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Examining the Ordoliberal Tradition in Classical Liberal Thought*

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Introduction: Liberalisms old and new

Writing in 1951, Friedrich Hayek identified four places where the classical liberal tradition¹ had been upheld and developed during the first half of the 20th century. He named London, Vienna, Chicago, and, perhaps surprising to some, the small southern German town of Freiburg (Hayek, 1951/1967). The reason for including Freiburg was that it is the birthplace of ordoliberalism, a branch of classical liberalism that to this day remains relatively unknown outside of Germany.

The historical significance of ordoliberalism derives from its central role in redefining classical liberalism, and from its impact on economic policy. Representatives of ordoliberalism were key members of the *neoliberal* movement of the 1930s and 1940s, participating in the Lippmann Colloquium of 1938 and helping to create the Mont Pèlerin Society after WWII. In terms of economic policy, ordoliberal ideas informed the post-war creation of Germany's free-market

* Chapter prepared for the *Routledge Handbook on Classical Liberalism*, edited by Richard A. Epstein, Mario J. Rizzo, and Liya Palagashvili.

¹ On the definition of the term classical liberalism see Mack and Gaus (2004). An earlier introduction to ordoliberalism that focuses on its relationship with classical liberalism was provided by Sally (1996).

system – the Social Market Economy – as well as certain aspects of the architecture of the European Union.

The founder of ordoliberalism was economist Walter Eucken (1891–1950), whom Hayek considered to be “one of [the] really great men [of the liberal revival]” (p. 199).² Notably, the early ordoliberals wanted to “revive” classical liberalism by substantially changing it. As was characteristic for neoliberalism during this period, the ordoliberals agreed with the liberal thinkers of the past on the importance of individual freedom as a political value. But they questioned whether *laissez-faire* economics would support the functioning of markets and protect the freedom of consumers.³ In Eucken’s words:⁴

Laissez faire economic policy was originally based on the belief that if it applies, competition would arise everywhere. ... But now the following has become apparent: ... Buyers and sellers always try – wherever possible – to avoid competition and to acquire or maintain monopolistic positions. A deep desire to eliminate competition and to acquire a monopoly is alive everywhere and always. (Eucken, 1949, pp. 4–5)

To counter this tendency, the ordoliberals proposed that the state should play a more active role in creating and maintaining the conditions under which markets work best. The underlying idea was that the beneficial functioning of markets as described by Adam Smith depends on a framework

² For biographical details on Eucken see Kolev (2016) and Klinckowstroem (2023).

³ An introduction to neoliberalism is given by Burgin (2012). Today, the term neoliberalism is sometimes used to denote market radicalism. This is a later development and does not reflect its historical meaning.

⁴ All translations by the authors, unless indicated otherwise.

of legal and social rules that are – to a degree – the subject of deliberate choice.⁵ In concrete terms, this meant that the ordoliberalists often aimed at identifying and highlighting market-supporting legal arrangements, such as antitrust (i.e., competition) laws. The technical-legal aspects of this task were elaborated upon by the jurist Franz Böhm (1895–1977).

The ordoliberalists' commitment to reforming classical liberalism also meant that they occasionally saw the need to distance themselves from other representatives of the liberty tradition. For example, Eucken thought that Ludwig Mises stood for an “extreme and antiquated form [of liberalism]” (Eucken, 1925, p. 40) because of his defense of the minimal state.⁶ Similarly, Eucken criticized Smith for being a proponent of *laissez-faire*.⁷ On the other hand, there was a high level of agreement between Eucken and Hayek, at least during Eucken's lifetime.⁸

As the 20th century progressed, it became increasingly clear that there existed two competing interpretations as to how liberalism should evolve.⁹ Ordoliberalism represented one such interpretation, while Anglo-Saxon neoliberalism eventually came to represent another. In the 1960s and 1970s, the (new) Chicago School¹⁰ of Milton Friedman and George Stigler advanced a different view of what government regulation and specifically antitrust policy could achieve.

⁵ This line of reasoning in classical liberal thought is explored by Lewis (2023).

⁶ Mises in turn referred to the ordoliberalists as “ordo-interventionists” (Kolev 2018).

⁷ For a critical evaluation of this reading see Horn (2020) and Vanberg (2022).

⁸ On the affinities between Eucken and Hayek see Kolev (2021) and Feld and Nientiedt (2022).

⁹ This had been visible early on from the debates within the Mont Pèlerin Society. For a depiction of such a debate see Köhler and Nientiedt (2017).

¹⁰ The distinction between old and new Chicago School thinking was proposed by Buchanan (2010). See also Köhler and Kolev (2013).

Hayek's work, too, developed in a direction that was at best complementary to ordoliberalism, perhaps rather conservative with its emphasis on the status quo.

The avenue of inquiry opened by the ordoliberals was later pursued consequentially by representatives of constitutional economics, especially James Buchanan, as well as representatives of the law and economics movement and the new institutional economics.¹¹ Moreover, the rules versus discretion distinction, from Henry Simons' famous 1936 paper to John Taylor's monetary policy rule, is in line with ordoliberal thinking.¹² While the modern research programs were not directly inspired by the German tradition, their existence makes ordoliberalism appear as a pioneering endeavor in the fields of economics and law that showed a great deal of foresight.

The Freiburg School and the birth of ordoliberalism

The history of ordoliberalism begins in the early 1930s. In the immediate aftermath of the Great Depression, both Eucken and Alexander Rüstow (1885–1963) declared that there was a need for a new liberalism that redefined the relationship between the Weimar state and the economy. Both outlined the idea of a state that assumes the role of an impartial referee, enforcing fair and equal rules while standing “above individual groups and above interested parties” (Rüstow, 1932/2017, p. 148; see also Eucken, 1932/2017).

¹¹ For an assessment of the similarities between ordoliberalism and these research programs see Grosseckler (1996), Richter (2012) and Vanberg (1988).

¹² On the issue of rules versus discretion see, e.g., Simons (1936) and Taylor (1993).

The foundations of this new liberalism were laid by the Freiburg School, a collaboration of economists and lawyers at the University of Freiburg. In 1936, Eucken, Böhm and Hans Grossmann-Doerth (1894–1944) drafted the school’s manifesto, stating their intent of making economics and law once again “guiding influences in the life of the German nation” (Böhm et al., 1936/1989, p. 16).¹³ The efforts of the Freiburg School can be divided into two broad categories: First, a scientific research program that focuses on the theoretical connection between the rule framework of markets and market outcomes; second, policy recommendations that combine these theoretical insights with normative convictions taken from political liberalism.¹⁴

The work of the Freiburg School developed in opposition to the political and economic views of National Socialism. At Freiburg, Eucken early on opposed attempts of the rector Martin Heidegger to reorganize the university in accordance with Nazi principles. Following the November pogroms of 1938, Eucken and Böhm became involved in the oppositional “Freiburg circles” and contributed to a secret memorandum outlining the economic and social organization of Germany after her eventual defeat.¹⁵ Eucken and his colleagues also openly criticized the economic policy of the regime by arguing against central planning and in favor of an economic system that respects the “inalienable rights to freedom of the individual” (Eucken, 1942, p. 44).

¹³ The manifesto emphasized that the Freiburg School’s task required overcoming the methodological legacy of the German Historical School in both disciplines. The relationship between ordoliberalism and the German Historical School of economics is investigated by Schefold (2022).

¹⁴ See the next section below. The differentiation between a theoretical and a policy paradigm in the work of the Freiburg School is taken from Vanberg (2004).

¹⁵ On the role of the members of the Freiburg School as part of the German opposition against Hitler see Rieter and Schmolz (1993).

Besides the Freiburg School, there was a different branch of early ordoliberalism represented by Rüstow and Wilhelm Röpke (1899–1966). Both had left Germany in 1933 immediately after the takeover of the Nazi party. Writing from their respective exiles, Rüstow and Röpke created a more sociological approach to ordoliberalism. The basic assumption was that the functioning of markets depends in part on non-economic factors, such as the broader social and cultural context in which they are embedded. Röpke said on the matter:

[W]e must stress most emphatically that we have no intention to demand more from competition than it can give. It is a means of establishing order and exercising control in the narrow sphere of a market economy based on the division of labor, *but no principle on which a whole society can be built. From the sociological and moral point of view it is even dangerous because it tends more to dissolve than to unite.* If competition is not to have the effect of a social explosive and is at the same time not to degenerate, its premise will be a correspondingly sound political and moral framework. (Röpke, quoted in Schnyder and Siems, 2012, pp. 254–255)

The Freiburg School dissolved shortly after the end of World War II. In 1946, Böhm took up a professorship at the University of Frankfurt. Eucken died unexpectedly in 1950 while giving a series of lectures at the London School of Economics. His student Leonhard Miksch passed away in the same year. Notably, it was only at this point in time that the term ordoliberalism was coined to describe the new liberalism from Germany: Hero Moeller (1950) suggested the term in reference to the journal *ORDO* which Eucken and Böhm had founded in 1948.

In German academic economics, interest in ordoliberalism waned relatively quickly. By the early 1950s, the profession had embraced Keynesian economic theory in the style of Paul Samuelson's neoclassical synthesis.¹⁶ While ordoliberal ideas remained influential in policy-making, young German economists adopted the methods of the international mainstream even if they shared some of the research interests and normative convictions of the early ordoliberals. Ordoliberalism saw a brief revival in the 1970s and 1980s, but never reestablished itself as a major influence on the direction of academic economic discourse.¹⁷ Instead, constitutional economics and the economic theory of politics have adopted such a role in economics today. Still, ordoliberalism managed to retain its influence on economic policy.

The theoretical approach and the policy paradigm

In their 1936 manifesto, the founders of the Freiburg School maintain that “the treatment of all practical politico-legal and politico-economic questions must be keyed to the idea of the economic constitution” (Böhm et al., 1936/1989, p. 23). The economic constitution is the framework of (legal) rules that govern the economic life of a community.¹⁸ In modern economics, these rules are called institutions.¹⁹ They can be of a formal (e.g., laws, constitutions) or an informal nature (e.g., norms, customs, traditions). Eucken compares the rules of the market with the rules of a game:

¹⁶ Regarding the spread of Keynesian ideas in Germany see Hagemann (2017) and Hesse (2010).

¹⁷ The brief renaissance of ordoliberalism is described by Krieger and Nientiedt (2022). For an assessment of ordoliberalism's influence on German economics today see Bachmann (2019).

¹⁸ Eucken also explicitly acknowledges the need for a rule framework that regulates the interactions between different communities or nations, i.e., international law (Eucken, 1940/1950, p. 314).

¹⁹ On the modern economic definition of the term institution see Acemoglu et al. (2005).

The rules do not determine the game's outcome, but they ensure that the course of the game has a desirable character.

Thus, instead of describing the interactions of individuals within existing rules – as is usually the case in neoclassical economics – ordoliberalism focuses on describing the economic effects of different rule frameworks. Its theoretical approach is best exemplified by Eucken's *The Foundations of Economics* (Eucken, 1940/1950). In this book, he illustrates the effects of different sets of rules by analyzing two “pure” or ideal types of economic system,²⁰ the competitive market economy on the one hand and central economic planning on the other.

In contrast to representatives of other variants of classical liberalism, ordoliberals assert that free competition – as described by Smith – does not come about naturally. Instead, they argue that competitive markets require the existence of legal rules that support competition on merit (“performance-competition”) and discourage competitive strategies that are aimed at impeding competition, such as cartel agreements.²¹ Ordoliberals emphasize that pro-competition laws have to be created and further developed by the state. That the state could at the same time be responsible

²⁰ In the German original of the *Foundations*, Eucken uses the term economic system (*Wirtschaftssystem*) when referring to the two abstract ideal types and the term economic order (*Wirtschaftsordnung*) when referring to a particular economic system in history, e.g., “the economic order of the Roman Empire”. This distinction was abandoned in the English translation of the book. The economic constitution (*Wirtschaftsverfassung*) is the basis of rules from which the actual economic system (or order) emerges.

²¹ On the two kinds of competition strategies see Böhm (1933/2010).

for hindering competition is a paradox that the early ordoliberals recognized but did not attempt to solve.²²

The policy paradigm of ordoliberalism is explained in Eucken's posthumously-published book *Grundsätze der Wirtschaftspolitik*. He names two principles as to how the state should approach economic policy-making. First, it should aim to “dissolve economic power groups or restrict their functions” (Eucken, 1952/2004, p. 334). Second, the state should concentrate on improving the framework of general and abstract legal rules in which economic transactions take place. This approach is referred to as ordoliberal policy (*Ordnungspolitik*) and can be distinguished from interventionist policy. Eucken says on ordoliberal policy:

The question whether there should be more or less state activity evades the essential issue which relates to quality, not quantity. ... The state should influence the *forms* of economy, but not itself direct the economic process. ... State planning of forms – Yes; state planning and control of the economic process – No! The essential thing is to recognize the difference between form and process, and to act accordingly. (Eucken, 1950/1951, pp. 95–96)

The ordoliberal approach to policy-making can be illustrated by looking at the practical policy proposals of the *Grundsätze*. Here, Eucken argues that an ideal economic constitution should be both “functioning and humane” (Eucken, 1952/2004, p. 14). The latter criterion stems from

²² Solving this problem requires considering the specifics of the *political* constitution, which Eucken and Böhm believed exceeded the scope of their inquiry. This gap in the ordoliberal research program was not closed for some time (Kirchgässner, 1988). As Viktor Vanberg has shown, Buchanan's constitutional economics is a plausible extension to traditional ordoliberalism in this regard (Vanberg, 1988). See also Feld and Köhler (2011, 2019).

Eucken's liberal political outlook. To him, a humane economic constitution means that all individuals can pursue their own goals and are protected, to the highest possible degree, from the controlling influence of others and of the state.²³

Eucken's liberalism leads him to recommend a particular economic constitution, the "competitive order". It is based on a number of constitutive principles, the most important of which is the functioning of the price system. The other principles are monetary stability, open markets, private property, freedom of contract, personal liability, and the consistency of economic policy. In Eucken's view, these important general principles should be supplemented by a limited number of regulatory interventions, the regulative principles. This second group of principles comprises antitrust legislation, a minimum guaranteed income, the internalization of external effects (he mentions the example of environmental pollution) and, in some narrowly defined cases, minimum wages.²⁴

The power of economic ideas: The policy impact of ordoliberalism

Ordoliberalism is often cited as a prime example of an economic idea that brought about real-world policy change.²⁵ The famous case in point is the Social Market Economy, i.e., the economic

²³ In the *Grundsätze*, Eucken mentions Immanuel Kant as a reference point for his liberal outlook. The development of Eucken's liberalism over time is traced by Dathe (2009).

²⁴ See Eucken (1952/2004, pp. 254–304). The principles are discussed in more detail by Sally (1996).

²⁵ For this line of argument see, e.g., Hutchison (1979) and White (2012).

system chosen by Germany after the end of WWII. This new system was based in substantial part on the work of the members of the Freiburg School.²⁶

The Freiburg School's policy suggestions were implemented by politicians such as Ludwig Erhard, the minister of economic affairs between 1949 and 1963, and his state secretary Alfred Müller-Armack. Another collaborator of Erhard was Miksch, who drafted the 1948 law to abolish price controls. Together with the introduction of the *Deutsche Mark*, this law created the preconditions for Germany's high-growth phase in the 1950s, the "economic miracle".²⁷ Germany's antitrust law, which took effect in 1958, was written with the participation of Böhm.

While the Freiburg School informed the pro-market elements of the German economic system, Müller-Armack emphasized the need to combine them with comprehensive welfare state measures. His perspective on this issue can, however, be categorized as specifically ordoliberal: He recommended adopting social policies that could be realized in a "market-conforming" manner, i.e., that would not interfere with the working of the price system.²⁸

Besides the founding of the Social Market Economy, there are at least two more instances where the impact of ordoliberalism on real-world policy has been discussed. First, there exists a literature about the importance of ordoliberal thought for the emergence of the European Union.

²⁶ On the genesis of the Social Market Economy concept see Goldschmidt and Wohlgemuth (2008).

²⁷ A contested issue is whether the ordoliberal-inspired Social Market Economy was a necessary or a sufficient condition for Germany's growth miracle. See Eichengreen and Ritschl (2009) and chapter eight in Spoerer and Streb (2013).

²⁸ On market-conforming social policy see Müller-Armack (1946/1976).

Ordoliberalism arguably shaped key aspects of EU competition law, one of the major fields of EU policy-making today. Evidence for the ordoliberal influence is, e.g., the presence of Article 86 in the original 1957 Treaty of Rome, which prohibits the abuse of a market-dominating position.²⁹ In addition, the setup of the European Monetary Union with its focus on price stability and liability (“no-bailout rule”) is at least consistent with ordoliberal principles.³⁰ The banking union as part of the new architecture of European Monetary Union has been influenced by ordoliberalism and can be understood as an attempt to reestablish the liability principle.³¹

Second, there was recently an extended debate about whether ordoliberalism inspired the German handling of the Eurozone crisis that started in 2009. This crisis drew the focus of the media and the public to the different economic traditions in the Eurozone countries.³² Ordoliberalism was used by some scholars as an explanation for positions taken by Angela Merkel’s government on issues such as public spending, structural reforms and monetary policy.³³ There is little question that Germany favored a rule-based approach to solving the crisis, broadly speaking. However,

²⁹ The idea of adding this stipulation to the treaty had been floated by the German delegation as early as 1954 (i.e., before the Messina Conference). On the history of Article 86 EEC see Behrens (2015). The influence of ordoliberalism on EU competition law is elaborated upon by Gerber (1994).

³⁰ Feld et al. (2017) also note personal connections between some of the founding fathers of European monetary integration and ordoliberalism, e.g., in the case of Hans Tietmeyer.

³¹ See particularly Schäfer (2016).

³² On the economic-philosophical differences between Eurozone member countries see Brunnermeier et al. (2016).

³³ Contributions to this debate are collected in the volumes edited by Dold and Krieger (2019) and Hien and Joerges (2017), among others.

from the point of view of the history of ideas, specifically the German government's insistence on monetary stability corresponds to a core tenet of ordoliberalism.³⁴

Conclusion

In the 1930s and 1940s, ordoliberalism emerged as part of an international movement that aimed at reforming classical liberalism. The early representatives of this neoliberal movement gathered around the idea that competitive markets do not come about naturally, but instead rely on an institutional framework that is provided by the state.

Like other neoliberals, the ordoliberals thought that this framework should mostly consist of general and abstract legal rules that support, in an indirect manner, the workings of free markets. What made the ordoliberals' perspective distinctive, however, was their concern about the emergence of economic power and the deliberate obstruction of competition by powerful firms and interest groups. This led them to propose extensive antitrust regulations.

Another distinctive feature of ordoliberalism was that its founders were, to varying degrees, interested in the broader social context in which economic transactions take place. Combined with strongly-held normative convictions, this led them to champion (limited) welfare state measures to complement market economies.

³⁴ For this argument see Feld et al. (2015).

The ordoliberalists' policy ideas were not unanimously shared within the neoliberal movement. Based on the Chicago School's work of the 1960s and 1970s, Anglo-Saxon neoliberalism eventually developed a different understanding of the appropriate institutional framework of markets. Probably the biggest difference between the ordoliberal and the Chicago view concerns the question whether firms can significantly hinder competition (without the help of the state), and how – if at all – dominant firms should be regulated.³⁵

Anglo-Saxon neoliberalism proved much more successful than its German counterpart, both in terms of scientific and worldwide policy impact. Still, ordoliberal thinking on private market power and the institutional preconditions of competition might hold important lessons for the 21st century. Given the mounting empirical evidence of entrenched market power in certain sectors, US economists are currently calling for stronger antitrust enforcement, e.g., in the treatment of mergers, in labor markets, and regarding the conduct of big tech firms.³⁶ It was in this context that Luigi Zingales recently remarked that “we [the US] desperately need more of the ordoliberal tradition” (2022, p. 3). Ordoliberal-inspired modern economic research could meet this requirement.

³⁵ See, e.g., Friedman's critical evaluation of the ordoliberal position in *Capitalism and Freedom* (1962/2002, p. 28). For an overview of the Chicago School's perspective on antitrust see Kovacic and Shapiro (2000).

³⁶ These key challenges for antitrust policy are identified by Shapiro (2019).

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