains-trust' composed of a couple of dozen denizens of expertise and ministerial bureaucracy, where the task is one, either of divesting power from wildly-proliferating edifices of power, or of preventing their collapse of the social order by means of their hierarchical capture in an overarching order. Whatever the desired mode of tackling the issue, the challenge will only be mastered where the political approach chosen is knowingly and whole-heartedly supported by broad swathes of public opinion. This holds true, whether one chooses to

re-establish competitive conditions in concentrated or threatened markets, concomitantly dissolving, atomising or impairing individual power concentrations, or whether one prefers to deploy public bodies, with more or less active strategies to influence the behaviours of power concentrations, or whether one considers it expedient to transfer concentrated power into other hands, primarily those of the state, whereby, in these latter two examples, the mushrooming of the administration and the misuse of informally-acquired authoritative competences are dangers against which one must guard. Questions of power are questions for the community as a whole, and we are the ones who will be overwhelmed and pay the price should the attack not be repulsed.

III

Let us return to our starting question: what justifies the demand that the accumulation and possession of economic power should be prevented and combatted? In order to answer this question, we must first review private economic power in the context of the economic system within which it has arisen. Taking this approach, we come to a startling conclusion. On the one hand private market power is nurtured and fed by a free, entrepreneurial economy. On the other hand, *its very existence simultaneously destroys and explodes the ordering of this economic system.*

One can clearly debate the degree to which market power would have been able to proliferate had governments, legally-constituted associations, judges, firms, workers and public opinion properly understood the ordering ideals and building blocks of an exchange economy which is built on market-conform performance exchange and free competition, and had behaved in methodical concordance with this system, purposively developing the legal framework of the system, and properly observing its principles and the rules of the game. In this case, it is at least certain that only a very small portion of power concentrations would have been able to assert itself. But it is just as certain that even an ideal defence of the system would not have provided complete protection against market power, and neither will it be able to fully eradicate the phenomenon of concentrated markets in future.

The concentration of power in the hands of individual or groups of individual market participants is a particularly serious and intractable problem for politics and law because, albeit with a few exceptions, the free market system is predicated on the assumption that *all* economic actors are *powerless*. The order only gives a monopoly position to bodies whose task it is to regulate the amount and circulation of money. The powerlessness of all other actors is founded in equal measure in the *justice principle* which is anchored within

the system, and in *political steering considerations*. The accumulation of private power offends market justice on the one hand, and undermines purposive and desired economic interaction on the other.

The postulate of mutual powerlessness is related to the *principle of performance exchange* and is necessarily and logically derived from the commitment to the freedom of consumption, the freedom of business and the freedom of contract. A precondition for mutual, non-pecuniary exchange is the *equal value* of offer and consideration; an equal value established in accordance with the rational and free calculations of the exchange partners themselves. According to the justice and functional considerations underlying the [contractual] institute, the agreement between exchange parties about the equal value of offer and consideration cannot be viewed as a purely formal construction within which one partner may be fooled or coerced into agreement. Instead, the agreement should be of a *substantive* nature reflecting a claim to the equality of values exchanged which each exchange party considers true, and which can also be considered to be true in a rational and proper judgment.

When the principle of remuneration is observed, i.e., neither party wishes to gift something to the other, it also follows that each party should be fully independent from the other. That is, that neither has power over the other. *Equal power* is not adequate. Rather, each party must be *powerless*.

This position is only possible however, where the vendor may choose between many purchasers and the purchaser may choose between many vendors. In other words, no barriers may exist to prevent each party from turning to other sellers or buyers should the offer establish a less favorable relation between the parties than that established between many sellers and buyers.

Modern market analysis has sought to formulate the preconditions for an ideally-comprehensive realisation of a situation of multilateral powerlessness through modelling and observation of exchange practice. The situation which fulfils all preconditions is known as *mutually-perfect competition*. It is characterised by the fact that each participant may be wholly *powerless* (i.e., cannot tangibly and knowingly impact upon another market participant through their own isolated behaviour), but is at the same time wholly independent (i.e. is free from the perceptible influence of the acts and omissions of another market participant). No market participant is a hammer, and none is an anvil. Rather, each may be reckoned as a free man.

In truth, perfect competition entails very effective and powerful interdependency between all. But this is not a dependency born out of the arbitrary desires of individuals, or out of the combined actions of groups, and is instead a dependency upon *all of the economic plans* of all individuals, firms and households who participate in the economy, selling or buying offers within any market. Every individual is dependent upon an equally-impacting,

impersonal and anonymous common will, whose content and potential is transmitted and made understandable to participants through the *pricing system*. In other words, each competitive price represents a *compromise* between the economic plans of all, within which all existing market evaluations of all existing market offers are reflected as if they were within a crystal. The subtlety, precision and comprehensive extent of this compromise is *far greater than could ever be created by the conscious plans and desires of human efforts* – even greater than that that might be furnished by the will and mind of the most talented of state planners, or the most prescient of committees. Naturally, the precondition is one of mutually-perfect competition. Nonetheless, its blanket presence is only postulated for the purposes of reaching exact theoretical conclusions. The practical needs of daily economic life are generally satisfied where competitive conditions are only partially present, above all, where the market – be it on the supply or demand side – is free from of market forms that typically reflect power concentrations (monopoly, partial-monopoly, oligopoly).

Under competitive economic conditions, each and every individual has the right to enter the market to make offers and demands as he will. Since all do this and every seller may make their choice from amongst the best purchase offers, just as each purchaser may make their choice from amongst the cheapest offers, all within the context of visible, transparent and responsive processes, this improvised interplay quickly establishes an experimental price for each good (performance value), which orders all offers on the market such that every purchaser that is prepared to pay the price will be supplied with as many goods as they wish at this price, and such that the collective demand is exactly equal to the collective supply. Even if they are in a position to do so, no purchaser has reason to pay a penny more and no vendor has reason to offer their supply even a penny cheaper, regardless of the fact that they might still make a profit. As a consequence, no purchaser will receive goods at less than market price and no vendor aim to receive more than the market price. From now on, each supplier and purchaser makes their economic plans according to this price. Firms either retain or rearrange their existing production plans, while purchasers either continue to satisfy their needs in the same sequence, or for reasons of price, or for other reasons, re-rank the urgency of their needs within their purchasing programme. Thus, market prices impact upon the motivations of individual actors, such that market-price-related behaviour gives rise to new market prices in its turn.

Theoretical macroeconomics has greatly refined the doctrine of market-price creation under conditions of mutually-perfect competition: it is not however our intention to enter too deeply into these considerations here. We need only to understand as much about the significance of market pricing as is necessary to understand rationales for political steering and ordering in the free market economy, and to comprehend its internal conception of justice.

We are now in a position to get a clearer idea of the roles freedom and force play in a competitive market economy, of where this freedom ends and force begins, and of what kind that force is.

First of all, the process of establishing the market price is free. And the conclusion of this process – that is, the market price – does not have a legal or authoritarian character either. No one is forced to align themselves to the market price. Beyond legal bans on profiteering and extortion, any price is admissible, be it far higher or far lower than the market price.

Nonetheless, market prices have imposed themselves within economic processes to a far greater extent than ever was the historical case for legally-prescribed prices, maximum and minimum pricing rules, price-freezes etc.; and this notwithstanding the threat of exorbitant sanctions. The ability of market prices to assert themselves is clearly not a result of human autonomy, concordance and rationality. It is far more a consequence of a *tangible force*. Why does a purchaser buy at market price? Because this price reflects his interests? Not in the least. If it were a simple matter of personal interest, he would not pay anything for the good at all. Because, he considers the price to be true and just? Not in the least! He would consider half the price to be far more just. He would nonetheless pay 20% or 50% more were the market price this much higher, and his wallet allowed him to do so. And, were he one day to demur from further purchases in the face of a higher market price, this would not be because his sense of justice was in revolt, but because he could no longer afford to satisfy such expensive needs. Why then does a purchaser buy at market price? Answer: because he can find nobody who will sell the good more cheaply. He is faced with a *comprehensive supply strike*. But, and this is the decisive and important point, the supply strike is *neither organised, nor the subject of an agreement*. The vendor rejects agreement at a lower price simply because his whole offer is comprehensively tailored to the market price. He behaves in rational appreciation of his interests and his autonomy. And, to the degree he acts in this way *he unknowingly and without coercion becomes a part of the elementary force that impacts upon demand*. The same is true of purchasers: without having concluded a single agreement, and without ever having to exert themselves in the matter of social or moral outrage, each and every one will refuse to pay prices higher than the market price, for the simple reason that the wares can be found throughout the market at market price.

The situation is as follows.

In an ideally-competitive economy, market prices are the outcome of a gigantic balancing process between the countless and varied individual interests of countless, powerless market participants, which unfolds in total freedom and which reflects every individual evaluation that has been asserted. Taking the social standpoint, it is this that makes the market price free of *all arbitrariness*. Market prices are compound articulations of necessity, justice and reason. In its own peculiar manner, market-price-creation is a *voting*

process, taking place, by the day, hour and even minute. The free market economy is the *most perfect expression of mass democracy*; its degree of precision is impossible to reproduce within *political* life. The continual nature of voting not only determines that the productive process will incessantly be shunned by purchasers who have lost confidence in it, but also establishes a degree of continuity, whereby producers may precisely analyse what purchasers desire, and orient themselves to this demand.

Viewing coercive tendencies that have been spontaneously established in the reaction of market participants from the standpoint of the coerced, the compelling force felt by them is very real indeed. Nevertheless, the character of this coercive force distinguishes it starkly from known and common forms of coercion.

First, in the competitive economy, the market price is the only conceivable force that can arise out of this most comprehensive possible voting process. Absent conspiracies, and in view of the spontaneous behaviours of market participants, it is simply not possible to direct a supply or demand-side strike to any other goal other than that of protection of the market price. *We are accordingly concerned here with a force that is exercised by people, but cannot be misused by these same people.*

Secondly, neither can an individual, nor a conscious common will be discerned within this force. Coercion is created by a concordance, which is desired by none, between *countless, comparable and spontaneous reactions*. This is a *force without masters or knaves*. As a consequence, this is a form of power that *does not violate the political, social or legal autonomy of those it acts upon*. In its political, social or legal meaning, autonomy is no more or less than a *freedom from the, legally-tolerated or legally-prohibited, imposition of the arbitrary will of others*. Individuals do not experience their dependency upon the non-organised median of the reactions of their co-citizens as a restriction of their autonomy, but rather as regard it as an expression of fate and the simple frustration of their desires.

IV

We have taken care to elaborate various ordering notions of the competitive economy because it is possible in this manner to attain clarity on the impacts on the system of the accrual by individual market participants of power such that they are in a position knowingly and strategically to influence market pricing.

For as long as *all* are powerless, all are independent. At the moment that *one* individual attains power, a portion of the remaining market participants lose their independence; this being the case, above all, amongst the most

immediate market partners (or suppliers). Market prices are no longer pure competitive prices, but are now combined with dictates instead. As a consequence, market prices lose their qualities of necessity, justice and reason – except in the case where the powerful actor sets the self-same price that would have established itself under competitive conditions. Whether he wishes to do so is nevertheless a matter of choice to him. That he would wish to behave in this matter is highly unlikely: at core, market pricing is, as argued above, a burden on every market participant. Every supplier desires higher prices; every purchaser desires lower prices. Where market participants find themselves in a position to influence pricing, they will surely satisfy this desire as quickly as possible. Theoretical models exist that detail typical price formation processes in monopoly markets, or markets exhibiting formations of lesser powers, and such impacts need not be detailed further here. It need only be noted that prices are established in all of these cases, which deviate from the competitive market price, to the detriment of the powerless.

A market participant can only improve his position within a competitive economy by providing a better offer, or by successfully riding the back of economic advance. By contrast, powerful actors can achieve private economic success by curtailing their market partners' ability to opt for cheaper supply offers or *higher priced demands*. This constitutes a clear *application of force*, a deployment of individual and truly arbitrary power. With this, an element of caprice and randomness smuggles itself into the price creation process. *Exchange justice is falsified* and the social principle of exchange compromised.

The impacts are even greater however. The gargantuan, highly differentiated economic process of the competitive market unfolds *in the absence of an authoritative plan*, by means of countless, knowingly-steered and mutually-focussed economic interactions. The *pricing system* substitutes for such a plan. The task of the pricing system is one of appropriate macroeconomic coordination of the partial, individual planning of hundreds of thousands of companies and millions of households. If the pricing system is to play this decisive role in the establishment of an ordered market economy, it is vital, as shown above, that no individual market participant disposes of power. *The economic quality of the pricing system decreases* relative to the accumulation of power. Prices are no longer trustworthy indicators for the private economic actions of market participants.

A concentrated market is a market with an incapacitated order: the justice principle that underpins the pure system is hollowed out.

Lawyers face difficulties in assessing the diminution of justice because power concentration impacts primarily upon pricing and the law is lacking in dependable and pragmatic criteria for the evaluation of the correct and just nature of prices. However, we do possess other reference points which reveal

to each lawyer or advocate the degree to which the behaviour of cartels and other forms of power concentration have undermined exchange justice. I refer here to general terms and conditions [*Allgemeine Geschäftsbedingungen*]. Consider only the divergence between the general terms and conditions applied by certain economic associations and the dispositive norms of civil law and business law – no further discussion is necessary.

For a long time, the belief persisted, and especially so in Germany, that the real danger posed by economic power was that it might be *misused*. This is a mistake. The danger to the competitive order and the risks of system-destruction or system-falsification arise much earlier, upon the very *emergence of a power concentration*. Antitrust policy is simply inadequate, a mere half measure when, on the one hand, establishment of cartels is tolerated or even encouraged and facilitated (e.g., when legal protection is given to contracts that have as their substance and goal the accumulation of market power), or when anti-competitive manifestations of economic conflict (embargos, loyalty discounts, discrimination or purchasing blockades) are deemed to be acceptable behaviour, and on the other, a state organ is endowed with various interventionist capacities should the behaviour of a powerful market participant threaten the national economy or the common good (§4 KartVO). If the aim is one of maintaining a functioning market economy in all of its free exchange and pricing, it can logically only be achieved in a political response to the concentration of power that is founded in the following maxim: *Prevention, combatting and reversal of the process of concentration of power with the help of all available legal, administrative means, as well as dedication of general economic policy to the promotion and revitalisation of competition*. Administrative capacity, public policy and law (business, social, patent, insolvency, tax and monetary law – whereby the latter should contemporaneously be reformed) must be dedicated in their entirety to the task of reducing power concentrations to their *minimum*. Granted, this goal can only be achieved with a maximum of state craft, governing culture, intricate legislative and doctrinal effort, a sense of justice, economic policy insight, patience, intelligence and force. Nevertheless, it is worth the effort. But what should happen to the remainder of economic power that cannot be eradicated, even in the face of the most effective and purposive politics of de-concentration? The answer is as follows: *such concentrated markets must be made subject to the strictest regime of public oversight*. The purpose of public oversight must be one of requiring anyone possessing market power *to behave as they would behave were they subject to proper performance competition processes* (a policy of ‘as if’). Naturally the identification of a competitive price on a market that is not competitive is very difficult; nevertheless, modern economic theory has furnished indicators which make this possible. The lasting and independent requirement that all

market masters behave competitively has a dual function: *on the one hand, serving the maintenance of the steering capacity of the pricing system, on the other, eradicating the appeal of the possession of market power.* Market participants should not hope to be able to create advantages for themselves which are not available to their powerless competitors, through the accumulation and application of market power. An appropriate summary of the form of cartel policy detailed here might be as follows: *pitiless de-concentration of the private economy; de-privatisation of any remaining market power.*

V

The solution to the concentration of market power sketched out here seeks to make possible a *market-based ordering* of economic life which functions without disruption. The guiding idea is the establishment of the enabling legal and technical conditions under which a *competitive order* may come into existence whose pricing system judiciously steers economic processes. If the aim is one of establishing an economic system that is steered by market prices and not by people, the concentration of power must be countered with all available means, because this form of system can only function, if at all, in the absence of power.

Such a solution is clearly appropriate only if the competitive economy is considered to be a functionally-effective and socially-just economic order, and when it is further thought that the process of concentration can be successfully retarded in practice, or that this is, at the very least, worth trying. Similarly, it is worthwhile only if one is of the conviction that those market externalities, such as boom and bust or the entrenchment of social class, which are so bitterly criticised by broad sections of the public, and in particular by the labouring classes, can either be mastered, or where this is not the case, are accepted as being at least less destructive than the negative impacts felt under any other form of economic system.

In practice, the creation, intensification and effective implementation of competition and anti-trust laws have been pursued in all countries by the supporters of the competitive market economy. This was the case in the United States and was also the case in Germany.

Granted, other forms of economic policy also fight against cartels, trusts and other private instances of economic power. Private market power is incompatible with all economic systems: it is incompatible with the competitive economy and with the soviet-oriented socialist economy. Neither is it compatible with any one of those many forms of planned or interventionist economy (economic democracy, lightly-applied planned economy, free socialism, etc.) that are preferred by socialists in the west. But the form and

mode of engagement is very different. Only supporters of the competitive economy make use of competition in order to prevent creation of private economic power and to defeat existing economic power. No accrual of *private* power is possible within a comprehensive socialist system of strict central steering because no private firms or private market exist. But, power, be it of a wholly different kind, plays a wholly determinative role within this system. The central power in charge of planning and economic steering disposes over an unimaginable power. Supporters of transmission systems by contrast tend to retain cartels, concentrations and trusts, but similarly subordinate their organisation, associational discipline and market influence *to the service of public economic planning*. Power concentrations are preserved but likewise de-privatised to a greater or lesser degree and transferred into the hands of the administration, or of public-legal or mixed-economic bodies who apply the public interest. The character of the economic steering principles which these bodies apply nevertheless remains an open one: some strongly support central planning, but others give preference to decentralised planning. The proponents of planned or partially-planned economic systems have never yet considered the idea of forcing power concentrations to engage in *competitive* behaviour. Similarly, it is yet to be made clear how systems which work with structural or partial planning wish to combine and coordinate the principle of political sovereignty in planning, with the principle of free market steering through pricing.

The distinction between the mode in which the competitive market economy combats the problem of power concentration and the approach taken by every other market form rests in the fact that the competitive solution alone is *anti-power* in its very fundamentals. All other solutions are based on the assumption that the danger and problem lies not with the accumulation of power as such, but rather with the fact that this power is *held in the private hands of capitalists*. It is a widely-held belief that where power is exercised by other legal or administrative actors, it loses its sting, its danger and its intractable nature.

For supporters of the competitive market economy, however, loyalty is primarily due to it, because of the high degree of freedom that it offers, and its very sparing deployment of any form of power whatsoever (including state power); a loyalty which is, as a consequence, also demanded because of the market's quasi-cosmic ordering power, or the particular relationship that it establishes between order and the immense degree of behavioural and planning autonomy granted to all economic actors. Competition and anti-trust laws, as elaborated here, are considered by free market proponents to be a fundamental and fateful issue precisely because they are concerned with harnessing this ordering power and securing a full taste of this autonomy for free peoples.

VI

The American and British military governments have given different reasons for their enactment of decartelization and de-concentration laws. The primary consideration here is that the intense degree of cartelization and concentration within the German economy made it extraordinarily easy for Hitler and the National Socialist movement to gain a hold of German industry, in particular heavy industry, and to transform a once price-led economy into a *politically-steered* command economy. In turn, this highly-organised and highly-disciplined apparatus was successfully utilised in order to pursue *a rearmament and war-oriented policy*, which, in its initial stages at least, could also be pursued in secret.

In other words: cartels and concentrations should be forbidden, terminated and unpackaged, not because they falsified the pre-National Socialist market, bringing it into disrepute and disorder. Nor are they the focus for intervention because power concentrations were a major factor in the economic crisis of 1929–1933, intensifying meltdown and retarding its end. Instead, cartels and concentrations are targeted by virtue of their proven nature as *agile and dangerous pace-makers for the transformation of a free market into an authoritarian market*. In the years 1932–1936, private cartels and concentrations acted as the cadres for public-administrative steering bodies within Göring's four-year economic plans. This authoritarian and strictly-organised steering apparatus could never have been created or set in motion in so short a time, had the necessary personnel, statistics, membership lists and disciplinary mechanisms not already have been nurtured within the private bureaucratic frameworks of cartels and concentrations. Had Hitler found himself confronting an enlightened market economy, characterised by only a very few examples of concentrated power, he would not have been in a position to maintain the secrecy of his rearmament programme; neither would he have been able to transform the German economic realm into a command economy quite so readily.

These arguments are undoubtedly convincing, and would surely have the same degree of resonance amongst us Germans were we in a position freely to choose our own future economic order. Extraordinarily extensive concentrations of private market power, such as those that existed within the German economy prior to Hitler's assumption of power, are a first step in the creation of politically- or economically-authoritarian systems, even favouring their establishment, and are likewise a significant aid in the seizure and consolidation of public power. It nevertheless follows, however, that power concentration within the private market will always create potential for *war*. It matters not whether the command system is National Socialist, socialist or communist in character: what is decisive is the fact that each command system owns

an extraordinarily extensive power apparatus which can be centrally deployed and mastered by a very small number of people, that individual positions of power are necessarily apportioned within oligopolistic procedures that can neither be overseen nor vetoed by the public, and that peoples who are forced to live under such a regime are consequently traduced and lost, because, whatever its label, the National Socialist, socialist or communist system does not afford even a minimum of support for development. It is advisable, as a consequence, to tackle even the weakest heralds of power concentration, in order to prevent its consolidation in its sharpest and most egregious forms.

VII

If cartels, trusts and other forms of private market power are to be combated, precisely because a concentrated market economy facilitates, or at least makes far easier, its own transformation into a command economy, which is characterised by an even greater degree of power concentration, it makes little if any sense to enact a decartelization law on the one hand, but to bring a command economy into being on the other. Should a decision be taken to enact the form of antitrust law described, it should be done so contemporaneously with the pursuit of monetary reform, conclusion of the required economic compact, and *the re-establishment of a competitive economy*. Enactment of an antitrust law without a return to active competition, or a return to active competition without the enactment of an antitrust law, will both lead only to an economy that is still dominated by power.

We referred above to the legal and administrative mechanisms which are required in order to open up a successful perspective for the battle against private power within a competitive market economy. So much preliminary work has already been undertaken in this regard that it would not be difficult to activate this policy very soon.

It would nevertheless be a mistake to assume that good laws, together with a monopoly oversight authority peopled with capable and committed individuals, would be sufficient for success. The task that must be mastered is one of bringing existing power concentrations down to the very minimum that can be achieved through application of all suitable and available means within an economy that is dominated by the notion of the firm, and within which large-scale companies will certainly assert themselves across a range of markets. And this task is a continuous one. Power and energy must be maintained. The core opponent is *the interest in the accumulation of power*; that is, a desire of elemental force. This desire is borne by *entrepreneurs*, primarily by entrepreneurs from particularly important production sectors, men of ambition, vision and influence who also possess extensive connections.

In addition, they have strong allies. Perhaps their workers will even stand shoulder to shoulder with them in this respect: the desire for higher salaries runs parallel to profit interest in this case.

It is possible to wager that in this battle, the potential for decisively successful establishment of an effective administrative authority are not great. Taking a broader look at what has to date been achieved with antitrust and competition laws in the rest of the world gives little cause for comfort.

The conclusion is obvious. When those portions of the public which have the most to gain from a solution to the problem of market power, that is *workers* and *employees*, and especially so in their role as *consumers*, cannot be persuaded to play an active part in a programme to deconcentrate power, then there is little overall hope.

However, it is workers who are most likely to regard the form of programme detailed here with great reservation, if not outright hostility. They do not trust the competitive market economy; a whole row of questions in this regard must be subject to fundamental debate and discussion.

And in fact, there is an irony in the attempt to persuade workers to arm themselves in their fight for their old goals with exactly that instrument, against which they were impelled by their leaders, Marx and Engels, to fight almost exactly one hundred years ago. Nevertheless, I like to believe that this instrument will prove itself to be a good instrument and that the attempt is worth the effort.

NOTES

1 'Kartellverordnung' – Böhm refers to the 'Verordnung gegen Mißbrauch wirtschaftlicher Machtstellungen' (Ordinance against abuse of economic power) from 2 November 1923. See Reichsgesetzblätter 112 (1923), Part I, 1067–1070 (translator's note).

2 MRG 56 (Prohibition of excessive concentration of German economic power).

3 MRVO 76.

4 'Kartell-Notverordnung' (*Emergency Cartel Regulation*) (translator's note).

Contextualisation 4

Alexander Rüstow

Alexander Rüstow was born in 1885 in Wiesbaden. He concluded his studies of philosophy, economics and law with a dissertation on the Liar's Paradox and afterwards worked for a publishing company. World War I pushed Rüstow to the left of the political spectrum as he became acquainted with the traditions of liberal and religious socialism, not the least through the influence of Frankfurt economist Franz Oppenheimer who coined the term 'The Third Way' that would acquire so much importance for the self-portrayal of the ordoliberal agenda. Rüstow worked for the Ministry of Economics in the early days of the Weimar Republic and in 1924 moved to the research section of the Verein deutscher Maschinenbauanstalten (VDMA), an industry organisation in part devoted to lobby the government against cartels and trusts. Both positions left a mark on Rüstow's decidedly sceptical position with regard to monopolies and cartels that he shared with Eucken and the other ordoliberals. Rüstow met Eucken and Röpke in the mid-1920s and subsequently left behind his religious socialist circles to embrace what would be the agenda of ordoliberalism that he co-created with his work. Rüstow preemptively went into Turkish exile when the Nazis seized power – as did Röpke – but in contrast to his friend, who managed to move to Geneva relatively soon, Rüstow was forced to stay in Istanbul until he could finally return to Germany in 1949/1950 to become a Professor of social sciences at Heidelberg University. In the 1950s his three-volume *Ortsbestimmung der Gegenwart* was published, and Rüstow delved into public life with countless lectures and talks that he gave as Professor, as the President of the German Political Science Association (1945–56) and later as the Chairman of the Aktionsgemeinschaft Soziale Marktwirtschaft that was and continues to be a broadly liberal pro-market economy network. He died in 1963.

The first text we have selected is another founding document of ordoliberalism *avant le lettre* as the lecture it is based on was delivered in 1932 when

Rüstow was still working at the VDMA but also running in political circles close to Von Papen and others who formed one of the last democratically elected governments in Weimar Germany. Rüstow himself suggested retrospectively that he was vetted as the next Minister of Economics but then the Nazis came to power and Rüstow had to leave Germany. The talk was given at the prestigious Verein für Socialpolitik, and Rüstow used the prominent occasion to stake out a number of what would become central ordoliberal tenets. The starting point of his argument is a diagnosis of the ills of contemporary economic policy that Rüstow identifies as the ‘policies of interventionism and state subsidy’ (p. 143), with the state being of crucial importance in this regard: ‘I am, indeed, of the opinion that it is not the economy, but the state which determines our fate’ (p. 144). But before he addresses the question of the state in greater detail, Rüstow first describes what he considers the appropriate economic policy and thus sketches out what he terms a ‘liberal interventionism’ (p. 145). While the interventionism prevailing at the moment seeks to soften the blows of structural changes in the economy until finally a new equilibrium is reached and a *laissez-faire* approach would simply let things take their course, Rüstow proposes interventionist policies in line with those structural economic changes, that is, the ‘creative destruction’ of capitalism to use a term coined by Schumpeter. What he has in mind are retraining schemes for labourers out of work and possibly even relocation schemes for people unable to find work in a particular area. The problem with such liberal interventionism, in Rüstow’s view, is that the existing state could not pursue it even if it wanted to because it lacks the prerequisite of sufficient independence and autonomy *vis-à-vis* the social forces pushing for a conventional interventionism. In this regard, Rüstow’s diagnosis is in almost complete congruence with Eucken’s assessment in *Structural Transformations of the State* (chapter 3) that dates from the same year, but the former is slightly more outspoken about the characteristics of the state capable of a liberal interventionism: ‘The new liberalism, which I and my friends promote, demands a strong state, a state that is positioned above the economy, above the interested parties, in the place where it belongs’ (p. 149).

Rüstow’s talk is noteworthy in two respects: First, there is the rather bold (re-)claiming of ‘interventionism’ for the *ordo*-/neoliberal cause and the proposition to use the instrument of interventionism not to ‘stem the tide’ of capitalist development but rather to spearhead this development and support is as much as possible. The effects of a liberal interventionism remain slightly ambiguous: The aggregate effect is an acceleration of capitalist dynamics, but on the individual level, educational and financial support might be welcomed by those willing to qualify themselves anew to be reinserted into the capitalist labour market as smoothly as possible. Second, there is the explicit call for a strong state with Rüstow candidly spelling out what this means, namely,

a state that is no longer the ‘prey’ (p. 147) of societal interest groups but rather hovers above them in an almost Hegelian fashion to rule allegedly in the name of some common good. In contrast to Eucken who offers no ideas as to how such a state could ever emerge, Rüstow addresses the question explicitly and, in his answer, offers an almost dualist view of citizens, who may be self-interested and ‘narrow minded’ but have another part, ‘a decent core’, that only ‘desires to be ruled with decency, i.e. to be ruled according to the meaning of the totality’ (p. 148). In sum, Rüstow aims to overcome the ills of pluralist democracy through a semi-authoritarian state, and with this recipe the talk stands in remarkably close intellectual proximity with another talk, entitled *Strong State, Sound Economy* by none other than Carl Schmitt.¹ The title of Rüstow’s actual talk (in contrast to the title under which it was published later) is almost indistinguishable; it is *Free Economy, Strong State*.

The second text we have included, albeit only in excerpts, was published in 1942 as an appendix to Wilhelm Röpke’s *International Economic Disintegration*. Its unwieldy title *General Sociological Causes of the Economic Disintegration and Possibilities of Reconstruction* already indicates that for Rüstow sociological issues figure prominently in any attempt to develop an analysis of economic problems which has led some commentators to group him and Wilhelm Röpke into an undercurrent of ordoliberalism, namely, sociological liberalism, which is distinct from the Freiburg School narrowly speaking with its focus on political economy and law.² The text touches on a lot of different issues, some of which are familiar from Rüstow’s 1932 talk, such as liberal interventionism, the strong, independent state and the critique of pluralist democracy. The excerpt we include here contains an important element to the neo- and especially ordoliberal self-positioning as a burgeoning intellectual and political strand within liberalism. To be sure, the ordoliberals view communist collectivists and Keynesian interventionists as their prime antagonists, but they also seek to distance themselves from what they consider outdated or misguided currents of liberalism. Rüstow is arguably the most fervent critic of a classical liberalism that had reduced itself to the slogan of ‘laissez-faire’. In his criticism, Rüstow blames religious remnants in early liberal thought for its mistaken assumptions about functioning markets and its ignorance with regard to the corrosive effects a capitalist economy has on other spheres of society. Concretely, if we are to believe Rüstow, it is Adam Smith’s deism that leads him to believe that the market is already embedded in a natural order designed by a benevolent watchmakers and thus in no need for corrections or interventions.³ The excerpt from Rüstow’s text is noteworthy for several reasons. First of all, it is no coincidence for Rüstow to target the quasi-theological underpinnings in Scottish Enlightenment thought. Not only was Rüstow deeply interested in the study of religion, but he also had a highly ambivalent but on the whole rather sceptical view of it. While he had been

associated with the movement of religious socialism before he ‘converted’ to (ordo-)liberalism, Rüstow not only turned himself into a critic of socialism but also of religion: It is well known that Röpke cautioned him to tone down the criticism of religion in Rüstow’s monumental *Ortsbestimmung der Gegenwart*, in order not to offend bourgeois audiences. What is also worth noting is that despite some sound points the overall interpretation of Smith as a proto-laissez-faire advocate is not a model of hermeneutical charity. Yet it documents ordoliberal efforts to position itself strategically as that camp on the political and intellectual landscape that will neither side with socialism nor with Manchesterism and the laissez-faire of nineteenth-century liberalism and thus avoids the rather deplorable impression the Austrians von Hayek or von Mises gave during the 1930s, when their response to the Great Depression was essentially to wait it out. Rüstow as well as Eucken and the other ordoliberals instead propose an activist agenda for the state that is nevertheless neither Keynesian nor Socialist; it represents what they regularly refer to as a ‘Third Way’, which, of course, must raise eyebrows for any perspective interested in the critique of ideology.

The final text is another lecture by Rüstow, who only published very few monographs but wrote a plethora of articles and gave innumerable talks throughout his career. In *Social Policy or Vitalpolitik (Organic Policy)* from 1951 he addresses what he considers the limits of traditional social policy and the ensuing problems. Social policy used to be driven by the attempt to reduce working hours and increase wages for workers. This model of compensating the worker financially or reduce labour time, however, is not enough anymore, contends Rüstow. The living conditions of workers, their family and housing situation pose problems that cannot be remedied solely through financial means, and the same goes for the feeling of being ‘superfluous, meaningless’ of those who are unemployed. For Rüstow, what is at stake is what he refers to as the *Vitalsituation*, or, organic situation of workers, and a modern social policy would therefore be addressed to the respective problems and thus turn into a *Vitalpolitik*, or, organic policy. The details of Rüstow’s proposal are not always clear, but their organic situation would be much more satisfying, he argues, if they could own their own land and house, which would also make for better living conditions for the family and give workers something to fall back on if they were to lose their job. Rüstow envisions ‘rural, or semi-agrarian, settlements’ (p. 169) for workers to counter what he considers the ills of modern living, at least for the lower strata: extreme urbanisation, massification, proletarianisation. But this is only the first issue in Rüstow’s sweeping sketch of a more comprehensive organic policy that seeks to strengthen solidarity ties between management and workers (along the lines of the German model of *Mitbestimmung*, or, co-decision making), wants to reform the school system, offers decidedly reactionary advice to the female

part of the population in preparing for their ‘main professions as spouses, housewives, and mothers’ (p. 172) and formulates ideas about how to invigorate democracy on the local level of municipalities and cities. Given Rüstow’s background as an academic and the general faith in the powers of social science found in all ordoliberal thinkers except for Röpke, it does not come as a surprise that he also puts forward the idea of a new research field entirely devoted to inquiries into the organic situation of the people and how to improve it. The talk closes by placing the matter at stake in the context of the time, that is, the Cold War rivalry between capitalism and communism. For Rüstow, who turned into an ardent Cold Warrior in the 1950s, working towards a better organic situation for workers is not just a matter of charity but also vitally important in order to prevail in what he considers a competition between two different organic situations: ‘The more positively we develop organic policies [*Vitalpolitik*] on our side, the higher the level of satisfaction on our side, the stronger the effect will be on the other side. . . .’ (p. 175).

This lecture illustrates an aspect of ordoliberalism that is of particular importance to Rüstow and Röpke who interpret the socio-economic and political crises of the first half of the twentieth century to be rooted not so much in economic problems of capitalism but rather view the latter as part of a more encompassing cultural crisis that engulfs modern man not only as an economic actor who may be exploited or a political one who is repressed but as a being whose holistically understood organic situation is deficient. As manifold as the crisis manifestations are Rüstow’s policies aimed at containing them. The impression remains that the state is called upon in a wide variety of ways to engage in the organic policy Rüstow demands. What is striking about the way organic policy is characterised is its pronounced ambiguity: From an almost Marxist critique of the meaninglessness of modern work – and it is not by accident that Rüstow extensively quotes Engels – Rüstow’s lecture moves into ultraconservative terrain when it comes to the organic policy of gender relations and oftentimes simply seems helplessly nostalgic when he paints a highly idealised picture of family life in the country with parents working in the garden and children playing in the fields. Still, to Rüstow’s credit, he is not afraid to develop ambitious reform agendas and shows a keen sensitivity for the grievances of contemporary (working) people that cannot be completely reduced to economic issues narrowly speaking. It is therefore not surprising that the contemporary standard bearers of ordoliberalism, or at least certain strands thereof, try to build on Rüstow’s holistic understanding of organic policy when they argue for ‘inclusion’ to be the guiding idea of contemporary social policy.⁴ However, it must be finally noted that Rüstow, at least if we take him at face value, did not argue for traditional social policy, that is, financial support, to be replaced by organic policy but rather social

policy to be complemented by organic policy. In the context of the contemporary calls for social policy *as* inclusion, this point seems to get lost at times.

NOTES

1 See Carl Schmitt, 'Strong State and Sound Economy. An Address to Business Leaders', in *Carl Schmitt and Authoritarian Liberalism. Strong State, Free Economy*, ed. Renato Christi (Cardiff: University of Wales Press, 1998).

2 See, for example, Ralf Ptak, *Vom Ordoliberalismus zur Sozialen Marktwirtschaft. Stationen des Neoliberalismus in Deutschland* (Opladen: Leske+Budrich, 2004); Nils Goldschmidt and Michael Wohlgemuth, 'Entstehung und Vermächtnis der Freiburger Tradition der Ordnungsökonomik', in *Grundtexte zur Freiburger Tradition der Ordnungsökonomik*, ed. Nils Goldschmidt and Michael Wohlgemuth (Tübingen: Mohr Siebeck, 2008).

3 For a recent defense of a 'hidden theology' in Adam Smith, see Lisa Hill, 'The Hidden Theology of Adam Smith', *The European Journal of the History of Economic Thought* 8. 1 (2001).

4 See Julian Dörr, Nils Goldschmidt, Gisela Kubon-Gilke and Werner Sesselmeier, eds., *Vitalpolitik, Inklusion und der sozialstaatliche Diskurs: Theoretische Reflexionen und sozialpolitische Inklusion* (Münster: Lit, 2016).

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Chapter 9

State Policy and the Necessary Conditions for Economic Liberalism

Alexander Rüstow

Translated by Daniel Steuer

Ladies and Gentlemen!

As our chairman (Werner Sombart) just pointed out in his opening address, the period in which our association¹ finds itself at present is characterized by a dawning realization that the problems of economic policy are dependent on conditions created by state policy. I may therefore be permitted to speak briefly about this latter aspect of our topic, especially as I consider it to be the decisive one.

INTERVENTIONISM AND STATE SUBSIDIES

Among those who are competent judges of such things, there is almost unanimous agreement that the present crisis in Germany has been caused in great part by policies of interventionism and state subsidy. Our two speakers today also agreed on this point. It makes little sense to quarrel over the precise extent of the influence of these policies because an exact quantitative determination is, in any case, not possible and because there are correlations in all directions. Now, we may be tempted to take solace in such unanimity; we might hope that a lesson has been learned from the damage done and that we are thus unlikely to repeat the same mistakes. But I think that none of us seriously believes this. Rather, we all share the highly disquieting feeling that, under present conditions, the same processes, with the same fateful consequences, could be repeated at any time, and that they actually will repeat themselves unless very decisive and far-reaching changes are made. This alone indicates that the roots of these matters go far deeper than questions of economic policy. It indicates that, ultimately, these are not questions of our insight into economic policy but of will formation: questions of politics

and state policy. And, following on from some of the things that were said this morning, I am, indeed, of the opinion that it is not the economy, but the state which determines our fate – and that the state also decides the fate of the economy.

Let us focus on what it is that leads to all these interventions and subsidies. Usually, there is a deteriorating competitiveness of some part of the economy, caused, as a rule, by some external structural change, and this leads to an intervention that is meant to compensate for the deterioration and protect the relevant economic sector. In principle, various reactions are possible in such a situation. One possibility is to do nothing and to let things take their course, according to the maxim ‘laissez-faire, laissez-passer’. What would happen in this case? It is not difficult to answer this question: all of the applied part of classical political economy, in a way, amounts to nothing but an answer to it. Thus, I do not need to go into detail. After some friction and a number of shifts, a new equilibrium will, at some point and in some way, establish itself. There is wide agreement, including among the economically educated advocates of interventionism, that this condition of equilibrium, once established, is the optimal solution and the most favourable for the economy as a whole. ‘But’, ask all those who adopt an anti-liberal position, ‘when will this condition be reached, and how great are the sacrifices and the damage that will be inflicted upon those affected in the meantime?’ After all, as Keynes’s witty saying – ‘in the long run we are all dead’ – reminds us, this meantime is the time in which we live. . . .²

But this option [of non-intervention; *the editors*] has never been put to the test: there have been interventions in all such cases. And these interventions took the form of reactions against the external disturbance – which, for purely psychological reasons, seems understandable. If, for instance, the effect of some change in the structure of the world’s economy is the lowering of certain prices, then measures are taken to manipulate these prices so that they rise again. And the arsenal of measures – for instance, trade policies, amongst others – has, unfortunately, grown immensely. If some income or other does not sink or rise in the desired way, then the situation is remedied at the expense of general costs or by means of the public purse. If there is the threat of a loss of capital, or an actual loss, then the state comes to the rescue with guarantees, or covers the shortfall with public money. All such interventions have in common that they are opposed to, and prevent, the process that would take place without them; they seek to preserve the status quo. One may therefore call this kind of interventionist economic policy ‘reactionary’ in the literal as well as in the conventional sense. But the structural changes these policies aim to prevent usually end up taking place anyhow, because we are quite often talking about large-scale, secular shifts of growing intensity. And so there is a constant need to intervene repeatedly, and with increasing

strength, to achieve the intended effect of counteracting the changes and move things in the opposite direction. Apart from that, it is well known that interested parties very quickly get used to this kind of support. They get a taste for the remedy, the appetite comes with the eating, and thus we get this endless dynamic that we are all so familiar with – the one that ends badly, that ends where we are now.

Given this result, we must ask ourselves: are we really faced with a choice between just letting things run their course or intervening in the natural course of things in this hopeless and ill-fated fashion? I personally don't think so. I think that there is a third way of responding and that this is the right way and the one that is appropriate for our times. If there is agreement that the new equilibrium that would result from the free development of things – even if after a great deal of loss through friction and intolerable side effects – is the desirable outcome, then it is obvious that we should try to intervene in order to bring about this situation immediately. In other words, we ought to reduce the intermediary time to nil, i.e. that time which would otherwise have to pass until the new, stable condition is reached, that time of hopeless fighting, of decline and misery.

Such intervention would aim in the opposite direction to the one that has been favoured so far, i.e. not against the laws of the market, but in the same direction as those laws; not in order to maintain the old, but in order to bring about the new; not in order to slow down, but in order to accelerate the natural process. This would be a liberal interventionism, so to speak, following the motto '*fata volentem ducunt, nolentem trahunt*'.³

I must refrain from illustrating what I want to say with concrete examples, not only because this is beyond the scope of my deliberations, but also because when looking at individual cases, it is almost inevitable that the discussion of concrete details takes centre stage. I therefore want only to present a short sketch by way of an example. Let us assume the competitiveness of a particular part of peasant farming is threatened by secular changes in the structure of the world market; suppose that this sector is substantially deprived of its ability to compete and that so far the response to this has been, as usual, to compensate the effect through protective tariffs, subsidies, and so on. And, as usual, these attempts have failed. The situation gets worse and worse, and it becomes necessary to intervene repeatedly and more and more drastically. If one were to pursue the prescriptions of Manchesterism, i.e. do nothing and let things run their course, then, after decades of misery, of desperate and hopeless struggles to retain the inherited land, the following situation would be the ultimate result: where there is the ability to restructure, the relevant restructuring has prevailed; where this ability is missing, those concerned are forced to leave their land and to try to find subsistence in a new and sustainable location.

What I would like to suggest is that one should bring about this final situation at once; that possible restructurings are accelerated and facilitated by providing educational and financial help; and that those who, in the long run, cannot be helped where they are should be given another place in exchange that affords them a new healthy and competitive basis for their agricultural production. This form of intervention would cost only a fraction of the price of the usual interventions, which continue indefinitely, and with this fraction of the costs one would create a sustainable and healthy situation. The currently popular practice, by contrast, only prolongs the unsustainability endlessly. The new form of intervention would make itself superfluous in the shortest possible amount of time; the other one makes itself ever more indispensable the longer it is practised, and it therefore requires an ever-increasing input. It is like morphine: the dose must be steadily increased if the effect is to remain the same.

Now, at this point the interventionist may note, with satisfaction and relief, that it may not, after all, be so difficult to find common ground if a notorious and forthright liberal such as myself is prepared to consider intervention at all. It is perhaps only a question of details, he may think, and these can be decided on a case-by-case basis. But this way of thinking is a grave mistake. In fact, as soon as we look at things at the level of dynamic reality, rather than of abstract concepts, we are dealing with an absolutely fundamental difference, a polarity of the utmost tension. It is not the case, as rationalist thought would have it, that there is a state; that the state considers if and how it should intervene; that it has the choice of proceeding this way or that; that it realizes that, so far, unfortunately, it has done the wrong thing, and in future, knowing better, hopefully will do better. Rather, there are very deep reasons for the fact that the state has so far intervened in the particular fashion that it has. Compared to the usual form of intervention, the new form I envisage presupposes an altogether different kind of state. It is not that there is one kind of state, and that this state has the choice between intervening in one way and intervening in another.

In this connection, it is necessary to make a fundamental observation. Almost without exception, it is generally believed that the phenomenon which Carl Schmitt, following Ernst Jünger, has called the ‘total state’²⁴ – this expansion of the state beyond its current limits, this inclusion of all areas of life as possible objects of state action – is a sign of an excessively strong state, of a hubris that knows no limits. In fact, it is a sign of the exact opposite: not of the omnipotence of the state but of its impotence. It is a sign of the pitiful weakness of the state, a weakness that can no longer stem the tide of the united onslaughts of all the interested parties. The state is ripped apart by interested parties and their greed. Each interested party tears out its own portion of state power and exploits it according to its own purposes. This also

explains the generality of the phenomenon. It is not the case that governments have so far given subsidies only to those constituencies from which the parties that make them up draw their support: they had to give in to demands from all directions – often even to those of their political opponents, for they were the source of the most brazen and ruthless demands and blackmail. There is no need to cite any examples of this. All this proves that in the context of these processes, the government, the state, was not in the position of the subject but in that of the suffering object; the interested parties were, instead, the subjects. What we are facing here, is, to use another term from Carl Schmitt, ‘pluralism’, and a pluralism of the worst kind. What takes place here accords with the motto: ‘The state as prey’.

Even today you occasionally come across the opinion that subsidies and interventionism only worked poorly in the past because there was no plan behind them. All we would need to do is to draw up a plan for the old form of interventions and all would be well. Ladies and Gentlemen, what I have just said shows that the lack of a plan is part of the essence of the kind of state intervention we have seen so far. Interventions that are based on the principle that each interested party gets something out of it for itself cannot follow a plan. This state does not have the choice of making planned interventions instead of unplanned ones. Only in one exceptional case, a limit case, may it proceed according to a coherent plan: namely, the case in which a struggle between interested parties over the state as their prey ends with an all-out victory for one of them – if one party eliminates all its competitors and annexes the state on its own, in other words, if the equation of pluralism takes the form $n = 1$. In this case, this one interested party, which has the state at its disposal, may of course totally pursue its interests and aims according to a plan.

This is the case in Russia, where a few million industrial proletarians, or former proletarians, exercise a tyrannical and autocratic rule over a hundred million peasants, who have anyhow become used to this kind of treatment over many hundreds of years. This is the only form in which a planned economy has so far been put into practice, and, in my opinion, this is the only possible form it can take. . . .

As opposed to the interventionism practised in the past, which served the interests of some, or even a large number, of interested parties, the kind of intervention that I demand – namely, one that catalyses those changes that such parties feel to be obstacles or threatening – the interested parties are, for selfish reasons, not interested in at all.

All they ever want is that their existing position, to which they believe they possess a well-earned entitlement, is secured or maintained with the help of protective measures or subsidies. This medicine tastes sweet, and it has been prescribed so far and has finally shown itself to have catastrophic effects. The effects of the remedy I recommend is, by contrast, beneficial for

the interested parties, but it tastes very bitter, and for that reason alone it is unlikely to be administered at too high a dosage.

For that reason, to carry out what I propose requires a strong state that stands above individual groups and above interested parties – a requirement, incidentally, that also needs to be fulfilled if we simply want to guarantee a free market and fair competition with the same rules applied to all. Such a state, should it become entangled in economic interests, would free itself from this entanglement again. And precisely this reflection on itself, this withdrawal of the state into its own identity, this self-limitation as the foundation for self-affirmation, is the precondition and expression of the independence and strength of the state. This is the only way in which it may again become strong, become independent, and neutral in the sense of the superior totality, superior not through the use of violence and domination but through authority and leadership [*Führertum*].

Now, you may ask: how is that even possible? After all, the state can hardly hover in a vacuum; it must rest on something. This leads us to what is perhaps *the* central question of the psychology of the state and of the sociology of the state, which, of course, I cannot approach in the present context. Let me just briefly say this: in every citizen of the state, even in the most selfish and narrow minded, there is somewhere a decent core which desires to be ruled with decency, i.e. to be ruled according to the meaning of the totality. This core can be appealed to, even – and, in fact, especially – with measures that go against the selfish interest of the individual concerned, no matter how loudly he pursues them otherwise. We have seen this ourselves in recent times, and it is the job of a government that is self-assured to call upon this core, this better part of every single citizen, to appeal to it in the *plébiscite de tous les jours*.⁵ It is the decisive criterion for a correct and organically constructed constitution [*organisch konstruierte Verfassung*] that it affects a person in this still undecomposed core and integrates people on that basis and not on the basis of them being interested parties. This is also the only chance to integrate the same group of people more effectively and more strongly through a better constitution. Only in this way, against all particular interests, can pluralism be overcome. The real task is to lead a state in this way. If anything has improved at all in recent years, during these difficult and tragic times in German history, if there is any hope that has been rekindled, having previously been buried, then it is the progressive development in this direction in state politics, however modest, imperfect, and afflicted by indecisive hesitation and hasty mistakes.

In being labelled pejoratively as ‘Manchesterism’, the old liberalism was accused, and still is accused, of promoting a weak state, a nightwatchman state. I do not want to examine whether this is historically correct: it is, at bottom, incorrect. Historically, the old liberalism confronted an exceptionally

strong state, and what it demanded of this state was not weakness, but that it be given space for its development under the protection of this same strong state. This was an historical demand, and it was fulfilled. The new liberalism, which I and my friends promote, demands a strong state, a state that is positioned above the economy, above the interested parties, in the place where it belongs. And with this confession of faith in a strong state that promotes liberal economic policies, and – because the two mutually condition each other – in liberal economic policies that promote a strong state, with this confession I should like to end. (Lively, enduring applause.)

NOTES

1 That is, the Verein für Socialpolitik (Association for social policy). (Translator's note.)

2 John Maynard Keynes, *A Tract on Monetary Reform* (London: MacMillan, 1923), 80.

3 The Fates lead the willing; the unwilling they drag along.

4 See, for example, Carl Schmitt's essay of 1931: 'The Way to the Total State,' in idem., *Four Articles, 1931–1938*, ed. and trans. Simona Draghici (Washington, DC: Plutarch Press, 1999).

5 'Plébiscite de tous les jours' [daily vote] in French in the original. The reference is to Ernest Renan's speech 'Qu'est-ce qu'une nation?' [What is a nation?] from 11 March 1882 (translator's note).

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Chapter 10

General Sociological Causes of the Economic Disintegration and Possibilities of Reconstruction

Alexander Rüstow

DEFICIENCIES OF LIBERALISM: THEIR SOURCE IN THE HISTORY OF THOUGHT

Liberalism was the dominant philosophy of life in the Western World during the nineteenth century. We shall use the term to denote liberalism of the commonplace and “popular“ kind rather than the more refined forms of liberal philosophy which were expounded by certain eminent thinkers and scientists but remained without much influence. Even among the founders of economic liberalism, especially in the writings of Adam Smith himself – whose breadth of vision and balance of judgment provoke again and again our admiration – there are numerous germs of ideas which, if further developed, would have prevented the fatal development to be described below. It was perhaps not a mere accident, however, that those ideas bore no fruit and remained without noticeable influence on the subsequent development.

This common liberalism was the principal determinant of the course of economic policy and was dominant to an extent and degree commensurate with the expansion and progress of the modern economic system.

This connexion with common liberalism was first a blessing, but later a curse for the economic system. Professor Röpke’s enquiries in this volume point out time and again that the present disintegration of world economy, as well as of the social structure supporting it, is based, to a large extent, upon certain deficiencies of liberalism itself.

Liberalism is, in its essence, a general human attitude which can and does find expression in all spheres of human activity. But it is characteristic of the historical development of the liberalism of the eighteenth and nineteenth centuries that its fundamental concepts were applied essentially only in the economic sphere. In practice, liberalism meant for the nineteenth century

predominantly economic liberty, i.e. freedom of the market system based upon predominant competition.

This position of economics in relation to the whole system of liberalism arose to a large degree from the developments in the field of thought and, more particularly, in that of science. This was so because liberalism as a science had made its epoch-making discovery in the sphere of economic theory. This discovery was that of the automatism of the market economy, of the self-adjustment which takes place in the competitive system by means of the mechanism of supply and demand, and of the harmony which is established and maintained by means of this subconscious adjustment between the egoism of the individual and the greatest welfare of all.

Although Adam Smith may be credited with having been the first to disclose this economic law with precision, we must realize that the general conception of such an invisible harmony has its origin in the more distant past. In the history of the philosophy of the Western World, the idea of an invisible harmony appears for the first time in the cosmological conception of Pythagoras and the Pythagoreans and also in the teachings of the Ionian philosopher Heraclitus of Ephesus which were expressly applied to the sociological and political sphere. For the latter it is the divine Logos, the world reason, which pervades and guides everything, from the whole course of the universe down to the actions of men, and which blends everything into the magnificent harmony of one great cycle. However little man, with his traditional lack of understanding, is aware of it, he is nevertheless part of it in all his being and in all his actions. He is bearer and executor of this will which he himself does not apprehend. Only the philosopher, the wise man, and above all Heraclitus himself are – in contrast to the primitive, blind, and deaf multitude – conscious of this invisible harmony and of its hidden sense. The special application of this idea to economics is, it is true, far from the mind of this ancient philosopher. But, as a citizen of one of the leading commercial cities of his time, he uses the monetary flow in trade, the exchange of goods for gold and of gold for goods, as a means of illustrating the circuit-process in the macrocosm.

These teachings of Heraclitus were taken over by the Stoics, who made them the basis of their philosophical system and particularly of their anthropology, their ethics, and their politics. Since the popular Stoic philosophy exerted a tremendous influence upon the whole Hellenic-Roman world, Heraclitus' theory became an important element in all ancient learning including the early Christian. Although it could hardly be harmonized with Christian dogma and Christian ethics, it spread and gained new influence, beginning with the Renaissance, and played an important part in the development of Western rationalism. On account of this development, the doctrine of the divine harmony found its way to the Physiocrats, and the economic circuit of

their *ordre naturel*, which they conceived as being a miracle of perfection and wisdom, is undoubtedly derived from the Stoics and therefore finally from Heraclitus. At the same time, in the teachings of the Physiocrats appears a second, equally theologico-metaphysical line of thought, viz. that of Chinese Taoism.¹

Adam Smith's doctrine of the automatism of the market economy, which was to become the corner-stone of modern liberalism, is the perfection of the Physiocratic conception of the *ordre naturel*. The "invisible hand" of his doctrine unmistakably contains a vestige of Pythagorean mysticism, and the beneficial harmony which it guides is nothing more than the Logos of Heraclitus and the Stoics and the Tao of Lao-tse, except that it is converted into the Christian anthropomorphic language of deism. The laws of Market economy which Adam Smith rationally demonstrated – in order not to say revealed – were at the same time divine and natural laws in the sense of Spinoza's formula, which is also valid for deism: *deus sive natura* [god or nature].² It is the task of man to comprehend – with insight, gratitude, and reverence – these divine laws which govern economics; to remove the obstacles which stupid traditionalism or unenlightened selfishness has put in their way and which prevent them from having their beneficial effects; and to realize thereby, to the advantage of all, the highest possible benefit which a benevolent providence has provided.

The mercantilism which Adam Smith encountered as the governing economic policy had set itself, as the goal of attainment, the greatest possible national wealth. But it had, for lack of enlightenment, tried to attain this end by means which were insufficient and indeed defeated their own ends. It had only disturbed the beneficial automatism of the economic laws by its officious meddling. It was now confronted by the call, "*Laissez-faire! Laissez-passer!*" which at the same time was a summons to honour God and an adjuration not to allow short-sighted human anxieties to interfere with the eternal wisdom of the natural laws.

But if the market mechanism of the free competitive economy partook of divine dignity and benevolence and of the severity and universal validity of a natural law, then it would manifestly be presumptuous as well as fruitless to act as if the validity and benevolence of the market mechanism might depend upon sociological conditions belonging to the humble human sphere. Such an attitude would have been totally incompatible with those views and doctrines. The eye, dazzled by the mystic light of rational economic revelation, was blind to problems lying in the obscurity of sociology.

This then was the most fundamental reason for the "sociological blindness," to characterize it briefly, of liberal economics (and of all unenlightened liberalism) – its blindness to the extreme importance of sociological needs and requirements which lay outside its sphere, as well as to its own

sociological conditions. Both of these will have to be examined more closely in the course of our studies.

Liberalism did not retain for long, however, the deistic providentialism and optimism of Adam Smith, although Bastiat took it up again later on. It became secularized by Say with classical French lucidity, was made a matter of middle-class ethics by the Prussian followers of Kant and was transformed in England into Manchester utilitarianism. But the theologico-metaphysical note was not by any means lost in the turn toward pessimism which Malthus and Ricardo gave to the doctrine.

The traces of theology and metaphysics, still apparent in Adam Smith's doctrine, gradually disappeared from economic theory. The natural consequence is that we have become accustomed to look at the founders and classics of our own theory from the point of view of rationalists and to neglect their theologico-metaphysical characteristics as mere superficialities of the fashion of the times, much in the same way as we now regard the wig of Adam Smith's portraits. It was therefore all the more necessary, in contrast to the usual attitude, to emphasize and throw light upon this point and to bring out the last traces of older ideas even where they were undoubtedly in the process of disappearing.

Care-free optimism and pusillanimity, which characterized a large part of the propaganda of liberal economics to the end, were persistent and fateful emotional consequences of the theological optimism which at first inspired liberalism and liberal economics. In every game there must be losers as well as winners, and the game of the market economy is no exception to this rule. This game demands, like any other, a certain stamina, a readiness to accept setbacks and losses should they occur. Instead of being frank about the fact that the extraordinary chances of gain which the game of the market economy offers for the good players are accompanied by chances of loss for those who are less capable or less fortunate, and that all those who want to participate in this game are obliged to take their chance, the propaganda promised prosperity and happiness to all without exception. But what is the inevitable result of an education which promises everything and demands nothing? The result in this case was that a type of player was bred, particularly in countries where the hardening tradition of Calvinism was non-existent, who enjoys playing a game only as long as he wins, but who, the moment he begins to lose, runs off in a huff and refuses to continue playing. This behaviour of the bad loser could be observed in the attitude of many entrepreneurs who went begging to the government to protect them against even the smallest losses.

But the most important intellectual form in which the original theologico-metaphysical character of liberal economics continued to exist was the belief in the autonomy, the unconditional validity of the economic laws. As we shall see later in greater detail, this superstitious belief prevented the necessary

sociological conditions from being secured in economic life, so that, beginning with the last decades of the nineteenth century, an unmistakable degeneration of the market economy set in. A further consequence was that the manifestations of degeneration which had grown out of the sacred *laissez-faire* were regarded by economic theory as endogenous, unavoidable, and characteristic of economic liberty. This conviction, which can be understood only in the light of its theologico-metaphysical origin, was so powerful that it was regarded as self-evident and beyond all discussion; the liberal defenders and the socialist assailants of economic liberty were in perfect agreement on this point. The liberals were of the opinion that the disadvantages had to be borne because they were unavoidable and that very little could be done, out of humanitarian considerations, to mitigate their worst consequences by means of social reform. The socialists, on the contrary, defended the view that this economic system, which was inherently incapable of improvement, had to be completely abolished and replaced by an entirely different system which, for the sole reason that it was different, would also be better. As the degeneration of the free economy progressed and as its consequences became more and more unbearable, the belief in the inevitability of this development led to the conviction that the revolutionary escape of socialism was the only possibility. All were agreed that “aut sit ut est – aut non sit”³ applied to capitalist economy, the only difference being that the liberals accepted the first and the socialists the second part of the alternative.

It had been expected that the spread of the free economy would bring about positive ethical and sociological results as well as an improvement in moral standards, a humanization, and an integration of society. But competition as such, appealing as it does solely to selfishness as a motivating force, can neither improve the morals of individuals nor assist social integration; it is for this reason all the more dependent upon other ethical and sociological forces of coherence.

On the basis of the mistaken idea of the central position of economics, which it had inherited from liberalism, socialism was inevitably forced to demand that the necessary social integration should take place within economic life itself and on this basis to reject the competitive system altogether. But it is a fact that there are more numerous and more effective means of integration of a political, ethical, and religious nature outside the realm of economics itself. These must be utilized with particular vigour if it is decided, for sound reasons, to desist from integration within the economic system itself.

Liberalism overlooked the sociological necessity of searching outside the market for that integration which was lacking within it. Instead, it proclaimed that the competition should be applied as a universal principle even in non-economic fields, and as a consequence of this attitude a progressive disintegration and atomization of the body politic set in as soon as the fund of the inherited integration had been spent.

During the early period of liberalism, however, there existed a large fund of other ethical and sociological forces of integration which were taken over from earlier periods and were capable of securing the necessary conditions for a smooth functioning of the free economic system. These forces were supported by the same classes of society that supported liberalism and the independence of economics. The rightly famous religio-sociological studies of Max Weber do not prove all they try to prove, but they show at least a close historical connexion between the pietistic-Christian ethics of the lower middle class and the advancing capitalistic-liberal conception of economics. These two parallel trends had to assert themselves against the degenerated morals of feudalism, based upon force and privilege on the one hand and the laziness of fossilized beneficiaries of guild privileges on the other. It is indisputable that the victorious advance of the new over both these trends meant an advance in human morality and integration. But this advance occurred because of the ethical-religious content of this mixture, and not because of the economic freedom to which it was ascribed.

If all this related mainly to the internal economic development of the various states, it must not be overlooked that parallel developments took place, though at a later stage, in the field of international trade. In this field Bentham had already emphasized that free trade brought about an international solidarity, and his pupil, Cobden, had taken this belief as the basis of his propaganda for free trade, which almost resembled a secular crusade. In fact, international solidarity increased noticeably during this period of expanding free trade even though, measured on an absolute scale, it always remained unsatisfactory. To ascribe this internationally integrating effect to free trade and to consider it to be a fulfilment of the prophecies of Bentham and Cobden was an error in perspective similar to that which we have mentioned in the preceding analysis of the conditions of national economic life.

The real contribution to international integration in this period arose from the fact that the liberal philosophy was dominant in all the major participating countries, and from the Pax Britannica in its last, Victorian humanized, and *diluted* phase.⁴ These international ideologies formed the latent basis for the development of international law during the nineteenth century – the simultaneous breakdown of the sub- and superstructure, which has taken place in recent years before our eyes, has made this relation clear to us contemporaries. These ideologies, not the free trade which expanded at the same time, were the integrating element. They alone created that degree of international integration which free trade needed as a basis and without which it would not have been possible. As a network of international commercial treaties was the form in which free trade was realized, it was imperative that the ethical maxim “*pacta sunt servanda*,” which was their indispensable condition, should be recognized. This maxim was at that time still guaranteed by the above-mentioned ideologies. The most favoured nation system of that

time would have been just as impossible if one could not have been perfectly certain, in contrast to the now predominant abuse of commercial treaties as weapons of an aggressive foreign policy, that such treaties would be regarded as of purely commercial concern, a means of increasing foreign trade.

Even though internal and external integrating effects, which really should have been credited to certain other contemporary factors, were mistakenly ascribed to economic freedom, this remained a mistake of a purely theoretical nature as long as these accompanying conditions were effectively maintained along with economic liberty. But when these accompanying conditions disappeared, and with them their beneficial effects, this error of theory became disaster in practice, because it helped to prevent correct diagnosis and effective treatment of the serious deficiencies which now made their appearance.

We know today, indeed, that the satisfactory functioning of the market mechanism does not take place autonomously, but is completely dependent upon the fulfilment of certain sociological and institutional conditions. Self-interest and common interest, the coincidence of which it was the great accomplishment of classical liberalism to have discovered, are co-existent only in that part of the social sphere in which these conditions can be and are fulfilled.

The first and most essential of these sociological conditions is the strict limitation of the freedom of the market to pure efficiency competition, and at the same time complete and unconditional maintenance of the freedom of this efficiency competition. We shall see later what this condition demands of the structure and attitude of the state. One consequence is that every kind of cut-throat competition, as well as every attempt to gain a competitive advantage outside the market itself or by other means than through a corresponding service, must be excluded as being disloyal. Efficiency competition alone places the selfish interests of the producer inevitably in the service of the consumer and leaves him no other means of gaining an advantage over his competitor than by supplying the consumer with better or cheaper goods. The most important and dangerous forms of these means of procuring an advantage outside the market are monopolies and subsidies or their equivalents.

Monopolism makes efficiency competition impossible, whether by means of law, or by legally secured agreement, or also, in rare cases, by the utilization of natural or technical circumstances. By political means, subsidizing (or its equivalents) provides a group of producers with public advantages which are not available to other producers and whose costs have to be borne by consumers and other producers. In practice, monopoly is based, as a rule, either completely or partially upon state intervention, because it is either specially created by law or made possible and even favoured by the actions or the attitude of the state. The beneficiaries, to be sure, usually conceal or even deny this.

Such phenomena, which interfere with the efficiency of the market economy, spread increasingly from the last quarter of the nineteenth century

onwards, and led to a progressive degeneration of the market economy. State and public opinion, whose task it should have been pitilessly to kill every such manifestation in the germ, in order to protect the freedom of the market and so to make a fair efficiency competition possible, not only did nothing of the kind, but even assisted this development in many ways – by legislation, jurisdiction, administration, trade policies, customs, freight tariffs, etc. To the basic blindness and fallacious ideas of the theorists which we have already discussed must be added numerous other motivating factors: ignorance of public opinion and of the masses about the functioning of the market system; megalomania, the desire to establish records; and both hidden and evident influences of financially powerful pressure-groups upon the state, politics and public opinion. Wherever, under the pressure of injured competitors, legislative measures were taken against monopolism, as, for instance, in the case of the anti-trust laws in the United States and of the German *Kartellverordnung*,⁵ they remained generally ineffective and principally served the purpose of silencing importunate petitioners. Effective results will be achieved by eliminating monopolies and not merely by controlling them.

Following the same lines was the trend, connected for the most part with monopolistic tendencies, towards over-concentration of factories and the grouping of businesses into mammoth enterprises. This, too, occurred under the protection of the superstitious belief in the inevitability of the development, and was accompanied by the enthusiastic applause of the megalomaniac public. It was justified only to a minor degree by technical and economic considerations, while in most cases the maximum size compatible with these considerations was surpassed.

In the face of all these fateful tendencies, the state needed, in addition to the insight which it lacked, the force and independence necessary to fulfil its rigorous duties of policing the market. But as weak a state as possible was the ideal state for liberalism. The weaker the state and the more it was forced to confine itself to the maintenance of order and security, the less would it be tempted, so it was thought, to encroach upon the sphere of the free economic system. The ideal which liberalism set itself was a weak but at the same time neutral and independent state; no one noticed that these two requirements were contradictory or grasped the obvious sociological truth that the strength and independence of a state are interdependent variables, and that only a strong state is powerful enough to preserve its own independence.

The failure to recognize this sociological truth soon became fateful. Long before the state let its powers be reduced to the sole function of maintaining public security it had passed that critical point where its force and authority became insufficient for the maintenance of its independence and where, therefore, it began to succumb to the attacks of pressure-groups, whose lust for subsidies knew no bounds. These pressure-groups could, when they were not agrarians, be generally identified as monopolists or would-be monopolists

who need the assistance of the state to realize their purpose. A little later they were joined by the unionized workers.

The democratic, parliamentary structure of some of the economically leading states caused the economic corruption to spread to the internal policy of the state, to the political parties, and to the *parliamentarism* itself. The political parties were slowly transformed into parliamentary agencies of economic pressure-groups and were financed by them. Not a single one of these parties and not a single one of the groups which supported them was at first able to win a parliamentary majority by its own strength alone. (This is particularly true for the multi-party systems modelled after the French system. The same phenomena were observed within the Anglo-Saxon two-party system, but more under the surface and within the parties themselves, and were therefore somewhat weaker.) A coalition of several parties was therefore necessary for the formation of a majority, and this coalition came into existence in the compromise form of the so-called log-rolling and spoils system. Even the opposition parties were able to find a way of sharing the spoils by means of blackmail. A crisis of *parliamentarism*, a crisis indeed of the state itself, was the unavoidable consequence. Italy and Germany, and France, too, became victims of such crises.

The pathological form of government which developed in this way was that of pluralism, the history of which has not yet been written, though this would be very desirable, as it would make it possible to learn at least something from this unfortunate experience. The date of the beginning of pluralism in Europe may be fixed: the time of Bismarck's decisive change in internal policy in 1878–79 and his shift to a policy of tariff protection, as a result of which Germany became the leader of this fateful road. We have here the rare case of a responsible statesman initiating a development with consciously bad intentions. The traditional parties, which were based on sentiment and conviction, had refused to follow Bismarck's brutal *Realpolitik*; with complete cynicism he therefore decided to transform and break them up into separate groups distinguished by their interests, believing that he could keep these under his control by feeding them from the state trough. His successors found that a state which begins to feed the beasts of organized business interests will finally be devoured by them.

This fateful policy did not remain confined to Germany. Even such healthy and in many ways exemplary little democracies as Switzerland⁶ and Sweden were not able to resist it. It is one of the most serious reproaches to the New Deal in the United States that it has generalized and intensified, to an alarming extent, this feeding from the state trough, which had, however, already begun with the tariff policy, the silver policy, etc.

Such a decay of democracy, which its supporters and opponents alike regarded as an endogenous and unavoidable development, caused tendencies and parties to appear which were fundamentally anti-democratic. Their parliamentary tactics consisted in abusing the rules of liberal *parliamentarism* for the purpose of weakening democracy and its organs. Such an attitude should have been regarded as

hostile to the state, and should have logically brought about the proscription and expulsion of its protagonists. But, instead, the liberal principles of tolerance were meekly and inappropriately applied even here. The superstitious belief in the universal applicability of the liberal principles, which always prevented the recognition of the way in which sociological conditions limited the validity of those principles, was called upon to justify this attitude. In this way anti-democratic parties were allowed to grow up like mushrooms. They demagogically exploited the degeneration of the market economy and its injurious consequences and, in a most unscrupulous manner, took part in the corrupt game of *parliamentarism*. The consequence was that in Italy and Germany those parliamentary parties which had at first made possible the entry of antiparliamentarians into the government were soon elbowed out by their unscrupulous colleagues, so that the game of pluralism ended in a totalitarian one-party dictatorship.

The same fateful mistake of admitting innately foul players on an equal footing was made, not only in the internal policy of the states, but also in their foreign policy. Its explanation can be found in the same blindness of liberalism to the limited applicability of the liberal principles; a blindness arising out of the sub-theological pseudo-universalism, the catastrophical consequences of which we have repeatedly encountered.

Even the rough outline of this brief review shows to what extent the present world catastrophe in all the affected spheres – economics, internal and external politics – has been caused by the same fatal weaknesses and mistakes of liberalism. The most serious mistake lies with its pseudo-universalism, its blindness to the conditioning framework and to the sociological pre-requisites which limit its own validity. This otherwise hardly conceivable blindness was, as we have seen, caused by the theologico-metaphysical origin of the liberal philosophy of life and of economics. This theologico-metaphysical origin gave liberalism and liberal economics, at a time when the world was still dominated by theology, a tremendous missionary force and a formidable impetus. Its apostles felt themselves carried by the conviction: *Dieu le veult!*⁷ But it contained a fateful defect, and finally contributed to the breakdown of liberalism and to our present world catastrophe.

NOTES

The beginning of the original text has been left out of this excerpt.

1 These most important connexions have been studied in detail by Lewis A. Maverist: 'Chinese Influences upon the Physiocrats', *Economic History* 13 (1938), and 'The Chinese and the Physiocrats. A Supplement', *Economic History* 15 (1940). Since, moreover, a monograph on this problem has been announced (E. Schorer, *L'Influence de la Chine sur la Genèse et le Développement de la Doctrine Physiocrate* [Paris: F. Loviton, 1938]), there is no need to go into it here more thoroughly. It should be noted,

however, that Lao-tse, the founder of Taoism, was an elder contemporary of Heraclitus. Both belong – like Buddha and Mahavira – to the sixth century B.C., the magnificent and fatal century of metaphysics. The question suggests itself whether this striking coincidence in time also implies, in spite of geographical separation, some kind of reciprocal influences. If so, there would have met again in the eighteenth century trends in the history of thought which had taken separate roads two and a half millenniums before.

2 The metaphysical dignity of economic theory was further enhanced by the fact that it is the only branch of *Geisteswissenschaft* which is capable of deductive treatment *more mathematico*. This fact was of utmost importance for a period when mathematics was considered the only true science and the only legitimate model for other sciences: a period, moreover, when mathematics – and everything that was capable of rising to its height – was still encircled by the *numinous nimbus* with which Pythagoras and Plato had surrounded it. Cf. the well-known investigations by Wilhelm Hasbach, *Die allgemeinen philosophischen Grundlagen der von François Quesnay und Adam Smith begründeten politischen Ökonomie* (Leipzig : Duncker & Humblot, 1890), and *Untersuchungen über Adam Smith und die Entwicklung der politischen Ökonomie* (Leipzig: Duncker & Humblot 1891).

3 ‘Let it be as it is – or let it not be at all’ (editors’ note).

4 Crude disciples of Friedrich List, who himself was not too refined intellectually, have thereby characterised the whole free trade propaganda as a devilish trick on the part of England, which, like a wolf in sheep's clothing, tried to persuade the others to open their gates to the English trade expansion. In the meantime, it has become obvious that these people only searched for others behind a door which they themselves wanted to use for their own concealment.

5 The present author, who was then one of the responsible officials of the German Ministry of Economy, shares in the paternity of this law. From the beginning he was under no illusion as to its real character as explained earlier.

6 Cf. William E. Rappard, *L'individu et l'état dans l'évolution constitutionnelle de la Suisse* (Zürich: Editions Polygraphiques, 1938).

7 ‘God wills!’ (editors’ note).

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Chapter 11

Social Policy or *Vitalpolitik* (Organic Policy)

Alexander Rüstow

Translated by Daniel Steuer

The following lecture, given on 19 October 1951, opened the series of talks on economic policy which our chamber planned for this winter. It addresses the most general of all social problems, human happiness and well-being, and shows that the continuous improvement of material conditions is not enough to make human beings satisfied members of a community. On the contrary, social tensions have risen over time. This dangerous development cannot be confronted simply with the usual means of social policy. Rather, what are needed are measures to improve what the speaker calls the 'organic situation' [Vitalsituation] of a people.

The development of modern industry since the great advances in productive technologies in the second half of the eighteenth century started out from social conditions which, from today's vantage point, can only be described as hair-raising – whether we are talking about the England of 150 years ago or the Germany of 100 years ago. The classic text on these conditions is by Friedrich Engels, the textile industrialist from Barmen and, later, the friend and ally of Karl Marx, and it concerns the situation of the working class in England. Published in 1845, it fully deserves its fame, and we shall have repeated occasion to quote from it. The conditions were, as I said, truly scandalous, and they did cause outrage even back then. And so these conditions were eventually overcome as a result of this outrage which they caused in people with a Christian or humane attitude. There were working days of sixteen hours or more, child labour above and below ground (for similarly long hours), no breaks for meals: people would hang tin bowls around their necks and eat a few spoonful from it as they worked. At the same time, the wages were literally starvation wages, which led to illnesses caused by undernourishment as well as to epidemics, tuberculosis, etc. In the face of such conditions, the most pressing need was, of course, to raise wages to a level which

at least guaranteed the workers' subsistence and to reduce the working hours to a level which satisfied minimum hygienic requirements. And this, indeed, is what happened. And since those days, these two aims – raising wages and reducing working hours – have remained the actual centre, the classical substance, so to speak, of all social policy.

The first steps along this path were indisputably dictated by the most urgent concerns of those workers; they were necessary in order to raise their living conditions to a level that was halfway tolerable and in accordance with human dignity. They were justified on grounds that were altogether beyond controversy. This was not the case with any further steps taken in the same direction. We might express the implicit conviction which informs the policy of increasing wages and decreasing working times by saying that the happiness of the worker is proportional to the level of his wage and inversely proportional to his working hours. If this were true, it would, of course, justify this policy. However, we all know that the continued pursuit of this policy did not lead to a parallel intensification of the feeling of happiness of those concerned, of their well-being and contentment. Now, this is in no way an argument against wage increases or reductions in working hours. While it is true that man shall not live by bread alone, it would obviously be foolish to conclude that he might therefore live without it, or with very little. It goes without saying that the workers are entitled to demand their just share of any increase in the productivity of labour. But what we may conclude is that this alone will not suffice: this is not the single decisive point on which the well-being of the worker, the way he feels about his life, ultimately depends. And this, in the end, is what matters. This may be a trivial point, but it seems necessary to make it.

The nineteenth century, however, was of a different opinion. The nineteenth century – a century that becomes all the more interesting, peculiar, and unintelligible the more distance we gain from it – had a strange religion, the religion of technological progress.¹ The nineteenth century had a blind enthusiasm for progress: it had an unconditional faith in it; it would do anything for it. And questions regarding its meaning, regarding its whither, why, and wherefore, regarding what its aims were meant to be: such questions were either not asked at all or, if they were raised on occasion, they were taken to be sacrilegious – proof that you did not have the right kind of faith, this nineteenth-century faith. Thus, with regard to social policy it thoroughly corresponded to the nineteenth-century tendency to affirm continual progress, in the sense I just outlined, unconditionally, and to be convinced that whatever was progressive was naturally also what was good. After all, the essential meaning of life, the meaning of world history, according to the nineteenth century, was precisely progress, and this meant progress pure and simple, without any particular goal. This idea has become a myth, a symbol

in Goethe's *Faust*. In Faust's famous pact with the devil, the worst and most embarrassing thing that could have happened to him – something he therefore considered altogether impossible – was that he might tell the moment: 'Bide here, you are so beautiful'.² Today, this view already appears strange to us, quite apart from the fact that our faith in technological progress – which, in the meantime, has given us the atomic bomb – has been shaken.

If we now ask ourselves why this continuous progress along the path of higher wages and reductions in working hours did not bring about a continuous increase in the level of satisfaction, it is not difficult to come up with an answer. If we imagine the life of a modern, urban industrial worker, his organic situation [*Vitalsituation*], it looks, as you know, roughly like this: the family lives in a tenement block of, in most cases, over-occupied flats, together with other tenants with whom they usually do not get along, especially if the others are refugees from the East who have been placed there. Every morning, the father goes to work, and usually the mother too. During working hours, there is no family life. Then, in the evening, when the parents come home from work and the children, who have not enjoyed anything closely resembling an education, return from the streets, there tend to be minor, or sometimes major, 'disciplinary explosions', which do not exactly contribute to a harmonious family life. The day is taken up by work which mother and father do in different locations, under external instruction and command and with minimal personal initiative. It is divided up in such a way that its overall significance is by no means always clear. All these things have been excellently described many times, and I therefore do not need to repeat them here. When the working week is over, it is, first of all, time to catch up on sleep, assuming that the damned rascals do not wake you early, which, if they do, tends to lead to further disciplinary explosions. And what is there then to do with one's free time? Go to the cinema, watch a football or a boxing match, visit an amusement park, or the pub? These are all industrialised amusements which serve to 'while away' the hours or 'kill' time; they do not genuinely reinvigorate or refresh, and they are actually just as frantic as the working week that just passed. If we imagine this pattern of activity extended over a person's lifetime, we cannot possibly expect him to feel totally happy with his mode of life. And this is not to say anything of all the individual difficulties and accidents which no one is spared, such as illness, family problems, and, most of all, unemployment.

The problem of free time, by the way, finds its clearest and most concentrated expression in the case of unemployment. Today, when unemployment benefits provide a reliable, if meagre, material subsistence, what is actually catastrophic and threatening about unemployment, and what is experienced as unbearable and as a misfortune, is precisely an excess of free time: the fact that an unemployed person has such absurd amounts of free time and

has nothing to do with it. The unemployed person is catapulted out of the normal rhythm, out of his accustomed place in the order; he becomes, in the most literal sense of the word, an atom, and feels like a fifth wheel, superfluous, meaningless. What emerges is that the urban proletariat's normal daily integration in the workplace, as dull and unsatisfactory as it may be in itself, is nevertheless the only support left to him; without it he has no firm ground to stand on. This is the fact of massification, seen from the perspective of the individual subjected to it.

As you can see, all these things are entirely independent of the level of wages and working hours. They even become all the more pronounced with higher incomes and more free time. Objectively, this deeply dissatisfying organic situation [*Vitalsituation*] obviously cannot be remedied in any way by raising wages and shortening working hours. But the subjective, psychological experience of it is all the more intense the less those affected are preoccupied with immediate material worries and the more time they have to become aware of their situation. Thus, the paradoxical phenomenon that was our point of departure – that, with rising wages and shorter working hours, the workforce not only did not become happier and more contented, but actually became even more discontented – becomes perfectly intelligible.³ Further, according to a well-known psychological law, the subjective effect of additional gains decreases exponentially, and thus one may wonder whether often the agonistic and competitive aspect, the satisfaction of having won a victory in a labour dispute, is not worth more than the actual material benefits gained.

If we want to know what the real causes of human happiness and unhappiness are, and so how to achieve the sorts of changes in this area that have a genuine effect, an organic effect [*Vitaleffekt*], that improves the situation in a way that cannot simply be achieved by raising wages and reducing working hours, then we would do well to start by noting that today's situation of human dissatisfaction has only existed for some 150 to 200 years. Before that time, this situation did not obtain: there was no such general social dissatisfaction. We should therefore imagine the situation which existed until shortly before that period; to this end, I shall briefly read out to you the relevant description in the book by Engels which I mentioned earlier:

Before the introduction of machinery, the spinning and weaving of raw materials was carried on in the workingman's home. Wife and daughter spun the yarn that the father wove. . . . These weaver families lived in the country. . . . and could get on fairly well with their wages. . . . So it was that the weaver was usually in a position to lay by something, and rent a little piece of land, that he cultivated in his leisure hours, of which he had as many as he chose to take, since he could weave whenever and as long as he pleased. . . . So the workers vegetated throughout a passably comfortable existence, leading a righteous and peaceful life in all piety and probity. . . . They did not need to overwork; they

did no more than they chose to do, and yet earned what they needed. They had leisure for healthful work in garden or field, work which, in itself, was recreation for them, and they could take part besides in the recreations and games of their neighbours. . . . Their children grew up in the fresh country air, and, if they could help their parents at work, it was only occasionally; while of eight or twelve hours work for them there was no question. . . . They were “respectable” people, good husbands and fathers. . . . They had their children the whole day at home. . . . In short, the English industrial workers of those days lived and thought after the fashion still to be found here and there in Germany, in retirement and seclusion, without mental activity and without violent fluctuations in their position in life.⁴

You can see straightaway that Engels intended this description to be ironic. What was the reason for his irony? What are his objections to the condition he describes? He says:

But intellectually, they were dead; lived only for their petty, private interest, for their looms and gardens, and knew nothing of the mighty movement which, beyond their horizon, was sweeping through mankind.⁵

Well, we are all too familiar with the mighty movement sweeping through mankind beyond our horizon, familiar enough for us to be quite happy if we could live more for our ‘petty, private interests’ and our looms and gardens again.

But, in any case, this description shows, as Engels himself emphasised, that these people were subjectively happy and contented – unlike today’s worker. And the description also tells us on what this contentment depended, on what it was based. It did not depend on people receiving particularly high wages. If we were to calculate their income in terms of today’s wages, the result would probably be very modest. Rather, their contentment rested on their organic situation [*Vitalsituation*]: life in the family, work in the family; the fact that work did not, as it does today, tear the family apart but, on the contrary, brought it together; life in nature, under open skies; the awareness of standing on one’s own ground (even if only as a lifelong tenant); the ability to grow one’s own cabbage; and everything else connected with these conditions. Such a way of life produced a satisfying organic situation [*Vitalsituation*], which the modern industrial worker lacks.

Nevertheless, just as Engels looked on the modest contentment of the pre-industrialist worker with irony, so every other socialist saw it as worthy of contemptuous and spiteful scorn. We are all familiar with Lassalle’s battle against the ‘damned modesty’, a battle which, as we also know, has been all too successful: the traditional desires for ‘nourishment’ [*“Nahrungs”-Gesinnung*], modesty, and contentment have been sacrificed to the Moloch of ‘progress’.

Of course, it is inconceivable that we should turn back the clock and reverse the developments that have taken place. And even if we are less self-assured and optimistic about progress than in the nineteenth century, we nevertheless cannot go back. However, we may, and should, learn from comparisons with history and consider what conclusions might be drawn from it. Here, I can quote another passage from Engels, which occurs in a slightly different context in his book, as a dictum: ‘We must either despair of mankind’, he writes, ‘and its aims and efforts, when we see all our labour and toil result in such a mockery, or we must admit that human society has hitherto sought salvation in a false direction’.⁶ I believe that Engels was more right about this than he himself realised. And if the path taken so far has been wrong or, more precisely, inadequate, if it has not led to happiness and has not been able to produce genuine satisfaction, then we should ask what positive supplements are needed, which possible measures should be demanded, in order to complement mainstream social policy in such a way as to lead to a genuinely satisfying organic situation [*Vitalsituation*] – an organic situation in which the individual can feel content and happy. This is what I call organic policy [*Vitalpolitik*].

In considering what falls under this term, we may begin by looking at what we found in Engels’ description of pre-industrial conditions, i.e. ownership of one’s own house on one’s own plot of land. Such a semi-agrarian form of settlement is in principle still achievable for today’s industrial worker, and in many areas of Germany, especially in my home region down in the south-west, in Württemberg and Baden, it is the rule. My colleague Preiser from Heidelberg wrote an interesting and important book, *Die württembergische Wirtschaft als Vorbild* [The economy of Württemberg as a model], in which this aspect of the economy of south-west Germany in particular is described as exemplary.⁷ I myself have currently instructed my students to carry out systematic investigations of such individual industrial settlements, with particular attention to the multifarious influences they exert on the organic situation [*Vitalsituation*] of the workers who live on them.

It is obvious that the situation which is the rule down in the south offers an incomparably greater level of organic satisfaction [*Vitalbefriedigung*] compared to the situation of an urban factory worker, a proletarian. People have their little house, their garden, their piece of farmland, and in their free time they and their families can occupy themselves usefully with work that they enjoy, ‘work which, in itself, [is] recreation for them’, as Friedrich Engels wrote. The children who do not yet work, as well as the elderly who no longer work, do not feel superfluous; they do not sit around listlessly, getting in the way. To the extent that they are strong enough, they can engage in meaningful activity. Unemployment loses its threatening appearance because – as subsistence is now taken care of by unemployment benefits – the man

can use his time to repair the roof at long last, to build the shed that he had always meant to build, or finally to dig over his plot. It is not at all the case that he does not know what to do with his time, should he become unemployed. He has his own solid ground on which to stand. He is outdoors in nature. The children have healthy, enjoyable childhoods, and all educational problems, insofar as they occur at all, are far easier to resolve (while in large cities they are irresolvable). To cut a long story short, an immeasurably more gratifying organic situation [*Vitalsituation*] results. And this is the reason that one is even prepared to accept losses in terms of wages, or other tangible disadvantages.

My students' work has uncovered some interesting details in this regard. For instance, the organic situation [*Vitalsituation*] of someone living on a settlement improves at first with increases in the size of the plot of land only to decline pretty rapidly after a certain size is reached. As in most cases, the desirable goal is not the maximum but the optimum. In our case, an increase in size above the optimum level usually results from the fact that someone owns an inherited farmstead. Their parents or grandparents were solely farmers, and for them the size of the land had been appropriate. But now, when the labour power and labour time of the individual is mainly claimed by factory work, the area is too large. Working this land leads to the permanent over-exertion of the whole family, and yet in most cases the results remain inadequate. In such cases, it would be necessary to overcome the traditional ties to the soil to such an extent that the owner decides to sell off that part of his property which exceeds the optimum size. At the same time, this would create a unit for someone else, and also an important and valuable task for settlers' advice bureaus [*Siedlerberatungsstellen*].

In this context, it is to be welcomed that numerous industrial enterprises have already taken the decision actively to support these rural, or semi-agrarian, settlements for their workers. However, as in the case of conventional company-owned apartments, the problem arises as to what to do once the settler, or his heir, no longer works for the company. The Duisburg copper smelter has devised a remarkably understanding and courageous solution to this problem. Recognising that the organic success [*Vitalerfolg*] of a settlement depends essentially on the worker genuinely feeling unreservedly that he is the full and free owner of his plot, the company has renounced a right to reclaim its land even in case that the owner no longer works for it. If he sells the plot, the company insists on having first refusal, but this does not limit the freedom of the owner in any way as long as he continues to live on the plot.

The extent to which industrial workers in an intense urban environment like Berlin felt a longing for such a rural organic situation [*Vitalsituation*] – and were, though impelled in darkness, yet well aware of the right way⁸ – is proven in a truly moving fashion by the allotment movement, which

represents a first, if limited, step towards self-help in this matter. Even if the result was no more than a few square metres of garden land, a homemade timber shed, and maybe a small rabbit hutch, this smallest of conceivable beginnings nevertheless produced an exceptionally strong organic effect [*vitale Wirkung*]. This is the only possible explanation for the tenacity, energy, and ingenuity with which this path was pursued. This led to some interesting phenomena which are also illustrative of our problematic.

After the Great War, the allotment movement expanded to Vienna, probably as a consequence of the comradeship between frontline soldiers from the German Reich and Austria-Hungary.⁹ However, as I have been told, in Vienna this led to counter-measures being taken by the Austrian trade unions because these workers, who had been diligent trade unionists, no longer regularly attended union meetings and, rather than paying their dues, bought themselves new watering cans. There was thus an immediate threat that they might become happy independently and without the help of their trade union, a possibility which, of course, needed to be prevented. The trade unions therefore took a firm line against these allotment movements, which is – from their perspective – only understandable. We shall shortly come to a much more important and contemporary question of a similar nature.

A central place in which the problem of the organic situation [*Vitalsituation*] of the worker arises with great force is the workplace itself. Quite independent of the economic importance and indispensability of large-scale enterprises to modern economies, the situation of the worker in such enterprises is significantly worse than is the organic situation [*Vitalsituation*] of the farmer on his own farm or the craftsman in his own workshop. But how can we free the individual worker, who spends by far the largest portion of his day working in a large-scale enterprise, from the feeling of being lost, from his thrownness (to put it in existentialist terms)?¹⁰ How can we increase solidarity within an enterprise? How do we create a ‘we-feeling’ amongst workers, so that they feel existentially committed to, and at home in, the enterprise? These questions arise, in particular, from the perspective taken by myself and my friends, namely the neoliberal perspective which, for reasons I cannot discuss here, considers competition to be the most productive and healthiest economic principle.¹¹ Competition, notwithstanding all its other advantages, has the obvious drawback that it is not itself a principle of solidarity. I am not in solidarity with my competitors. Competition, therefore, means that solidarity cannot be achieved within a market economy. But as the need for solidarity is one of the most fundamental and valuable human needs, we need to take care all the more that this striving for solidarity, for comradeship, finds satisfaction somewhere else, outside of the competitive market. The point of departure for this is the individual enterprise. The fact that such solidarity within an enterprise is possible in our country today, and

actually very much on the agenda, is, after all, a relatively new phenomenon. As an emigrant I spent sixteen years abroad; having returned after such a long period of time, one of the most striking and most positive impressions I had was of this solidarity in German enterprises, which had spontaneously developed and which previously would have been considered impossible.

At the time when this solidarity was still impossible within an enterprise, the workers had no other option but to look towards the trade unions in order to satisfy their legitimate need for solidarity; there was nowhere else to turn. What is tragic about the present situation is that this old form of satisfying the need for solidarity (which, back then, was the only possible one) now stands in opposition to the growing, and much healthier and more gratifying, new form through which this same old need for solidarity may be satisfied. At the same time, the old form has a long history and the support of a powerful, well-established, and widespread structure with a large bureaucratic apparatus and strong vested interests.¹² The new kind of integration, by contrast, that of solidarity within enterprises, still needs to find its form, recognition, and consolidation. If we want to judge situations in daily politics adequately, we need to be aware of this historically developed conflict between these two inter-related forms of integration. And, what's more, we need to remember that this new and growing form of solidarity within enterprises needs to be promoted with all our strength precisely because it bears such a great historical handicap. I am therefore of the opinion that the workers' right to co-determination within enterprises deserves every conceivable support, and that all regulation within enterprises should be left to the self-governance of the workforce, at least where this would not damage the primary purpose of the enterprise. As practitioners, you know these things better than me. In every enterprise, there is a host of things that can easily be left to the workforce to be organised – the more of them the better. Transitional problems and inconveniences should just be accepted. Of course, this right to co-determination within an enterprise has its limit where the responsibility for the economic management of the enterprise is concerned. This cannot be shared, of course: it cannot be dealt with in a democratic fashion, a fact which is in most cases fully understood by the workforce. But even here, something could still be done, given enough goodwill, and I know enterprises that are successful with it. Even if the ultimate decision lies with the manager of an enterprise, there is nevertheless no reason why this decision and its rationale should not be explained to the workforce. Admittedly, this does not come naturally to everyone, and it does not suit all. But I know of cases in which it is very successfully practised by managers with a talent for it, and in such cases it can contribute very effectively to a strengthening of solidarity within an enterprise and to an improvement in the organic feeling [*Vitalgefühl*] of the workers. These are essential components of the organic policy [*Vitalpolitik*] I advocate.

The question of profit sharing also belongs into this context. There are many arguments for and against it which I cannot discuss here and now. But the question needs to be examined from the same perspective, and it must be put into the balance, even if we do not yet know to which side the balance will eventually incline. The different interests which the owner and manager have also play a part in this – the manager, after all, shares a number of interests with the workforce. The conflicts which result from this fact are as interesting as they are delicate, and I only wanted to mention this in passing.

In order not to remain stuck exclusively within the sphere of the most immediate economic interests, I wanted to mention an altogether different point by way of example. From the insights of depth psychology, we know today that the fate of individuals is to a large extent predetermined by the experiences of early childhood and that these earliest childhood experiences go a long way towards deciding the future happiness or unhappiness of the individual. Of course, it follows from this that one can, and should, influence the individual's happiness or unhappiness in later life by influencing his childhood. There are now very interesting and commendable initiatives going on in this direction: child guidance,¹³ parenting advice, and so on. All this is still in its infancy, but it is very important and noteworthy.

Schooling is, of course, another extraordinarily important issue. You might think that enabling pupils to make the right choice of profession would be one of the most central objectives of any school, given that it aims to prepare the pupil for professional life, success in which crucially depends on that choice. We all know the kinds of contingencies on which the choice of profession usually depends. A school's task and responsibility would therefore be to provide pupils with a genuine survey of the various professional possibilities: to show them which professions would be an option for them, what they look like in practice, and what opportunities they offer. This would allow pupils to make sensible choices and decisions. It is gratifying to see that initiatives in this direction are underway, but they are as yet still far from being the norm everywhere. And this is despite the fact that making the right or wrong, appropriate or inappropriate, choice of profession clearly has a crucial influence on the organic situation [*Vitalsituation*].

As far as the female half of the population is concerned, we must recognise that, despite everything else, the vast majority of girls still marry at some point. In light of this fundamental fact, we may naively conclude that all girls' schools see their chief task as preparing their pupils for their main professions as spouses, housewives, and mothers. I do not wish to offend any of these schools and therefore leave it to you to answer the question of whether this is already sufficiently the case today. This would, again, be a measure by which the fate and happiness of the individuals concerned could be influenced in highly effective ways: the amateurish behaviour of these females when it comes to the

central tasks in their lives contributes significantly, without a doubt, to their own unhappiness, as well as to that of the husbands and children involved.

Something I have only heard about recently that I do not want to pass over is that in West German cities and villages the inhabitants of individual quarters have come together to form neighbourhood groups in which they discuss and present the common concerns of the quarter: questions such as why a certain street has still not been tarmacked, whether a post box might finally be put up on that corner, and the like. In this way, astonishing and lively feelings of belonging gradually develop from the ground up. It seems that this promises a realistic and undemanding way of pursuing the aim of truly democratic integration from the bottom up, much as Turgot envisioned in his *Memorandum on Local Government* and Freiherr von Stein envisioned in his municipal system of local government.¹⁴

Ladies and gentlemen, I could continue for a long time with my list of things which are important for the organic situation [*Vitalsituation*] of the worker. However, crucially I want to emphasise that it is at least necessary to turn to these things in the first place, to ask which things, in principle, might be relevant. Astonishingly, no one has yet explicitly addressed this large sphere of problems, which are of such central importance for the fate and well-being of every individual. I was thus, tellingly, confronted with the necessity of coining a new terminology for it, namely that of the organic situation [*Vitalsituation*] and of organic policy [*Vitalpolitik*].¹⁵ From the neglect of this sphere, it clearly follows that it must be addressed at once.

In principle, I am of the opinion that there is far too much organising going on in the social sciences, that there are far too many institutes, and that soon we may not find any time for actual work because of all the foundations, committees, conferences, and meetings. But for every ten foundations which are perhaps dispensable, there is an eleventh that is truly necessary. One such foundation might be an institute which attends to these things, i.e. to the problems of the organic situation [*Vitalsituation*] and organic policy [*Vitalpolitik*], full-time and *ex professo*. These are tasks which I could merely touch upon in the context of an evening's lecture, but each of these hints could keep one whole section of our institute busy. These are matters which belong immediately to life and which, for that reason alone, cannot be dealt with and solved in a purely centralised manner. I happen to know that here and there in Germany there are people who work on such matters, in some instances very successfully. I am convinced that there is an even greater number of such attempts going on, without us having yet heard of them. And failed attempts can be as instructive and useful as successful ones by saving later researchers unnecessary detours. I therefore think that, apart from its own internal work, one of the most important tasks for such an institute would be to organise the exchange of experiences: it would be the central place for establishing

connections and exchanges between all those who work, practically or theoretically, on such problems, wherever they may be. Alternatively, one of the existing institutes might concentrate on this exceptionally important and urgent task. In any case, it could hardly be a task one simply did on the side.

Now, so far I have looked at this question solely from a German perspective. This is important enough and concerns everyone. But under today's conditions, the matter also has a very important and serious international aspect. You all know that we are in the middle of a world at war; we are in the middle of a worldwide battle between two power blocs which, apart from the many other fundamental differences between them, also represent two completely different organic situations [*Vitalsituationen*]. The deepest difference that exists between the worlds this and the other side of the Iron Curtain consists in the fact that the dominant ideas of what is considered organically desirable [*was man vital für erstrebenswert hält*] are opposed to one another. In this context, it is a common but very damaging delusion to think that our own organic situation [*Vitalsituation*] has all the advantages and that the other side has only disadvantages. I should like to remind you of a piece of news which was in the papers a year ago, and which you may not even have noticed. A year ago, it happened again that a Soviet official defected while in New York. He had prepared his escape very well. All went smoothly, and he got out and put himself under the protection of the American police. He was given a room in a hotel and was safe. His English was probably not very good, and he might have had some trouble establishing contacts. He had to be cautious, and he did not have any acquaintances. To cut a long story short, day after day he was sitting all on his own in his hotel room, and after four weeks this finally became so unbearable to him that he went back to the Russians and turned himself in, despite the fact that this involved the risk of being executed or transported to Siberia. Compared to the total lack of direction¹⁶ he experienced in free New York, any direction – even that by two Soviet policemen – appeared organically [*vital*] more bearable to him. This is an extreme case, extreme on both sides, but for that very reason it possesses an epigrammatic vividness. There can be no doubt that this side of the Iron Curtain we generally suffer from a lack of integration, from an insufficient satisfaction of the need for integration. On the other side, the opposite is the case: there, we have an extreme excess of integration which, moreover, involves pathological and reprehensible means. But I do not wish to talk about this now. Thinking about the competition between these two organic situations [*Vitalsituationen*], we have the task of finding a remedy for this deficiency on our side, for this lack of integration and sense of place within an order [*Einordnung*]. This lack of integration, this lack of a sense of having a place, is the ultimate cause of much of our discontent, which expresses itself in a whole host of forms. The difficulty is heightened by the fact that the solution

must not be sought competitively by moving in a similar direction – for in that case we would already be on our way to Moscow. It is necessary to find altogether different paths and to exercise much more restraint in doing so. This is a substantial difficulty and is much easier said than done.

My colleague Pfister once said that we lack social inventors. This area provides a particularly large playing field for social inventors, social ideas, and social creativity. I am convinced that in this battle, this battle of the worlds in which we find ourselves, and which on our side of the globe, for the time being, takes the form of the Cold War, the weighing of these two life forms, of the two organic situations [*Vitalsituationen*], is of decisive importance – however invisible these matters may be. I am convinced that the vital question [*Schicksalsfrage*] which bears down on all of us, and for which none of us has an answer, namely how to avoid a third world war, also essentially depends on this problem. The more positively we develop organic policies [*Vitalpolitik*] on our side, the higher the level of satisfaction on our side, the stronger the effect will be on the other side, exerted through a thousand invisible channels which cannot be plugged. How much better off we are materially, how much more we have to eat – this doesn't impress those on the other side and is of little interest to them. But how people feel on our side, the human atmosphere we have: that is what interests them. I am of the firm conviction that work on the organic situation [*Vitalsituation*] and organic policy [*Vitalpolitik*] is one of the few ways open to all of us to help, bit by bit, to prevent a third world war. From this perspective, this problem, important enough in itself, gains even greater significance today.

As I have had occasion several times to distance myself from what is commonly called 'modern' and 'progressive', in the nineteenth-century sense, and to refer back to things that may previously have been believed but which are now considered outdated and old-fashioned, let me conclude my deliberations fittingly, with a verse from the Bible: 'Behold *that* which I have seen: *it is* good and comely *for one* to eat and to drink, and to enjoy the good of all his labour that he taketh under the sun all the days of his life, which God giveth him: for *it is* his portion'.¹⁷

NOTES

1 Alexander Rüstow, 'Kritik des technischen Fortschritts' [*Critique of technological progress*], *ORDO* 4 (1951).

2 Johann Wolfgang Goethe, *Faust, Part I*, trans. David Constantine (London: Penguin, 2005), 57 (l. 1700). (Translator's note.)

3 There are other cases in which the material improvement of a situation only makes its organically dissatisfying character even more keenly felt. Thus, for obvious reasons, it was previously believed that the German Peasants' War of the sixteenth

century was caused by a deterioration of the peasants' economic situation. It was a great surprise when more detailed investigations found that, on the contrary, the economic situation of the German peasants had been continuously improving up until the Peasants' War. It was because of this fact, according to the feudal lords, that the peasants became cocky – they became more painfully aware of the undignified aspect of their subservience.

4 Friedrich Engels, *The Condition of the Working Class in England* (Oxford: Oxford University Press, 1993), 15–17.

5 *Ibid.*, 17.

6 *Ibid.*, 155 f.

7 Erich Preiser, *Die Württembergische Wirtschaft als Vorbild. Die Untersuchungen der Arbeitsgruppe Ostpreußen-Württemberg* (Stuttgart: Kohlhammer, 1937).

8 The formulation is a quotation from *Faust*: 'A good man, though impelled in darkness, yet/Is well aware of what the right way is'. Goethe, *Faust, Part I*, 15 (ls 328 f.). (Translator's note.)

9 The first associations of holders of small allotments in Vienna predate the Great War. During the war, from 1915 onwards, the movement changed as the Viennese population began to found so-called wild settlements in order to secure their subsistence, which could no longer be guaranteed by the wartime government. These were later legalised. It is estimated that in 1918, these settlements provided nourishment for about 160,000 people. (Translator's note.)

10 'Thrownness' (Geworfenheit) is a term of Martin Heidegger's philosophy (translator's note).

11 See Alexander Rüstow, 'Zwischen Kapitalismus und Kommunismus' [Between capitalism and communism], *ORDO* 2 (1949).

12 'Vested interests' in English in the original (translator's note).

13 'Child guidance' in English in the original (translator's note).

14 See Anne Robert Jacques Turgot, 'Memorandum on Local Government', in *The Old Regime and the French Revolution. Readings in Western Civilization*, vol. 7, ed. Keith M. Baker (Chicago/London: University of Chicago Press, 1987). With regard to Freiherr vom Stein, Rüstow probably has in mind the so-called Nassauer Denkschrift: "Über die zweckmäßige Bildung der obersten und der Provinzial-, Finanz- und Polizei-Behörden in der preußischen Monarchie." (Translator's note.)

15 My colleague Bernhard Pfister (Munich) tells me that he has used the concept *Vitalpolitik* in his lectures for years, in particular to refer to the opposite of a *Rationalpolitik* (rational policy) which only takes into account factors that can be rationally captured and measured. This is one of those cases of intellectual convergence whose striking accumulation is one of the most gratifying and consoling symptoms of our present times. See Alexander Rüstow, *Ortsbestimmung der Gegenwart. Eine universalgeschichtliche Kulturkritik* [abbreviated version translated as *Freedom and Domination: A Historical Critique of Civilization*, Princeton, 1980], vol. 1, (Erlenbach: Rentsch, 1950), 12–13.

16 The German text has 'Fühlungslosigkeit', which could be rendered as 'lack of contacts'. However, the subsequent sentence makes it likely that this is a printing error, and should read 'Führungslosigkeit' (translator's note).

17 Ecclesiastes 5:18.

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Part II

ANALYSES

Chapter 12

Ordoliberalism as Governmentality

Johanna Oksala

The EU has always been weak in terms of political legitimacy acquired directly from its citizens, but today its lack of popular support appears perhaps more blatant than ever. Brexit is only the latest instance that has exposed its profound crisis; its recent track record is already dismal. While much of the criticism from the right has focused on immigration, the critics from the left have targeted the EU's austerity policies. Their claim is that the drastic austerity measures – structural reforms to increase and regain competitiveness and the preservation of stable monetary framework for preventing inflation – have resulted in a series of social harms: increasing economic inequality, unemployment, poverty and violence.¹ Many economists and political theorists, including the contributors to this volume, identify ordoliberalism as the theoretical foundation of these austerity policies. Thomas Biebricher, for example, shows that the key economic principles of ordoliberalism – free competition and monetary stability – have been the overarching aims of all the economic reforms undertaken in the Eurozone countries since 2011.²

My aim in this chapter is not to contest this view but to expand it by providing a philosophical examination of ordoliberalism. I will do this through a reading of Michel Foucault's lectures *The Birth of Biopolitics* (2008), particularly lectures four to seven, which study the historical formation of ordoliberalism in the 1920s and 1930s in the Weimar Republic, and its implementation in West Germany from around 1952.³ My contention is that if we understand ordoliberalism through a Foucauldian lens, a new perspective to it opens up. Rather than providing a causal explanation for the EU's recent economic policies, the ordoliberalisation of the EU should be understood as a deeper and historically more long-term process, which has profound consequences for the questions of the EU's political legitimacy, its democracy deficit as well as the possibilities for its reform.⁴

My argument proceeds in two stages. I will begin by explicating Foucault's analysis of ordoliberalism as governmentality. I will identify its key philosophical and moral tenets and then discuss its political technologies. In the second section, I will turn to the question how a Foucauldian analysis of ordoliberal governmentality can shed critical light on the structural problems of the EU.

I. FOUCAULT ON ORDOLIBERALISM

Many commentators now see the year 1979, when Foucault delivered his lectures on ordoliberalism as the inauguration of the dominance of neoliberal economic policy in Europe and the United States. Almost forty years after its expanding application, Foucault's topic and his insights appear farsighted, almost prophetic. His point in spending so long on the analysis of the history of neoliberalism was to show how it formed 'his actuality'.⁵ 'The art of government programmed by the ordoliberals around 1930 . . . has now become the program of most governments in capitalist countries'. . .⁶ For him, understanding German ordoliberalism – its historical development, key theoretical principles and modes of implementation – was central in terms of understanding his present. My contention is that it is indispensable for understanding our present too.

Foucault's analysis of ordoliberalism is distinctive in at least two significant ways. First, he understands German ordoliberalism as the earliest form of neoliberalism. Although his lectures distinguish and cover two forms of neoliberalism – German ordoliberalism, and what today appears as the more prominent neoliberalism of the Chicago school, he spends much more time on the German form, because he sees it as 'more important theoretically . . . for the problem of governmentality'. Foucault shows how ordoliberalism and the Chicago school share the same key principles of neoliberal governmentality. Their main doctrinal adversary is Keynes and they have 'the same objects of repulsion' – state-controlled economy, economic planning, and state interventionism.⁷ A series of persons, theories and books also passed between them: Friedrich Hayek, for example, was a central figure for both schools.⁸ My contention is that tracing the genealogy of neoliberalism to German ordoliberalism makes it easier to recognise the specific path that the neoliberalisation of Europe has taken.

Second, he analyses ordoliberalism as a historically novel form of *governmentality* – a rationality of governing connected with specific technologies of power. Ordoliberalism should not be understood just as an economic doctrine, but as a governmental form that is directed towards specific objectives, regulates itself through continuous reflection and, essentially, aims to ensure that

capitalism works. It is not ‘simply an economic theory on the effectiveness and utility of market freedom’, but amounts to ‘adherence to a doctrinal and programmatic whole’.⁹ As a form of governmentality, ordoliberalism thus comprises a coherent political ontology, a set of philosophical background beliefs about the nature of society, markets and human beings. However, it is not an ideology in the sense of consisting only of ideas or false beliefs. Its political ontology necessitates and rationalises a specific technology of power – specific practices of governing, as well as a particular way of reflecting on and problematising these practices. Although these two aspects – the political ontology and its practical implementation in political technologies – are not separate or independent from each other, I will explicate and analyse them here in two separate sections in order to provide a succinct and analytically clear account of Foucault’s understanding of ordoliberal governmentality.

I.1 The political ontology of ordoliberalism

Foucault’s lectures analyse in detail the historical shift from classical liberal governmentality to neoliberal governmentality in order to identify the difference between them and to grasp neoliberalism ‘in its singularity’.¹⁰ For him, neoliberalism was not just the revival of classical liberalism after a period of socialist dominance but involved a fundamental shift within liberalism itself: on the level of political ontology, neoliberalism effected a move away from naturalism. In other words, it did not only introduce some refinements to the liberal economic doctrine, but more importantly, it completely rethought the relations between economy and politics and consequently the whole of the liberal art of government.

In the first three lectures that focus mainly on classical liberalism, Foucault shows that liberalism was a much broader and at the same time much more complex phenomenon than a simple political doctrine advocating individual liberty. Understood as governmentality, it was a form of ‘governmental naturalism’.¹¹ Social reality had its own quasi-natural and self-regulating principles and dynamics. It was determined according to inevitable economic processes – which Adam Smith famously called ‘the invisible hand’ – that could maximise the efficiency of production and promote social good when left to function uninterrupted. Whereas liberalism is politically associated with the idea of individual liberty manifested as juridical rights, classical economic liberalism emphasised, seemingly paradoxically, both the determinism and spontaneity of social reality. Human beings, driven by natural self-interest, would spontaneously attempt to maximise their wealth. The mechanisms of the economic sphere would then harmonise their natural and spontaneous self-interests in accordance with the deterministic laws of economics. The sum total of individual tastes and talents in an open market determines correct

prices for goods, and the correct prices guide resource allocation towards efficiency and stability. A free-market society is therefore a harmonious whole that works for the benefit of everybody.¹²

Ordoliberals broke with this idyllic picture by rejecting the view that an invisible hand spontaneously regulated markets. For them, such belief amounted to theology or deistic philosophy. Economic freedom would not result from blind trust in invisible forces whirring away automatically because the market was not a given of nature. *Laissez-faire* could not be the political conclusion drawn from the economic principles of the market; rather, creating an unimpeded free market order required deliberate political commitment and practice. While the key problem in the liberalism of Adam Smith in the eighteenth century had been to cut out a free space for the market within an already-given political society, the problem of ordoliberalism was rather how the overall exercise of political power could be modelled on the principles of a market economy. ‘It is not a question of freeing an empty space, but of taking the formal principles of a market economy and . . . projecting them onto the general art of government’.¹³

Franz Böhm, one of the founders of the Freiburg School along with Walter Eucken, compared the maintaining of a well-functioning market economy to creating and maintaining a highly cultivated park: it required continuous nursing and gardening.¹⁴ Friedrich Hayek also formulated this idea explicitly:

Probably nothing has done so much harm to the liberal cause as the insistence . . . on . . . the principle of *laissez-faire*. . . . The liberal argument is in favor of making the best possible use of the forces of competition as a means of coordinating human efforts, not an argument for leaving things as they are. It is based on the conviction that where effective competition can be created, it is a better way of guiding individual effort than any other.¹⁵

The ordoliberals’ critique of governmental naturalism was essentially founded on their understanding of the centrality of competition. In eighteenth-century liberalism, the market was understood on the basis of free exchange between two partners who through this exchange established the equivalence of two values. The ordoliberals, in contrast, followed the development in liberal thought of the nineteenth century – economists such as Walras, Marshall and Wicksell – according to whom the most important condition for the functioning market was no longer free exchange, but free competition.¹⁶ Only full and complete competition could ensure economic rationality through the formation of prices and thereby measure economic magnitudes and regulate choices.¹⁷

Foucault contends that the nineteenth-century liberals nevertheless drew the same political conclusion from their view of the market as the eighteenth-century liberals had done from theirs, namely, the necessity of *laissez-faire*.

For ordoliberals, this was again naïve naturalism. Competition was not a pre-given source and foundation of society that only had to be allowed to rise to the surface and be discovered. Rather than being an essential structure in the sense of a natural given, it was a structure with formal properties. It was these formal properties that could assure economic regulation through the price mechanism. In other words, competition was not the result of the natural interplay of appetites, instincts and behaviours between individuals, but a formal game between inequalities. It could appear and produce its effects only under certain conditions, which had to be carefully and artificially constructed. Free competition was the result of lengthy efforts and ultimately was never fully attained. It had to be and could only be a political objective presupposing an infinitely active policy. While competition as a formal structure was thus rigorous in its internal organisation, it was fragile in its real, historical existence. The task of neoliberal policy was to develop the concrete and real space in which this formal structure of competition could function.¹⁸

The centrality of competition in ordoliberal governmentality has profound consequences for their philosophical conceptions of the subject as well as society. Competition, by necessity, always entails winners and losers. Rather than being a harmonious whole, in which individuals engage in mutually beneficial exchanges, free market society will now inevitably appear as unequal, antagonistic and conflictual. For ordoliberals, it is important that these necessary antagonisms are not politicized, however. The state cannot be held responsible for the satisfaction of the citizens' conflicting interests and needs. It must act merely as a politically neutral referee of the market game, and the price mechanism must be the only regulator of individual preferences. The self-responsible pursuit of economic freedom must entail individual liability for the consequences of individual actions and decisions. Foucault quotes Wilhelm Röpke, who contends that an unemployed person is 'not someone suffering from an economic disability; he is not a social victim. He is a worker in transit. He is a worker in transit between an unprofitable activity and a more profitable activity'.¹⁹ The goal of ordoliberal governmentality is thus a depoliticised society in which individuals compete against one another as entrepreneurs, not as political actors. The depoliticisation of society must itself be understood as an eminently political practice, however.

The rationality for the purely economic governance is not only political and economic, however, but also moral. In lecture five, Foucault discusses the tragic experience of Nazism as decisive for the theoretical development of ordoliberalism and particularly for the political and moral conclusions that the ordoliberals drew. In his most important work, *The Foundations of Economics. History and Theory in the Analysis of Economic Reality (Die Grundlagen der Nationalökonomie)*, originally published in 1940, Walter

Eucken distinguishes between two pure elemental forms of economic order, which he claims can be found in whatever historical period we study: the centrally directed economy and the exchange economy.²⁰ These forms are transhistorical: They can only appear in history, but when they appear, they always appear in essentially the same form.²¹ Eucken heaps scorn on economists who use concepts such as ‘capitalism’, ‘communism’ or ‘socialism’, and he places these words inside quotation marks throughout the book. For him, they are just catch phrases or labels with no real explanatory power. In other words, there is no historical uniqueness to Nazism or communism in economic terms; they are simply historical variants of the ideal type ‘centralized economy’.²² Identifying this economic-political invariant that underlay all the different manifestations of planned economy in their historical milieu – Soviet planning, the New Deal, and the Beveridge Plan in Britain – allowed ordoliberals to conclude that these economic plans were essentially no different from the Göring Plan in Nazi Germany. Similar to Nazism, they were all forms of planned economies and therefore forms of anti-liberalism.

Friedrich Hayek forcefully sums up the ordoliberal moral argument against all attempts to plan economies in his seminal book, *The Road to Serfdom* (1944). He argues that any attempt to interfere with the economy according to deliberate political aims or goals will lead to serfdom – the illegitimate restriction of individual freedom. It inevitably means that the public authorities have assumed a decision-making role for the individuals and consequently forced them into certain roles, choices and activities. That is why, in a liberal society, the state can make legal interventions in the economic order only if these interventions take the form of purely formal principles that manifest themselves in abstract and general laws, rather than the form of ‘decisions, which someone takes for others’.²³

I.2 The political technology of ordoliberalism

Ordoliberals thus broke with the preceding tradition of liberalism in denying that the political consequence of free markets should be the principle of laissez-faire. But what does the governmental intervention that they propose instead concretely mean? What does it mean to intervene not on the market, but for the market? How does the political ontology of ordoliberalism translate into political technology?

In lecture six from February 14, Foucault brings out what he calls the ‘original armature of neoliberalism’ through a discussion of Walter Eucken’s 1952 posthumous book *Grundsätze der Wirtschaftspolitik* (Principles of Economic Policy). Foucault describes the book as providing ‘the practical side’ of ordoliberalism, while Eucken’s earlier book *Grundlagen der Nationalökonomie* (The

Foundations of Economics), which I discussed in the previous section, formed the theoretical side.²⁴ In this later book, Eucken explicates the idea that liberal governance must be perpetually vigilant and active, and he makes a distinction between two different types of interventions: regulatory actions and organising actions.²⁵

Regulatory actions are actions that do not intervene on the market, but on the conditions of the market. The main objective of regulatory action is to guarantee that the price mechanism works correctly, which requires the maintenance of price stability through the control of inflation. As Foucault writes, this means that

consequently all other objectives . . . can only be secondary and so to speak, adjunct . . . the primary objectives must not be the maintenance of purchasing power, the maintenance of full employment, or even balancing the balance of payment.²⁶

The instruments used by socialism and Keynesian interventionism must thus be abolished – price controls, support for particular sectors of the market, systematic job creation and public investment – and they must be replaced by pure market instruments – what we would today call austerity. Whatever the rate of unemployment, for example, the government must not interfere directly ‘as if full employment should be a political idea and an economic principle to be saved at all costs. What is to be saved, first and above all, is the stability of prices’.²⁷

The other type of intervention, organising actions, also targets the conditions of the market, but these are ‘more fundamental, structural, and general conditions’.²⁸ It is necessary to intervene also on phenomena that are not strictly economic, but social. It is necessary to intervene on ‘society as such, in its fabric and depth’, so that competitive mechanisms can play a regulatory role not just in the economy, but society at large.²⁹ While such organising actions include almost everything from the health of the population to the quality of the climate, it is important to note that they do not amount to traditional welfare politics, however.³⁰

Foucault shows how ordoliberals completely overturned the way social policy was traditionally conceived. In a society built on the principles of generalised competition, the equalisation of wealth simply could not be a political goal. Such a goal would obviously seriously distort competition and disrupt the unimpeded functioning of the price mechanism. Foucault formulates this key principle of neoliberal governmentality in stark terms: ‘Social policy cannot have equality as its objective. On the contrary, it must let inequality function’.³¹ Social policy could not be understood as a counterpoint or compensation for the detrimental effects of economic processes. It could not use the traditional political instruments of redistribution of income or socialisation of consumption because it could not work against the economic

policy. That is why there could only be ‘one true and fundamental social policy: economic growth’.³²

Economic growth and only economic growth should enable all individuals to achieve a level of income that will allow them the individual insurance, access to private property, and individual or familial capitalization with which to absorb risks.³³

The economic game, along with the unequal effects it entails, is a kind of general regulator of society that clearly everyone has to accept and abide by. . . .³⁴

Hence, equality as a political ideal can only be understood narrowly as equal opportunity to compete in the economic game, take on and confront risks. The rationality for leaving a lot of the population behind economically is thus not the lack of manifest compassion for them, but the presumed need to keep the economy working in the most efficient and rational manner. Foucault’s discussion here is strikingly farsighted. He acknowledges that the actual German social policy had not followed these principles for various historical reasons, but notes that ‘social policy increasingly tends to follow this programme. . . . This is the tendency: privatized social policy’.³⁵

In addition to economic and social policy interventions – regulative actions targeting the economy and organising actions targeting society – ordoliberal governmentality has a third, important mode of intervention, namely, the legal framework. The law operates as one of the foremost technologies of ordoliberal government. Economics and law have to be intimately related because the competitive order can only be a legal order. It requires an economic constitution, or what the ordoliberals called ‘Wirtschaftsverfassung’. The economic constitution should be understood as the fixed rules of the economic game that allow the players to engage in fair competition. As Foucault formulates the idea: ‘The economy is a game and the legal institution which frames the economy should be thought of as the rules of the game’.³⁶ It is important that these rules take the form of a purely formal economic legislation, however: they must not impede the functioning of the logic of the competitive market, but on the contrary, make it possible.

Foucault sets the ordoliberals here against the orthodox interpretations of Marxism, according to which the juridical is always superstructural in relation to the economic. Instead of capitalism creating new and more favourable laws in accordance with its own logic and requirements, economic processes and institutional frameworks mutually shape each other. The economic logic of capitalism is always instantiated in precise and particular economic-juridical complexes.³⁷ According to Foucault, it was important for ordoliberals to insist on such a historicised view of capitalism, because it made it possible for them to defend its economic logic, the logic of the competitive market.³⁸ Ordoliberalism originated towards the end of the Weimar Republic in a context of

hyperinflation, depression, mass unemployment, political violence and social instability. Hence, ordoliberals had to be able to show that the economic logic of capitalism was perfect and non-contradictory; only the concrete set of juridical-economic relations in which it was historically embedded had to be reinvented in order for it to survive.³⁹ They had to demonstrate that it was possible to invent an improved form of capitalism, one that avoided crises and made continuous economic growth possible.

To sum up this section, Foucault makes clear that ordoliberal governmentality should not be confused with *laissez-faire*, but rather implies permanent vigilance, activity and intervention. Ordoliberalism is an intervening liberalism: it has to intervene everywhere in order to create effective competition and to actively oppose all inferior methods of coordinating individual efforts, such as central planning. Planning is required, but it has to be planning for competition, not against it, or instead of it.⁴⁰ Ordoliberal governmental intervention is thus no less dense, frequent, active and continuous than any other system of governmental rationality. Only the point of intervention is new. The government should not interfere with the effects of the market, nor should it correct its destructive consequences for society retroactively. It has to intervene in the very being of society in order to make competition the dominant principle for guiding human behavior. The government has to construct the legal, institutional and cultural conditions that give competition between enterprises and entrepreneurial conduct maximal range. It also has to maintain these conditions through effective policing. Confidence in the spontaneous intelligence of market mechanisms does therefore not mean that state violence becomes unnecessary. On the contrary, state violence must remain an effective means of ensuring that the spontaneous logic of the market can operate.⁴¹

II. THE ORDOLIBERALIZATION OF THE EU

Understanding ordoliberalism as a form of governmentality, and not just as a set of economic policy prescriptions pronounced or implemented by specific individuals, makes it possible to maintain that there is a coherent political rationality, a consistent theoretical framework underlying EU governance, even if it is at times unevenly articulated and implemented. Goals and values such as the centrality of competitiveness, the promotion of entrepreneurial citizenship, the shift away from traditional social policy measures and the significance of price stability, for example, all form part of a coherent outlook.

In his discussion of the influence of ordoliberalism on the EU's recent austerity policies, Biebricher acknowledges that the recent economic reforms in the EU have also included emergency measures that many commentators

would identify as Keynesian, rather than ordoliberal, such as bailouts and stimulus packages.⁴² Hence, it is not the case that the EU has suddenly come to ‘conform to the ordoliberal playbook in its entirety’.⁴³ According to Biebricher, it is important to resist the simple cognitivist view that actors implement ideas in a fully conscious manner. Such a view would pay ‘insufficient attention to the conflictual and contingent pattern of politics . . . that is likely to yield uneasy compromises and a mixed bag of measures’.⁴⁴

My contention is that such a view also pays insufficient attention to the deeper, philosophical level structuring individuals’ actions, their ways of looking at the world and making sense of it. In other words, it is important to recognise that ordoliberalism forms a pervasive way of thinking about the goals of politics, the meaning of social justice, nature of society, economy and human beings.⁴⁵ This does not mean, however, that it is a totalising framework that was strategically implemented as a whole by a set of political actors. Rather, it functions as a shared discursive practice, which is inevitably intertwined with heterogeneous elements and confronted with competing truth claims. In connection with Brexit and the recent refugee crisis in Europe, for example, it is evident that the ordoliberal governmental rationality foregrounding economic freedom and economic growth has been effectively confronted with the nationalist and neo-fascist discourses that are currently on the rise in Europe.

Understanding ordoliberalism as historically deeply ingrained governmental rationality is also helpful for an analysis of some the structural problems of the EU, particularly for the questions over its political legitimacy and aspects of its democracy deficit.⁴⁶ In the fourth lecture, in which Foucault discusses the implementation of ordoliberal economic policy in Germany in the context of post-war reconstruction, he interprets this project importantly as a political legitimisation project. In other words, he argues that the decisions to remove price controls and to deregulate the German economy at the end of the 1940s were not just economic decisions. Rather, what was at stake was the political legitimacy of the new German state. When the German state had to be reconstituted after the war, there were no existing historical rights on which it could be founded. Foucault suggests that the institution of economic freedom came instead to function as the basis for the formation of political sovereignty: Economic freedom and economic growth produced it.⁴⁷ It seems to me that the basis of the EU’s political legitimacy is strikingly similar. The EU too is a political institution, whose legitimacy has been essentially grounded on the value of economic freedom and the production of well-being for its citizens by economic growth.

Europe started its project of integration as an economic community. The Treaty of Rome – the treaty that led to the founding of the European Economic Community (EEC) in 1958 – established the freedom of the movement

of capital, goods, services and labour. Christian Joerges argues that the ordoliberal theory of an economic constitution was central for the legitimisation and design of the integration project of 1958: a key idea was that the treaty should establish ‘the interdependence of a system of undistorted competition, individual freedoms and the rule of law – and protect this precious balance against discretionary political influence’.⁴⁸ The European polity was deliberately envisaged to have a twofold structure: at the supranational level, it was committed to economic rationality and a system of undistorted competition, and consequently the internal market has become the most richly developed aspect of the EU.⁴⁹ Redistributive social policies, on the other hand, are decoupled from the economic framework and left to the member states.⁵⁰ This design plainly reflects the ordoliberal view of good governance: The economic game needs an economic constitution guaranteeing the freedom of the market, and there has to be a complete categorical separation of economic policy from social policy. As the European integration has deepened and the constitutionalisation of the EU has progressed, this dual structure has been preserved. It was refined in the 1970s and 1980s, and the Monetary Union and the Stability and Growth Pact completed it.⁵¹

Thomas Wallgren contends that the EU treaty has almost no place for any discourse of social fairness. It is not like a political constitution in this sense but continues to embody the ordoliberal ideal of an economic constitution – it is merely the neutral rules of the economic game carefully insulated from any political intervention.⁵² The EU law guarantees juridical rights defined in terms of the functional needs of the market but leaves very little room to social and political rights and freedoms.

In this sense the juridical order of the EU can with right be called ordoliberal or market fundamentalist order. It is a political order in which the regulation of the conditions for the working of the market is the core of the juridical system.⁵³

As the EU law has now been established as the superior level of the juridical hierarchy, it has effectively become illegal in many instances for member states to tackle social issues through economic measures that interfere with free competition, even if these measures were supported by a strong democratic mandate.⁵⁴

Hence, whereas some commentators hold that the EU’s democracy deficit is the unfortunate and unintended consequence of the fragmentary and haphazard way that the European integration has historically taken place and can be remedied as this process proceeds, an analysis of ordoliberalism as its governing rationality opens up another perspective: The democratic deficit of the EU is no accidental feature or a design fault. The EU has been built in such a way that many basic economic decisions that affect society as a whole are

effectively removed from democratic, political decision making, and instead are executed through legal instruments and by un-elected economic experts. This is an important aspect of the governmental rationality first formulated by ordoliberalism and subsequently constitutionalised in the EU treaties. The EU is founded on the belief in the political, economic and moral supremacy of market liberalism, and it is designed to legally safeguard economic growth and market stability against the conflicts and pressures of mass democracy. Its political legitimacy essentially rests on this belief as well as on the concrete economic successes of its political technologies.

Today, as the economic growth in the Eurozone is faltering and economic freedom is increasingly understood as synonymous with immigration, the EU's political legitimisation project is in serious crisis. My hope is that this crisis would spur Europeans to demand a union built on the principle of popular sovereignty rather than economic freedom and economic growth. However, I also hope to have shown that such a political project will have to be based on a sober recognition of what this would mean. A democratic reform of the EU would require not only completely rewriting its constitution and redesigning its key institutions, but it would also require a radical revolution in our governmentality, in the ways in which we perceive politics and understand the good government of societies.

NOTES

1 See, for example, Mark Blyth, *Austerity. The History of a Dangerous Idea* (Oxford: Oxford University Press, 2013). For feminist assessments on the consequences of austerity policies for gender equality in the EU, see, for example, Penny Griffin, 'Crisis, Austerity and Gendered Governance: A Feminist Perspective', *Feminist Review* 109 (2015), Ian Bruff and Stefanie Wöhl, 'Constitutionalizing Austerity, Disciplining the Household: Masculine Norms of Competitiveness and the Crisis of Social Reproduction in the Eurozone', in *Scandalous Economics. Gender and the Politics of Financial Crises*, ed. Aida A. Hozic and Jacqui True (Oxford: Oxford University Press, 2016).

2 Biebricher sees this as a result of the recognised need for re-regulation of the financial sector in the aftermath of the crisis, as well as the growing economic and political influence of Germany in Europe. See Thomas Biebricher, 'Europe and the Political Philosophy of Neoliberalism', *Contemporary Political Theory* 12. 4 (2013), 7–8 and 'The Return of Ordoliberalism in Europe. Notes on a Research Agenda', *i-lux* 21 (2014). According to the economist Mark Blyth (*Austerity*, 133), ordoliberal principles were incorporated into the ECB's constitution and are clearly visible in the EU commissions' current competition-focused policies.

3 Michel Foucault, *The Birth of Biopolitics. Lectures at the College de France 1978–1979* (Basingstoke: Palgrave MacMillan, 2008). Foucault discusses

ordoliberalism in these lectures mainly through the work of Walter Eucken, Franz Böhm, Alexander Rüstow, Wilhelm Röpkke and Alfred Müller-Armack.

4 Many EU critics on the left go beyond highlighting examples of mishandled or ineffective economic policies and argue that EU's most serious problems are structural. Perhaps the most damning criticism claims that the EU is a deeply undemocratic institution perpetuating authoritarian neoliberalism, which cannot be reformed in a progressive direction, because its very architecture is designed not to be reformable. See, for example, Stanislav Kouvelakis, 'The EU Can't Be Reformed', *Verso Blog*, 26 June 2016, <http://www.versobooks.com/blogs/2726-the-eu-can-t-be-reformed>.

5 Foucault, *Birth of Biopolitics*, 192.

6 Ibid., 149.

7 Ibid., 79.

8 For historical accounts of neoliberalism, see also, for example, Philip Mirowski and Dieter Plehwe, *The Road to Mont Pelerin. The Making of the Neoliberal Thought Collective* (Cambridge: Harvard University Press, 2009), 1–42.

9 Foucault, *Birth of Biopolitics*, 89.

10 Ibid., 130.

11 Ibid., 61.

12 Foucault proposes that the new liberal governmentality formulated at the end of the eighteenth century challenged the ideal and the project of an exhaustive disciplinary society (ibid., 259). His lectures on liberalism and neoliberalism can thus be read as a form of self-critique: While disciplinary power had provided Foucault with a useful tool for elucidating some of the key mechanism for the constitution of the subject still operative in our society, it was proving to be inadequate for understanding many others.

13 Ibid., 131.

14 Franz Böhm, *Freiheit und Ordnung in der Marktwirtschaft* (Baden-Baden: Nomos, 1980), 115.

15 Friedrich Hayek, *The Road to Serfdom* (London: Routledge, 1944), 13 and 27.

16 Foucault, *Birth of Biopolitics*, 166.

17 Ibid., 119.

18 Ibid., 120.

19 Ibid., 139.

20 See chapter 4 in this volume.

21 The philosophical influence of Husserl's phenomenology can be clearly detected behind this idea, but also more generally, behind Eucken's approach. On the similarities of Eucken's and Husserl's methods, see Rainer Klump and Manuel Wörsdörfer, 'On the Affiliation of Phenomenology and Ordoliberalism: Links between Edmund Husserl, Rudolf and Walter Eucken', *The European Journal of the History of Economic Thought* 18. 4 (2011); Johanna Oksala, 'Foucault, Husserl and the Roots of German Neoliberalism', *Continental Philosophy Review* 49. 1 (2016) and Timo Miettinen, 'Governing with Ideas. On the Phenomenological Roots of the Ordoliberal Tradition', *Metodo. International Studies in Phenomenology and Philosophy* 4. 1 (2016). Another important influence was Max Weber: Eucken calls his two forms of economic order 'ideal types'.

22 Foucault, *Birth of Biopolitics*, 114.

23 Ibid., 171.

24 Ibid., 138.

25 Foucault's elaboration of regulatory actions also relies on Röpke's important distinction between compatible and incompatible actions in *The Social Crisis of Our Times* (Chicago: The University of Chicago Press, 1950). The quote that Foucault mistakenly attributes to Eucken (Foucault, *Birth of Biopolitics*, 138) is actually from Röpke, for example. See also Foucault, *Birth of Biopolitics*, 154 footnote 36.

26 Ibid., 139.

27 Ibid.

28 Ibid.

29 Ibid., 145.

30 Again, it is not entirely clear whether Foucault was right to attribute this idea to Eucken rather than to Röpke. Eucken does not deal with agricultural questions in the section of *Grundsätze der Wirtschaftspolitik* that Foucault refers to. See *ibid.*, 155 footnote 41.

31 Ibid., 143.

32 Ibid., 144.

33 Ibid.

34 Ibid., 143.

35 Ibid., 145.

36 Ibid., 173.

37 See chapter 7 in this volume.

38 Foucault, *Birth of Biopolitics*, 165.

39 Ibid., 166.

40 See, for example, Hayek, *The Road to Serfdom*, 31.

41 State violence is eliminated from the level that dictates people's consumer choices and preferences only to appear on the level that precludes them from interfering with or opting out of the economic game. See Johanna Oksala, *Foucault, Politics, and Violence* (Evanston: Northwestern University Press 2011).

42 Biebricher, 'The Return of Ordoliberalism in Europe', 17–18.

43 Ibid., 19.

44 Ibid.

45 See Nicolas Jabko, 'Re-Problematizing Neoliberalism', *Contemporary Political Theory* 12. 4 (2013), 22.

46 The democracy deficit in the EU penetrates several layers of governance. The most obvious problem is that the EU is not a parliamentary democracy. Its parliament is not a real parliament in terms of its legislative powers, and it does not have a real government in terms of a democratically accountable executive. Critics have also noted the vast influence of the lobbyists, the weakness of the pan-European civil society and the relatively weak positions of the trade unions. On the different aspects of the democratic deficit in the EU, see, for example, Thomas Wallgren, 'Cosmopolitan Futures for Europe', in *Dictatorship of Failure: The Discourse of Democratic Failure in the Current European Crisis*, ed. José Filipe Silva and Alejandro Lorite Escorihuela (Helsinki: Helsinki Collegium for Advanced Studies, 2013); Werner Bonefeld,

'European Economic Constitution and the Transformation of Democracy: On Class and the State of Law', *The European Journal of International Relations* 21. 4 (2015) and Vivien A. Schmidt, *Democracy in Europe* (Oxford: Oxford University Press 2006). Jürgen Habermas has criticised the EU's 'executive federalism' – the shift of regulatory power from the constitutional to the extra-constitutional sphere. See Jürgen Habermas, *The Crisis of the European Union. A Response* (Cambridge: Polity Press, 2011).

47 Foucault, *Birth of Biopolitics*, 84.

48 Christian Joerges, 'What Is Left of the European Economic Constitution? A Melancholic Eulogy', *European Law Review* 10. 4 (2004), 13. It should be noted, however, that the EEC still enabled a range of political compensatory mechanism such as agricultural subsidies and the possibility currency devaluations. The ordoliberalisation of the EU, understood in terms of its economic policy, therefore usually refers the developments since the Economic and Monetary Union (EMU) was established in the 1992 Treaty of Maastricht.

49 On the influence of Hayek's thought on the project of European integration, see, for example, Bonefeld, 'European Economic Constitution', 10–12.

50 Fiscal policy is increasingly shared with the EU now after the Stability and Growth Pact and the Fiscal Compact because these treaties require member states to achieve balanced budgets. The EU has the power of coordination and surveillance as well as the ability to recommend modifications of fiscal policy and to apply sanctions. See, for example, Bonefeld, 'European Economic Constitution', 13.

51 See, for example, Joerges, 'What Is Left of the European Economic Constitution' and Wallgren, 'Cosmopolitan Futures'. The Economic and Monetary Union (EMU) was established in the 1992 Treaty of Maastricht, Stability and Growth Pact in 1996 and the Fiscal Compact in 2013.

52 The Lisbon Treaty is the symbolic and functional equivalent of a constitution for the EU, and it replaced the draft constitution of 2003 that was rejected by French and Dutch citizens in 2005. It has not been brought to a new referendum in these countries.

53 Wallgren, 'Cosmopolitan Futures', 253.

54 Christian Joerges (in 'Europe's Economic Constitution in Crisis and the Emergence of a new Constitutional Constellation', *German Law Journal* 15. 5 [2014], 993) argues that after the EU's enlargement towards the East, the obstacles to developing shared social protection became also practical: the socio-economic disparities between the different member states became so pronounced that a continuation of integration was feasible only by reducing the social protection provided by welfare states.

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Chapter 13

Europe after Ordoliberalism

A Philippic

Christian Joerges

Translated by Sandra H. Lustig¹

Theories of economic law, particularly liberal ones, owe their power to transdisciplinary fundamentals that fuse the two parts of the concept, law and economics – and consummate that fusion by a ‘Staatsverfassung’, a configuration of the state which codifies that fusion. In the case of ordoliberalism, this connection has lost much of its former splendour. To be sure, ordoliberalism is still tremendously influential not only among scholars of private and economic law but also with important political advisors. But intellectual Dioscuri as eminent as Franz Böhm and Walter Eucken have no longer been with us since Ernst-Joachim Mestmäcker lost his congenial scholarly companion Erich Hoppmann in 2007. But the fact that a distinctly German tradition can no longer continue to develop also has to do with the internationality of economics. The term *Ordnungspolitik* is difficult to translate, and even where parallel concepts have become firmly established, as is the case for *Wirtschaftsverfassung* (economic constitution) and *System des unverfälschten Wettbewerbs* (system of undistorted competition), ordoliberal patterns of thinking cannot be tied into foreign legal discourses. However, none of these are reasons to let the economic-theory and social-philosophy elements of the ordoliberal tradition lie stagnant. Their diminishing attractiveness certainly has to do with language barriers and the Anglo-Saxon supremacy in economics and the schools of thought in law and economics. The plight of ordoliberalism in the European Union, however, is due at least in part to a combination of difficulties immanent to the theory and institutional circumstances: Apparently conceptual repercussions are developing with the institutional stabilization of the post-national constellation. These configurations are at the centre of this chapter, which will trace five phases of their development. (I) The beginning was the founding of the ordoliberal tradition during the Weimar Republic, in which it sought to overcome

Germany's 'organized capitalism'² by a competitive order which it sought to immunise against political interventions by non-majoritarian institutions. (II) Having established itself as the Freiburg School since the mid-1930s, ordoliberalism survived National Socialism so well that it appealed to the early Federal Republic as an untainted tradition and joined forces with the protagonists of the social market economy. (III) That alliance was not powerful enough to withstand the re-entry of organised capitalism onto the scene in the Bonn Republic. It seemed appropriate to seek new backing for the concepts of *Ordnungspolitik* in the European Economic Community (EEC). (IV) Ordoliberalism was then indeed strongly supporting the EEC until the dynamics of the integration process unleashed by the Delors Commission's internal market policy caught up with it and in Maastricht led to a twofold turnaround. (V) Since then, the European project has no longer been regarded exclusively as a reliable bastion of *Ordnungspolitik*, but rather a threat to it as well.

I. ORDOLIBERALISM AS THE THIRD WAY

Ordoliberalism sought to provide new political orientation in a period characterised in Germany by seemingly unmanageable economic crises and social tensions.³ It did put its trust on the unsettled political democracy of the Weimar Republic, let alone on leftist quests for 'economic', or 'industrial' democracy.⁴ Yet the remedy sought by the new economic-policy approach to address this havoc is not sufficiently specified by the term 'liberal'. In terms of economics, it was about nothing less than a post-liberal reorientation: Alexander Rüstow's 1932 polemic against 'paleo-liberalism' speaks volumes.⁵ Two important works were published that same year: Walter Eucken's 'Staatliche Strukturwandlungen und die Krise des Kapitalismus'⁶ and Alexander Rüstow's 'Interessenpolitik oder Staatspolitik? (Politics of Interest or Politics of the State)'⁷ Other advocates of the school who were later to become famous spoke up at the same time or shortly thereafter.⁸ Franz Böhm's authoritative monograph on 'Wettbewerb und Monopolkampf' (Competition and the Struggle of Monopolies)⁹ which was published in 1933, was to become the foundation for a school of legal thought.⁹ Yet the ordoliberal departure can be considered liberal in the sense that it was directed against both the historical school of economics and socialist notions.¹⁰ But it was precisely not *laissez-faire* liberalism – above all because the state was assigned the task of guaranteeing that the economy functioned in an orderly manner. Wilhelm Röpke used the oxymoron 'liberal interventionism' to describe this function.¹¹ The idea was in fact to replace the old 'paleoliberal' night-watchman state with a 'strong state'.¹² The *ordo-liberal* 'strong state' must not be equated with Carl Schmitt's use of the same term.¹³ Hermann Heller's diagnosis and critique of an 'authoritarian liberalism' concerned exclusively the latter.¹⁴

Why should we be interested in all this? Above all because ordoliberalism called for and attempted to establish an order that was intended to function without democratic-parliamentary legitimation. Together with this reserve against parliamentary democracy a ‘good dose of Schmittianism’ has been found in the ordoliberal manifesto of 1936¹⁵ and in further contributions from the National Socialist period.¹⁶ Not everybody who felt little confidence in the Weimar democracy propagated a *völkisch* order. The ordoliberals did not become partisans of the Nazis. Their authoritarian liberalism did not seek the type of strong state that Carl Schmitt had called for in his 1932 speech.¹⁷ Equating the two is an inadmissible equivocation, because Schmitt’s state was to establish the priority of politics over the economy without consideration for the law, while the ordoliberals wanted to prescribe a stable legal framework for the economy which politics would have to respect.¹⁸

Philip Manow found reasons why ordoliberals were unwavering which also helps understand why ordoliberalism, whose founding fathers had ties to Protestantism, was able to connect with social Catholicism in the post-war period. His finding: the social question, which had caused so much unrest in early capitalism, had been taken on as a real challenge by *both* Christian churches.¹⁹ What Protestants and Catholics alike were seeking was effectively a ‘Third Way’ between laissez-faire liberalism and a socialist planned economy. It is precisely this status which Alfred Müller-Armack, the originator of the concept of the ‘social market economy’, ascribed to this concept.²⁰ Whether in doing this he succeeded in creating a theoretical symbiosis of economic and social *Ordnungspolitik* or whether the social market economy merely signified a formulaic compromise through which unstable alliances could form is another question.

II. ECONOMIC CONSTITUTIONALISM

In the early post-war years, the alliance of the churches, political Protestantism and social Catholicism, penetrated far into society and reached the trade unions: it is possible to describe the ‘social market economy’ both as an economic ecumenical movement and as a project encompassing all of society. This project was highly successful in political and economic, but also in social respects,²¹ and cannot be reduced to that new German ersatz identity which according to Foucault²² was brought about in the Bonn Republic by the Deutschmark and the country’s economic miracle.

Admittedly, this project had conceptual rifts and proved politically unstable, too. Müller-Armack claimed his ‘social market economy’ had an ordoliberal foundation which was said to harmonise smoothly with distribution and business cycle policies of the social welfare state.²³ Leading ordoliberals

let him do as he pleased or developed more sophisticated framework concepts, for example, Walter Eucken with his theorem of the interdependency of orders.²⁴ It proved impossible to reach a generally valid clarification of concepts.²⁵

Politically speaking, the society-wide coalition did not last long either. Germany had neither reversed its process of secularisation nor permanently overcome its division into political factions, which extended back to the days of the German Empire. As Manow shows, the traditional mistrust with which social Catholicism approached economic liberalism soon gained the upper hand again, and the old alliances between Catholicism, economic corporatism and the Bismarckian welfare state formed once again.²⁶

The Protestant ordoliberalism responded to this restoration with understandable suspicion. The relationships being renewed were too similar to those they had struggled to overcome in the 1920s. But now, in the new Bonn Republic, they were a great deal more influential. The group had grown; their ideas determined much of academic life, public opinion and the officious statements of the Christian Democratic government. So ordoliberalism tackled the renewal of its agenda with considerable optimism. One key part of its constitutional messages and perspectives was the theory of the ‘economic constitution’ according to which politics was to guarantee and respect the system of undistorted competition, economic and personal liberties, and the requirements of a state under the rule of law as interdependent elements of order.²⁷

When political Catholicism and Protestant ordoliberalism returned to their well-trodden paths, an old schism erupted again – and so did other historical controversies. In his work on the history of German private law in the Weimar and Bonn Republics, Knut Wolfgang Nörr²⁸ differentiates between two concepts that took effect in parallel and against each other in the course of (German) economic legal history: the ‘organized economy’ and the ‘social market economy’. This coexistence of the ‘organized economy’ on the one hand and ordoliberalism on the other, he claimed, had institutionalised a contradiction: ordoliberalism had indeed dominated only the thinking of the scholars of private and economic law. In state, constitutional and administrative law, the influence of the ordoliberal school remained weak, the proponents of an organised and corporatist economic constitution dominant. For this reason, Nörr diagnosed a two-pronged approach to economic policy and constitutional law as a basic phenomenon in the genesis of the Bonn Republic:

Concerning the economic order which was to shape the new state, we must speak of nothing less than a double *mise-en-scène*, of two productions of the same dramatic piece that did not take note of each other.²⁹

The opposition of constitutional law, otherwise so abstinent in matters of economic law, to the democratic deficit of the theory of the economic constitution also certainly remained weak; Rudolf Wiethölter, who had been appointed as Böhm's successor,³⁰ was to call attention to this problem in his inaugural lecture in Frankfurt.³¹

The dual structure which Nörr finds so paradoxical in theory proved to be extraordinarily successful in practice. Not only did the social dimension of the new order remain in existence in the post-war German economy, but it also grew and flourished.³² All this is well known beyond Germany³³ and is now manifested in the Treaty on European Union (Art. 3 Para. 3 Sentence 2 TEU).³⁴ According to Manow, the success of the social market economy is due precisely to the fact that neither *laissez-faire* liberalism nor authoritarian liberalism was able to dominate the politics of the Bonn Republic. Instead, he claims, Germany had reached a form of decentralised and functional interventionism.³⁵ In Glasman's analysis:

Nobody 'designed' postwar Germany, it developed from a moral and ethical material that is infinitely more enduring and thought through than what economic theory or any other social-science methodology has to offer.³⁶

III. EUROPE AS A SHIELD AND A SWORD

The leading ordoliberals could not identify with and reconcile themselves to the actually existing constitution of the Federal Republic's economy – its decidedly corporatist elements, the tendencies of political Catholicism towards economic democracy and the restoration of the Bismarckian welfare state under the Catholic chancellor Adenauer. They saw Germany on the road to serfdom that Hayek had prophesied for welfare-state agendas.³⁷ In fact, their institutional agenda – especially the establishment of a strong cartel authority which was to operate beyond interest groups and was not to be subjected to unreasonable political demands – was constantly being subverted in the German 'bargaining democracy'.³⁸

The early phase of the EEC has been described many times, in multiple languages, and in various disciplines – above all by jurists, political scientists and historians³⁹ –, and the history of the European economic constitution is well documented.⁴⁰ The attractiveness of the new transnational order to ordoliberalism seems equally plausible as, conversely, its suitability to provide legitimacy and orientation to the project of integration.⁴¹ The liberties guaranteed in the EEC Treaty, the opening of the economies, the bans on discrimination, and the commitment to a system of undistorted competition could be interpreted as a 'decision' in favour of an economic constitution conforming

to the ordoliberal ideas about the underlying conditions of a market-based system. The fact that Europe was set on the path of integration ‘only’ as an economic community seemed to comply with the ordoliberal interpretation: the EEC could be presented as a legal order committed to maintaining economic freedoms and protecting competition by means of supranational institutions that precisely because of this gained a constitutional legitimacy independent of that of the democratic nation-state – and that placed limits on the Community’s scope of action.⁴²

It must be added, however, that these are merely reconstructions and ex post facto rationalisations that have little in common with the events of the negotiations and their power games. Majone observes soberly and soberingly:⁴³ In the 1950s, *planification* and interventionist practices were commonplace in the founding states in all sectors of the economy – how could defeated Germany, of all countries, have gotten back on its feet with a liberal *Ordnungspolitik* that could not even be implemented at home?⁴⁴ Is it legitimate to present the acceptance found by the chapter on competition policy as an ‘ordoliberal moment’ even though it appears simply imperative that eliminating barriers to trade seems unacceptable if governments retain the authority to create a competitive advantage for their own economies through subsidies, and if companies are able to organise private market compartmentalisation? After all this, even limiting the Community to the economy and thus foregoing a European labor and social constitution which that entailed, which indeed meant the ‘decoupling’ of the social dimension from the institutionalisation of Europeanised ‘undistorted competition’,⁴⁵ cannot so easily be exposed as (backhanded) cunning on the part of neoliberal reason. Instead, it stood to reason to let such efforts to expand and deepen the project of integration rest because opening up the economies and removing barriers to trade was considered a win-win matter even by socially oriented economists,⁴⁶ and it could be assumed that the social security systems organised along nation-state lines would remain intact in ‘embedded liberalism’.⁴⁷ Meanwhile, ordoliberalism has not been and is not deterred by any of this in its teleological-counterfactual reinterpretation of integration.⁴⁸

IV. MAASTRICHT AS A TURNING POINT

Europe’s integration through law withstood many a crisis and progressed only slowly – until in 1985 Delors, the charismatic President of the Commission, triggered an unprecedented dynamic with his ‘White Paper on completion of the internal market’.⁴⁹ The agenda of the White Paper was vigorously applauded in the ordoliberal camp (1). But the reaction to the Maastricht Treaty, which promised a development towards an ‘ever closer union’, was

more than restrained (2). When the Federal Constitutional Court let the Maas-tricht Treaty stand, only subject to ordoliberal provisos, it seemed that the economic constitution had been consummated (3).

IV.1. Invasion of the market⁵⁰

The Commission's internal market initiative can be interpreted as an attempt to bind Europe to economic rationality criteria.⁵¹ Adherents of the ordoliberal school also had this view, which was expressed vigorously in opinions prepared by the Academic Advisory Board of the Federal Ministry of Economic Affairs⁵² and the Monopolies Commission.⁵³

The new principle of mutual recognition was understood as the institutionalisation of regulatory competition designed to expose national legislation to competition among legislations. The tendency in the ECJ's rulings to intensify its supervision of national legislation could be understood in the same way. The reorientation of competition law and competition policy seemed just as important; it was to go beyond controlling private distortions of competition and cover anti-competitive regulations: deregulation and privatisation policies determined Europe's agenda.

These reorientations had amounted to turning away from the original ordoliberal economic constitution as it had been conceived of in the formative phase of the EEC. Nothing less than a paradigmatic revision in the national context, the groundwork for this new direction had already been prepared in the 1960s. At the time, 'old Freiburger' Walter Eucken was replaced by Friedrich A. von Hayek, who had returned from Chicago: Hayek's theorem of 'competition as a discovery procedure'⁵⁴ became the new guiding star for the second generation of post-war ordoliberalism.⁵⁵ The implications of the theoretical reorientation in terms of law, legal policy and economic policy were discussed in depth, first at the national and soon also at the European level. One building block remained untouched, however, even with all the refashioning of the theoretical structure of *Ordnungstheorie*: The project of integration was to remain nonpolitical and was to be shielded from discretionary influence. The 'economic constitution' retained its status as a guiding constitutional concept.⁵⁶

IV.2. Politicization of the market

The vigorous approval for the programme of the internal market did not, however, last long. It became more muted after the internal market initiative drew the Community into more and more issues of social regulation in the fields of occupational health and safety as well as environmental and consumer protection, leading to the establishment of a highly developed regulation

machinery: reregulation instead of deregulation, a surprising finding.⁵⁷ The weight and dynamic of these policy areas had been thoroughly underestimated by the protagonists of the ‘economic constitution’.⁵⁸ The ensuing treaty changes agreed in Maastricht in December 1991 were severely criticised by the protagonists of *Ordnungstheorie*.⁵⁹ Their reasons for doing so were diverse and – against the theoretical background of neo-ordoliberalism – understandable and logical. How could a constitutional core function continue to be assigned to the ‘system of undistorted competition’ if competition policy covered just one of many competing goals and if its relative weight had to be determined in political processes whose outcomes are uncertain? How could the commitment to competition as *the* discovery procedure in economic questions be reconciled with acknowledgement of industrial policy as a task legitimated by the constitution? After the Maastricht Treaty, it was no longer possible to ascribe positive validity to the ordoliberal ‘economic constitution’.⁶⁰ Unexpectedly, they came to view themselves as the opposition or critically distanced themselves from it.⁶¹

IV.3. A market without a state and states without markets

The Maastricht Treaty was brought before the German Federal Constitutional Court whose ruling of 12 October 1993⁶² caused quite a sensation and even more shock among Germany’s European law scholars: the Community, the court claimed, was merely an association of states; the Federal Constitutional Court had the right to review whether the system of power was being heeded; allegiance to ‘*ultra vires* legal acts’ was to be refused: it also found that it was a dictate of democracy for the populace to have the opportunity ‘to give legal expression . . . to that which – relatively homogeneously – joins it together intellectually, socially, and politically’.⁶³

The criticism triggered by all this⁶⁴ drew attention away from more interesting arguments put forward by the complainants who claimed that the European Community, now the European Union, had such far-reaching competencies that the nation-states could no longer exercise important functions. This erosion of national statehood, they asserted, called the continued existence of democratic statehood into question altogether. This line of argument prompted the Federal Constitutional Court to position the constitutional democracy of the Federal Republic of Germany in opposition to the continuing erosion of its statehood. Nonetheless, the ruling ultimately approved European integration. But it reached this result only by identifying – in substance – with specifically ordoliberal theorems; and in so doing, it limited the political control member states had over their economies.

How was that possible, and why did nobody notice?⁶⁵ One fundamental contradiction in the reasons given for the ruling actually appears obvious. It is

true that the Federal Constitutional Court declares that ‘fundamental’ powers are to be left to the Bundestag as an essential constitutional requirement. But then the reasons given for the ruling make a strictly ordoliberal about-face: economic integration, the court said, was a non-political process that was taking shape autonomously and beyond the member states. The Monetary Union needed functional legitimacy which was to be institutionalised via a constitutional duty to guarantee price stability and regulations to counter excessive budget deficits. By putting such institutional provisos into practice, the court concluded, the objections against the democratic legitimacy of economic integration had resolved themselves. In other words: the European Union is permitted to constitutionalise itself as a ‘market without a state’, and its member states may become ‘states without markets’.⁶⁶ Since the Monetary Union was dependent on Germany, the German conditions came to be applied across Europe. Ernst-Joachim Mestmäcker can see this only in positive terms: ‘Trust in independent institutions, represented by German experiences with the Federal Constitutional Court and the Bundesbank, was probably the most important German contribution to the constitutional structure of the EC’.⁶⁷

V. THE DE-LEGALISATION OF EUROPE⁶⁸

Methodologically speaking, Mestmäcker’s comment on the rule of law and on the institutions mediating this rule fit precisely with the interpretation of the EEC Treaty as a supranational economic constitution.⁶⁹ It is a reconstruction that, today as back then, hardly permits itself to be disturbed by inconsistencies in the structure of Community law and the practice of politics, and that instead reacts to transformations of the integration project by means of conceptual gambits in which *Ordnungstheorie* assumes a new form. This occurred, and failed, when the second-generation ordoliberals adjusted their *Ordnungstheorie* to Friedrich A. von Hayek’s ideas about ‘competition as a discovery procedure’.⁷⁰ The renaissance of regulatory policy associated with the policy of the internal market, which was to become the focus of the policy of integration, could be neither understood nor stopped on this basis. This course of events is recurring in the case of the Economic and Monetary Union which is to be the object of the ‘EC Treaty as constitutional charter of a Community based on the rule of law’.⁷¹

The legal structure of that union, conceived as ordoliberal, was to prove unstable very rapidly. When in 1998, before entry into the third stage of the Monetary Union, the German Federal Constitutional Court saw itself confronted with the demand to review whether the criteria it had formulated itself were being respected; the court had no other option but to refer to the prerogatives of the responsible organs of the state to assess the matter.⁷² The ECJ had

to react the same way when in 2004, the Commission tried to persuade it to declare a Council decision null and void; the Council had refused to use the legal instruments recommended by the Commission in the excessive deficit procedures instituted against France and Germany.⁷³

Is this what the 'rule of law' looks like? Is this simply a matter of disobedience, or are the Federal Constitutional Court and the ECJ operating outside the law because this kind of law neither deserves nor permits recognition? Majone, whose esteem for non-majoritarian, politically independent institutions is equal to Mestmäcker's, analysed the reasons for the development of the Monetary Union just as soberly as the negotiations about the EEC Treaty.⁷⁴ His assessment:

In deciding to grant quasi-constitutional status to the independence of the European Central Bank, the framers of the TEU accepted a democratic and constitutional monstrosity – a central bank operating in a political vacuum – for the sake of 'deepening' the integration process, indeed, of making it irreversible.⁷⁵

Barry Eichengreen, who had pointed out the Monetary Union's design flaws early on, considered the Stability Pact's 3 per cent debt limit, which was to round out the Monetary Union,⁷⁶ to be 'at best silly and at worst perverse'.⁷⁷ Today the question is being discussed whether it is possible to drive Greece out of the Monetary Union⁷⁸ and whether the European Central Bank violated the bailout ban of Art. 125 Para. 1 TFEU and disregarded its statutes when it bought Greek government bonds.⁷⁹

Have we been put in a political state of emergency by a deficient rule of law? Because of the financial crisis, the Union finds itself in a situation where the member states can no longer take action independently, but where a European crisis toolbox is not available – which means that crisis management must be organised without such a framework. This is not the place to pass judgement on the measures that have been and are being taken. It is, however, apparent that the independence of the European and national central banks now laid down in Art. 130 TFEU and the obligation of the European system of central banks to ensure price stability as its primary goal, stated in Art. 127 TFEU, is insufficient as orientation for coordinating fiscal, monetary and economic policy – in an economic area as heterogeneous as the Eurozone. This framework does not signify that the system has powers as wondrous as those available to Baron von Münchhausen when he pulled himself out of the swamp by his own shock of hair. The independence of the banking system and the limits on its authority did not establish supremacy over all the other constitutionalised policy goals of the Union.⁸⁰ Instead, the central bank is obliged to contribute its independent expertise to the coordination of economic policy in the Union. One way for law to survive in this process

would be to create transparent norms for the framework in which such coordination takes place in order to fill the vacuum that ordoliberal policy left in Maastricht.

In both cases, regulatory policy as well as the current financial crisis, ordoliberalism failed because of precisely those boundaries which it sought to set for political action in the name of the forces of law and order supposedly intrinsic to market activity. The question as to the reasons for this failure belongs in the realm of political economy and economic sociology. Instructive insights are to be found there in the works of a contemporary of von Hayek's who, like him, had to leave Vienna. In the same year von Hayek published his *Road to Serfdom*,⁸¹ Karl Polanyi presented analyses of the 'political and economic origins of our time' in his *Great Transformation*⁸² in which he demonstrated that 'markets' never emerged of their own devices any more than they are capable of maintaining themselves. Contemporary economic sociology has certainly retained Polanyi's insights and is in the process of bringing them up to date.⁸³ Accordingly, the simultaneity of internal market policies creating and regulating markets, which ordoliberalism was not willing to acknowledge, is an irrefutable consequence, yet not a substantively determined one, of the politicality of market activity, and financial crises result from the decision to treat money – a 'fictitious commodity' just like 'land' and 'labor' – as a commodity. Polanyi has generalised this observation:

Our thesis is that the idea of a self-adjusting market implied a stark Utopia. Such an institution could not exist for any length of time without annihilating the human and natural substance of society; it would have physically destroyed man and transformed his surroundings into a wilderness. Inevitably, society took measures to protect itself. . . .⁸⁴

When publishing his *Great Transformation* Polanyi was apparently expecting a re-embedding social countermove. But he had experienced countermovements of a different kind.

NOTES

1 Wherever possible, the references to German sources in the original version have been replaced by English equivalents. The text has been revised only very slightly.

2 On this tradition see Heinrich A. Winkler, ed., *Organisierter Kapitalismus. Voraussetzungen und Anfänge* (Göttingen: Vandenhoeck & Ruprecht, 1972) and Martin Höpner, 'Coordination and Organization: The Two Dimensions of Nonliberal Capitalism', *MPIfG Discussion Paper* 07/12 (2007); on its revival in post-war Germany see section II (notes 23 and 24).

3 Insightful especially Philip Manow, 'Ordoliberalismus als ökonomische Ordnungstheologie', *Leviathan* 29. 2 (2001): 179–98, with numerous references, as well as Philip Manow, *Social Protection and Capitalist Production. The Bismarckian Welfare State and the German Political Economy, 1880–1990* (Cologne: Max Planck Institute for the Study of Societies, unpublished Habilitationsschrift, 2001).

4 On the affinities between German conceptualisation of economic democracy and British 'industrial democracy' see Ruth Dukes, 'Conflict and the Crisis in Labour Law: From Weimar to Austerity', in *Critical Theories of Crisis in Europe: From Weimar to the Euro*, ed. Poul F. Kjaer and Niklas Olsen (London: Rowman & Littlefield International, 2016).

5 Alexander Rüstow, 'Paläoliberalismus, Kollektivismus und Neoliberalismus in der Wirtschafts- und Sozialordnung', in *Christentum und Liberalismus*, ed. Eric Voegelin (München: Zink, 1960), 149–178. See also by the same author 'Interessenpolitik oder Staatspolitik?' in *Querschnitte – Sechs Jahrzehnte deutscher Wirtschaftsgeschichte 1926–1986*, ed. Wolfram Engels and Hartmut Froels (Düsseldorf: Wirtschaftswoche, 1986); idem, 'State Policy and the Necessary Conditions for Economic Liberalism', chapter 9 of this volume.

6 Walter Eucken, 'Structural Transformations of the State and the Crisis of Capitalism', chapter 3 of this volume.

7 Rüstow, 'Interessenpolitik oder Staatspolitik?'

8 Alfred Müller-Armack, *Entwicklungsgesetze des Kapitalismus. Ökonomische, geschichtstheoretische und soziologische Studien zur modernen Wirtschaftsverfassung* (Berlin: Junker und Dünhaupt, 1932). On the life and works of Müller-Armack, see Dieter Haselbach, *Autoritärer Liberalismus und Soziale Marktwirtschaft. Gesellschaft und Politik im Ordoliberalismus* (Baden-Baden: Nomos 1991), 117 ff.

9 Franz Böhm, *Wettbewerb und Monopolkampf; eine Untersuchung zur Frage des wirtschaftlichen Kampfrechts und zur Frage der rechtlichen Struktur der geltenden Wirtschaftsordnung* (Berlin: Heymanns, 1964 [1933]).

10 Werner Abelshausen, *Kulturkampf. Der deutsche Weg in die neue Wirtschaft und die amerikanische Herausforderung* (Berlin: Kulturverlag Kadmos, 2003), 158 ff.

11 See Wilhelm Röpke, *German Commercial Policy* (London: Longmans, Green and Company, 1934), 40–41; see also Wilhelm Röpke, *Die Lehre von der Wirtschaft* (Vienna: J. Springer, 1937); on Röpke see Maurice Glasman, *Unnecessary Suffering. Managing Market Utopia* (London/New York: Verso, 1996), 52 ff.

12 Alexander Rüstow 1932 to the Verein für Socialpolitik: 'a strong state, a state that is positioned above the economy, above the interested parties, in the place where it belongs' (chapter 9 of this volume, [7]).

13 Carl Schmitt, 'Strong State and Sound Economy: An Address to Business Leaders', (1932) in *Carl Schmitt and Authoritarian Liberalism*, ed. Renato Cristi (Cardiff: University of Wales Press, 1998).

14 Hermann Heller, 'Autoritärer Liberalismus', *Die Neue Rundschau* 44 (1933). An English translation is since recently available: Hermann Heller, 'Authoritarian Liberalism?' *European Law Journal* 21. 3 (2015).

15 See chapter 2 of this volume.

16 Julio Baquero Cruz, *Between Competition and Free Movement: The Economic Constitutional Law of the European Community* (Oxford: Bloomsbury Publishing, 2002), 29. The German discussion about the Freiburg Circle under National Socialism is documented comprehensively and analysed convincingly in Milène Wegmann, *Früher Neoliberalismus und Europäische Integration: Interdependenz der nationalen, supranationalen und internationalen Ordnung von Wirtschaft und Gesellschaft (1932–1965)* (Baden-Baden: Nomos Verlag, 2002), 55 ff. – See also Manow, *Ordoliberalismus*, 179–185.

17 Schmitt, ‘Strong State and Sound Economy’.

18 Haselbach disagrees: see Haselbach, *Autoritärer Liberalismus*, 20. But see Rudolf Wiethölter, ‘Franz Böhm (1895–1977)’, in *Juristen an der Universität Frankfurt am Main*, ed. Bernhard Diestelkamp and Michael Stolleis (Baden-Baden: Nomos, 1989) and again with consummate precision, Wegmann, *Früher Neoliberalismus und Europäische Integration*, 61–66. – The case of the founder of the ‘social market economy’, Alfred Müller-Armack, is different, though; he did not belong to the core circle of the ordoliberals, quite obviously not at that time (see the references in note 8) but also not in post-war Germany.

19 Manow (in *Social Protection and Capitalist Production*, chapter 3.5) refers not only to primary sources, but also to a considerable number of historical studies providing evidence for his hypothesis.

20 Alfred Müller-Armack, ‘Wirtschaftslenkung und Marktwirtschaft’, in *Wirtschaftsordnung und Wirtschaftspolitik. Studien und Konzepte zur sozialen Marktwirtschaft und zur europäischen Integration*, ed. Alfred Müller-Armack (Freiburg: Rombach, 1966).

21 For a brief and precise analysis see Glasman, *Unnecessary Suffering*, especially 50 ff. (on ordoliberalism) and 56 ff. (on the Germany of the post-war period).

22 Michel Foucault, *The Birth of Biopolitics. Lectures at the Collège de France 1978–79*, ed. Michel Senellart (New York: Palgrave Macmillan, 2008), 85, 97.

23 See the considerations in Florian Rödl, ‘Europäisches Verfassungsziel soziale Marktwirtschaft – kritische Anmerkungen zu einem populären Modell’, *Integration* 28. 2 (2005), 152–53 in connection with Christian Joerges and Florian Rödl, ‘“Social Market Economy” as Europe’s Social Model?’ in *A European Social Citizenship? Preconditions for Future Policies in Historical Light*, ed. Lars Magnusson and Bo Stråth (Brussels: Peter Lang, 2004).

24 Cf. for example, Walter Eucken, *Grundsätze der Wirtschaftspolitik* (Hamburg: Rowohlt, 1959), 21 ff., 124 ff.

25 For details on this, see Wegmann, *Früher Neoliberalismus und Europäische Integration*, 73 ff.

26 Manow, ‘Social Protection and Capitalist Production’, 84 ff.; Abelshausen, *Kulturkampf*, 93 ff.

27 Cf. from the rich literature, for example, Gert Brüggemeier, *Entwicklung des Rechts im organisierten Kapitalismus*, vol. 2 (Frankfurt: Syndikat, 1979), 322 ff.; Friedrich Kübler, ‘Wirtschaftsrecht in der Bundesrepublik – Versuch einer wissenschaftshistorischen Bestandsaufnahme’, in *Rechtswissenschaft in der Bonner Republik*, ed. Dieter Simon (Frankfurt: Suhrkamp, 1994). – It is common knowledge that

the German Federal Constitutional Court (BVerfG) pursued its own course despite all this; see the famous *Investitionshilfe* judgement of 20 July 1954, BVerfGE 4, 7 and the later seminal *Mitbestimmungs-Urteil* of 1 March 1979, BVerfGE 50, 290.

28 Knut Wolfgang Nörr, *Die Republik der Wirtschaft. Teil I: Von der Besatzungszeit bis zur Großen Koalition* (Tübingen: Mohr Siebeck, 1999), 5 ff.

29 Nörr, *Republik der Wirtschaft*, 84.

30 Ironically, or thanks to the cunning of reason, even though his place on the list of candidates was only 3b.

31 Rudolf Wiethölter, ‘Die Position des Wirtschaftsrechts im sozialen Rechtsstaat’, in *Wirtschaftsordnung und Rechtsordnung. Festschrift zum 70. Geburtstag von Franz Böhm am 16. Februar 1965*, ed. Helmut Coing, Heinrich Kronstein and Ernst Joachim Mestmäcker (Karlsruhe: CF Müller, 1965), 59–60.

32 Werner Abelshausen, *Die Langen Fünfziger Jahre. Wirtschaft und Gesellschaft in Deutschland 1949–1966* (Frankfurt: Schwann, 1987).

33 Pointed and impressive on this as well, Foucault, *The Birth of Biopolitics*, 122 ff.

34 After that, the Union worked towards ‘a highly competitive social market economy’. – The formula was included thanks to an initiative of Joschka Fischer and his colleague Dominique de Villepin in the context of the European Convention – CONV 470/02 –, and it entirely disregards decades-long disputes between German *Ordnungspolitik* and French *planification*.

35 Manow, ‘Social Protection and Capitalist Production’, chapter 3.6, 96.

36 Glasman, *Unnecessary Suffering*, 55.

37 Friedrich August von Hayek, *The Road to Serfdom* (London: Routledge Press, 1944).

38 The Competition Act was adopted only in 1957, under Chancellor Konrad Adenauer, but with the decisive involvement of Ludwig Erhard, the ordoliberals’ most important political ally. It was presented as ‘the Basic Law of the social market economy’, but was a far cry from comprehensively putting the ordoliberal ideals into practice. The entire process is reconstructed in Brüggemeier, *Entwicklung des Rechts*, 383 ff. The more recent study by Milène Wegmann, *Der Einfluss des Neoliberalismus auf das Europäische Wettbewerbsrecht, 1946–1965* (Baden-Baden: Nomos Verlag, 2008) is very precise.

39 To name just a few: Joseph H. H. Weiler for law (see ‘Transformation of Europe’, *Yale Law Journal* 100. 8 [1991], 2 ff.; id., *The Constitution of Europe. ‘Do the New Clothes Have an Emperor’*, [Cambridge: Cambridge University Press, 1999], 10 ff.); Andrew Moravcsik for political science (*The Choice for Europe. Social Purpose/State Power from Messina to Maastricht* [Ithaca, NY: Routledge, 1998], 86 ff.), Alan S. Milward for history (*The European Rescue of the Nation-State* [London/New York: Routledge, 1999]). Legal historians thoroughly neglected the new Europe.

40 David J. Gerber, ‘Constitutionalizing the Economy: German Neo-liberalism, Competition Law and the “New Europe”’, *American Journal of Comparative Law* 42 (1994); Manfred E. Streit and Werner Mussler, ‘The Economic Constitution of the European Community. From “Rome” to “Maastricht”’, *European Law Journal* 1 (1995); Werner Mussler, *Die Wirtschaftsverfassung der Europäischen Gemeinschaft im Wandel. Von Rom nach Maastricht* (Baden-Baden: Nomos Verlag, 1998); Peter

Behrens, ‘Die Wirtschaftsverfassung der Europäischen Gemeinschaft’, in *Verfassungen für ein ziviles Europa*, ed. Gert Brüggemeier (Baden-Baden: Nomos Verlag, 1994). For current summaries cf. Armin Hatje, ‘The Economic Constitution within the Internal Market’, in *Principles of European Law*, ed. Armin von Bogdandy and Jürgen Bast (Oxford: Hart, 2010); Josef Drexl, ‘Wettbewerbsverfassung’, in *Europäisches Verfassungsrecht*, ed. Armin von Bogdandy et al. (Berlin/Heidelberg: Springer Verlag, 2009).

41 Cf. Christian Joerges, ‘Markt ohne Staat? Die Wirtschaftsverfassung der Gemeinschaft und die regulative Politik’, in *Staatswerdung Europas? Optionen einer Europäischen Union*, ed. Rudolf Wildenmann (Baden-Baden: Nomos Verlag, 1991); id., ‘Legitimationsprobleme des europäischen Wirtschaftsrechts und der Vertrag von Maastricht’, in *Verfassungen für ein ziviles Europa*, ed. Gert Brüggemeier (Baden-Baden: Nomos Verlag, 1994).

42 Instructive Alfred Müller-Armack, ‘Die Wirtschaftsordnung des Gemeinsamen Marktes’, in *Wirtschaftsordnung und Wirtschaftspolitik*, ed. Alfred Müller-Armack (Freiburg: Rombach, 1966), 401 ff.

43 Giandomenico Majone, *Europe as the Would-Be World Power. The EU at Fifty* (Cambridge: Cambridge University Press, 2010), 90 ff.

44 That is why it is anything but surprising that leading proponents of the ordoliberal school rejected the integration project; cf. Wegmann, *Früher Neoliberalismus und Europäische Integration*, especially 313 ff.

45 Fritz W. Scharpf, ‘The European Social Model: Coping with the Challenges of Diversity’, *Journal of Common Market Studies* 40. 4 (2002), 645 f.

46 Cf. especially the ‘Ohlin Report’ by the International Labour Organization: Bertil Ohlin, ‘Social Aspects of European Economic Co-operation. Report by a Group of Experts’, *International Labour Review* 74 (1956).

47 John Gerard Ruggie, ‘International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order’, *International Organization* 36 (1982); see J. Steffek, *Embedded Liberalism and Its Critics: Justifying Global Governance in the American Century* (New York: Palgrave Macmillan, 2006). – Cf. Stefano Giubboni, *Social Rights and Market Freedoms in the European Constitution. A Labour Law Perspective* (Cambridge: Cambridge University Press, 2006), who claims, ‘[T]he apparent flimsiness of the social provisions of the Treaty of Rome (and of the slightly less meagre ones of the Treaty of Paris, was in reality consistent with the intention, imbued with the embedded liberalism compromise, not only to preserve but hopefully to expand and strengthen the Member States’ powers of economic intervention and social governance: i.e., their ability to keep the promise of protection underlying the new social contract signed by their own citizens at the end of the war’ (ibid., 16); similarly Florian Rödl, ‘Labour Constitution’, in *Principles of European Law*, ed. Armin von Bogdandy and Jürgen Bast (Oxford: Hart, 2010).

48 Cf. the references in Wolf Sauter and Harm Schepel, *State and Market in European Union Law. The Public and Private Spheres of the Internal Market before the EU Courts* (Cambridge: Cambridge University Press, 2009), 13–15. Significantly, Hans Peter Ipsen, the nestor of German legal science on European law, who had accepted the functionalist theories of integration predominant in the social sciences at

the time, rejected the ordoliberal theory of the economic constitution (cf. Hans Peter Ipsen, *Europäisches Gemeinschaftsrecht* [Tübingen: Mohr Siebeck 1972]); see also V. below.

49 Commission of the European Communities, ‘White Paper from the Commission to the European Council on completion of the internal market’, COM (85) 310, 14 June 1985.

50 The title is from Steven Lukes, ‘Invasions of the Market’, in *From Liberal Values to Democratic Transition: Essays in Honor of János Kis*, ed. Ronald W. Dworkin (Budapest: Central European University Press, 2004).

51 On the following, in more depth and with more precise references, Joerges, ‘Markt ohne Staat?’ 244 ff., 253 ff.; Joerges, ‘Legitimationsprobleme’, 106 ff.; Sonja Buckel and Lukas Oberndorfer, ‘Die lange Inkubationszeit des Wettbewerbs der Rechtsordnungen – Eine Genealogie der Rechtsfälle Viking/Laval/Rüffert/Luxemburg aus der Perspektive einer materialistischen Europarechtstheorie’, in *Europäische Gesellschaftsverfassung. Zur Konstitutionalisierung sozialer Demokratie in Europa*, ed. Andreas Fischer-Lescano et al. (Baden-Baden: Nomos Verlag, 2009).

52 Wissenschaftlicher Beirat beim Bundesministerium für Wirtschaft (Academic Advisory Board of the Federal Ministry of Economic Affairs), *Stellungnahme zum Weißbuch der EG-Kommission über den Binnenmarkt* (Bonn 1986).

53 Monopolkommission, *Achtes Hauptgutachten der Monopolkommission 1988/1989*, Bundestag publication 11/7582, 16 July 1990, 401.

54 Friedrich August von Hayek, ‘Der Wettbewerb als Entdeckungsverfahren’, in *Freiburger Studien. Gesammelte Aufsätze*, ed. Friedrich August von Hayek (Tübingen: Mohr Siebeck, 1969). English version: ‘Competition as Discovery Procedure’, *The Quarterly Journal of Austrian Economics* 5 (2002).

55 The most influential economist of the Freiburg School during this period was Erich Hoppmann, his most important companion as a legal scholar Ernst-Joachim Mestmäcker, a student of Böhm.

56 The shift from Walter Eucken to Friedrich A. von Hayek and especially the shift of focus from private to regulatory distortions of competition impacted the role of the state and its institutions. William Scheuerman claims that the differences between von Hayek and Schmitt were not as serious as is usually thought (see his ‘The Unholy Alliance of Carl Schmitt and Friedrich A. Hayek’, *Constellations* 4. 2 [1997]). Indeed, von Hayek also harboured the ordoliberal and Schmittian mistrust of the institutions of pluralist polities and their capabilities. But their agreement in terms of analysis did not extend to their conclusions. It is true that the two shared the conviction that welfare-state interventionism results in a ‘quantitatively’ strong state as called for by Carl Schmitt in his famous 1932 speech (Schmitt, ‘Strong State and Sound Economy’). In particular, von Hayek did not propagate the ‘qualitatively’ strong state Carl Schmitt had committed himself to after 1933. Scheuerman does not imply that he did this. Instead, he is concerned with the possible consequences of a systematic dismantling of protections provided by the welfare state – and in this respect, however, also with the social and political risks of the ‘peculiar institutional proposal’ put forward by von Hayek in *Law, Legislation and Liberty* (Scheuerman refers to Friedrich August von Hayek, *Law, Legislation and Liberty (Volume 3). The Political Order of a Free People* [Chicago: University of Chicago Press, 1979], 113).

57 First identified with unequivocal clarity and elaborated programmatically above all by Giandomenico Majone, 'Regulating Europe: Problems and Prospects', *Jahrbuch zur Staats- und Verwaltungswissenschaft* 3 (1989); Giandomenico Majone, ed., *Deregulation or Re-Regulation? Regulatory Reform in Europe and the United States* (London: St Martin's Press, 1990).

58 The reasons are diverse. One of them is the historically determined priorities of the agenda of *Ordnungspolitik*. It is by no means agreed that *Ordnungstheorie* is unable to cope with the problems posed by the 'risk society' (cf. Karl-Heinz Ladeur, *Negative Freiheitsrechte und gesellschaftliche Selbstorganisation* [Tübingen: Mohr Siebeck, 2000], esp. 171 ff.; Alessandra Arcuri, 'The Case for a Procedural Version of the Precautionary Principle. Erring on the Side of Environmental Preservation', in *Frontiers in the Economics of Environmental Regulation and Liability*, ed. Marcel Boyer et al. [Farnham: Ashgate, 2006]). But it is indisputable that the protagonists of the 'economic constitution' contributed little to the policy fields of social regulation.

59 Suffice it here to refer to Mussler, *Wirtschaftsverfassung*, 166 ff., as well as the references in Joerges, 'Legitimationsprobleme'; Streit and Mussler, 'Economic Constitution'; Behrens, 'Wirtschaftsverfassung', 73 ff.; most elegantly: Ernst-Joachim Mestmäcker, 'On the Legitimacy of European Law', in *Wirtschaft und Verfassung in der Europäischen Union. Beiträge zu Recht, Theorie und Politik der europäischen Integration*, ed. Ernst-Joachim Mestmäcker (Baden-Baden: Nomos Verlag, 2003), 133 ff.

60 Cf. Wolf Sauter, *Competition Law and Industrial Policy in the EU* (Oxford: Oxford University Press, 1997), 26 ff.

61 See, for example, Streit and Mussler, 'Economic Constitution' and Behrens, 'Wirtschaftsverfassung'. The fact that the multiplicity of constitutional requirements relativises the relevance of the system of undistorted competition was certainly registered by Ernst-Joachim Mestmäcker and Heike Schweitzer, *Europäisches Wettbewerbsrecht* (Munich: C. H. Beck, 2004), 112 ff., but they add that 'the primacy of an overall order characterized by the internal market and undistorted competition had prevailed . . . in the German-language literature'.

62 BVerfG 89, 155–233 [Brunner v European Union Treaty, 89 BVerfGE 155 and 1 CMLR 57 (1994)].

63 BVerfG 89 (Decision of 12 October 1993), 186.

64 Cf. in particular Joseph H. H. Weiler, 'Der Staat 'über alles': Demos, Telos und die Maastricht-Entscheidung des Bundesverfassungsgerichts', *Jahrbuch des öffentlichen Rechts (N.F.)* 44 (1996); Brun-Otto Bryde, 'Die bundesrepublikanische Volksdemokratie als Irrweg der Demokratietheorie', *Staatswissenschaften und Staatspraxis* 5 (1994).

65 This negative assessment may be flawed, since nobody can cope with all the literature on the Maastricht ruling; it is, however, true that even so comprehensive an analysis as that by Franz C. Mayer, *Kompetenzüberschreitung und Letztentscheidung. Das Maastricht-Urteil des Bundesverfassungsgerichts und die Letztentscheidung über Ultra-vires-Akte in Mehrebenensystemen; eine rechtsvergleichende Betrachtung von Konflikten zwischen Gerichten am Beispiel der EU und der USA* (Munich: C. H. Beck, 2000), does not address the issues raised by the ruling with regard to economic constitution law.

66 Cf. Christian Joerges, ‘States without a Market. Comments on the German Constitutional Court’s Maastricht-Judgment and a Plea for Interdisciplinary Discourses’, NISER Working Paper (Utrecht, 1996), <http://eiop.or.at/eiop/texte/1997-020.htm>.

67 Ernst-Joachim Mestmäcker, ‘Europäische Prüfsteine der Herrschaft und des Rechts’, *ORDO* 58 (2007), 12.

68 The heading for the following remarks refers to Christian Joerges, ‘Integration through De-Legalisation?’ *European Law Review* 33. 3 (2008).

69 See III. above.

70 See IV.1 above.

71 Mestmäcker, ‘Europäische Prüfsteine’, 3.

72 BVerfG 97 (Decision of 31 March 1998), 350.

73 Case C-27/04, decision of 13 July 2004, European Court Reports 2004, I-6649 – Commission/Council, paragraph 80.

74 Majone, *Europe*, 90 ff.

75 Majone, *Europe*, 34; see also 162.

76 See, for example, Barry J. Eichengreen, ‘Should the Maastricht Treaty Be Saved?’ *Princeton Studies in International Finance* 74 (1992).

77 Stated in a *DIE ZEIT* article on 20 November 2003.

78 Martin Seidel, ‘Der Euro – Schutzschild oder Falle: Kann die EWU-Mitgliedschaft eines Landes bei Überschuldung und permanenten Leistungsbilanzdefiziten aufgehoben werden?’ *ZEI Working Papers* (Bonn, 2010).

79 M. Seidel, ‘Der Ankauf nicht markt- und börsengängiger Staatsanleihen, namentlich Griechenlands, durch die Europäische Zentralbank und durch nationale Zentralbanken – rechtlich nur fragwürdig oder Rechtsverstoß?’ *Europäische Zeitung für Wirtschaftsrecht* 21. 14 (2010).

80 The ECJ expressed this rather clearly to the bank: ‘[T]he fact that a body, office or agency owes its existence to the EC Treaty suggests that it was intended to contribute towards the attainment of the European Community’s objectives and places it within the framework of the Community, so that the resources that it has at its disposal by virtue of the Treaty have by their nature a particular and direct financial interest for the Community’ (Case C-11/00, judgment of 10 July 2003, Collection 2003, I-7147, paragraph 91). Of the same tenor, Advocate General Jacobs in his conclusions of 3 October 2002: ‘[T]he ECB forms an integral part of the Community framework. . . . The particular position of the ECB *within* that framework – which distinguishes it from, on the one hand, the institutions and, on the other hand, the agencies and offices created by secondary Community law – cannot, in my view, lead to the conclusion that the ECB is not a body forming part of the Community. The ECB is subject to the general principles of law which form part of Community law and promotes the goals of the Community set out in Article 2 EC through the implementation of the tasks and duties laid upon it’ (*Ibid.*, paragraph 60).

81 Hayek, *Road to Serfdom*.

82 Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 2001).

83 Reference is made here only to Alexander Ebner, *Governance und Public Policy* (Erfurt: unpublished habilitation thesis, 2008); see also Alexander Ebner,

'Transnational Markets and the Polanyi Problem', in *Karl Polanyi, Globalisation and the Potential of Law in Transnational Markets*, ed. Christian Joerges et al. (Oxford: Hart Publishing, 2011).

84 Polanyi, *The Great Transformation*, 3.

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Chapter 14

Is Germany's and Europe's Crisis Politics Ordoliberal and/or Neoliberal?

Brigitte Young

The outcome of the Brexit referendum of the United Kingdom on 23 June 2016 to leave the European Union (EU) has increased the already-shaky foundation of the EU. The EU sovereign debt crisis mode has gone into top gear as crisis after crisis erupted in many of the southern periphery countries of the Eurozone. It all started with the US financial crisis in the sub-prime markets in 2007/2008, which triggered worldwide financial panic and staggering declines in global growth rates. Even nine years after the crisis and despite unconventional monetary policy intervention by the ECB, full economic recovery to the pre-crisis level is not in sight. In the Eurozone, the financial crisis manifested itself as a sovereign debt crisis in 2010, demonstrating the fragility of the European banking sector. On top of these economic and financial crises, geopolitical turmoil in the Middle East resulted in one of the biggest refugee exoduses, which began in 2014, and saw numbers rise as the crisis over Ukraine and the annexation of the Crimea precipitated a *Cold-War* climate between the East and West. None of these crises have been resolved, although some of them may have disappeared temporarily from the media headlines, only to re-emerge as the banking crisis in Italy and the legal problems of the Deutsche Bank hailing from the period leading to the financial crisis clearly demonstrate.¹ The Brexit vote is just the newest challenge to the sixty-year history of European integration.

Is the Eurozone doomed to fail and, if so, what role do economic ideas play? Do EU political leaders have a reform plan to boost economic performance to stem the swelling anger and frustration of people expressed in euro-scepticism and the drift to populist and right-wing movements? Does the past fragmented crisis management mode among EU member states signal the 'new normal' of how to resolve the various interdependent crises? The post-Brexit mood has already led to disagreements about whether to proceed with

European integration. Some warn that, in times of great uncertainty, more integration would lead to further euro-scepticism, as do some members of the German Economic Council of Economic Experts,² while others advocate that European governments should step in now and build a stronger Europe in order to avoid further anti-euro sentiments.³

There is even more uncertainty and irritation about the role that particular economic ideas may be playing in the crisis management, as Germany's ordoliberalism is assumed to have influenced the hard-line austerity policy against the indebted peripheral countries of the Eurozone. The renaissance of ordoliberalism as a research topic mainly by Anglo-Saxon political scientists and political economists has sparked an ideational battle based upon the assumption that the Eurozone policy has followed the script of the ordoliberal ideas of fiscal austerity and competitiveness.⁴ Largely unintended by Eurozone political actors, the Eurozone crisis has thus become the battleground which pits the supposedly 'German iron cage'⁵ of ordoliberalism against post-Keynesianism.⁶ It is for this reason that the University of Freiburg organised a Colloquium entitled *Ordoliberalism: A Chance or Danger for Europe?* on 14 September 2016. The purpose was to inquire into the existing ideational conundrum of whether ordoliberal ideas have provided a coherent paradigm and subsequent blueprint for the rule-based austerity governance of the Eurozone, as many Anglo-Saxon political economists and media pundits seem to maintain. The presenters largely agreed that the German rigidity (pursued through the Troika) in applying austerity policies on the indebted southern European countries has little to do with the ideas of ordoliberalism. Rather, Germany's insistence on fiscal prudence is the result of national interests or even egotism in that Germany is unwilling to pay for the supposed fiscal profligacy of indebted Eurozone countries.

Problematic about this ideational debate is the lack of clarity of *who* the ordoliberals actually are, given that there are different branches of ordoliberalism, of which the Freiburg School is but one branch, and *what*, specifically, is ordoliberal in the shaping of the German euro crisis management. A fundamental dispute and cause of confusion surrounds the meaning of the term 'neoliberalism', which was first coined in Paris in 1938 at the Colloque Water Lippmann (successively becoming ordoliberalism in the 1950s) and the later usage of neoliberalism starting in the 1970s with a meaning completely different from that of the earlier one.⁷ Is the recent convergence between the German neoliberalism or ordoliberalism and the Anglo-Saxon neoliberalism justified on epistemological and ontological grounds?

The general purpose of this chapter is to engage with the different meanings of neoliberalism from a historical perspective, to describe the grounds on which German ordoliberalism has become a dangerous idea for critics of the Eurozone crisis management, and, finally, to answer the question to

what extent ordoliberalism has played a role in the German domination of EU macroeconomic policy. The structure of this chapter is as follows: First, the chapter engages with the puzzling assumption that neoliberalism or ordoliberalism, as coined in the 1930s, is synonymous with neoliberalism, a term associated with the radical market fundamentalism of the Chicago school and politically in vogue since the tenure of Margaret Thatcher in Great Britain and Ronald Reagan in the United States in the late 1970s/early 1980s. This involves delving into the historical roots of European neoliberalism and the re-emergence of neoliberalism in the 1970s, with the latter emphasising mainly the negative liberty of ridding the economy of regulatory constraints. Next, the discussion shifts to the critics of ordoliberalism and discusses their main negative contentions about the Freiburg School, pursuing a macroeconomic strategy based upon austerity, rather than stimulating growth. This discussion sets the stage to ascertain, in the fourth section, whether the economic policies of the German government are informed by the ordoliberal tradition.

I. FORMS OF NEOLIBERALISM: GERMAN NEOLIBERALISM AND ANGLO-SAXON NEOLIBERALISM

Defining neoliberalism is all the more difficult because the concept, as it emerged in the 1930s, differs fundamentally from the form in which it re-emerged in the 1970s. The old concept re-appeared as a policy response to the Keynesian crisis of stagflation and was made popular by the political ascendance of Margaret Thatcher in Great Britain and Ronald Reagan in the United States. The new neoliberalism has become a central concept in the social sciences, describing the structural changes in the global economy since the 1970s, implying the triumph of market forces and individual autonomy over state power. At a fundamental level, there is a normative difference in neoliberal ideas between negative and positive liberty. Drawing on Isaiah Berlin's discussion⁸ on the dichotomy between negative liberty as *freedom from specific constraints* and *positive freedom to facilitate the self-determination of individuals*, the most recent neoliberalism of market fundamentalism focuses solely on the concept of negative liberty and rejects the relevance of positive freedom to facilitate individual liberty through state intervention.⁹ In contrast, the older concept of neoliberalism (and the then ordoliberals) is concerned with both the negative and positive liberty of citizens. Negative liberty plays a role in constraining private and public monopoly power to prevent the negative dynamics of privilege seeking and privilege granting, while, positive freedom simultaneously involves the role of the state in creating a *constitutional framework* conducive in terms of better service to consumers (*Ordnungspolitik*).¹⁰

II. HISTORICAL ORIGIN OF CONTINENTAL EUROPEAN NEOLIBERALISM

Historically, the European concept of neoliberalism originated in the 1930s, in opposition to the Anglo-Saxon *laissez-faire* liberalism of self-regulating markets. The best account of such a *laissez-faire* economic system is found in Karl Polanyi's *The Great Transformation*,¹¹ in which he argues that the collapse of the international economic system in the 1930s was a direct consequence of the attempt to organise the economy upon the basis of *laissez-faire* principles influenced by the British and Austrian schools of liberal economics. According to the German economist Wilhelm Röpke, the term 'neoliberalism' was coined at a symposium in honour of Walter Lippmann in Paris in 1938, the aforementioned Colloque Water Lippmann.¹² The participants selected the term neoliberalism to signal the start of a new liberal movement against the *laissez-faire* liberalism of the nineteenth century. While not all members endorsed the term neoliberalism, it nevertheless became an umbrella designation for different strands of liberalism which developed under its roof with the economist Walter Eucken, the jurists Franz Böhm and Großmann-Doerth as its most renowned representatives. The Faculty of Law and Economics of Freiburg University provided a conducive environment to integrate the legal and economic perspectives that are the trademark of the Freiburg School tradition, subsumed under the term of ordoliberalism.¹³

The exponents of this neoliberal circle united in rejecting the economic reductionism which they perceived as central to the ideas of nineteenth-century *laissez-faire* liberalism. Instead, they emphasised an ethical foundation of economics, delineating an important role for the state to set the constitutional framework for economic competition in order to serve the larger interests of society. The intellectual proponents of neoliberalism argued to combine economic efficiency with human decency to achieve a just and stable social order. As suggested by the term 'social market economy', which developed from the earlier neoliberal circles and is still used today to describe some of the continental European (German) economic model, the belief in the self-regulatory capacity of the market was rejected. In contrast, *laissez-faire* intellectuals such as David Ricardo, Thomas Malthus, Edmund Burke and, from the Austrian economic school, Ludwig von Mises developed the theoretical foundation for claiming the superiority of negative freedom (deregulate markets) over public intervention to regulate markets (positive liberty). These intellectuals postulated that unfettered economic competition was superior to any form of state guidance in coordinating human efforts. A belief in the naturalness of the market and the self-regulating power of markets forces were the key concepts of *laissez-faire*. In rejecting the *laissez-faire* liberalism with its sole emphasis on the defence of negative liberty, the proponents of neoliberalism challenged the separation between the political

and economic spheres. They envisioned the state to provide a constitutional economic framework to enhance positive freedom for citizens while at the same time constraining the power of private and public monopoly power that hinder citizens' autonomy.¹⁴

It is a puzzle how the term neoliberalism as an ethical concept has turned into the exact opposite becoming synonymous with a radical-market-oriented system rejecting state intervention in the economy since the late 1970s.¹⁵ Intellectuals most closely identified with the norms of market fundamentalism are found in the so-called Chicago school, but only the political rejection of the post-war Keynesian consensus in Great Britain and the United States in the late 1970s made the spread of anti-state rhetoric of laissez-faire neoliberalism globally possible. A central element of this new neoliberalism is the removal of regulatory and social constraints through such measures as liberalisation, deregulation and privatisation to unleash the productive forces of capitalism. Twenty-five years later, there is still no shared consensus on the meanings of neoliberalism as it emerged at the end of the 1970s except for its negative connotation. The term has become synonymous with human and natural resource exploitation, the dismantling of the welfare state, increasing global inequality and even oppression in the name of freedom.¹⁶ It is those negative effects resulting from a belief in unrestrained and self-regulating market forces ordoliberal economists and lawyers of the 1930s tried to mitigate.

It should not come as a surprise that I strongly reject the interchangeability of the meaning of continental neoliberalism of the 1930s with the Anglo-Saxon neoliberalism coming into vogue in the 1970s.¹⁷ It neither does justice to the origin of the term and its further development of ordoliberalism after World War II. However, this differentiation between the two neoliberalisms does not answer the question on what grounds ordoliberalism has come to be seen as the 'danger for Europe' and whether this school of thought has been the major influence in German management of the Eurozone crisis.

III. ORDOLIBERALISM AS DEFINED BY ITS CRITICS AS A DANGER FOR EUROPE

There are two contentious points dominating the discussion against ordoliberalism. The first deals with the austerity politics against the highly indebted Eurozone countries where the *Bundesbank* is seen as the epitome of the ordoliberal tradition. Second, there is much confusion about the phrase 'strong state' bringing to the fore the German tradition of state-centrism and authoritarianism.

In terms of the much-demonised policy of austerity, it was Mark Blyth with his catching book title *Austerity: The History of a Dangerous Idea* (2013) who made the link between ordoliberalism and rule-based austerity.

Essentially, the idea is that indebted peripheral countries have lived beyond their means, and debt¹⁸ reduction must result in cutting domestic wages and declining prices in order to restore competitiveness. This calls for drastic budget reductions, a dead economic idea, according to Blyth, which has led to low growth along with tremendous increases in inequality. While the Republican government under George W. Bush argued for Keynesianism to stimulate the economy following the onset of the financial crisis of 2007/2008, the German government insisted on monetary stability plus strict rules on debt and deficit controls. That Germany was able to take this lead in managing the Eurozone crisis, has, according to Blyth, to do with the fact that German ideas have been at the very heart of both the EU and the euro since its inception by banning Keynesian demand management and insisting on running budgetary surpluses during economic slumps.

The central player in this game of austerity and thus preventing any Keynesian stimulus is the German *Bundesbank*, which supposedly is the main embodiment of ordoliberal values of monetary stability.¹⁹ The specific German approach to monetary stability was then transferred to the European level with the introduction of the European Monetary Union (EMU) and the formation of the European Central Bank (ECB) in 1999. Whether the link between the ordoliberal *Bundesbank* and an ordoliberal mandate of the ECB did, in fact, shape the monetary economic constitution in the Bundesbank Act of 1957 has received little attention.²⁰ According to Lars Feld, Ekkehard Köhler and Daniel Nientiedt, there were several ideas floating around among ordoliberals in the late 1940s about 'how a monetary constitution of greater stability can be integrated into the competitive order'.²¹ In the end, the various ordoliberal proposals for a monetary constitution were not adopted in the Bundesbank Act of 1957. Eucken championed for a 'rational automatism'²² to guide monetary policy, but this was rejected in favour of the discretionary power of the German *Bundesbank*. Nor was the much-cited independence of the *Bundesbank* ever a central feature for the monetary concepts of ordoliberalism.

It may come as a surprise to many critics that Keynesianism played a crucial role in the 1960s and that German monetary policy was seen as part of an integrated concept of employment policy. To stabilise the business cycle after the first recession in 1967, the *Bundesbank* deviated from the goal of price stability and introduced monetary measures to boost aggregate demand. A notable shift emerged in the wake of the Bretton Woods collapse when the *Bundesbank* endorsed Milton Friedman's quantitative theory of money as a target for monetary policy in 1974. The *Bundesbank* followed the monetarist policy rule into the 1990s. Feld et al.²³ conclude that while price stability had emerged as the sole objective of German monetary policy by the time of the Treaty of Maastricht in 1992, German monetary development should be understood in the context of the international debate between Keynesianism

and Monetarism. This debate owes much more to the dominance of New Institutional Economics (NIE) taught at virtually all Anglo-Saxon economic departments as well as prominent economics and business studies curricula in Europe than to the Freiburg School.²⁴ The ordoliberal impact of the Freiburg School 'was far less important than commonly assumed in the debate on the "ordoliberalization" of Europe'.²⁵

In terms of the second contentious issue, the phrase 'strong state' used by Eucken supposedly signals 'a vision of the state as a monolithic structure, insulated from societal influence, and willing and powerful enough to force other actors into compliance with its decision'.²⁶ This interpretation has led to view European governance as authoritarian, undemocratic and technocratic. Walter Eucken did use the phrase 'strong state' to 'indicate the importance of extending the logic of *Ordnungspolitik* from the realm of the economic constitution to that of the political constitution'.²⁷ Due to Eucken's early death in 1950, the concept of the 'strong state' remained largely vague. Werner Bonefeld, focusing mostly on Wilhelm Röpke and Alfred Müller-Armack writings of the 1930s, asserts that a free economy amounts to a political practice of the strong state. In the ordoliberal account, a free economy and a strong state constitute an interdependent relationship, in which the state is the concentrated force of the system of liberty. As a result,

the study of ordoliberalism brings to the fore a tradition of a state-centric neo-liberalism, one that says that economic freedom is ordered freedom, one that argues that the strong state is the political form of free markets, and one that conceives of competition and enterprise as a political task.²⁸

Much of the academic literature draws on the writings of the German ordoliberals of the 1930s and does not take into account the transformation and the distance that ordoliberals took from their initial sympathy with a 'strong state' authority. Thinkers of the different ordoliberal branches integrated the lessons that they had learned from the traumatic experience of the Nazi dictatorship and, after 1945, were intent on creating a constitutional order. The notion of the 'strong state' was replaced with a much more muted role for the state in providing a constitutional framework to guarantee both economic stability and freedom within this framework.²⁹ As Vanberg points out, the phrase 'strong state', if read in isolation, may sound undemocratic or even anti-democratic.³⁰ Yet rather than advocating an authoritarian concept of politics, the Freiburg scholars were intent on weakening the influence of special interests for the benefit of the common interests of citizens. Undoubtedly, a discussion about the role of the state and the 'democratic deficit' in the Eurozone is a much-needed future research topic. Isaiah Berlin's discussion on the dichotomy between negative liberty as *freedom from specific constraints*

and *positive freedom to facilitate the self-determination of individuals* could facilitate a more nuanced discussion.³¹ Rather than a ‘strong state’, the notion of a ‘light state’ may come closer to the ordoliberal concept of the *economic constitutional order* (the rules of the game) both in the economic arena and in politics.

The next section will ‘look on the ground’ and analyse the extent to which the ordoliberal tradition has informed the economic policies of the German government in the Eurozone crisis, and the extent to which it has pursued a strategy of political pragmatism and even of national egotism during the crisis.

IV. HAS ORDOLIBERALISM SHAPED THE EURO CRISIS MANAGEMENT?

The inquiry may be facilitated if we follow Dyson’s recommendation to think of ordoliberalism not as a specific school with strict ‘golden rules’, but as an epistemic tradition, instead.³² Tradition implies a more open way of interrogating the characteristics of the ordoliberal way of viewing society, economics, the state and ethics. Rather than formal intellectual knowledge that can be delineated according to a set of criteria, the concept tradition suggests a more practical and implicit form of knowledge. This type of knowledge is best seen as being institutionally and culturally embedded and resembles a kind of ‘common sense’ which is not reducible to certain immutable rules.³³ Viewing ordoliberalism as a tradition, however, does not imply that there are no identifiable characteristics pertaining to this tradition. One of these is the long-standing tradition of a rule-oriented *Ordnungspolitik*, rather than an interventionist policy-making mode. This implies that ‘the principle means by which economic policy can seek to improve “the economy” is by improving the institutional framework within which economic activities take place’.³⁴

If we analyse the impact of ordoliberalism on the Eurozone crisis management, two characteristics should answer the question of whether a link exists between the two levels: the rule-based Eurozone Monetary Union (EMU) and the German rejection of joint liability (*Haftung und Kontrolle*). In terms of the EMU, the rule-based union reflects an attempt to create a framework of rules aimed to ensure a sound fiscal policy and sound money. In creating the euro as a de-nationalised currency with no links to the individual member states, meaning that member states had to pay their debt in a currency which they could not create, the Maastricht Treaty and the Stability and Growth Pact functioned to counteract fiscal profligacy by the member states. With the introduction of the single currency, the member states of the Eurozone entered a regime of fixed exchange rates. This meant that countries could not

devaluate in order to improve their competitiveness, as countries can do with national currencies. Since the nominal exchange rate is fixed, all they can do, to become more competitive, is to adjust wages and prices accordingly.

It is here that the critique sets in against the supposedly ordoliberal logic of the monetary union. However, as Feld et al.³⁵ point out, the design of the monetary union owes more to the New Institutional Economics (NIE) than to any particular ordoliberal principles. Monetary economists from NIE suggest that any devaluation is short-lived, since it does not address the underlying causes of the prevailing economic conditions. To wit, as long as devaluations are ruled out as a policy option, the relative competitiveness of a country can be adjusted only through wages and prices, as is presently demanded of the indebted countries in the Eurozone. 'Notably, the need for such adjustment cannot be attributed to any specific type of ordoliberal heritage or anything else specifically "German"'.³⁶

Germany can be critiqued for following the tenets of Applied Monetary Economics, which can be found in all mainstream economic textbooks, an economic doctrine which is referred to as neoliberalism in the social sciences. In fact, ordoliberalism, or the 'Freiburg School economics', is no longer taught in German economics or business schools, and certainly not in any prestigious Anglo-Saxon programmes which are completely unfamiliar with ordoliberal ideas.³⁷

If commentators criticise the German decision makers for rejecting fiscal transfers among the member states of the currency union, and accuse Germany of a lack of solidarity, the culprit is not ordoliberalism thinking, but rather the existing monetary economics of the NIE. Undoubtedly, there are grounds to criticise Germany for not showing more solidarity in the Eurozone crisis management. However, this position can also be explained by referring to national egotism and German domestic politics, in that Germany was unwilling to support Eurobonds since this would have increased its interest rates and thus reduced its competitiveness. But what is most important for our argument is that neither the distinct set-up of the EMU nor the logic of the Eurozone monetary union is the outcome of specifically ordoliberal principles.

Let us turn to the second tenet of whether the German rejection of Eurobonds is based upon ordoliberal thinking. Germany was unwilling to share the debt burden with Eurozone member states in financial stress. The rejection of joint liability is one of Eucken's seven principles for an economic and humane constitution.³⁸ In terms of the EMU, the primacy of currency policy (price stability) and the principle of liability are particularly central. Eucken's insistence on both liability and control stems from his reasoning that individual liability changes the parameters of costs and risk. As such, Eurozone countries which accumulated debts within the monetary union

have to be held accountable for their decisions and cannot impose the costs on others. Germany rejected the EU-Commission's proposal in 2011 to issue government bonds jointly in order to reduce the financing costs of the highly indebted peripheral countries. At the same time, the German government supported the European Stability Mechanism (ESM) as a rescue mechanism for the indebted countries, despite the fact that it also violated the joint liability principle, as Jens Weidmann, President of the German *Bundesbank*, testified before the Budget Committee of the German *Bundestag* in 2011.

Given the existential crisis of the euro in 2012, the rejection of Eurobonds by Germany brought the ECB into the picture with the announcement of the Outright Monetary Transactions Policy (OMT) aimed at purchasing bonds from member states of the Eurozone. The German government did not openly endorse the measure, but neither did it reject it. It clearly violated the ordoliberal principle of liability and resulted in a flood of lawsuits at the constitutional court in Karlsruhe from irate German politicians across the party spectrum and from citizens. Ordoliberals criticised the OMT programme, since the ECB was combining monetary with fiscal policy measures. More to the point, the European Stability Mechanism and the OMT programme seem, according to Feld et al.,³⁹ to be driven by German *pragmatism* at the time of the existential crisis, rather than adherence to an ordoliberal doctrine. In fact, 'Germany may have followed ordoliberal thinking rather too little than too much'.⁴⁰ It would have been more effective to agree to a 'partial (legacy) debt mutualisation against the preservation of independence of the ECB and national debt brakes'.⁴¹

During the height of the crisis in 2012, ordoliberals proposed to reform and construct a more rule-based EMU with a credible no-bailout clause (rejection of joint liability). The Council of the Economic Experts⁴² in a special report advocated EMU reforms which focused on fiscal policy reforms (fiscal integration), a crisis mechanism in the form of a debt-restructuring regime and financial market regulation. In fact, just recently some members of the Council reiterated their call for a Eurozone orderly debt restructuring mechanism with a creditor participation clause.⁴³ Their reflection rests on the fact that the likelihood of a new sovereign debt crisis cannot be ruled out, and thus an orderly process of debt re-structuring has advantages over the present *status quo*. In addition, 'the genie of sovereign debt restructuring in the Eurozone is already out of the bottle and cannot be put back',⁴⁴ and Greek and Cyprus debt re-structuring signalled that private creditors were no longer shielded from a bail-in. The authors Jochen Andritzky et al. suggest a reform of the European Stability Mechanism (ESM). This body was created during the sovereign debt crisis to provide liquidity assistance in cases where access to capital markets was no longer feasible ('loans against reforms'). A re-structuring would mean strict conditionality, but, at the same time, it would reduce uncertainty and

ad hoc re-structuring, as was the practice with the privately held debt in Greece and Cyprus.

The idea is to differentiate between a mere liquidity crisis and a full-blown solvency crisis.⁴⁵ Since this cannot be ascertained with any certainty at the start of a crisis, the proposal is divided into a sequential two-stage mechanism. In the first stage of the debt operation, a simple decision triggers a maturity extension in the following cases: (1) if the debt exceeds 60–90 per cent of GDP; (2) if the funding requirement for the debt exceeds 15–20 per cent of GDP; or (3) if there have been two to three or more violations of fiscal rules in the past five years. If such a mechanism were in place now, France, Portugal, Spain, Italy would have access to receive maturity extension and interim funding reducing the great uncertainty plaguing the financial stability of these countries. If the debt operation subsequently turns out to be more serious and the debt sustainability is in danger, then the ESM would conduct an analysis of deeper re-structuring and even consider debt relief.

Against the often-cited belief that German policies are only about adhering to strict rules, the Council suggests some discretion with fiscal rules to policy-makers during the debt programme while nevertheless advocating compliance in accordance with their economic and political capacity. An advantage of this debt re-structuring programme is that it builds on the existing ESM Treaty, which demands that private sector involvement be considered. Only an amendment to the ESM guidelines is needed that makes ESM lending conditional on the new two-tier sequential mechanism.

V. CONCLUSION

The intent of this chapter was to analyse what is neoliberal in Germany's and Europe's crisis politics. Much has been written in Anglo-Saxon political economic circles and the media about Germany's insistence on an outdated and conservative school of ordoliberalism.⁴⁶ As this chapter has tried to show, Germany followed ordoliberal principles far less than has been advocated, first in the setting up the *Bundesbank* in 1957, and later in transferring supposedly ordoliberal constitutional principles to the ECB. In the early stages of the *Bundesbank*, it followed the international accepted practice of Keynesianism under Karl Schiller, Economics and Finance Minister, and, in the aftermath of the collapse of the Bretton Woods system, it followed monetarism of Milton Friedman until the middle of the 1990s. Monetarism has little to do with ordoliberalism; its intellectual roots lie in the mainstream of New Institutional Economics.

On closer inspection of the Eurozone crisis management, it can be seen that the dominant German influence has much more to do with the ascendancy of

the so-called mainstream Anglo-Saxon New Institutional Economics and the New Consensus Macroeconomics. These ideas became the basis for economic teaching in Anglo-Saxon graduate programmes and influenced European economics curricula. The same is true for austerity, which, according to Mark Blyth, is linked to the ordoliberal school. However, the idea for austerity goes back to the laissez-faire deflationary period of the late 1920s, and its resurrection first in Great Britain under Margaret Thatcher and in the United States under Ronald Reagan, both of whom advocated a 'lean and mean' state. More important than ordoliberal thinking which advocated both positive and negative liberty, libertarian economists such as Friedrich August von Hayek, Milton Friedman and Murray Rothbard all emphasised the negative freedom to reduce constraints and permit the unfettered workings of capitalist forces.⁴⁷ It should be recalled that it was Wilhelm Röpke, an ordoliberal, who argued for fiscal *stimuli* in the 1929 Brauns-Commission at the time of the Great Depression. The German Chancellor, Heinrich Brüning, advocated a politics of deflation to overcome the world economic depression by strict household consolidation and mandated wage and price reductions to increase German export competitiveness on the world markets. This policy strongly resembles what the German Finance Minister, Wolfgang Schäuble, has advocated for the indebted Eurozone countries in response to the sovereign debt crisis.

Critics are right to take Germany's handling of the Eurozone crisis management to task, but it is simply incorrect to hold ordoliberal ideas responsible for this. Rather, Germany used the crisis to act in a self-interested manner, and, in many cases, pursued its national interest(s) at the expense of European solidarity.

After the worst financial crisis since the Great Depression, it should be evident even to die-hard free-marketeers that the present Anglo-Saxon neo-liberalism based upon the self-regulating market and anti-state rhetoric is unsustainable. In these times of great uncertainty, increasing inequality, feelings of alienation from political élites and the centrifugal tendencies within the European Union, it may behove us to return to the writing of the early ordoliberals and consider their writings on the need to include a strong welfare element in the EU reform programme. Not only did Walter Eucken in his *Grundsätze der Wirtschaftspolitik* (Principles of Economic Policy) (1952) acknowledge the state's role in social policies for those suffering from social misfortune, he was also acutely aware that the competitive market order might lead to undesirable income distributions and that it might be necessary to use a progressive income tax to correct such market-distorting cases. This is even more so with the ideas of Alfred Müller-Armack, who coined the term *Soziale Marktwirtschaft* (Social Market Economy) around 1946/1947 and acknowledged the need for interventionist policies to correct market failures.⁴⁸ Today's scholars, civil society, policy-makers and politicians may gain

valuable insights from these older ordoliberal anti-laissez-faire advocates, and could use these ideas to reform the present 'turbo capitalism' which is only beholden to negative integration at the expense of positive integration.

NOTES

1 See Martin Wolf, 'Deutsche Bank Offers a Tough Lesson in Risk', *Financial Times*, 5 October 2016.

2 See Lars Feld et al., 'Den Zugang zum Sozialsystem bremsen', *Frankfurter Allgemeine Zeitung*, 29 August 2016.

3 See Henrik Enderlein et al., *Repair and Prepare: Growth and the Euro after Brexit* (Gütersloh/Berlin/Paris: Bertelsmann Stiftung, 2016).

4 See Mark Blyth, *Austerity: The History of a Dangerous Idea* (Oxford: Oxford University Press, 2013).

5 See François Denord et al., 'Germany's Iron Cage', *Le Monde diplomatique*, August 2015.

6 See Brigitte Young, 'The Battle of Ideas in the Eurozone Crisis Management: German Ordoliberalism versus post-Keynesianism', in *The Economic Crisis in Social and Institutional Context*, ed. Sebastiano Fadda and Pasquale Tridico (London-New York: Routledge, 2015).

7 Philip Mirowski and Dieter Plehwe, *The Road from Mont Pèlerin. The Making of the Neoliberal Thought Collective* (Boston: Harvard University Press, 2009); also Angus Burgin, *The Great Persuasion. Reinventing Free Markets since the Depression* (Boston: Harvard University Press, 2015); Alessandro Vercelli, *Crisis and Sustainability: The Delusion of Free Markets* (London: Macmillan, 2016); and Young, 'The Battle of Ideas'.

8 See Isaiah Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty* (London: Oxford University Press, 1969).

9 Vercelli, *Crisis and Sustainability*.

10 See Viktor Vanberg, 'Ordoliberalism, Ordnungspolitik, and the Reason of Rules', *European Review of International Studies* 2. 3 (2015), 29.

11 Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston MA: Beacon Press, [1944] 2001).

12 Wilhelm Röpke, *Die Gesellschaftskrisis der Gegenwart* (Bern und Stuttgart: Haupt, 1979); Razeen Sally, 'Ordoliberalism and the Social Market: Classical Political Economy from Germany', *New Political Economy* 1. 2 (1996).

13 Vanberg, 'Ordoliberalism, Ordnungspolitik, and the Reason of Rules', 29.

14 Franz Böhm et al., 'The Ordo Manifesto of 1936', chapter 2 of this volume; also Franz Böhm, 'Rule of Law in a Market Economy', in *Germany's Social Market Economy: Origins and Evolution*, ed. Alan Peacock and Hans Willgerodt (London: Macmillan, 1989).

15 Brigitte Young, 'Neoliberalism', in *International Encyclopedia of Political Science*, ed. Bertrand Badie et al. (Thousand Oaks, CA: SAGE, 2011); also Brigitte Young, 'Introduction: The Hijacking of German Ordoliberalism', *European Review of International Studies* 2. 3 (2015).

16 Christian Müller, 'Neoliberalism und Freiheit – Zum sozialetischen Anliegen der Ordo-Schule', *ORDO* 58 (2007).

17 For a different Foucaultian interpretation of the German neoliberalism and American neoliberalism see chapters 13 and 16 in this book by Johanna Oksala and Lars Gertenbach, respectively.

18 Debt is translated in German as 'Schuld', which implies a personal normative guilt, and not just a material debt.

19 See Kenneth Dyson, 'The Ordoliberal Tradition: Germany and the Paradox of Creditor-State Power in the Euro Area', Presentation at the Conference 'Ordoliberalism as an Irritating German Idea', Hertie School of Governance, 13–14 May 2016.

20 See Jörg Bibow, 'On the Origin and Rise of Central Bank Independence in West Germany', *European Journal of the History of Economic Thought* 16. 1 (2009). Also Alberto Alesina and Lawrence Summers, 'Central Bank Independence and Macroeconomic Performance: Some Comparative Evidence', *Journal of Money, Credit and Banking* 25. 2 (1993).

21 Cited in Lars Feld et al., 'Ordoliberalism, Pragmatism and the Eurozone Crisis: How the German Tradition Shaped Economic Policy in Europe', *European Review of International Studies* 2. 3 (2015), 53; see Walter Eucken, *Kritische Betrachtungen zum deutschen Geldproblem* (Jena: Gustav Fischer, 1923); Walter Eucken, *Grundsätze der Wirtschaftspolitik* (Tübingen: Mohr Siebeck, [1952] 2004).

22 Eucken, *Grundsätze*, 263.

23 Feld et al., 'Ordoliberalism, Pragmatism and the Eurozone Crisis', 53.

24 See Malte Dold and Tim Krieger, 'Ordoliberalism Is Not Responsible for Jihadist Terrorism in Europe – A Reply to Van der Walt', *New Perspectives* 25. 2 (2017).

25 Feld et al., 'Ordoliberalism, Pragmatism and the Eurozone Crisis', 55.

26 See Thomas Biebricher, 'Europe and the Political Philosophy of Neoliberalism', *Contemporary Political Theory* 12. 4 (2013), 340.

27 See Viktor Vanberg, 'The Freiburg School of Law and Economics: Predecessor of Constitutional Economics', in *The New Palgrave Dictionary of Economics and the Law*, vol. 2, ed. Peter Newman (London: Macmillan, 1998), 178.

28 See Werner Bonefeld, 'Freedom and the Strong State: On German Ordoliberalism', *New Political Economy* 17. 5 (2012), 633.

29 See Volker Berghahn and Brigitte Young, 'Reflections on Werner Bonefeld's "Freedom and the Strong State: On German Ordoliberalism" and the Continuing Importance of the Ideas of Ordoliberalism to Understand Germany's (Contested) Role in Resolving the Eurozone Crisis', *New Political Economy* 18. 5 (2013).

30 Vanberg, 'Ordoliberalism, Ordnungspolitik, and the Reason of Rules', 29.

31 Fritz Scharpf has used Berlin's concept of negative and positive freedoms and speaks about negative and positive integration in the EU. Negative integration is defined as market liberalisation, whereas positive integration follows market-correcting regulations with a high level of protection. See Fritz W. Scharpf, *Regieren in Europa. Effektiv und demokratisch?* (Frankfurt: Campus, 1999), particularly Chapter 2, 247–80.

32 Dyson, 'The Ordoliberal Tradition'.

33 Ibid.

34 According to Ludwig von Mises, a member of the Austrian economic school, ordoliberalism is 'ordo interventionist' whereby von Mises tried to differentiate

the Austrian and the Freiburg School of Economics (see Dold and Krieger, 'Ordoliberalism Is Not Responsible for Jihadist Terrorism in Europe'). See also, Viktor Vanberg, 'Ordnungspolitik, the Freiburg School and the Reason of Rules', *i-lex* 21 (2014).

35 Feld et al., 'Ordoliberalism, Pragmatism and the Eurozone Crisis', 53.

36 *Idem*.

37 Dold and Krieger, 'Ordoliberalism Is Not Responsible for Jihadist Terrorism in Europe'.

38 Eucken's six constitutive principles (in Eucken *Grundsätze*) are: functioning of the price system (140–43; 254–55), the primacy of currency policy (168–69, 255–64), open markets (266–70), private property, freedom of contract (276, 278), liability (279–80, 284–85) and the constancy of economic policy (285–91).

39 Feld et al., 'Ordoliberalism, Pragmatism and the Eurozone Crisis', 53.

40 *Ibid.*, 61.

41 *Ibid.*, 61.

42 The Council is mandated by German law to support all decision makers in the economic and political sphere, as well as the general public in Germany, to form views about economic policy and its potential risks. To this end, every November it presents an annual report to the German federal government and the general public. Invariably, the report results in wide-spread, often quite contested, discussions among economists and political leaders.

43 See Jochen Andritzky et al., 'Creditor Participation Clauses: Making Orderly Sovereign Debt Restructuring Feasible in the Eurozone', VOX CEPR's Policy Portal. 21 July 2016. <http://voxeu.org/article/mechanism-proposal-eurozone-sovereign-debt-restructuring>.

44 *Ibid.*

45 A liquidity crisis means that governments are temporarily unable to meet their financial responsibilities. In contrast, a solvency crisis means that a government is no longer able to pay its expenditures and service its debt.

46 Young, 'The Battle of Ideas,' 78–90.

47 Dold and Krieger, 'Ordoliberalism Is Not Responsible for Jihadist Terrorism in Europe'.

48 Alfred Müller-Armack, 'Die Soziale Marktwirtschaft als Friedensordnung', in *Genealogie der Sozialen Marktwirtschaft. Frühschriften und weiterführende Konzepte*, ed. Müller-Armack, Alfred (Bern/Stuttgart: Haupt, 1981); also Willi Semmler and Brigitte Young, 'What Kind of Fiscal Union – What Kind of Social Union?' (forthcoming). 'Saving the Euro – redesigning Euro Area economic governance', eds. Hansjörg Herr, Jan Prieue, Andrew Watt, (Social Europe Publishing, 2017), 221–237.

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Chapter 15

Economic Order and Political Intervention

Michel Foucault on Ordoliberalism and its Governmental Rationality

Lars Gertenbach

I. PRINCIPLES OF ORDOLIBERAL ECONOMICS

The success story of ordoliberalism has been inextricably linked with its key role in the process of rebuilding a prosperous economic order in post-war Germany. As a result, it is quite comprehensible to believe this period of time to be of crucial importance in the formation of ordoliberal economics in general. This assumption is supported by the fact that the key journal of ordoliberal thought, *The Ordo Yearbook of Economic and Social Order* (ORDO: *Jahrbuch für die Ordnung von Wirtschaft und Gesellschaft*), was founded at that time: its first issue appeared in 1948. However, to understand the specific profile of ordoliberalism, it is advisable to begin more than a decade earlier – with an encounter that took place in Freiburg (Germany) in the early 1930s between the economist Walter Eucken and the jurists Franz Böhm and Hans Großmann-Doerth. At least two events mark that time as one of crucial importance. In April 1933 Böhm submitted his post-doctoral thesis on *competition and monopoly-fight*¹ to the Faculty of Law and State Sciences in Freiburg. His appointed reviewers were Eucken, who had been in Freiburg since 1927, and Großmann-Doerth, who had just assumed his professorship in the same month. Then, one month later Großmann-Doerth held his public inaugural lecture on *the self-made law of economy and state law* (in German: *Das selbstgeschaffene Recht der Wirtschaft und staatliches Recht*). Both events are in at least two ways relevant and highly symbolic for the birth of ordoliberalism: They not only initiated a contact between formerly unknown but in terms of research interests highly related scientists; they also foreshadowed what would have become essential components of ordoliberalism in general: on the one hand the focus on competition and on the other the

differentiation between two forms of order, one that can be understood as a result of markets and competition and one that originates in the principles of law in the usual sense.

Hence, the encounter in spring 1933 marks just the starting point of an intense collaboration between Eucken, Böhm and Großmann-Doerth.² Apart from joint teaching activities, the immediate results were several joint activities and publications in the following years. At least two titles are of special importance here: the series *Probleme der theoretischen Nationalökonomie*³ with irregular outcome between 1932 and 1944 and the series *Ordnung der Wirtschaft* (Order of the Economy) with two issues each in 1936 and 1937.⁴ Although many of the concepts of what would later be called Ordoliberalism or Freiburg School can be found in these writings and some basic assumptions are already indicated in the aforementioned titles by Böhm and Großmann-Doerth, fundamentally they are already present in the sheer disciplines the three represent. As the name suggests, the basic issue of ordoliberalism is the idea that liberalism has to be addressed from the question of order. The jointment between Eucken, Böhm and Großmann-Doerth projects that idea as a concurrence between the disciplines they represent: economy and law. This call for an alliance between the political economy and jurisprudence must be understood as the founding assumption of ordoliberalism, especially since it places them in stark contrast to the prevailing schools of economic thinking at that time. The magnitude of this assumption is expressed in their first collective publication, one of the founding documents of ordoliberalism: the preface to the first issue of the series *Ordnung der Wirtschaft* that tries to carve out the goals for the collective work as well as its programmatic purpose and theoretical orientation – quite fittingly renamed for the English translation as the *Ordo-Manifesto of 1936*. There, Böhm, Eucken and Großmann-Doerth initially state the failure of both sciences at that time to ‘exercise any appreciable influence on fundamental decisions of a politico-legal and economic nature’⁵. In dispute with the (at least in Germany) popular school of historicism and the widespread tendencies of relativism and fatalism which they regard mainly as an impact of Marxism, they emphasise the need to reverse the ‘dethronement of the two sciences’.⁶ Pointing out that ‘law and political economy were once formative forces which exercised considerable influence’⁷, they commit themselves to the task ‘to bring scientific reasoning, as displayed in jurisprudence and political economy, into effect for the purpose of constructing and reorganizing the economic system’.⁸

In these quotations and particularly in the elaborations of the last section of the chapter where they delineate *Our Programme*, there are at least two key elements present – besides the already-mentioned combination of law and economics: the strong emphasis on the scientific, objective and especially non-partisan observing capacity of these two sciences and the idea that the

re-organisation of the economy as well as any other political intervention has to consider the whole economic system. Both assumptions are intertwined in the rejection of partisan politics:

Men of science, by virtue of their profession and position being independent of economic interests, are the only objective, independent advisers capable of providing true insight into the intricate relationship of economic activity and therefore are also providing the basis upon which economic judgements can be made. They are also the only ones who, on the strength of their intimate knowledge of those interrelationships . . . are capable of forming an objective judgement, independent of their own immediate economic interests, about economic measures appropriate in particular circumstances. If men of science relinquish this role or are deprived of it, then other less competent advisers take over – the interested parties⁹

The necessity for rejecting ‘other less competent advisers’ and the declaration that economists are not only objective and independent but also the only ones able to provide ‘true insight into the intricate relationship of economic activity’ point to one main argument of ordoliberal thinking: that any form of control and regulation of economic activities as well as any political decision and intervention by the state has to be conducted with regard to generalisable principles and must be directed towards the organisation of the economic system in its entirety. Albeit this preference of strict impartial decision making often goes hand in hand with an advocacy for a strong state, it is basically directed towards creating a superordinate and comprehensive framework in which market exchange, competition and (individual) economic activity can take place. Therefore, its main goal is to prevent descending into chaos:

If the state follows the advice of such interested parties, then politico-economic and legal decisions, which are based on a precise knowledge of the great organizing principles of economic activity and which fit into this general system and derive their importance from it, are replaced by decisions which run counter to systematic analysis of the economy and reduce a well-regulated system to chaos.¹⁰

The dichotomies between impartial vs. partial decisions and a well-regulated system vs. chaos reveal that ordoliberalism can neither be understood as a mere reprise of classical liberalism nor as a call for a planned and state-directed economy. Instead, both paradigms are rejected at the same time with reference to two historically eminent phenomena: first, the hegemony of centrally planned economies especially during the 1930s and 1940s and the tendencies of monopoly-building, both deemed responsible for suppressing and replacing market mechanisms in numerous spheres; and second, the failure of classical liberalism, which has proven to be ill-equipped and

therefore incapable of preventing the crisis and demise of free markets. In consequence, the ordoliberals saw themselves confronted with the task of developing a comprehensive alternative to the predominant centrally planned economies without being able to resort to the former doctrine of liberalism for its naïve confidence in the self-regulating capacities of free markets. To comprehend the ordoliberal proposal for a new version of political economy it is important to emphasise that not only ‘a return to laissez-faire is out of the question’,¹¹ but the idea of a compromise or a balance between both sides as well. Instead they insisted on the possibility of a third way, as several programmatic statements unmistakably point out:

After the experiences of the last years, we want nothing to do with a planned economy, for it disregards the indispensable freedom of men, making him the slave of bureaucracy. Furthermore, we have recognized that freedom without barriers of the economic activity also leads to antagonisms between particular and collective interests, to the agglomeration of private economic power which is detrimental economically and socially not less than state omnipotence.¹²

Or, as Eucken put it in 1942:

By now the problem that must be resolved practically in the future is apparent. . . . What can be done about this situation? . . . Here we have the centrally-administered economy which will have to be dissolved; there we have the anarchic ‘free’ economy, which leads to lifelong tensions and great damage. Is there a third way?¹³

Notwithstanding the highly debatable character of such self-portrayals there is indeed at least one seminal novelty to be found in the writings of ordoliberals, which can be identified as a key component in this search for a third way.¹⁴ From an ordoliberal point of view, both classical liberalism and centrally planned economics rely on the assumption of a cardinal separation between a realm of the state and a realm of the market.¹⁵ Furthermore, both are not only separated but basically also substitutable: a former domain or task of the state can be replaced by the market and vice versa – with the different political positions mainly depending on converse judgements in matters of superiority between the two. In contrast to this sort of division of labour between the two basic organisational forms of the market and state, ordoliberalism relies on a different distinction, thus offering a different epistemology of the relation of market and state. Instead of constructing the market as a sphere where the state or political intervention is almost completely absent, they divide the economy itself into a constitutional and a procedural sphere – denoted in German as *Wirtschaftsordnung* vs. *Wirtschaftsprozess*.¹⁶ According to this, the distinction between the market and state does not

disappear, but since it is viewed as inherently more intertwined, it becomes momentarily rearranged.

The order of competition we advocate is equally distant to both previously mentioned economic systems [*laissez-faire* and planned economy; L.G.]. In an economic system which is mainly centrally administered [*zentralverwaltungs-wirtschaftlicher Art*], the state directly determines the economic *order* in general as well as the everyday economic *process* which takes place within the scope of the economic order. In a so-called liberal economy the state determines *neither* the economic order *nor* the everyday economic process. However, in an order of competition the state doesn't let the forms in which economic activities takes place unfold arbitrarily, although the everyday economic process develops based on free decisions of the households and companies. The order of competition requires in contrast to the liberal economy that the design of the economic order as such should by no means be left to interest groups, and it requires in contrast to the centrally administered economy the economically free activity of the individual in all places, where competition can be organized.¹⁷

Whether little or more state activity – this question misses the point. It's not about quantity, but quality. The state should neither try to steer the economic process, nor leave the economy to its own devices: State planning of the forms – yes; state planning and steering of the economic process – no. It is essential to recognize the difference of form and process and to act according to that difference. . . . The only economic system in which this is possible is that of 'pure competition'. It is only feasible if all market participants are robbed of the possibility to change the rules of the game of the market. Therefore, the state must provide the form of the market through a suitable legal framework – i.e. the rules of the game in which economic activities take place.¹⁸

As both quotations stress, the key element is competition. It justifies not only the distinction between the two spheres but also the superiority of the market organisation in comparison to a centrally planned economy. It is viewed as 'the only solution, able to allow economic performance, reasonable order and individual freedom at the same time'¹⁹ and is therefore chosen to be the primary goal of state activities. Being assigned with the enforcement of an order in which free and pure competition can arise, state intervention has to be directed towards the removal of as many obstructions as possible.²⁰ However, in line with the aforementioned distinction any interference should only address the general framework of the economic constitution instead of intervening in the economic process as such: 'The treatment of all practical politico-legal and politico-economic questions must be keyed to the idea of the economic constitution'.²¹

Due to these basic assumptions, ordoliberalism cannot be regarded as a mere revival of liberalism. Following the conviction that the freedom of the markets 'relies on a comprehensive policy, which strictly demarkates the

field of economic freedom like a playing field'²², it should not even be viewed as an economical one – an argument especially Wilhelm Röpke and Alexander Rüstow time and again pointed out:

For Röpke ordoliberalism is 'a liberalism, which must not be understood first and foremost as an economic one. . . . Whoever still regards liberalism as a primarily economic view is entangled in an "economistic" and nowadays completely outdated perspective, which causes him to miss the current task. . . . The liberalism, that we thus attain, could be characterized as a sociological one. The weaponry forged to act against the old, mere economic liberalism will stay blunt'.²³

In summary, it is possible to identify at least five key elements of ordoliberalistic thinking: first, the renunciation of an insular and self-sufficient conception of economics in favour of an irrevocably *political* economy; second, the assumption that the possibility of a renewal of liberalism relies on the orientation of economics towards law, since any political decision ought to be executed in the form of a generalisable law and be directed towards a 'self-referential system of political-economic order';²⁴ third, that a crucial element of this combination lies in the distinction between the economic constitution and the economic process, with the former being the immediate subject of state activities whereas the latter is being conceived as infeasible for any direct intervention. This argument is illustrated in the famous metaphor of a game and its adjacent distinction between the rules and the course of the game; fourth, the assumption that the unfolding of market processes is by no means an automatic result of exchange societies, for they have to be facilitated and guaranteed by the economic constitution; fifth, that the crucial element or even the target of all politico-economic and legal decisions is the mode of competition, for it is not only superior to centrally planned economies in the technical sense of information processing capacities – the key argument in Hayek's version of neoliberalism as well²⁵ –, but it is also regarded as the guarantor for economic prosperity as well as a sustainable liberalism. With that in mind, it is now possible to assess the lectures of Foucault and his reading of ordoliberalism.

II. ORDOLIBERALISM IN THE LECTURES OF FOUCAULT

Albeit the subjects of Foucault's lectures at the Collège de France are genuinely historical, they are rooted in questions and problems of present-day societies, just as in the case of his books.²⁶ As much as Foucault regarded himself as a historian, ultimately his interest in historical discourses and their transformations is more linked to sociological and political rather than historical questions. Almost his entire works amount to a sort of formation history

of the present and both lectures on governmentality – *Security, Territory, Population* of 1977/1978²⁷ and *The Birth of Biopolitics* of 1978/1979²⁸ – are obviously no exception to that. Like all of the others they must be understood as a (notoriously tentative and preliminary) answer to the basically Nietzschean question *how we became what we are*. Following the idea of a ‘history of the present’ Foucault famously outlined in *Discipline and Punish*,²⁹ they contribute to what he later called ‘a historical investigation into the events that have led us to constitute ourselves and to recognize ourselves as subjects of what we are doing, thinking, saying’.³⁰ However, his lectures on *The Birth of Biopolitics* where he encounters ordoliberalism differ at least in one crucial way from all his other lectures: they are the only ones dealing with a subject located in the twentieth century. But what is even more peculiar is the fact that Foucault’s interest in ordoliberalism is limited entirely to a few weeks – or to be more exact: five lectures – in spring 1979.³¹ For though it is one of the key subjects in *The Birth of Biopolitics*, it is impossible to find even the slightest reference to ordoliberalism or the ordoliberals in any other piece of writing by Foucault, before or after this short period in 1979. Hence, to grasp the role of ordoliberalism in the lectures of Foucault and to assess his interpretation of ordoliberal governmentality, it is helpful to ask what motivated this remarkable deviance from his usual routine.

In various writings and throughout different periods of his work Foucault had shown an interest in political economy,³² albeit largely confined to authors from the seventeenth to the nineteenth centuries. Accordingly, his turn to contemporary political economy has been widely discussed, often being associated with some discontent regarding his analytics of power.³³ Besides such theoretical reasons, a key motive for his sudden interest in the governing techniques of (classical as well as new) liberalism can be found in the observation of a ‘crisis of “government”’³⁴ in present-day societies. In an interview with Duccio Trombadori in late 1978 he described it as follows: ‘And by “government” I mean the set of institutions and practices by which people are “led,” from administration to education, etc. It is this set of procedures, techniques, and methods that guarantee the “government” of people, which seems to me to be in crisis today’.³⁵ In his former lectures *Security, Territory, Population* he began to address this issue based on a genealogy of the techniques of the pastorate and the birth of the notion of population between the sixteenth and the eighteenth centuries. His analysis culminated in the thesis of ‘the birth of an absolute new form of power’³⁶, which, at least since the physiocrats, became inextricably linked with political economy.

In short, the transition from an art of government to political science, the transition in the eighteenth century from a regime dominated by structures of sovereignty to a regime dominated by techniques of government revolves around population, and consequently around the birth of political economy.³⁷

. . . the essence of this government, that is to say, of the art of exercising power in the form of economy, will have what we now call the economy as its principal object. The word 'economy' designated a form of government in the sixteenth century; in the eighteenth century, through a series of complex processes that are absolutely crucial for our history, it will designate a level of reality and a field of intervention for government.³⁸

It is for this very reason that Foucault turned his attention towards liberalism and political economy, however not so much as an epistemological concept but as a political technique of government. The very notion of governmentality reflects that, for it must be understood as an attempt to describe the specific art of government procured by a politico-economical liberalism. Hence, political economy is of great importance throughout Foucault's lectures, for it is 'the major form of knowledge'³⁹ of this 'very specific, albeit very complex, power' of governmentality.⁴⁰

Nearly one year after the lectures on the transition from sovereignty to an art of government, the birth of political economy and the governmentality of classical liberalism, Foucault directed his attention to the renewal of liberalism in the twentieth century. To comprehend this shift in focus and to address the specific reading of ordoliberalism, it is advisable to recapitulate some basic assumptions from his former lectures. At least three aspects are important here: first, that the question of government by far exceeds the political institutions of the state, since, for Foucault, it has been merged with the problem of conduct in a general, by no means merely juridical sense.⁴¹ Second, that liberalism plays a crucial role in this process, for it is expanding the scope of government while simultaneously repelling and limiting the scope of the state. And third, that the economy is a key to this new form of power, since governmentality is exercised 'in the form, and according to the model, of economy'.⁴² Consequently, what is essential in liberal governmentality for Foucault are the two ways in which the economy functions as a means to a highly novel art of government: as a sort of guiding principle for the general problem of conduct and governing and as a specific realm of reality equipped with its own laws and therefore (potentially) to be freed from any state intervention.

Foucault's interest in ordoliberalism derives from this analysis. It is rooted in the thesis of a fundamental change in the political rationalities of governmentality in the twentieth century. For him, ordoliberalism is the key to understand the specifics and the novelty of our situation: 'We are dealing with something new in comparison with everything that since the eighteenth century constituted the functioning, justification, and programming of governmentality'.⁴³ Focusing on the feasibility of governmentality, apparently the main difference does not so much concern questions of economic theory, but the 'doctrine of government'.⁴⁴ Furthermore, it is obvious that the novelty

of ordoliberalism does not lie in the sheer principle of interlacing government with the notion of economy, for this is far from being a unique feature of ordoliberalism. To be sure, ordoliberalism entails an ‘art of economic government, of governing economically’,⁴⁵ but so does classical liberalism. The aspect where ordoliberalism deviates from the art of governing classical liberalism proposes concerns the specific way in which the economy and the state are relegated to each other. In contrast to the liberal governmentality of the eighteenth and nineteenth centuries, the state is not just confined by the economy; it entirely derives from a liberal concept of the market.

To justify this reading of ordoliberalism, Foucault first interprets the political rationality of ordoliberalism through the specific situation of post-war Germany. What he finds, especially in a speech by Ludwig Erhard in 1948, which he uses as the point of departure for his analysis,⁴⁶ can be described as the premise of an extra-stately foundation of state sovereignty – simultaneously legitimising and limiting the political authority. Here lies the novelty of ordoliberalism and the special importance of this post-war situation. According to Foucault, the ordoliberals were able to resolve the problem ‘of giving legitimacy to a state that did not yet exist and that had to be made acceptable to those who most mistrusted it’.⁴⁷ To that effect ordoliberalism gave way to the ‘idea of a legitimizing foundation of the state on the guaranteed exercise of an economic freedom’.⁴⁸ What is striking in Foucault’s approach to ordoliberalism is the importance he grants this particular political situation – instead of focusing on the founding texts of ordoliberalism more than a decade earlier. One reason for this is that this situation is highly symbolic to assess the difference to former liberal governmentalities. Herein lies the novelty of ordoliberalism:

The problem they [the physiocrats, Turgot, and the economists of the eighteenth century; L.G.] had to resolve was the following: given the existence of a legitimate state, which is already functioning in the fully and completely administrative form of a police state, how can we limit this existing state and, above all, allow for the necessary economic freedom within it? The problem the Germans had to resolve was the exact opposite: given a state that does not exist, how can we get it to exist on the basis of this non-state space of economic freedom?⁴⁹

In fact, in contemporary Germany, the economy, economic development and economic growth, produces sovereignty; it produces political sovereignty through the institution and institutional game that, precisely, makes this economy work. The economy produces legitimacy for the state that is its guarantor. In other words, the economy creates public law. . . .⁵⁰

On this basis Foucault begins to engage with the revival of liberalism in the twentieth century. But although he commences taking no reference to the founding texts of the ordoliberals, his main thesis leads him to

highlight the novelties of ordoliberal governmentality, therefore focusing on contrasting it with classical liberalism. At least four elements can be identified as of crucial importance in Foucault's interpretation of ordoliberalism: (1) the renunciation of *laissez-faire*, (2) the shift from exchange to competition, (3) the denaturalisation of the market and (4) the birth of a liberal interventionism.

(1) As already mentioned in the first section, one of the founding principles of ordoliberalism is the renunciation of a naïve and passive liberalism felicitously associated with the motto of *laissez-faire*. Foucault basically affirms the adequacy of this self-portrayal. For him, a key principle of ordoliberalism lies in 'dissociating the market economy from the political principle of *laissez-faire*'.⁵¹ Instead of coupling market economy with policies of *laissez-faire*, ordoliberalism tries to rearrange the relation between the market and the state. Thus, a sharp contrast arises to the 'initial formula of liberalism'⁵² in the eighteenth century. Whereas classical liberal governmentalities operate with an essentially topological dualism of market and state, in which the state functions as the guarantor and supervisor for the autonomy of the market sphere, ordoliberalism rearranges this relationship, projecting the state as a form of the dependent variable of the market. Foucault acknowledges this aspect by stating that ordoliberalism basically inverts the formula of liberalism:

the ordoliberals say we should completely turn the formula around and adopt the free market as organizing and regulating principle of the state, from the start of its existence up to the last form of its interventions. In other words: a state under the supervision of the market rather than a market supervised by the state.⁵³

However, his further deliberations show that this new arrangement between market and state is far more than just an inversion; it rearranges the notion of the market as well as that of the state in its entirety.

(2) A key element that Foucault identifies in the renewal of liberalism is the shift from the principle of exchange to the principle of competition. Whereas classical liberalism connects the notion of the market sphere with the idea of a natural exchange, for ordoliberalism the key feature of the market lies in the notion of competition.

Now for the neoliberals, the most important thing about the market is not exchange, that kind of original and fictional situation imagined by eighteenth century liberal economists. The essential thing of the market is elsewhere; it is competition.⁵⁴

According to Foucault this shift goes far beyond mere epistemology. Since it fundamentally alters the understanding of the market process, it has much

wider political ramifications. Unlike the idea of a natural exchange, the ordoliberal notion of pure competition

is not a primitive given. It can only be the result of lengthy efforts and, in truth, pure competition is never attained. Pure competition must and can only be an objective, an objective thus presupposing an indefinitely active policy. Competition is therefore an historical objective of governmental art and not a natural given that must be respected.⁵⁵

Hence, the shift from exchange to competition not only changes the economic theory of the market, but it also modifies the whole functionality of the economy. The idea of pure competition epitomises the necessity for a constitutive *political* economy. Deriving from a non-natural notion of the market, the governmental rationality ordoliberalism proposes differs notably from that of classical liberalism.

(3) With the shift from the concept of free exchange markets to a market economy based on competition, ordoliberalism rejects the politics of *laissez-faire* and consequently also its underlying notion of the market as a quasi-natural sphere. What it offers instead is the idea that markets need to be shepherded and cultivated in order to guarantee their potential. Therefore, the concept of the market has become stripped of any strong notion of naturalness. The same applies for competition, which ‘was not presented as in any way a primitive and natural given, the very source and foundation of society that only had to be allowed to rise to the surface and be rediscovered as it were’.⁵⁶ Following that, it becomes clear that the inversion ordoliberalism proposes regarding the initial formula of liberalism by far exceeds a simple role switch. Instead, the denaturalised notion of the market functions as a sign for the performance of the state in general. It therefore completely inverts the question of liability, for any failure or defect of the market only sheds a light on the governmental performance – or lack thereof: ‘The defects and destructive effects traditionally attributed to the market economy should instead be attributed to the state and its intrinsic defects and specific rationality’.⁵⁷ Far more than in classical liberalism, in neoliberal governmentality the market has become a key element in a complex ‘regime of truth’.⁵⁸

(4) A fourth important element in Foucault’s description of ordoliberal governmentality immediately derives from the former three. As pointed out earlier, the uncoupling of market economy and *laissez-faire* policies that ordoliberalism proposes relies on the principle of competition. But since for the ordoliberals competition is by no means anchored in any form of natural law or to be viewed as an automatic outcome of exchange, it needs to be instituted by and cultivated within a juridico-political framework. Coexistent with a complex and fragile juridical and societal structure, neither competition nor the market exist by themselves. As the shift from exchange to competition

indicates, this entails an entirely different role of the state. Since competition needs to be fostered, the state can by no means be an inactive, passive observer of the market:

There will not be the market game, which must be left free, and then the domain in which the state begins to intervene, since the market, or rather pure competition, which is the essence of the market, can only appear if it is produced, and if it is produced by an active governmentality. . . . Government must accompany the market economy from start to finish.⁵⁹

Hence, in contrast to rejecting any form of state intervention regarding the market sphere, ordoliberalism proposes a specific form of interventionism. Bearing on the distinction between the economic process and the economic order – or in terms of game theory: the rules and the course of the game – they restrict any form of intervention to the latter. Or, as Foucault put it:

The problem of liberal policy was precisely to develop in fact the concrete and real space in which the formal structure of competition could function. So, it is a matter of a market economy without *laissez-faire*, that is to say, an active policy without state control. Neoliberalism should not therefore be identified with *laissez-faire*, but rather with permanent vigilance, activity, and intervention.⁶⁰

But despite this permanent vigilantism it is important to recognise the specific constraint of this form of intervention: instead of a direct intervention into the economic process as such, ordoliberalism proposes a form of indirect intervention whose only object is the conditions of the existence of the market, the economic order as such in the sense of the framework of the market.⁶¹ This is exactly what the ordoliberal Alexander Rüstow proposed, when he called upon a liberal interventionism:

Such intervention would aim in the opposite direction to the one that has been favoured so far, i.e. not against the laws of the market, but in the same direction as those laws; not in order to maintain the old, but in order to bring about the new; not in order to slow down, but in order to accelerate the natural process. This would be a liberal interventionism, so to speak. . . .⁶²

For Foucault these four aspects are elementary to grasp the peculiarity of ordoliberal political economy. Furthermore, they highlight the novelty of ordoliberalism by delineating major differences to classical forms of governmentality. Before reflecting on the specific political rationality of ordoliberal governmentality in the following section, it is important to emphasise this difference. Or, in the words of Foucault, if we want to understand

what is important and decisive in current neoliberalism . . . , we should not be under any illusion that today's neoliberalism is, as is too often said, the

resurgence or recurrence of old forms of liberal economics which were formulated in the eighteenth and nineteenth centuries and are now being reactivated.⁶³

With that in mind, it is possible to address the specific political rationality of ordoliberal governmentality.

III. THE POLITICAL RATIONALITY OF NEOLIBERAL GOVERNMENTALITY

Subsequent to identifying some key elements of Foucault's analysis of ordoliberalism, it is necessary to turn one's attention towards the impact of its specific governmental rationality. Basically, this concerns at least two aspects: the line of argumentation underlying Foucault's notion of governmentality (including the way it affects his analytics of power) and the political significance of ordoliberalism for the current form of government (and its above-stated crisis). To a certain degree, both aspects are connected. Although Foucault first introduces the notion of governmentality in *Security, Territory, Population* to address the birth of political economy and the conception of a liberal state, in the subsequent lectures it becomes gradually generalised. Since at least his shift to contemporary liberalism in *The Birth of Biopolitics* it is no longer restricted to a certain period, for it designates simply 'the way in which one conducts the conduct of men'.⁶⁴ Instead, Foucault now emphasises 'that the analysis of micro-powers, or of procedures of governmentality, is not confined by definition to a precise domain'.⁶⁵ A crucial reason for this shift in meaning can be found in ordo- and neoliberalism itself. By redefining the relation between the market and the state, the German as well as the American neoliberalism simultaneously spread the form of the market and widened the scope of economic policies. As a result, the whole notion of economic policy is changing. Instead of being confined to a well-defined area, economic policy has become dislimited, forming a comprehensive policy of society – or, to use the ordoliberal term a *Gesellschaftspolitik*⁶⁶ in the widest possible sense. According to Foucault, at least two concepts play an important role in this generalisation of the economic form of the market: the form of the enterprise and the grid of homo oeconomicus. What they have in common is that they are deemed capable of exercising a formative power over society. What Foucault describes as 'the generalization of the grid of homo oeconomicus to domains that are not immediately and directly economic'⁶⁷ and the 'multiplication of the "enterprise" form within the social body',⁶⁸ can be understood as the key features of the specific type of neoliberal economisation: both act as instruments to implement and spread the governmental rationality of neoliberalism throughout the whole society.⁶⁹ At least to some degree, the shift in meaning in the notion of governmentality can be seen as an attempt to conceptualise this transformation of economic policy.

Besides that, there is another aspect in which ordoliberalism affects Foucault's own work. By confining the scope of government and therefore restricting the exertion of sovereignty, liberalism fundamentally acts as a critique of power. Unsurprisingly, this aspect of liberalism plays a crucial role in Foucault's lectures – and to a certain extent also for his interest in liberalism in the first place. Hence, in light of his own critique of the disciplinary and normalising techniques of power, that he outlined just a few years earlier in *Discipline and Punish* and the first volume of *The History of Sexuality*,⁷⁰ liberalism and neoliberalism appear to be challenging at least. In their attempt not just to limit state authority, but also to guarantee individual freedom (however mutilated and economised this version of freedom may be), liberalism and neoliberalism pose an alternative to rigid forms of disciplinary power. At least several passages in his lectures can be found where he discusses liberal political rationalities as a counter model to the idea of a disciplinary or normalisation society.

. . . what appears on the horizon of this kind of analysis is not at all the ideal or project of an exhaustively disciplinary society in which the legal network hemming in individuals is taken over and extended internally by, let's say, normative mechanisms. Nor is it a society in which a mechanism of general normalization and the exclusion of those who cannot be normalized is needed. On the horizon of this analysis we see instead the image, idea, or theme-program of a society in which there is an optimization of systems of difference, in which the field is left open to fluctuating processes, in which minority individuals and practices are tolerated, in which action is brought to bear on the rules of the game rather than on the players, and finally in which there is an environmental type of intervention instead of the internal subjugation of individuals.⁷¹

In the light of such passages, it is hard to overlook that neoliberalism has indeed a certain appeal to Foucault. However, recognising the liberal principle entailed in an indirect form of government does not mean that Foucault is endorsing or advocating neoliberalism, as some recent commentators have suggested.⁷² Instead it once again stresses the significance of this 'environmentality'⁷³ for neoliberal governmentality in general, whether it concerns the distinction between the economic constitution and the economic process crucial to ordoliberalism or the project of negative tax American neoliberals proposed.⁷⁴

Additionally, in highlighting the importance of this environmental type of intervention, once more it becomes clear why ordoliberalism plays such a crucial role in Foucault's lectures: it not only concedes a formative power of the market over societal relations (based on the form of the enterprise), but also insists on an indirect form of governing. Provided that these principles are the two essential components of the governmental rationality of neoliberalism, ordoliberalism is far more than just a variation of neoliberalism; according to Foucault, it must rather be understood as the epitome of its political rationality.⁷⁵

Regardless of the peculiar path of German liberalism, for Foucault it entails a form of governmentality, which by far transcends the specific historical situation of post-war Germany. While it is common in political debates (especially in Germany) to distinguish between neoliberal market-radicals on the one hand and ordoliberal social market economy on the other, Foucault undermines this distinction, explicitly claiming that '[t]he German model . . . is the model of a possible neoliberal governmentality' (Foucault 2008, 192). Hence, instead of searching for differences between German and American neoliberalism, Foucault emphasises their common epistemological ground. Due to that, it is possible to identify the similarities between both and to underline the crucial novelty regarding the relation between the market and the state.

It is hard to overlook the gravity of this argument, since it does not just concern the evaluation of ordoliberalism, but also the understanding of neoliberalism in general. Ultimately, it makes abundantly clear that the political rationality of neoliberalism has nothing to do with a politics of laissez-faire and a general disengagement of the state. Instead, its general principle strives towards a constant pampering and 'cultivation' of the market.⁷⁶ Hence, the crucial distinction between neoliberal and non-neoliberal efforts to regulate the market does not lie in the mere existence of an intervention as such, but in the object of intervention. According to the principles of neoliberal governmentality, the market may even demand a certain degree of state regulation to be operational. For Foucault this reflects the shift in political rationality established by neoliberalism, since 'the market is no longer a principle of government's self-limitation; it is a principle turned against it. It is a sort of permanent economic tribunal confronting government'.⁷⁷ By ascribing the market 'the power of formalization of both the state and society'⁷⁸, at least two consequences arise: first, it becomes clear that, in principle, everything can be economised, and every aspect of society can be rendered governable through market mechanisms. And second, it makes it clear that neoliberalism should in no way be reduced to the programme of dismantling the social and welfare state. Instead, following Foucault, it can be presumed that the alleged retreat of the state, commonly said to constitute neoliberalism, may in fact be a mere effect of a broader development to readjust the political logic of government as such.

NOTES

1 The full German title is Franz Böhm, *Wettbewerb und Monopolkampf. Eine Untersuchung zur Frage des wirtschaftlichen Kampfrechts und zur Frage der rechtlichen Struktur der geltenden Wirtschaftsordnung* (Berlin: C. Heymann, 1933).

2 See Uwe Blaurock, Nils Goldschmidt and Alexander Hollerbach, eds., *Das selbstgeschaffene Recht der Wirtschaft. Zum Gedenken an Hans Grossmann-Doerth (1894–1944)* (Tübingen: Mohr Siebeck, 2005). See especially Alexander Hollerbach,

‘Hans Großmann-Doerth im Kontext der Freiburger Rechts- und Staatswissenschaftlichen Fakultät’. In *Das selbstgeschaffene Recht der Wirtschaft*, ed. Uwe Blau-rock et al. (Tübingen: Mohr Siebeck, 2005).

3 The series consists of six volumes published in 1932, 1934 (2), 1935, 1938 and 1944. The first volume written by Eucken is of greater importance: Walter Eucken, *Kapitaltheoretische Untersuchungen. Mit einer Einleitung in die Sammlung: Was leistet die ökonomische Theorie?* (Jena: Fischer, 1934).

4 Whereas the first volume by Böhm can be characterized as programmatic (Franz Böhm, *Die Ordnung der Wirtschaft als geschichtliche Aufgabe und rechts-schöpferische Leistung* [Stuttgart/Berlin: Kohlhammer, 1937]), the others deal with particular issues of constitutional economics: money (Friedrich Lutz, *Das Grundproblem der Geldverfassung* [Stuttgart/Berlin: Kohlhammer, 1936]), credit policy (Hans Gestrich, *Neue Kreditpolitik* [Stuttgart/Berlin: Kohlhammer, 1936]), competition (Leonhard Miksch, *Wettbewerb als Aufgabe. Die Grundsätze einer Wettbewerbsordnung* [Stuttgart/Berlin: Kohlhammer, 1937]).

5 Franz Böhm, Walter Eucken and Hans Grossmann-Doerth. ‘The Ordo Manifesto of 1936’, chapter 2 of this volume, 27.

6 Ibid.

7 Ibid.

8 Ibid., 35.

9 Ibid., 27.

10 Ibid., 28.

11 Walter Eucken, *Unser Zeitalter der Misserfolge. Fünf Vorträge zur Wirtschaftspolitik* (Tübingen: Mohr, 1951), 69.

12 Franz Böhm and Walter Eucken, ‘Vorwort: Die Aufgabe des Jahrbuchs’, in *ORDO* 1. 1 (1948): IX – X. All translations from German texts by L.G. unless noted otherwise.

13 Walter Eucken, ‘Competition as the Basic Principle of the Economic Constitution’, chapter 5 of this volume, 88.

14 The differences between the core group of the Freiburg School and a wider circle which, for instance, also includes Wilhelm Röpke and Alexander Rüstow as well as many other protagonists associated with ordoliberalism cannot be elaborated here. See Lars Gertenbach, *Die Kultivierung des Marktes. Foucault und die Gouvernementalität des Neoliberalismus* (Berlin: Parodos Verlag, 2007). For a detailed study of Röpke and Rüstow from a Foucauldian perspective see Thomas Biebricher, ‘The Biopolitics of Ordoliberalism’, *Foucault Studies* 12 (2011): 171–91.

15 See Gertenbach 2007.

16 See Walter Eucken, ‘Das ordnungspolitische Problem’, *ORDO* 1. 1 (1948): 61–73.

17 Böhm and Eucken, ‘Vorwort: Die Aufgabe des Jahrbuchs’, X. Emphasis in original.

18 Eucken, *Unser Zeitalter der Misserfolge*, 71–72.

19 Böhm and Eucken, ‘Vorwort: Die Aufgabe des Jahrbuchs’, IX.

20 Eucken, ‘Competition as the Basic Principle of the Economic Constitution,’ chapter 5 of this volume.

21 Böhm, Eucken and Grossmann-Dorth, ‘The Ordo Manifesto of 1936’, 36.

- 22 Wilhelm Röpke, *Maß und Mitte* (Erlenbach-Zürich: Rentsch, 1950), 142.
- 23 Wilhelm Röpke, *Civitas Humana. Grundfragen der Gesellschafts- und Wirtschaftsreform* (Erlenbach-Zürich: Rentsch, 1944), 50–51.
- 24 Franz Böhm, 'Economic Ordering as a Problem of Economic Policy and a Problem of the Economic Constitution,' chapter 7 of this volume, 117.
- 25 Friedrich August von Hayek, 'Competition as a Discovery Procedure', in *New Studies in Philosophy, Politics, Economics and the History of Ideas*, ed. Friedrich August von Hayek (London: Routledge, 1978), 179–90.
- 26 Gilles Deleuze, *Foucault* (Minneapolis/London: University of Minnesota Press, 1988), 115.
- 27 Michel Foucault, *Security, Territory, Population. Lectures at the Collège de France 1977–78* (New York: Palgrave, 2007).
- 28 Michel Foucault, *The Birth of Biopolitics. Lectures at the Collège de France 1978–79* (New York: Palgrave, 2008).
- 29 Michel Foucault, *Discipline and Punish. The Birth of the Prison*, 2nd ed. (New York: Vintage Books, 1995), 31.
- 30 Michel Foucault, *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon Books, 1984), 46.
- 31 Hence, it is noteworthy that his interest in neoliberalism took place before what later would be identified as the incipencies of neoliberal politics, that is, before Thatcher became Prime Minister of the UK in May 1979 and Reagan President of the USA in 1981.
- 32 Lars Gertenbach, 'Ökonomie als blinder Fleck? Die Politische Ökonomie und die Ökonomisierung des Sozialen im Denken Foucaults', in *Beiträge zur Gesellschaftstheorie des Geldes*, ed. Lars Meyer and Hanno Pahl (Marburg: Metropolis, 2010), 303–31.
- 33 Foucault, *Security, Territory, Population*, 48.
- 34 Michel Foucault, *Remarks on Marx. Conversations with Duccio Trombadori* (New York: Semiotext(e), 1991), 176.
- 35 Foucault, *Remarks on Marx*, 176.
- 36 Foucault, *Security, Territory, Population*, 183.
- 37 Foucault, *Security, Territory, Population*, 106.
- 38 Foucault, *Security, Territory, Population*, 95.
- 39 Foucault, *Security, Territory, Population*, 108.
- 40 Foucault, *Security, Territory, Population*, 108.
- 41 Foucault, *Security, Territory, Population*, 191–216.
- 42 Foucault, *Security, Territory, Population*, 95.
- 43 Foucault, *Birth of Biopolitics*, 102.
- 44 Foucault, *Birth of Biopolitics*, 102.
- 45 Foucault, *Birth of Biopolitics*, 103.
- 46 Foucault, *Birth of Biopolitics*, 80–83. Foucault's main source in addressing ordoliberalism is François Bilger's comprehensive book *La Pensée économique libérale de l'Allemagne contemporaine* from 1964. The speech of Erhard is discussed in the third part of his book: see François Bilger, *La Pensée Économique Libérale de l'Allemagne Contemporaine* (Paris: Librairie Générale de Droit, 1964), 211.

- 47 Foucault, *Birth of Biopolitics*, 117.
- 48 Foucault, *Birth of Biopolitics*, 83.
- 49 Foucault, *Birth of Biopolitics*, 86–87.
- 50 Foucault, *Birth of Biopolitics*, 84.
- 51 Foucault, *Birth of Biopolitics*, 131.
- 52 Foucault, *Birth of Biopolitics*, 116.
- 53 Foucault, *Birth of Biopolitics*, 116.
- 54 Foucault, *Birth of Biopolitics*, 118.
- 55 Foucault, *Birth of Biopolitics*, 120.
- 56 Foucault, *Birth of Biopolitics*, 131.
- 57 Foucault, *Birth of Biopolitics*, 116.
- 58 Foucault, *Birth of Biopolitics*, 18–20.
- 59 Foucault, *Birth of Biopolitics*, 121.
- 60 Foucault, *Birth of Biopolitics*, 132.
- 61 Foucault, *Birth of Biopolitics*, 137–40.
- 62 Alexander Rüstow, ‘State Policy and the Necessary Conditions for Economic Liberalism’, chapter 9 of this volume, 145.
- 63 Foucault, *Birth of Biopolitics*, 117.
- 64 Foucault, *Birth of Biopolitics*, 186.
- 65 Foucault, *Birth of Biopolitics*, 186.
- 66 Foucault, *Birth of Biopolitics*, 241.
- 67 Foucault, *Birth of Biopolitics*, 268.
- 68 Foucault, *Birth of Biopolitics*, 148.
- 69 Although it is quite appropriate to use the term ‘economisation’, it is important to emphasise that this type of economisation has nothing to do with a mere expansion of the realm of the market against the realm of the state. See Ulrich Bröckling, Susanne Krasmann and Thomas Lemke, eds., *Gouvernementalität der Gegenwart: Studien zur Ökonomisierung des Sozialen* (Frankfurt am Main: Suhrkamp, 2007).
- 70 Michel Foucault, *The History of Sexuality. Volume 1: An Introduction* (New York: Pantheon Books, 1978), 139–45.
- 71 Foucault, *Birth of Biopolitics*, 259–60.
- 72 There has been some debate on Foucault’s stance towards neoliberalism, going so far as to assert that he has been seduced by some of its key ideas, see Daniel Zamora, ‘Introduction: Foucault, the Left, and the 1980s’, in *Foucault and Neoliberalism*, ed. Daniel Zamora et al., 1–5 (Cambridge: Polity Press, 2016). See further Daniel Zamora and Michael C. Behrent, eds., *Foucault and Neoliberalism* (Cambridge: Polity Press, 2016); Michael C. Behrent, ‘Can the Critique of Capitalism Be Antihumanist?’ *History and Theory* 54. 3 (2015): 372–88; Mitchell Dean, ‘Foucault Must Not Be Defended’, *History and Theory* 54. 3 (2015): 389–403; Serge Audier, ‘Neoliberalism through Foucault’s Eyes’. *History and Theory* 54. 3 (2015): 404–18. For a comprehensive evaluation see Magnus Paulsen Hansen, ‘Foucault’s Flirt? Neoliberalism, the Left and the Welfare State: A Commentary on *La Dernière Leçon de Michel Foucault* and *Critiquer Foucault*’, *Foucault Studies* 20 (2015): 291–306.

73 Foucault introduces the neologism ‘environnementalité’ in his notes for the 10th lecture to emphasise this indirect, lateral type of intervention, see Michel Foucault, *Naissance de La Biopolitique. Cours au Collège de France (1978–1979)* (Paris: Seuil, 2004), 266. Albeit the analogy to governmentality, the English edition (in contrast to the German one) abstained from a literal translation and uses ‘environmentalism’ instead (Foucault, *Birth of Biopolitics*, 261).

74 Foucault, *Birth of Biopolitics*, 203–6.

75 The notion of political or governmental rationality plays a crucial role in Foucault’s *History of Governmentality*, for it indicates the inner coherence as well as the practical dimension of governmentalities: ‘Rationalities are ways of thinking that render reality conceivable and thus manageable, which is to say subject to calculation and transformation’ (Ulrich Bröckling, Susanne Krasmann, and Thomas Lemke, *Governmentality. Current Issues and Future Challenges* [London/ New York: Routledge, 2011], 11).

76 See Gertenbach, *Die Kultivierung des Marktes*.

77 Foucault, *Birth of Biopolitics*, 247.

78 Foucault, *Birth of Biopolitics*, 117.

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