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Contextual liberalism: the ordoliberal approach to private vices and public benefits

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Abstract

This article highlights the various sources that shaped the genesis of ordoliberalism. In the wake of the emerging project of neoliberalism, ordoliberals created a theory that contains a bundle of claims, which constitute the attempt to merge liberalism and its contextual embedding into a social philosophy that meets the requirements of both—economy and society. They were concerned with a new and properly interpreted liberalism. Not because they did not share the basic assumption of classical liberalism that individual self-interested action is the necessary driving force in advancing economic and social progress, but because they realized that individual action requires an embedding into a social and moral order to deliver public benefits. This insight proves to be the significant difference between ordoliberals of neoliberal facon and the exponents of classical liberalism: namely that the market economy operates based on prerequisites which it cannot itself guarantee. Regarding their very own historical context, this must be seen in light of their concern for the reconstruction of Western societies after the end of the totalitarian Nazi regime. The purpose of ordoliberalism has always been the “consciously shaped” economic order which manifests itself as humane and as functional. Moreover, if one understands ordoliberalism as contextual liberalism, it can also be significant for today’s discourse. In order to achieve this aspiration, ordoliberalism adopts a contextual approach. In particular, linkages can be drawn here to Constitutional Political Economy, and the interaction of these perspectives offer promising benefits for both “thinking-in-orders” traditions.

Keywords Ordoliberalism · Neoliberalism · German historical school · Constitutional political economy · Economic methodology

JEL Classifications B15 · B31 · P48

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1 Introduction

To grasp the definition of ordoliberalism, it may prove helpful to contrast its renowned thinkers, both of whom are understandably icons of liberalism: Bernard Mandeville and Friedrich Hayek. In his commemoration of Mandeville in 1966, Hayek assessed the Dutchman's achievement as grounded in being the first to explain that “in the complex order of society the results of men's actions were very different from what they had intended, and that the individuals, in pursuing their own ends, whether selfish or altruistic, produced useful results for others” (Hayek 1978, p. 253). In that sense, it was Mandeville who established this important element of liberal theory, namely, that “the twin ideas of evolution and the spontaneous formation of an order” (ibid., p. 250).

Yet when one examines the texts of ordoliberal scholars, one quickly discerns that—contrary to Hayek—classical liberal thinkers like Mandeville and Adam Smith hardly played significant roles, and if they are mentioned in passing, they generally are regarded critically. It would be mistaken, however, to suggest that ordoliberals failed to understand classical liberalism. Somewhat in contrast to the usual perspectives in the predominant literature (Horn 2019; see also Tribe 2008), they were far more concerned in their criticisms of liberal thinkers like Mandeville and Smith that their ideas unintentionally led to a development in which individuals' actions were removed from their social settings and respective contexts. To formulate it differently: ordoliberals did not deny that individual action based on self-interest was the necessary driving force of market and societal forces; but they worried that an excessive focus on individual action and the positive effects that such action brings about for society were inflated, thereby overlooking the necessary embedding of individual action in a societal and moral order. Such an order is indispensable for ordoliberals to ensure that individual action does indeed serve to benefit the public.

Unlike Mandeville, for whom even individual vices confer public benefits, ordoliberals require the presence of public benefits in terms of a societal order *ex ante* so that individual action can be assumed to function in a desirable way. Thus, ordoliberals seek to invert the perspective of classical liberalism: only an order that embeds the individual sufficiently can secure durable liberties both for society and the individual. Otherwise, the degeneration of society and developments antithetical to the intentions of classical liberals—i.e., the Wealth of Nations—would ensue. Alexander Rüstow, a progenitor of ordoliberalism, got to the heart of the matter in formulating the following:

Adam Smith and his school of economic liberalism no longer depreciated egoism as ‘vice’ – as had Mandeville in his puritanical asceticism – but rather identified it as the real motive force of the market economy; they viewed it as altogether legitimate ... and sanctified it because of its highly beneficent effects – a development that also contributed to the ‘transvaluation of values’ that was to culminate in the nineteenth century. (Rüstow [1980] 2014, p. 477).

In light of that focus on values, virtues and collective welfare, the ordoliberals extended their economic analysis far beyond “economics proper” into what can be called the (societal) environment in which economic activity takes place. They anchored their specific concept of liberalism in societal notions of norms and justice—in short, in its context.

We shall proceed as follows: in the second section we introduce briefly the ordoliberal school of thought and delve into the philosophical foundations of ordoliberalism. To understand its genesis correctly, it is important to realize that the ordoliberal tradition has no genuine roots in “classical liberalism” as such. Nonetheless, ordoliberals always have seen

themselves as “true” liberals and willingly were engaged in the early and mid-twentieth century project to redefine liberal principles. It is not a surprise that the *ordoliberal*s see a primacy of order before freedom. Moreover, for them liberalism is much more than an economic conception. In the third section we illustrate the connection ordoliberals established between liberty and dignity. We argue that irrespective of the detailed experiences during the dark time of Nazism, the threat of the Nazi’s regime had profound influences on the ordoliberals, instilled a stronger desire for freedom in them, and demonstrated the necessity of fostering societal arrangements that would oppose totalitarian encroachments in the future. Section 4 illustrates the ordoliberals’ clear grasp of political economy. By focusing on the contextual sphere, it becomes clear why they certainly can be seen as successors of the German Historical School (GHS). We will demonstrate how the ordoliberal research program can be connected to Constitutional Political Economy (CPE), especially regarding thinking of rules and orders as enabling freedom and the pursuit of the common interests of all members of a society. Based on such a re-interpretation of ordoliberalism, implications for the current debate on liberalism can be drawn. The fifth section concludes.

2 The philosophical foundations of ordoliberalism: a liberalism without liberal roots?

With all its peculiarities, ordoliberalism commonly is regarded as the German variety of neoliberalism (Bilger 1964; Riha 1986; Barry 1989; Kolev 2015; Biebricher 2017). Ordoliberalism in large part dates back to an interdisciplinary research group of economists and legal scholars, the so-called *Freiburger Schule* (Freiburg School). It was founded at the University of Freiburg in the 1930s by the economist Walter Eucken (1881–1950) and the two jurists Franz Böhm (1895–1977) and Hans Großmann-Doerth (1894–1944). As the name implies, ordoliberalism emphasizes the necessity of establishing an economic *order* above all that must be created and maintained by the state as a legal framework in order to guarantee a free, prosperous and humane society. In contrast to other currents of liberal thinking, that characteristic shapes ordoliberalism as a school of thought; it was promoted further by other important scholars beyond the Freiburg School, namely, Alexander Rüstow (1885–1963), Wilhelm Röpke (1899–1966), Alfred Müller-Armack (1901–1978) and Ludwig Erhard (1897–1977).

It is indisputable that the ordoliberal thinkers surrounding Eucken always considered themselves to be true liberals, but their characteristic emphasis on the idea of order and the prominent role that the state has to play in it is not the only aberration from classical liberalism’s roots. The incompatibility of the two schools was quite obvious as early as in 1938 at the *Colloque Walter Lippmann*. The participation of Alexander Rüstow and Wilhelm Röpke was formative in the sense that it forced them to discuss and further confront their differences with respect to economic policy and liberal foundations (Reinhoudt and Audier 2018). In general, the ordoliberal thinkers chiefly were concerned with a *new* and properly interpreted liberalism; hence, it is not surprising that the creation of the term *neoliberalism* supposedly is attributed to Rüstow during the Colloque (Mirowski and Plehwe 2009, pp. 12–13).

The ordoliberals criticized classical liberalism for failing to provide an adequate response to the cultural and social problems of modern mass societies. Their impression was that classical liberalism tended to decontextualize the individual and economic processes, thus presenting a colorless perspective on society. It was the end of totalitarianism

after WWII, in particular, that led ordoliberals to consider freedom to be an integral and practical research project. The contradiction between perceptions of living in times of cultural and social crisis, combined with liberal convictions that the crisis could not be overcome without a market economy and economic competition, could be seen as *differentia specifica* between ordoliberalism and other (neo-)liberal schools of thought, especially those of the classical Anglo-Saxon tradition (Kolev and Goldschmidt 2020, pp. 215–216).

In order to differentiate themselves from the latter, they applied the term *paleoliberalism* to distinguish antiquated liberalism from the ideas they sought to develop (Rüstow 1961). As Horn (2019) has argued, ordoliberals have not always bothered to dig deeply into Smith's works to fully appreciate the nuances of his positions. One can argue à la Horn, but our point is different: it is not so much misinterpretation by the ordoliberals that leads to a different assessment of the classics, but rather that the focus on individual behavior (quite in the sense of the Enlightenment), which was understandable in the eighteenth century, neglects the necessary embedding of individuals in a society. Institutional context matters. Furthermore, the ordoliberal approach does not contain a “liberal” philosophical underpinning. Instead, their philosophical influences can be found in German idealism, for Eucken especially in the person of Edmund Husserl (Goldschmidt 2013; Goldschmidt and Rauchenschwandtner 2018) and Immanuel Kant (Klump and Wörsdörfer 2009; Audier 2013) as well as—in the case of Rüstow in particular—the Greek classics (Rüstow 1952).

2.1 A reverse perspective on liberalism: order first, followed by individual freedom

The German variety of neoliberalism did not wish to separate itself from the “liberal family”, but willingly was engaged in the early and mid-twentieth century project of redefining liberal ideas and searching for institutions that would enable societies to preserve economic and civil liberties over time (Kolev et al. 2019a). The important role of ordoliberals during the *Colloque Walter Lippmann* or later on in the *Mont Pèlerin Society* seem to confirm that assessment. Nevertheless, ordoliberal thinkers were drawn to their liberal convictions in somewhat different ways, focusing on diverging strategies for achieving their vision of an ordered and at the same time free society. Ordoliberalism does not emphasize the process of free exchange as the essence of liberalism inasmuch as it focuses on the interactions of free individuals within a legal order. Within that legal framework, individuals are free in the sense that rules define scopes of lawful action, while the economic order ensures efficient economic performance.¹ The main argument that led the ordoliberals to that conviction was

the question of private power in a free society. It necessarily leads to the question of how an order of the free economy is constituted. From there one arrives at the question of what types and possibilities there are at all, what role power plays in them, both the power of the government and the power of private individuals and private groups, and what disturbances of order occur when a different distribution of

¹ As Ludwig Erhard (then Minister of the Economy) wrote in 1949 in a letter to the first Chancellor of the Federal Republic of Germany Konrad Adenauer: “The Social Market Economy means much more than a return to liberalistic forms of economy; it does not mean a laissez-faire, but a very alert, sensitive economic governance which leaves the principle of freedom untouched, indeed highlights it more strongly and more emphatically than the abuses of a past capitalist system.” (Erhard [1949] 2019, p. 203; all quotations from German sources are translated into English by the authors).

power develops within the state and society than that which is in conformity with the respective economic system. (Böhm 1957, p. 99).

In that sense it becomes obvious that “free order is a task” (Eucken [1952] 2004, p. 360) and not something that will emerge from spontaneous forces: “The ‘invisible hand’ does not easily create forms in which individual interest and overall interest are coordinated” (ibid.), a conclusion ordoliberals perceived to be the decisive difference of their approach to classical liberalism. It is not the pursuit of individual interests and competition per se that leads to advantageous economic and societal outcomes; on the contrary, competition itself is to be understood as a task (Miksch 1937), something that can be realized and preserved only by crafting an adequate order that serves the interests of the individual. The ordoliberals do not deny that self-interested individual action is the necessary driving force of economic and social progress, but they are concerned that sole reliance on the action of the individual overlooks its necessary integration into a social and moral order. For them, however, order is indispensable for ensuring that individual actions really do best serve the common interest. In that conviction they rely on the incentivizing effect of a proper institutional framework that establishes the “rules of the game” for each individual. Preserving the formal aspects of those rules is the primary task of social and economic policy—interpreted as *Ordnungspolitik*.

They [i.e., the Classics] have failed to appreciate the degree to which socio-cultural achievements have been important for the development of mechanisms of ordering, believing instead that it would suffice to remove privileges, to establish the freedom of trade, and to refrain from state intervention to create a politico-social framework which enables leaving everything else to ‘nature’. (Böhm 1950, p. 52).

Yet, that argument is not to be understood as a reproach to the Classics. Historical developments only highlighted, the ordoliberals argued, that an ordering of the economy was necessary to guarantee its functioning—experiences classical liberals had not had when they formulated their politico-economic proposals. Thus, the novelty of neoliberalism in ordoliberal *façon* was to “refine the market economy to a competitive order and to realize it in the economic-social cultural sphere of “ORDO” (ibid.). For ordoliberals, the idea of freedom (literally) comes second to the notion of a well-ordered society, but that interpretation certainly is not to be understood as a devaluation of freedom: In ordoliberalism—unlike in other liberalisms—it is order that makes freedom possible in the first place. On that basis, one might be led to believe that the idea of liberty does not in itself have supreme value for the ordoliberals,² but the tension vanishes if one comprehends that their concept of liberalism is deeply rooted in their cultural values.

² Eucken summarizes the idea in his *Grundsätze der Wirtschaftspolitik* (Principles of Economic Policy): “The principles outlined here are sometimes called ‘liberal’ or ‘neoliberal’. But this term is often tendentious and not apt.... The liberals of the nineteenth century were mostly supporters of a policy of *laissez-faire*. They were based on a great tradition; but some of them were epigones. On the whole, the liberalism of that time is only a branch of the great tree of European culture which has been based on freedom ever since it existed, and which was threatened or decayed only when freedom decayed. The new historical context makes it necessary – and it is precisely this idea that has forced us to do so – to avert the massive threat to freedom posed by new, positive means” (Eucken [1952] 2004, pp. 374–375).

2.2 Liberalism as a cultural ideal

The idea of (classical) liberalism often is associated by ordoliberals with the conception of laissez-faire and “Manchesterism”, which, as immanent features of the economic system, are seen as causing undesirable social phenomena such as impoverishment and economic inequality and therefore are downright counterproductive to human flourishing. According to Rüstow (1949, p. 131), the great demerit of “Manchester liberalism” is that it “could not stop the degeneration of the market economy”. The insistence on a “weak state” (Rüstow 1942, p. 275) ultimately led to the fact that the actual economic policy prerequisites of a market economy—a “pure efficiency competition” for performance (ibid., p. 274)—could no longer be regarded as given. As a solution to the real economic problems that existed in the mid-twentieth century, ordoliberals had in mind a “Third Way” that openly addressed the grievances of the market economy and attempted to renew liberalism in such a way that it “takes into account the demands of socialism” (Rüstow 1949, p. 131; see also Röpke [1944] 1979, p. 52). In other words, it cannot be doubted that the ordoliberals share the goals of classical liberalism—a free society of sovereign individuals. From the perspective of the ordoliberals, however, strong focus on individual self-interest and the underestimation of processes of economic power have not drawn sufficient attention to the legal and cultural preconditions for achieving a successful liberalism.

In that regard, classical liberalism seemed to them to suffer from an “emptiness of the senses”. Nobody made that point better than Röpke, who charged classical liberalism with “economism”, only aiming at “stimulating performance” while neglecting the crucially important non-economic aspects of human existence (Röpke [1958] 2009, p. 136). Ordoliberalism, on the other hand, claims that the market economy “must be embedded in a higher overall context which cannot be based on supply and demand, free prices and competition” (Röpke [1958] 2009, p. 131). Rüstow likewise deals extensively with “liberal criticism of liberalism” (Tönnies 2009, p. 159) and contrasts it with his own vision of a more contextual version. Furthermore, classical liberalism could be found guilty of *Soziologieblindheit* (blindness to sociology) (Rüstow [1950a] 2001, p. 61) and, correspondingly, overlooking of the institutional prerequisites for and regulatory forces of a market economy (ibid., pp. 90–112). Accordingly, Röpke writes in *Civitas humana*: “The liberalism which we reach could be characterized as sociological, and against it the weapons which have been forged against the old, purely economic liberalism remain blunt” (Röpke [1944] 1979, p. 51).

Against that backdrop it is obvious how ordoliberalism’s criticism leads away from an economistic view and locates the true problem of liberalism in another place, namely on a level that lies, in the words of Röpke, “beyond supply and demand” (Röpke [1958] 2009). The surrounding institutions or—as they themselves called it—the “border of the market” which represents “the actual domain of the humane, [and is] a hundred times more important than the market. The market itself merely has a serving function” (Rüstow 1961, p. 68). In a similar vein, Eucken criticizes classical economics’—implied is the ever-present connection with classical liberalism—failure to explain events in the real world by abstracting too much from them:

We can appreciate the efforts of the classics to discover a rational natural order by studying the diversity of economic institutions, but all the same they did not satisfactorily explain economic life as it actually was. Their analytical powers were applied essentially to the *one* case which they considered ‘natural’, the system of free competition in all markets.... We know that the classical economists did not feel this diver-

gence between theory and reality so strongly, because they were mainly concerned to look for the ‘natural’, rational and workable economic system, but we, if we wish to understand economic reality, cannot tolerate it. (Eucken [1940a] 1950, p. 49).

In Röpke’s (1947a, p. 12) dichotomy of *fleeting* [vergänglich] and *lasting* [unvergänglich] liberalism, ordoliberalism’s unique view on the liberal order and its issues with classical liberalism become most evident: a distinction must be made, he thought, between liberalism as the political and social movement of the nineteenth century and *true, imperishable* liberalism. The economic and socio-political liberalism of the time actually was a transient liberalism that did not do justice to the “cultural ideal” (ibid., p. 1) that should inform lasting liberalism (see also Goldschmidt and Dörr 2018).

3 The fight for freedom in response to the tyranny of the Nazi dictatorship

We have shown in the previous section that ordoliberalism places the idea of order before the idea of freedom as a desideratum for a well-functioning society. Additionally, the school’s members criticized economists advocating a *laissez faire* approach to economic policy and, at times, actively tried to distance themselves from belonging to the “camp” of paleoliberalism. It also can be shown—despite the criticism of classical liberalism—that the real freedom of each individual is essential for ordoliberals, and increasingly became important over the years. While it is clear that a noteworthy liberal outlook existed amongst many ordoliberals prior to 1933, we make the case that their first-hand experiences with the thoroughly illiberal regime of National Socialism from 1933 to 1945 sensitized ordoliberals to the necessity of liberal political and economic institutions and the value of freedom as such. The connection can be illustrated with the ordoliberals’ publication history: While their early writings clearly were centered on narrow economic questions such as business cycles and capital theory (Röpke 1929), trade theory (Rüstow 1925) or detailed descriptions of various business sectors (Eucken 1914, 1921), which then turned into questions about the good economic order (Eucken [1938a] 2005, [1940] 1950), their scope and aims changed further in the late 1930s and 1940s, increasingly linking economic questions to matters of political organization and social philosophy.³ The very concept of “freedom” and clear statements about the desirability of maintaining it can be found from that point onward. Practical experiences with a very concrete loss of freedom led to deeper reflections on the prerequisites of an economic and social order that reliably would prevent such deprivations in the future. To achieve that aim required extending the realm of analysis from merely economic topics to broader issues, as is evident from the titles of their publications at the time—*The Social Crisis of our Time* (Röpke 1947b), *Civitas humana* (Röpke [1944] 1979) or *Freedom and Domination—a Historical Critique of Contemporary Civilization* (Rüstow [1980] 2014)⁴ do not sound like titles of economics textbooks, and that certainly was not what they were.

³ Blümle and Goldschmidt (2006a) argue that the rise of dictatorship in Germany also taught ordoliberals that attempting to solve small, technical problems of economic life might not be the proper domain of analysis. While those technical problems were challenging in isolated analyses, a well-ordered overall economic order was useful to address them.

⁴ The book is a condensed, translated version of Rüstow’s three-volume *Ortsbestimmung der Gegenwart* (Rüstow 1950b, 1952, 1957) edited by his son, Dankwart A. Rustow.

The change in appreciation of a *liberal* social and economic order can be linked directly to experiences with the Third Reich. Naturally, the experiences of the proponents of ordoliberalism during that period differed sharply depending on their personal relationships with the Nazi regime. In the cases of Alfred Müller-Armack or Ludwig Erhard, for instance, connections to National Socialism are not always entirely clear, especially in the earlier years, even though they generally distanced themselves from active politics during those years.

For others, most notably Alexander Rüstow and Wilhelm Röpke, the coming to power of the Nazis impeded freedom in a very concrete sense: it forced them into exile. In both cases, the experience of National Socialism triggered deep reflection about the cultural prerequisites of free societies and instilled in them the conviction that economics alone could not prevent disasters like the Nazi regime from happening again. The issue at hand was viewed as a cultural malaise requiring that solutions to the problem also were to be found on the level of social and cultural influences (as exemplified in the second section). In the case of Röpke, for instance, many of the sentiments he expressed during his exile in Istanbul and later in Geneva can be detected in the collection of essays *Against the Tide* [Gegen die Brandung]. It not only demonstrated Röpke's initial reaction to the difficulties of the Weimar Republic and "Brown Totalitarianism", but also reveals how the experiences of those years informed his later attempts to help (re-)construct an economic and social order that would not succumb to the same type of totalitarian seduction ever again (see Röpke 1969). While Röpke's writings in the early 1930s already are permeated with pessimism about the future, the dire outlook (among which totalitarian tendencies clearly were included) always is seen as a consequence of faulty economic policies, especially regarding money and trade (Röpke 1929; see also Eucken 1923). Shortly after the National Socialists' takeover, we find much broader criticisms of the current state of affairs and a political climate "that prepares itself to reforest the garden of culture and transform it back to the old primeval jungle" (Röpke [1933] 2009, p. 68).

The case of the Freiburg School is perhaps even more instructive in that respect, especially given the characterization of the ordoliberal's liberalism of one as a "cultural ideal", as has been laid out in the second section.⁵ Franz Böhm and Walter Eucken, for instance, both raised in homes where Christian faith played prominent roles, were active in all three of the so-called "Freiburg Circles", which aimed at reflecting on the importance of the believing citizen in the face of an evidently unjust political order during the times of the Third Reich. Ultimately, they took part actively in promoting the overthrow of the Nazi regime.⁶ For our

⁵ Research on the important roles of Freiburg economists in the resistance has of course been conducted almost exhaustively in recent times (Rieter and Schmolz 1999; Rütger 2002; Goldschmidt 2005, 2011; Maier 2014; Dathe 2018). Our aim is not to contribute to actual historical study of the so-called Freiburg Circles (see below), but rather to identify the sense in which the ordoliberals' commitment to resistance against the Nazi regime contributed to their growing appreciation of freedom as a value to be actively pursued.

⁶ Three Freiburg Circles must be distinguished: The *Freiburg Council* (First Freiburg Circle), the *Bonhoeffer Kreis* (Second Freiburg Circle) and the *Arbeitsgemeinschaft von Beckerath* (Working Group von Beckerath, Third Freiburg Circle). A detailed description of the members of the Freiburg School in all three circles can be found in Goldschmidt (2005). In this paper we mostly will refer to the Second Freiburg Circle for purposes of illustration. The first Freiburg Circle, the so-called Freiburg Council, was founded after the events of the "Reichskristallnacht" (Night of Broken Glass). The members, all of whom had strong ties to Christianity, wrestled with the question of what their role vis-à-vis the Nazi regime should be.

The Third Freiburg Circle was an economics working group associated with "Klasse IV der Akademie für deutsches Recht" (Class IV of the Academy for German Law), in which many of the Freiburg econo-

purposes, the activities in and contributions to the so-called Freiburg Bonhoeffer Circle is a perfect way of illustrating the connections between the resistance against the Nazi regime and the development of ordoliberalism. The Bonhoeffer Circle was created at the behest of the Berlin pastor Dietrich Bonhoeffer (1906–1945) and also was influenced heavily by the ideas of the Confessing Church. The Circle produced a clandestine paper titled “Politische Gemeinschaftsordnung: Ein Versuch zur Selbstbestimmung des christlichen Gewissens in den politischen Nöten unserer Zeit” (Political and Communal Order: An Attempt at Self-Determination of the Christian Conscience in Our Politically Difficult Times), which dealt with questions of how Christians ought to act in the Third Reich. More important, it also featured an essay written by Eucken and his two Freiburg colleagues Constantin von Dietze and Adolf Lampe, included in the document’s appendix, which deals with the “Wirtschafts and Sozialordnung” (Economic and Social Order) to be implemented after the war had ended. The appendix proposes an economic order for the postwar area that not only focuses on material aspects, but also offers “the strongest resistance possible to the power of evil” (Dietze et al. [1943] 2008, p. 100). Throughout the text, the authors stress the ethical and religious pillars of a future economic order, at the heart of which stood the individual human as a free and moral being. They motivate their endeavor in the following way, which clearly demonstrates the strong religious underpinnings of the project:

Our work is primarily concerned with the overall order of economic life, rather than with the duties and commandments which, according to Christian teaching, apply to the behavior of the individual in economic life. As much as we are imbued with the fact that the observance of the eternal basic demands of individual economic ethics founded on Christian values is of utmost importance for healthy economic and social conditions, we think that we should not deal with them in detail here. For the Christian foundation of individual economic ethics, everything that is contained in the commandments of love for God and love for one’s neighbour (Matth. 22, 40) seems to us to have been worked out sufficiently clearly. On the other hand, it is a particularly urgent task to give a Christian foundation to the foundations of social-economic ethics, especially according to the Protestant understanding. What has been done for this so far is not enough and therefore has not found general approval. (ibid., p. 99).

As such, the appendix likewise offers very concrete practical guidance for economic policy: The discussion of the promotion of competition and the avoidance of monopoly—characteristic of ordoliberalism—is found there, along with extensive treatment of the role of the state, given the necessity of embedding the economic order of a society in a safe and stable legal framework. In that sense, it is no surprise that the appendix has been described as “containing the essence of ordoliberal thinking” (Horn 1996), and its content neatly illustrates that the ordoliberal’s conception of liberalism is indeed rooted in strong ethical and cultural underpinnings. However, the ordoliberals’ participation in the resistance also carried with it immediate practical consequences that placed their lives in serious danger. After the failed attempt to assassinate Hitler on July 20th 1944, the activities of the

Footnote 6 (continued)

mists came together – with other leading German economic thinkers of the time – to discuss questions of economic policy. The reports of the meetings played an important role later on within the scientific advisory body of the federal ministry of economics under the first federal minister of the economy in the newly founded Federal Republic of Germany, Ludwig Erhard (Grossekettler 2005; Klump 2005). Indeed, many of Erhard’s advisors had belonged to the same working group.

Bonhoeffer Circle became known and its members frequent targets of police questionings and SS investigations. Some of its members, for instance Constantin von Dietze and Adolf Lampe, were sentenced to death, but the verdicts were not carried out (Goldschmidt 2011).

Thus, the Freiburg School's program for economic policy ultimately also became—as Eucken later described it—a “program for freedom” (Eucken [1952] 2004, p. 370). With its opposition to Nazi ideology, it becomes clear why it evolved into a positive program for real individual freedom. The threatened loss of freedom spurred the development of an economic and social order that could defy power and coercion. As Michel Foucault (2010, p. 106) wrote about the ordoliberals:

But I think we can say that Nazism was, in a way, the epistemological and political ‘road to Damascus’ for the Freiburg School. That is to say, Nazism enabled them to define what I would call the field of adversity that they had to define and cross in order to reach their objective (also see Goldschmidt and Rauchenschwandtner 2018).

Their practical experiences with unfreedom during that time, and the constraints they had to suffer because of them, also sensitized the ordoliberals towards appreciating freedom as a value in itself. We do not mean to imply that a school of thought similar to ordoliberalism would not have emerged without those experiences, but suggest that its focus on individual freedom and the necessity of searching for an economic and political order that would limit the activities of the state and render a reappearance of a Nazi-like regime impossible would have been far less pronounced without the crucial experience of National Socialism.

4 Ordoliberalism as contextual liberalism

4.1 The historical foundations of ordoliberalism's contextual approach

Having seen how historical context helped instill particular appreciation of freedom in the ordoliberals, we now turn to how they integrated the broader context into their thinking about economic activity. In order to do so, it is necessary to first take one step back: one of the strongest factors influencing early ordoliberalism undoubtedly was the German Historical School of Political Economy, although ordoliberal thinkers surrounding Eucken tried to distance themselves from that point of origin (e.g., Eucken 1938b, 1940b). Indeed, at first glance, discontinuities with the GHS program can be identified at various levels, e.g., regarding methodological approaches, epistemological positioning, or economic policy agendas, particularly with respect to competition policy implications (Eucken 1940b, p. 489). It is therefore not surprising that some corresponding works consider ordoliberalism to fall into an Anglo-Saxon tradition rather than being an offspring of the GHS (e.g., Sally 1996; Vanberg 2004; Goldschmidt and Berndt 2005; Köhler and Kolev 2013). Nevertheless, even if that interpretation were correct, ordoliberalism can be fully grasped only in its connection to the GHS heritage (Schefold 1995, 2003; Peukert 2000; Goldschmidt 2002; Broyer 2006). Moreover, at second glance, a further examination of that heritage reveals continuities that even the early ordoliberals may not have fully recognized or perhaps did not wish to acknowledge.

It often is overlooked that the founders of the (older) GHS stood firmly on the ground of the German political liberalism of their time. Even so, they had a dispassionate confidence in the abilities of state intervention to remedy social problems (Bruch 1985, p. 138). But to

justify obvious deviations like that from the liberal doctrine of classical economics in their own country, they developed a pronounced historical awareness within their political economy—a relativist economic approach taking the context and specificity of time, place and culture into account. Such a contextual—or rather sociological—understanding of political economy also is strongly reflected in ordoliberal theory, and it is not coincidental that that tradition of economic thought originated in Germany in the middle of the nineteenth century (Goldschmidt et al. 2016, pp. 3–6): Compared to England or France, the onset of industrialization was a relatively late development, so Germany was one of the first late-comers in Europe to undertake catch-up development. Classical economics in the wake of David Ricardo implicitly presupposed what Germany—like most other societies—had not yet sufficiently achieved.⁷

As such, one can distinguish explicitly between contextual economic approaches that concern the interactions between the economic order and other societal orders, and other approaches that isolating economics focus on the processes within the economic order itself (Goldschmidt et al. 2016; see also Kolev et al. 2019b). That classification does not imply a static relationship between contextual and isolating economics, but rather that their interrelationships vary or should vary as economic reality changes (Kolev et al. 2019b, p. 648). Hence, contextual economics is first and foremost research on transitions; its comparative advantage lies in understanding profound structural changes (ibid., p. 649). However, given their own historical context in nineteenth century Germany—in the midst of a major societal transformation and increasing integration into the world economy (Rieter and Zweynert 2006)—it appears reasonable that the GHS research program almost was exclusively devoted to contextual economics.

That conclusion applies in particular to the works of Gustav Schmoller (1838–1917), the *spiritus rector* of the younger GHS. Central to his approach is the economy *in its entirety*—i.e., economy and society (and each of their interdependent components) are conceptually integrated (Shionoya 2006).

The term ‘economics’, adopted by the Americans and partly by the English, instead of political economy [Volkswirtschaftslehre] ... seems to me even more impractical, because it also wants to eliminate the people, the society, the social side of the economic process by using the economy as a mere material process. (Schmoller 1911, p. 429).

Schmoller’s contextual concept can best be described as historico-ethical political economy (Nau 2000). It is an attempt to move beyond pure economics, because for Schmoller political economy “can only be a science if it expands to a societal doctrine [Gesellschaftslehre] and to the extent to which it does so. Its entire starting point must no longer be the individual and one’s technical production, but rather society and its historical development, its narratives must be inquiries into the societal manifestations of economic life” (Schmoller 1882, p. 1382).

Methodologically, Schmoller’s approach primarily was derived empirically by individual studies of economic history in which institutions constitute the tangible object of research. He preferred to “first explain the development of the individual economic institutions” (Schmoller [1908] 1978, p. 120) in order to embed it in specific overall economic

⁷ From the perspective of the history of economic thought, the conclusion certainly does not apply to the beginnings of classical political economy. Especially the system of Adam Smith remained firmly concerned with understanding economic processes in their societal embeddedness (Evensky 2005).

and societal contexts. Even though the later ordoliberals rejected the allegedly anti-theoretical method of Schmoller in their effort to overcome the predominant historicism following the decline of the GHS—quite tellingly they refer to themselves as “Ricardians” in that respect (Janssen 2009a, pp. 34–50; Köster 2011, pp. 222–233)—they clearly share its genuinely contextual approach.⁸ Eucken’s *specific holism* (Zweynert 2007), according to which it is necessary to concentrate first on the analysis of suborders in order to be able to comprehend the overall order, is remarkably similar to Schmoller’s institutional approach. It therefore is not surprising that Eucken, on the other hand, also rejects classical economics with a quite Schmollerian argument: Classicism failed to him “not simply because of defects in its theoretical system, but mainly because its theoretical solutions did not fit the existing historical variety of economic life” (Eucken [1940a] 1950, p. 48).

Consequently, the ordoliberals sought to distance themselves to a certain extent from both the (contextual) German Historical School *and* (the seemingly context-free) classical economics. At the same time, Eucken explicitly identified questions about economic processes *and* those about economic order as the two main subjects of political economy (Eucken [1938a] 2005). What appears to be a contradiction nevertheless makes sense when condensed to the fundamental notion of context-free and contextual economics in general.

The early ordoliberals claimed to emancipate themselves from their predecessors who in their eyes had failed by exaggerating the historicist method (Böhm et al. [1936] 2008, p. 38; Eucken 1938b, p. 207). Their aim was to bypass the “ruins of the Historical School” (Janssen 2009b, p. 104) by providing its guiding questions with an epistemologically solid foundation (Gander et al. 2009) and by reconnecting German political economy to the modern international mainstream of economic science in favor of a more (neo-)classical theoretical approach. But in the end, the GHS’s successors instead tried to offer a new perspective and a new theoretical foundation (Schefold 1994, p. 222). Therefore, one could say that ordoliberal thinkers wanted to pursue modern economics, but also sought to include contextual thinking into their analyses. They attempted a new form of deductive abstraction, but wanted to remain grounded in the real world. According to Alfred Müller-Armack ([1949] 1982, p. 539), “we are not entitled to view economic development in isolation. It is deeply connected to general intellectual history, which we thus have to address as such”.

In other words, ordoliberalism’s economic approach tries to bridge context-free and contextual economics without becoming bogged down by the inherited burdens of the respective approaches. Condensed to the notion of a contextual approach, ordoliberalism certainly can be understood as the most recent GHS (Schefold 1995, 2003; Peukert 2000). The ordoliberals not only maintained heavy emphasis on social policy (Blümle and Goldschmidt 2006b) or the conviction that the prerequisite for a free, prosperous and humane economic and social order has to be a strong and assertive state.⁹ Their strong ethical-normative convictions and their appeal for including cultural values in economic analysis (already discussed in the previous section) broadly are to a considerable extent rooted in the rich legacy of the GHS’s intellectual endowment (Häuser 1994). In particular, those

⁸ Schmoller never ruled out the possibility that an economic theory is possible under realistic basic assumptions. The almost ubiquitous accusation of Schmoller’s hostile attitude to economic theory, emerging at a later point, therefore needs to be put into perspective (Plumpe 1999, p. 262).

⁹ The ordoliberals adopt the term “strong state” not in the sense of an authoritarian or totalitarian one. For them it is a state that, by operating under general rules as opposed to establishing privileges, rises above private interests and is not vulnerable to being captured by them (Eucken [1952] 2004, pp. 327–332). Misinterpretation of the term “strong state” is a permanent irritation of the critics of ordoliberalism (e.g., Mirowski and Plehwe 2009; Bonefeld 2017; Innset 2020).

convictions seem evident with respect to their attitudes toward value judgments. According to Eucken, above all, economics is tasked with “find[ing] an effective and lasting system, which does justice to the dignity of man” (Eucken [1940a] 1950, p. 314). His scientific aim was a *functional* and *humane* economic order (ibid.; see also Eucken [1952] 2004, p. 14).

Probably the most important contextual domain within the scientific agenda of ordoliberalism is the issue of social cohesion in modern market societies. That ethical line of reasoning on the contextual interactions of markets with social order is anchored deeply in German economic thinking (Priddat 1995, p. 310). Schmoller (1875, p. 86) once compared the economy to the mechanical gears of a clock driven by egoism and quantitative relations that must be regulated by ethics and law in order to achieve a prosperous outcome. Insisting on the need for an institutional framing of the economic order, he suggested that it is not a “natural product”, but rather that it is most of all the consequence of “respective moral views on what is right and justice in the relationship of the various social classes” (Schmoller 1874, p. 337). In his 1894 essay “The Idea of Justice in Political Economy”, he explains that social stability derives from subjective perceptions of social conditions based on certain predominant mental models rather than from objective economic indicators alone (Schmoller [1894] 2016). In the view of ordoliberalism (e.g., Röpke [1956] 1981, p. 448) one could read Schmoller as follows: the market economy operates based on prerequisites that it cannot by itself guarantee.

Such a holistic view of the interdependent relationship between the economic order, along with other societal orders and the recognition that the economic reality is continually evolving and driven by changes in the social environment, makes ordoliberalism still particularly relevant for the twenty-first century (see Zweynert et al. 2016). The new societal fragility is characterized by an entanglement of factors that stem from the economic, legal, political or even religious domains (Kolev 2018, p. 86). For if ordoliberalism is not considered simply as a merely (neoliberal) approach to economic policy, but as an approach to a rathering sociological and therefore contextual understanding of political economy, its continuing scientific value becomes apparent (Kolev et al. 2019b, p. 655). If current economic research aims to provide explanations for economic processes in the real world it has to deal with the same questions that drove the early ordoliberalism of the 1930s and 1940s. As we will show in the next section, such contextual ordoliberalism also can enhance contemporary liberal approaches.

4.2 Contextual liberalism and CPE

While isolating economics has its merits in times when the interrelations between various societal orders is fairly stable, it does not do justice to recent changes in (economic) reality. However, it is for those problems that contextual approaches reveal their comparative advantage. Ordoliberalism likewise can reveal its significance, but in order to do so it is (again) necessary to reconnect with current economic discourse to achieve mutual gains from exchange between suitable context-free *and* contextual approaches. Such exchanges become even more important because in the past the search for integration in Anglo-Saxon academia was pursued sporadically at best (Feld and Köhler 2016).

The linkage between ordoliberalism and the research program of Constitutional Political Economy (CPE) pioneered in the extensive work of James M. Buchanan appears to be most suitable in that respect. How close the two approaches are in their very own “thinking-in-orders” tradition is, of course, already well established in the detailed examinations of Vanberg (1988), Leipold (1990). Both—the exponents of ordoliberalism and CPE—share the

essential conviction that a sound liberal society needs a well-defined legal framework that establishes the rules for individual action; especially with respect to the issue of power in a market economy.¹⁰ In contrast to classical liberalism, ordoliberalism and CPE consider mere reliance on the rationality of action by single individuals to be insufficient. Instead, they plead for an effective design of a superior (constitutional) order—defining the “rules of the game”—as necessary for self-interested actions to serve the common interest.

Like ordoliberalism, Buchanan’s work clearly is directed to the entangled interfaces between the political and societal orders, on the one hand, and the economic order on the other (see Wagner 2017, 2018a). With his approach of combining ordoliberal thought with the works of Buchanan, Vanberg already has shown how the Virginia School can revitalize ordoliberalism, e.g., by providing a more realistic concept of the functional and performance capabilities of politics in a democracy (see Vanberg 1997, 1999, 2014, 2015). The essential distinction between “choices over rules” and “choices within rules” has become a central element of modern “*Ordnungsökonomik*” (economics of order). Picking up on that concept, Kolev (2018) recently has outlined how the ordoliberal tradition can benefit from Buchanan’s comprehensive contributions to the fields of CPE and public choice to promote a research program addressing the “*New Economics of Order*” (see Zweynert et al. 2016). We suggest that such a synthesis certainly also would be a great asset for *contextual liberalism*.

Moreover, in that respect CPE surely would benefit from ordoliberal insights as well. It has been argued that Buchanan’s notion of a functional CPE is no adequate way of insuring the self-set goal of facilitating the construction and sustainability of a free and liberal society (Haeffele and Storr 2018, p. 113). Buchanan’s project ultimately would have very little to say precisely in those cases for which it should be needed most—in societies filled with unreasonable and heterogeneous actors, i.e., most real-world societies. Similarly, Goldschmidt (2006, p. 181) asks what the “culturally and socially transmitted conditions [are] that make an agreement between citizens possible”, concluding that CPE falls severely short of a conception of economics as a cultural science.

To develop concrete constitutional rules (based on unanimous consent), Buchanan stresses the rationality of the individual and his or her accountability to society. In claiming, furthermore, a cultural environment that sustains such a self-imposed order, ordoliberals take an additional decisive step. To them, methodological individualism and individual rationality alone are too indeterminate; they require a cultural (and thus contextual) embedding. Although it did not find much consideration in his theory, Buchanan seemed to be aware of that particular shortcoming of his approach. It is easy to show that “Virginia-style” CPE is not completely blind to that issue. Indeed, some of Buchanan’s work on moral orders and moral community (Buchanan [1981] 2001) actually can be interpreted in a similar vein: while a moral community can serve to facilitate and maintain agreement among small and relatively homogenous societies because “individual members of the group identify with a collective unit” and do not “conceive

¹⁰ With regard to their normative convictions, the founders of both approaches pleaded for an active shaping of the institutional (respectively constitutional) order, but they had different emphases: Eucken was primarily concerned with the active shaping of a competitive order which was intended to prevent private concentrations of power in the form of cartels, monopolies etc. (see Eucken 1952 [2004], pp. 241–324). In contrast, Buchanan’s considerations are primarily aimed at limiting the power of the state, either through finding the appropriate framework for people to agree on which responsibilities they want to delegate to government (Brennan and Buchanan 1985 [2000]) or through exposing governments to competitive pressures themselves (Sinn 1992, p. 187).

themselves to be independent, isolated individuals” (ibid., p. 188), they create issues for governability in larger societies. To the contrary, a moral order—defined as conditions under which “participants in social interaction treat each other as moral reciprocals, but do so without any sense of shared loyalties to a group or community” (ibid., p. 189)—was seen as a much more preferable underpinning of a contractarian political order. Precisely because “each person treats other persons with moral indifference, but at the same time respects their equal freedoms with his own” (ibid.), the prospects for peaceful cooperation and exchange are magnified greatly.

However, the major challenge was how to overcome the problem that “it is not rational to participate actively in any discussion of constitutional change or to become informed about constitutional alternatives” (Buchanan [1989] 1999, p. 371). In other words, treating other members of a society as moral equals imposes a cost on citizens—a cost that they will be much more likely to bear in the presence of some prevalent—as Buchanan (ibid., p. 372) called it—“Madisonian vision”, namely, “some ethical precept that transcends rational interest for the individual” (ibid., p. 371). Without what Buchanan ([1986] 2001, p. 234; emphasis added) called a “*heritage of experience* that embodies some understanding of the central logic of effective constitutionalism, any implementation of constitutional democracy will be difficult to achieve”. Indeed, Buchanan (1983, p. 205) acknowledged that, historically speaking, large parts of human evolution and progress could be described as a gradual extension of mutual respect between persons from the original setting of tribal communities to much more inclusive forms of organization. While he thought that religions historically had been at the forefront of granting a status of morality including to (former) outsiders, letting go completely of distinctions between in- and outsiders of course rarely happened. Nevertheless, Buchanan (ibid., p. 205) mentions “humanism, considered as a great religion” as one such attempt to extend inclusiveness of traditional moral communities to humanity as one giant group, which thus could serve as the basis for an all-encompassing moral order, in turn making agreement between diverse groups of people much easier.

It is worth noting that CPE also does not seek solutions to perceived policy problems exclusively within the domain of trying to change formal institutions: *The Reason of Rules* (Brennan and Buchanan [1985] 2000)—considered by many scholars to be the most comprehensive account of CPE—ends with a section that calls for “a new civic religion” (ibid., p. 165). CPE will not, as Brennan and Buchanan stress in abundantly clear terms, be successful by “proffering advice to this or that government or politician in office” (ibid., p. 167), but indeed only by the gradual advancement of constitutional understanding on the part of a state’s citizenry. Once “the relationships between individual utility functions and the socioeconomic-legal-political-cultural setting within which evaluations are made” (Buchanan 1991, p. 186) are understood, Buchanan thought, would it be possible to “invest ... in the promulgation of moral norms” (ibid.), revealing a further contextual layer of the CPE project. While those ideas usually are presented as “side notes”, their mention shows that the contextual sphere is at least partially present in Virginia-style CPE, implying the possibility of broadening its scope to a CCPE—a Contextual Constitutional Political Economy—at some point.

While the ordoliberal tradition generally is more concerned with the properties and characteristics of the non-economic preconditions deemed necessary for the implementation of a functional market and societal order, its hinted presence within CPE highlights one further overlap between the approaches of Freiburg and Virginia, which favors a fruitful collaboration in the search for adequate rules to promote human flourishing under the heading of “contextual liberalism”.

5 Conclusion

Not unlike Friedrich Hayek, James Buchanan also sees Bernard Mandeville as “one of the first social philosophers to demonstrate that the result emerging from interaction of many persons need not to be those intended or planned by any one person or group of persons.” Instead, “under some situations ... qualities of private individual behavior that might seem vicious or self-seeking may be precisely those required to produce desirable social results when persons interact in a complex environment” (Buchanan [1970] 2001, p. 302) The extent to which private interests produce public goods depends largely—as ordoliberalism and CPE concur—on the corresponding environment, i.e., on the rules of the game. In what sense classical political economy actually acknowledged it (Buchanan’s interpretation) or merely presupposed such an environment unknowingly (the ordoliberal interpretation) is a dispute that will have to be settled by historians of economic thought.

However, with the neoliberal project that emerged in the late 1930s, it became the ordoliberals’ aim to restore a properly interpreted liberalism. That was not because they did not share the liberal basic assumption of classical liberalism that individual self-interested action is the necessary driving force in economic and social progress, but because they realized that individual actions require embedding into a social and moral order to unfold desirable public benefits. Grasping that insight proves to be the significant difference between the *ordoliberals* of neoliberal stamps and the exponents of classical liberalism. It became the ordoliberals’ profound conviction that without a proper “spiritual-moral bracket” (Röpke [1958] 2009, p. 160) neither society nor its wealth-serving market economy are viable. Thus, the purpose of ordoliberalism always has been the “consciously shaped” (Eucken [1940a] 1950, p. 314) economic order that manifests itself as *humane* and as *functional*. The ordoliberals’ crucial insight that such an order can thrive only on the soil of a liberal society was reinforced by their own experiences of totalitarian oppression during the years of the Nazi regime. That is the reason why freedom turned into a real project for them.

Moreover, that real project of freedom and the reception of contextual factors are keys to understanding the strong influence that ordoliberalism managed to exert on policy making in post-WWII Germany. While ordoliberal ideas were not debated heavily in international academia, their reception in policy-making circles directly helped to construct the main pillars of the German model of the Social Market Economy (see Hesse 2010). If one contrasts that influence with the relatively modest impact of Constitutional Political Economy (CPE) on practical policy making in most places,¹¹ one is tempted to conclude that the ordoliberal approach has proven to be more fruitful in some respects.¹² We suggest that ordoliberalism’s influence can be explained in part by the more contextual perspective it brings to bear, which leads to never losing sight of the ultimate goal of its efforts: a humane and self-determined life for as many people as possible. To achieve that goal, the ordoliberals always have been willing to recognize that reality is more important than

¹¹ Richard E. Wagner – one of Buchanan’s most influential students himself – even suggests that Buchanan’s political economy must be seen as a “failed effort to square the circle” (Wagner 2018b, p. 9), given that he – whilst being interested in the continuously ongoing “game” of societal rule-making – could, on an analytical level, “never escape the hold of closed-form theorizing” (ibid.).

¹² The statement should not be interpreted as a criticism of CPE, the aim of which does not lie precisely in its direct influence on policy making. However, it also is proper to mention that even Buchanan himself was aware of a “basic indeterminacy” (Buchanan 1987, p. 249) in CPE; even though he did see it as a necessary, and not even detrimental, feature of the approach.

abstract principles. While Buchanan probably would not have disagreed with that premise about the political process itself,¹³ ordoliberalism is more proactive in realizing the (sometimes messy) heterogeneity of contemporary societies and the corresponding need for compromise and reciprocal discourse already present at the theoretical level, thereby suggesting one key area in which CPE actually could benefit from the ordoliberal approach in order to gain more relevance in the political arena itself. If CPE as a traditional “thinking-in-orders” approach is—according to Gaus (2018)—and “not a completed artifact to be admired and defended, but an ongoing project, constantly refining its assumptions and analysis” (ibid., p. 139), the same can be said of ordoliberalism. The two approaches can benefit from mutual interactions based on their particular insights and thereby make valuable contributions to current socioeconomic discourse.

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¹³ For a comprehensive summary of Buchanan’s conception of democracy, see Thrasher (2019).

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