



ESSAY

Ordoliberalism Revisited

Thomas F. Remington

Emory University, Atlanta, GA, USA

Harvard University, Cambridge, MA, USA

ABSTRACT

The recent publication of Kenneth Dyson's book *Conservative Liberalism, Liberalism, Ordo-Liberalism, and the State* offers an occasion to reconsider the body of ideas known as ordoliberalism. The books reviewed here represent much of the most recent scholarship in English on the subject. In this essay, I undertake two tasks: first, to clarify what the term properly refers to and in particular how it is related to "neoliberalism," and, second, to consider its influence on postwar German policies and institutions. I argue that much of the recent discussion of ordoliberalism and neoliberalism overlooks important differences between early ordoliberal thinking and the ideas associated with neoliberalism. Over time, as neoliberalism evolved and particularly as it became an ideological justification for policies and institutions justifying the accumulation of concentrated market power, these differences have become wider even as they have been obscured by misreadings of ordoliberalism. A better understanding of ordoliberalism can also provide insights relevant to the contemporary debates about the crisis of liberal democracy and capitalism. Is it in fact a "third way" for ordering an economy, an alternative to neoliberalism and socialism?

KEYWORDS

ordoliberalism, liberalism, neoliberalism, democracy, capitalism

I. Introduction

The publication earlier last year of Kenneth Dyson's book *Conservative Liberalism, Liberalism, Ordo-Liberalism, and the State* (2021) offers a welcome occasion to reconsider the body of ideas known as ordoliberalism. The books reviewed here represent much of the most recent scholarship in English on the subject. In this essay, I undertake two tasks: first, to clarify what the term

properly refers to and in particular how it is related to “neoliberalism,” and, second, to consider how much influence it had on postwar German policies and institutions. A better understanding of ordoliberalism can also provide insights relevant to the contemporary debates about the crisis of liberal democracy and capitalism. Is it in fact a “third way” for ordering an economy besides neoliberalism and socialism?

Ordoliberalism is little known outside a few scholarly circles. Some American students of antitrust theory, such as Daniel Crane and Herbert Hovenkamp, have discussed it and related it to other branches of thinking about antimonopoly law (Crane, 2013). Historians of postwar German economic reconstruction treat it as a source of some intellectual guidance for the architects of the “social market economy,” of which it formed an integral element (Abelshauser, 2004; Haley, 2001; Murach-Brand, 2004; Nicholls, 1994; Streeck, 1997, 2010). Students of European competition law continue to debate its ideas and the degree to which they have influenced the competition enforcement regime in the European Union (Akman, 2012; Gerber, 2001; Quack & Djelic, 2005). During the Eurozone debt crisis following the Great Recession, ordoliberalism again aroused furor when many blamed Germany’s resistance to easing the terms of restructuring Southern European debt on its ordoliberal heritage. The latter issue is the major impetus for the edited volume *Ordoliberalism, Law and the Rule of Economics* of Hien and Joerges (2017).

Unfortunately, relatively little of the ordoliberalism literature has been translated into English. To the extent the term is used in scholarly literature, it is usually conflated with, or subsumed as a German variant of, a larger neoliberal current of thought associated with figures such as Friedrich Hayek and Chicago School economists¹. I believe this seriously mischaracterizes ordoliberalism and obscures its relevance.

II. The Origins of Ordoliberalism

Ordoliberalism originated in the 1930s at the University of Freiburg, Germany. Ordoliberalism was a legal and economic theory to defend competition—and all its benefits to society—against the threats posed by state socialism or by the consolidation of market power in cartels and monopolies. Ordoliberalism’s core comprised a group of legal and economic scholars—Walter Eucken, Franz Böhm, and others—reacting against the spread of cartels and trusts throughout the capitalist world, the establishment of state socialism in Russia, and the anti-democratic impulses that accompanied both (Fear, 2006; Nicholls, 1994). At the time, Germany was completely dominated by cartels, more even than other capitalist countries. German cartels controlled 100% of coal production, 90% of steel, and exerted similar levels of control over many other branches of industry. Cartels’ defenders claimed that they stabilized capitalism against the threat of ruinous overproduction leading to crashes, but their opponents saw them as harmful both to political and economic freedom for raising barriers to entry for small businesses, for example, and wielding

¹ Peacock and Willgerodt (1989) is a useful compendium of several ordoliberal essays. A concise summary of some of Eucken’s thinking in English is Eucken (1951).

power over government. The triumph of cartels continued into the Nazi period, when Hitler forced all big businesses to join cartels (Schweitzer, 1964).

Eucken took a position as professor of economics at the University of Freiburg in 1927 and remained there until he died in 1950. At Freiburg Eucken met Böhm, who was then working in the Weimar government ministry that dealt with the regulation of cartels. The two shared an antipathy against the power of cartels and concentrations of market power generally. An economist devoted to grounding economic theory in historical evidence, Eucken grasped how hard it was for governments to check the abuses of monopolists. As he noted, “abuse” was itself a vague term (a problem that bedevils antitrust litigation to this day), and corporate entities always acquire substantial political influence. Therefore, the state must act to prevent the rise of entities with market power, not fight them after the fact: It is not in the first instance against abuses of existing power bodies that economic policy should be applied, but rather against the rise of power bodies altogether. Otherwise, it will have no chance to solve the problem (Eucken, 2004, p. 172). His colleague, Franz Böhm, declared that society must not put the principles of the freedom of contract and rights of property ahead of the freedom to compete: “Jus publicum privatorum pactis mutari non potest” [a public law cannot be changed by private agreements] (Böhm, 1928/1960, 1933).

The ordoliberalists fought the refusal by many economists to look squarely at factual data. They recognized that economic theories were powerful tools, but they did not accept that theories worked independently of their social setting. Eucken insisted that economists take account of historical circumstances in which economic forces play out. This required that economists lift the curtain to recognize the constant struggle of power interests, masked by ideology, often brutal, among concentrated centers of market power (Eucken, 2004). Economic history, Eucken wrote in 1947, is a history of the abuse of power. And power, he wrote, is power, whether in private or state hands. Power is the antithesis of freedom, which—following Kant—he argued should be the moral foundation of the society; freedom is not a goal in itself but a means to serve “eigenverantwortliche Menschen” [free self-responsible people] (Eucken, 2004, p. 178). Eucken always insisted that economic and political power were inextricably tied together. Over history, state rulers fought to dominate the economies of their countries. Guilds fought against outsiders, consumers, and landowners. The history of economics is a history of the abuse of power, he wrote, although to varying degrees in different economic orders. The key question was who was abusing whom, and how (Eucken, 2004).

Eucken and Böhm founded the journal *ORDO* after the war, continuing to propound ordoliberal ideas. The “ordo” element referred to the idea that the legal framework ensuring market competition and market freedom should be embedded in a constitutional order to protect market competition and prevent concentrated economic power from encroaching on freedom. The state had an obligation, Böhm insisted, to interfere with the freedom of contract and rights of property when they infringed on the freedom of individual producers and consumers. To protect property in the name of efficiency would “etablierung des Rechtes des Stärkeren, eines kommerziellen Faustrechts” [establish the power of the mightier, a commercial right of

the fist]. Such a right of the fist of course was precisely what appealed to communists, fascists, and radical libertarians alike. Such thinking repulsed the ordoliberals, who had watched as the Russian Bolsheviks imposed a totalitarian economy on their subjects and as Hitler imposed a mandatory cartel system on Germany (Schweitzer, 1964). Whether under the Nazis or the Soviets, such monopolistic organizational forms denied freedom both in the economic and the political realms. And while they succeeded in preventing crises of overproduction and mass unemployment, they failed to foster either social justice or technical innovation (Müller-Armack, 1947/1982). For the ordoliberals, therefore, a market economy where the state protected individual freedom by ensuring competition and preventing the rise of concentrated market power was the only guarantee of both economic prosperity and elementary social justice.

The ordoliberals were influenced by American progressive doctrines that giant concentrations of economic power threatened both political and economic freedom, as a 1928 essay by Böhm on private power concentrations makes clear (Böhm, 1928/1960, 1933). But whereas in the United States, where the pro-competition doctrine's influence faded after the 1970s under the influence of the Chicago antitrust school, which insisted on efficiency as the sole criterion of social well-being, ordoliberal ideas became a major influence on the design of German economic institutions following World War II.

III. Ordoliberalism's Core Precepts

How ordoliberalism is related to neoliberalism is contentious. To some degree confusion over this point is understandable. The Freiburg School ordoliberals had close relations to the group of economic thinkers associated with the Mont Pèlerin Society that formed in 1947². Eucken was an original member of the group. Moreover, Hayek himself moved to the University of Freiburg in 1962, taking the chair formerly held by Eucken; the *ORDO* yearbook became almost entirely a creature of Hayekian neoliberal thought; and the Walter Eucken Institute at Freiburg became part of the Mont Pèlerin's "institutional machinery," as Angela Wigger puts it in the Hien and Joerges volume (Wigger in Hien & Joerges, 2017, p. 170). Confusion therefore between the stream of thought identified as neoliberalism and the body of ordoliberal thinking reflected in the Freiburg school and the designers of Germany's "social market economy" in the 1950s and 1960s is understandable. It is also the case, as the studies reviewed here show, that both streams of thought were themselves highly diverse and often self-contradictory, and both underwent continuous evolution as new generations of thinkers and issues arose. Certainly, it is fair to say that the bodies of thought termed neoliberalism and ordoliberalism did and do overlap.

However, the ordoliberals did not consider themselves to be neoliberals³. As Eucken put it, "the term 'liberalism' or 'neoliberalism' is sometimes applied to my

² The Mont Pèlerin Society originated as a group of thinkers dedicated to advancing free-market liberal principles in the face of widespread support for collectivist and Keynesian ideas. The group continues to exist. Among its notable figures have been Friedrich Hayek, George Stigler and James Buchanan.

³ In addition to Dyson, an authoritative German-language study on the ordoliberal philosophy persuasively making this case as well is Föste (2006).

ideas, but it is a poor fit” (Eucken, 2004, pp. 374–375). Although they had strong ties to the *laissez-faire* liberals (whom they called “paleoliberals” or “Stone Age liberals”), the ordoliberals insisted on treating capitalism as embedded in the social and political environment in which it operates (Föste, 2006, p. 346). It generates power inequalities that can threaten both political and economic freedom. For this reason, the ordoliberals insisted that *laissez-faire* is not the same as full competition⁴. They did not elevate economic freedom above political freedom. Rather, the ordoliberals advocated firm government protection of market competition. Rent-seeking would be inevitable if market agents thought they could win government administrative support for restricting market rivals. Fairness and freedom, not efficiency, were ordoliberalism’s basic principles.

Thus, there are significant differences between ordoliberalism and neoliberalism. Over time, especially as the neoliberal philosophy associated with Hayek, Friedman and Stigler developed, these differences became wider, yet they were almost entirely obscured. Today, as neoliberalism has been used as the doctrinal justification for pressures to dismantle government controls over trade, labor relations, finance, market regulation, public goods, redistribution and social protection policies in all spheres, and blamed for the surging economic inequality witnessed in the United States and many other countries, it is useful to reconsider ordoliberalism. Ordoliberalism’s early instincts have significant implications for us today as we confront the crises of market capitalism and liberal democracy. For this reason, to bury ordoliberalism under the broad mantle of neoliberalism is to ignore the points that the early ordoliberals considered most important. Briefly, these can be summarized as follows:

A. An economy consists of a set of closely interrelated elements. To isolate one issue—trade policy, for example, or social policy—and deal with it separately from its interaction with all other elements will never succeed in solving that problem. More likely it will create more problems, leading to still more interventions. Under some conditions, a Keynesian full employment policy is justified, but it would have been better to have avoided the mistakes (such as a deflationary policy) that led to a spiral of deflation and mass unemployment, because a full employment policy can lead to inflationary pressure, and then to price controls that expand and distort the ability of prices as a system to enable rational decision-making by economic actors. Consequently, it is necessary to think of the economy as a system, or a comprehensive order, and to set in place the rules that will govern that order. Rather than intervening on an ad hoc basis each time a crisis arose, the state’s role is to establish and enforce basic principles. The core issue, Eucken wrote, is not the “quantity” of state intervention, but rather the “quality” of the intervention (Eucken, 1951, p. 95). From the very beginning, the ordoliberals emphasized the importance of a constitutional legal framework for the economic order; they chose the term “*ordo*” from Roman law to reflect that crucial point (Böhm et al., 1937/1989, 1937).

⁴ Eucken (1938, p. 57): “Teils sehnt man die frühere Zeit zurück, verwechselt *laissez faire* und Wettbewerb und sieht nicht, daß das *laissez faire* oft gerade zur Beseitigung der Wettbewerbsordnung und zum Emporwuchern monopolitischer Gebilde führte.” [In part one longs for the former time, confuses *laissez faire* and competition, and does not see that the *laissez faire* often led to the elimination of the competitive order and to the proliferation of monopolistic entities.]

They recognized that government may be called upon to correct market failures, but argued that an order set up to prevent such failures was better than a sequence of ad hoc policy measures that create new problems requiring yet more ad hoc interventions. These rules need to be set in constitutional law so that the state can enforce them as part of the orderly functioning of the market system.

B. Market competition is the only way to protect the freedom of individuals as economic and political agents. It is preferable to forfeit the (purely apparent) efficiency gains of monopolies, trusts, and cartels before they form rather than to risk allowing them to acquire stifling market power. In direct contrast to the Chicago antitrust school, therefore, the ordoliberals believed that competition itself must be the objective of economic policy. The strong state must act to enforce the rules of competition and to block the formation of large concentrations of market power *before they arise, not afterward*.

C. The market economy must serve not only efficiency, but also social justice. As Eucken himself put it repeatedly: “How can a modern industrialized economy and society be organized in a humane and efficient way?” (Eucken, 1951). Unlike the neoliberals, the ordoliberals always insisted on the normative foundations of the market economy. Their emphasis on the importance of establishing an explicit constitutional foundation for the market economy derived from their conviction that the economy must serve society, not the other way around. Freedom for ordoliberals was the basis of morality.

D. Perhaps most importantly, they held that throughout history, concentrations of market power always ally with concentrated political power to suppress both economic and political freedom. These freedoms in the economic sphere extend not only to would-be entrepreneurs who are squeezed out of a market, but to workers as well as their freedom to choose the place and conditions of their employment is constrained, and of consumers, whose range of choice is narrowed. In the political sphere, they lead to totalitarianism; for the ordoliberals in the postwar Federal Republic, the establishment of a Soviet-type planned economy next door in East Germany provided a close-hand example of the difference between a state socialist planned economy and a market economy in the West. Concentrated economic power always seeks ideological justifications, so we must always look behind the curtain of ideology to identify the power interests deploying them⁵.

Therefore, while some government power is required to enforce the rules of a competitive order, excessive government power is just as oppressive as a laissez-faire policy. Laissez-faire as a policy had failed no less than the centrally planned Nazi or Soviet economic models in solving basic questions of freedom and order; both ended up suppressing freedom in favor of market power (Eucken, 2004). Laissez-faire, Eucken wrote, “permits misuses of freedom of contract to destroy freedom” (Eucken, 1951, p. 37). Such words, needless to say, would never be uttered by a neoliberal.

⁵ “Auch wir NationalökonomInnen müssen den Vorhang lüften, welchen die Interessenten-Ideologien vor die wirtschaftlichen Machtballungen und Machtkämpfe ziehen” [We economists too must lift the curtain that the ideologies of interested parties draw in front of the economic concentrations of power and power struggles] (Eucken, 1947, p. 306).

For Eucken and Böhm, in short, the question of the distribution of power was central to their analysis. Like the framers of the American constitution, they recognized that state power must be sufficient to check the abuses of power by private interests, but not so great as to infringe on the freedom of private interests and citizens to act in such a way as to further socially desirable objectives, such as prosperity and justice. “The problem of economic power,” wrote Eucken, “can never be solved by further concentrations of power” (Eucken, 1951, p. 36). It is but a few steps removed to the American pluralist school of the mid-20th century, which saw in the competition of organized interests a “dispersion of inequalities” that resisted such concentration of either private or state power as to infringe on individual rights (Cf. Dahl, 1961, 1982). The question of power—the inevitable pursuit of state power by powerful private interests—was recognized in early writings of such Chicago economists as George Stigler and the early public choice school writers. Over time, however, the neoliberals only saw the abuse of government power by rent-seeking interests as arising from the poor, the minorities, the labor unions, and Democrats; never were they willing to defy their corporate sponsors by suggesting that as corporate power grew larger, more concentrated, and more politically adept, it was the “winners” of market competition that would seize government power to protect monopoly rents, not the losers⁶.

IV. Perspectives on Neoliberalism

Vail, Blyth, and Slobodian each offers a distinctive perspective on neoliberal doctrine. Mark Vail’s book argues that liberalizing national policies in France, Germany and Italy in recent decades were not in fact applications of neoliberal theory. This is the basis for his characterization of their economies as “illiberal.” He ascribes these deviations to the influence of national intellectual traditions on elites. He offers shorthand descriptions of each—“French statism, German neocorporatism, and Italian clientelism” (Vail, 2018, p. 5 and *passim*). Vail is strongest on France. He is less knowledgeable about Germany, and his treatment of Italy is somewhat cursory. Most of the book is based on interviews, although he has conducted some research into original, secondary, and journalistic sources as well. Vail believes in the power of ideas to influence policy through their effect in guiding the outlooks of policymakers. Therefore, in his framework, when the simple, universalistic doctrines of neoliberalism were understood and applied in particular national settings, it was the intellectual traditions of those countries’ national elites that adapted neoliberalism to their own national circumstances.

Slobodian also emphasizes the global outlook of neoliberalism but makes a different point. For Slobodian, neoliberalism has always had a global perspective, and has always aimed at establishing a political order conducive to its free-market,

⁶ This insight, articulated in respect of the post-communist economic reform experience of Russia and other East European systems by Joel Hellman in 1998 (Hellman, 1998), would have been consistent with the ordoliberals’ view of history but was entirely alien to the neoliberals. I will return to this point below.

In her book *Democracy in Chains*, Nancy Maclean shows that James Buchanan justified denying equal access to education for Blacks on the grounds of the primacy of private property rights and states’ rights, effectively joining public choice theory to Southern segregationism (MacLean, 2017).

laissez-faire ideology. Its major proponents, from the very start, toyed with various notions of world government or at any rate world free trade regimes, with varying levels of success. Slobodian illuminates a particular center for the global outlook in the neoliberal tradition, which he calls the “Geneva School,” a rival to Freiburg or Chicago as a home to this strand of neoliberalism. Their objective effectively was to make the world safe for capital. Slobodian skillfully traces the continuity of the global framing of the neoliberal doctrine from its origins to the present day. He treats ordoliberalism as part of this project: “I argue that we can understand the proposal of the Geneva School as a rethinking of ordoliberalism at the scale of the world. We might call it ordoglobalism” (Slobodian, 2018, p. 11). However, I believe this represents a serious misreading of ordoliberalism.

Blyth pursues a different line of argument. Blyth treats the doctrine that economic austerity is necessary to squeeze out inflationary forces and restore healthy economic exchange as a malign and “dangerous idea.” He characterizes it as generally unworkable, anti-democratic, and punitive toward those least able to bear the burden of fiscal and financial austerity, while benefiting banking interests and others. Often it has a strong moralistic dimension as well.

While Blyth is undoubtedly correct that austerity policies have distributional effects, he overlooks the point that any fiscal and regulatory policy does as well. If neoliberalism’s simplistic faith that government is bad, the market good, that as property rights are established, the rule of law will follow along with productive investment and broadly shared prosperity, is flawed, likewise so is the notion that any alternative to austerity will automatically benefit both economy and society. Blyth maintains a singular focus on the history of the idea of austerity, but slights the political and economic contexts in which it is applied. Economists who imagine that their theories give them ready-made policy solutions to a crisis of hyper-inflation wherever it occurs are obviously vulnerable to the empirical evidence that their remedies fail more often than not. But by the same logic, we must be wary of equally simplistic faith in the virtues of public spending. If a government is in bed with its cronies, public spending is likely to make both the cronies and the politicians richer without raising the standard of living of the rest of the society. Under conditions of high inequality in the polity and the economy, any simple policy formula will be applied so as to benefit those with economic and political power.

Unlike Vail or Slobodian, Mark Blyth (2013) deals in detail with ordoliberalism. He even pays it a backhanded compliment: “By way of summing up so far, Germany provided a postwar home for austerity arguments in the form of ordoliberalism, the instruction sheet for how to run a late-developer, high-savings, high-technology, export-driven economy. It’s a great instruction sheet—so long as you are indeed the late-developing, high-savings, high-technology, and export-driven economy in question. If you are not, as the periphery of the Eurozone is finding out, then it’s a one-way ticket to permanent austerity” (Blyth, 2013, p. 151). This is too pat. Netherlands, Denmark, Sweden, and Switzerland all have higher shares of foreign trade in GDP than Germany without having ordoliberal traditions, and all have more strongly positive trade balances. Meantime, US foreign trade as a share of GDP is

far lower than any of them, and is negative, although neoliberalism has had a much greater impact in the United States. Therefore, it is inaccurate to claim that Germany's ordoliberalism's tradition works only in Germany because it is Germany. Because history shapes both the creation and operation of institutions, it is extremely difficult to separate the effects of institutional arrangements from the conditions under which they arose. If this applies to ordoliberalism and neoliberalism, it applies with equal validity to state socialism and Keynesianism.

Vail's treatment of ordoliberalism and of Germany is one-sided. He emphasizes the importance of the corporate organizations of labor and employers but makes no reference to the social partnership principle or the ways in which it has facilitated price and wage restraint, joint investment in skill, and the embodiment of balanced representation by labor and business in institutions such as labor courts and enterprise governance. He overstates the dominance of big business and understates the importance of the *Mittelstand*, the sector of small- and medium-sized firms, often specializing in niche products for export markets, which has been important both to Germany's economic success and to its social stability. Vail's survey of German economic and social institutions overlooks a number of crucial features, such as the social insurance system and its important link to institutions of coordinated investment in skill. The treatment of ordoliberalism lacks important detail, such as its relationship to the principle of the social market economy. Although Vail emphasizes the dualism between labor market insiders and outsiders, he makes no effort to explore ways in which Germany has sought to incorporate outsiders into the system of social partnership. The absence of any comparative metrics for assessing the levels of poverty, unemployment, and inequality in Germany relative to levels elsewhere leaves an inaccurate impression of Germany's economic system. Although Vail is interested in the "institutional and ideational manifestations" of ideas (Vail, 2018, p. 5), he has not actually explored the primary sources. At the same time, like Blyth and Slobodian and other authors reviewed here, his emphasis on the power of ideas leaves him unequipped to consider how neoliberal doctrines in many countries—the United States and Russia, among others—are used as instruments for rent-capture by powerful corporate interests.

V. Ordoliberalism and Neoliberalism

The two edited books differ somewhat in scope. The subject of Mirowski and Plehwe's book *The Road from Mont Pèlerin: The Making of the Neoliberal Thought Collective* (2015) is neoliberalism. The editors frame ordoliberalism as neoliberalism's German version. Dieter Plehwe's introduction argues that the neoliberalism originating with the Mont Pèlerin Society should be seen as a "thought collective," rather than a coherently bounded philosophy (Mirowski & Plehwe, 2015, p. 4). This is a similar approach to Kenneth Dyson (2021), who also sees ordoliberalism as an open-ended, evolving tradition rather than a defined school of thought, and as part of a larger movement that he terms "conservative liberalism." Both stress the ways in which Germany's ordoliberals parted company from the MPS neoliberals and, as Plehwe

puts it, “succeeded in developing an alternative third way to the Keynesian welfare and planning state right after World War II—the social market economy” (Dyson, 2021, p. 27). Therefore, although the Mirowski and Plehwe volume tends to treat ordoliberalism as part of a larger stream of neoliberal thought, it is a distinct variant of it, and one which became increasingly distinct as the Chicago School of thinking gained ground from the 1950s.

Of the essays in the Mirowski and Plehwe volume, the one most specifically devoted to ordoliberalism is by a scholar based in Germany who wrote his dissertation on ordoliberalism, Ralph Ptak. Ptak’s view is largely negative. He associates the ordoliberals with German traditions of patriarchy and authoritarianism. He attempts to argue that their belief in a strong state was “akin” to Nazi ideology and to Carl Schmitt, the Nazis’ legal apologist. They held, in Ptak’s view, a “fundamental skepticism toward democracy” (Mirowski & Plehwe, 2015, pp. 125). Such influence as they had was thanks to American occupation as well as “massive neoliberal propaganda” disseminated through “veiled multilayer networks” (Mirowski & Plehwe, 2015, pp. 121–122). Since the early days, moreover, it has tended to evolve into an Anglo-Saxon version of neoliberalism.

Ptak has studied ordoliberal texts and archival documents but Dyson’s much more extensive research in the primary sources and archives refutes much of Ptak’s critique. Despite the frequent charge that the ordoliberals drew their belief in the strong state from Carl Schmitt’s doctrines (this charge recurs in Werner Bonefeld’s chapter in the Hien and Joerges volume, and in writing by Michel Foucault, among others), this is in fact an error. The ordoliberals, like most other European intellectuals, observed the failure of the parliamentary system of the Weimar Republic, and concluded that a stronger executive institution was needed to stabilize a parliamentary democracy. Charles de Gaulle drew the same conclusions in his 1946 Bayeux proposal for a new constitution, which underlay the successful mixed constitutional forms of the Fifth Republic. Germany adopted a “constructive vote of no confidence” into the constitution of the Federal Republic, hardly an anti-democratic provision, and one which has successfully prevented the constant fall of weak coalition governments characteristic of some other European democracies.

Likewise, ordoliberals were hardly alone among intellectuals—Hannah Arendt is a good example—who feared the potential that a “mass society” lacking the fabric of a civil society would succumb to totalitarianism. Likewise, the damning charge that the ordoliberals were tainted by Nazi associations breaks down upon closer examination. It is the case that a number of ordoliberals had ties to the Nazi party at an early stage, before the 1930s. A later ordoliberal, Wolfgang Müller-Armack (who coined the term “social market economy” after the war) was a Nazi party member from 1933. Another early figure in the Freiburg group, Hans Großmann-Doerth, remained a Nazi party member through the war. This led Eucken and Böhm to cut off relations with him.

Krystallnacht in 1938 shocked Eucken and Böhm. Both refused to serve the Nazi regime; Böhm was stripped of his teaching duties at Freiburg, and both

joined a resistance circle in Freiburg and helped in the drafting of the Bonhoeffer Memorandum. Wilhelm Röpke was dismissed from his university position and forced to leave the country; likewise, Alexander Rüstow fled the country. Eucken resisted Rector Martin Heidegger's efforts to impose a "Führerprinzip" at the university, and, at a time of intense political pressure, spoke out against celebrations of irrationalism and moral relativism (Dyson, 2021, pp. 56–66, 425–432). As early as 1932, Eucken wrote against a dictatorship that imposes a "total" state serving as a "substitute for religion". It was precisely against such a regime that state power is needed to protect individual freedom against oppression by governing elites (Dyson, 2021, p. 36). Three of the Freiburg ordoliberalists were arrested for anti-Nazi activity. In his private papers, Eucken compared the ordoliberalists to the tradition of Galileo, Cicero, and Socrates, who put up heroic intellectual resistance to tyranny. In 1944, Eucken joined with another colleague from the resistance circle and drafted a study to serve as a blueprint for rebuilding the economy after the war. It was in this atmosphere that Eucken turned to a deeper study of Kant, Schiller and Tocqueville, seeking a conception of individual freedom that could counter the temptations of romantic nationalism.

Much of the criticism of ordoliberalism presented in the Vail, Slobodian and Blyth books lacks adequate historical context. The authors tend to apply present-day standards of judgment without sufficient appreciation of the collapse of liberalism in Europe in the 1920s, 1930s, and 1940s. The appropriation of militant nationalism by totalitarian fascists and Nazis and of collectivism by communists, the fall of weak democracies, and the loss of social bearings all led to a wide-ranging search for new foundations for a viable liberalism. Slobodian's understates how powerfully nationalism had fueled antidemocratic and antimarket movements throughout Europe, favoring fascist forms of corporatism and cartels. For example, Wilhelm Röpke—whom Slobodian reveals to be viciously racist in later decades—defended free trade in the immediate post-war period as the most effective constraint on the reemergence of German nationalism and monopoly capitalism (Dyson, 2021, p. 36). The ordoliberalists' defense of free trade represented a direct response to the ruinous nationalism that resulted in World War II. We must remember that the ordoliberalists were engaging with their times, not with ours⁷.

Ordoliberalists were not alone in the mid-20th century in seeking principles for an international order that could protect peace, justice, equality, and freedom. For that matter, Immanuel Kant had looked to an international federation of republics, even a form of "world citizenship," guaranteeing basic individual freedom in his essay "Eternal Peace" of 1795. The internationalist perspectives of the mid-20th century can hardly be reduced to the conspiratorial working of a neoliberal technocratic elite. If this soil nurtured the seeds of contemporary globalization, as Slobodian argues, it also fostered the contemporary international human rights, anti-colonial, and democratization movements.

Although we no longer consider Soviet-style central planning a viable alternative to the crises of capitalism, for many in the 1930s, it offered a vividly

⁷ Walter Eucken quoted Schiller: "live with your century, but do not be its creature; serve your contemporaries but given them what they need, not what they praise" (Dyson, 2021, p. 64).

present model, debated vigorously throughout the world. The British aristocratic socialists Sidney and Beatrice Webb wrote a much-discussed book presenting the Soviet system as a new civilization (Webb & Webb, 1936). Our memory of that time has faded. We are preoccupied with the failures of the capitalist system in the face of multiple financial crises and recessions, and its apparently inability to cope with the existential threat of climate change. But political support today for a communist revolution to deal with these and other crises has disappeared. We are therefore apt to underestimate the attractions of the planned economy for Western intellectuals in the 1930s and wonder at the large amount of attention the ordoliberalists paid to it as they developed a model of capitalism that was neither laissez-faire, nor cartel-dominated, or overtaken by state central planning. To fail to appreciate these historical circumstances is therefore to miss the real contribution that the ordoliberalists made.

The Mirowski and Plehwe volume includes two useful accounts of the relationship of the Chicago school to neoliberalism, one by Rob Van Horn and Philip Mirowski and another by Rob Van Horn. Rob Van Horn contrasts the worries of the early generation of Chicago economists, such as Frank Knight and Henry Simons, about the dangers that monopolies and corporate power more generally posed to market economies and political democracies. In a little pamphlet published in 1934, Simons—who studied with Eucken—wrote that

the great enemy of democracy is monopoly, in all its forms [...] The representation of laissez faire as a merely do-nothing policy is unfortunate and misleading. It is an obvious responsibility of the state under this policy to maintain the kind of legal and institutional framework within which competition can function effectively as an agency of control. Thus, the state is charged, under this 'division of labor', with heavy responsibilities and large 'control' functions: the maintenance of competitive conditions in industry. (Simons, 1934, pp. 3–4)

Latter-day Chicagoans, of course, rejected this view. They held that no matter how damaging monopoly power might be to social welfare, any effort by government to curb it would produce even worse effects. They regarded the older Progressive view that only government power could curb the concentrated influence of trusts, monopolies and cartels as outdated, even pernicious.

Van Horn shows that the shift in Chicago school thinking about corporate power occurred between the late 1940s and late 1950s. These economists persuaded themselves that competitive forces are always at work—based on the deductive logic that if monopoly power to extract rents in a market is available, a competitor will always enter that market to claim a share of those rents. As Friedman put it, the “workings of competition are devious and hidden” (Cited in Van Horn, Mirowski & Plehwe, p. 219). Forgotten were the analyses of public choice scholars about the ways in which those with monopoly power will expend resources to capture government administrative power in order to preserve those rents, if doing so is less costly than investing in risky efforts to improve productivity.

VI. Ordoliberalism and the Eurozone Debt Crisis

The Hien and Joerges (2017) volume provides more background on ordoliberalism itself, but its contributions are rather cursory. Their main focus is the influence of ordoliberal thinking on German responses to the Eurozone debt crisis. The impetus for the volume is the widely held view that ordoliberalism was the intellectual ground for Germany's resistance to more generous terms for restructuring the debt of Southern European countries. Most of the contributors to the volume, however, have relatively little to say about ordoliberalism itself. Essays by Bruno Amable and by Arnaud Lechevalier discuss French intellectuals' interpretations of ordoliberalism; Stefano Solari discusses the Italian reception of ordoliberalism; William Callison discusses the view taken by the United States, including by Timothy Geithner, who attributed Germany's "Old Testament" rigidity and moralism to its religious and ordoliberal tradition. A chapter by Kenneth Dyson presents a balanced treatment of ordoliberalism as a tradition, which he expounds at much greater length in the recent book. A few essays—notably by Angela Wigger, who treats ordoliberalism as nothing more than a "foundational myth" for Germany's social market economy, with little actual impact on German policy; by Philip Manow, for whom Germany's welfare state is directly contradictory to ordoliberal principles; and by Brigitte Young, who argues that Germany's policies had little to do with ordoliberalism and a great deal with German national self-interest—dismiss its influence as marginal at most.

Other writers ascribe more influence to ordoliberal thought. Josef Hien writes that the "deep grammar" of ordoliberalism is "crypto-Protestant values" (Hien & Joerges, 2017, p. 262). Hien does acknowledge, to be sure, the more generally recognized influence of Catholic social thought on the "social" ordoliberals, notably Alfred Müller-Armack, who saw "social market economy" as a deliberate effort to marry the liberalism of the Freiburg school with a theoretical and practical commitment to the principle that the economy must serve to raise living standards and opportunity for all sections of society. This emphasis created a constant dynamic tension in the evolution of ordoliberal thinking and in its impact on policy between the "liberal" and "social" wings of the movement. They disagreed, however, more over emphasis than fundamental principles. As Dyson again points out, this divergence also reflects the gap between general economic principle and their application to specific policy issues. Like other political and intellectual movements, the ordoliberals had their purist and pragmatic wings (something like the tension between the "fundis" and the "realos" among the Green party in the 1980s). Eucken was never particularly adept at addressing specific policy issues, whereas others in the movement, such as Alfred Müller-Armack welcomed engagement in them in order to apply general principles to the extent circumstances permitted⁸.

⁸ Alfred Müller-Armack was an economist who strongly argued that an economy should serve social justice; he therefore rejected the laissez-faire conceptions of most neoliberals. During the war, he advised the German government but fell out with the regime and began turning his attention to the principles of a postwar economy. It was he who coined the term "social market economy," reflecting his conviction that a market-oriented competitive economy must serve the larger good of society.

The contribution by Stephan Pühringer in the Hien and Joerges volume argues that ordoliberalism became an important “guiding principle” for German policymakers at a number of turning points in the postwar period. Therefore, in his view, after the debt crisis erupted, the German response reflected not so much the return of ordoliberalism as its application to new problems. Ordoliberal thinking had remained strong in a number of policymaking centers, such as think tanks and economics departments and key media outlets such as the *Frankfurter Allgemeine Zeitung*, and embedded in a broader international network of neoliberal thinkers (Pühringer, in Hien and Joerges, 2017, pp. 144–158). In this respect, his position is akin to that of other writers reviewed here who tend to downplay the specific theoretical points of the ordoliberals in favor of their membership in the larger international movement of liberals. To some degree, this position therefore understates both the specific contributions of ordoliberal ideas to early German postwar reconstruction and to its institutional legacy. Nonetheless, Pühringer is surely right in demonstrating the continuing relevance of ordoliberalism, which, as Dyson and other authors observe, is part of the “operational code” of German economic thinking (Dyson, 2021, p. 89).

Other contributors declare that ordoliberalism’s influence on German institutions was minimal, a matter of myth-making and propaganda. Albert Weale rejects the notion that ordoliberalism influenced the social market economy, or indeed that the social market economy shaped Germany’s economic miracle. Whatever successes Germany enjoyed, he claims, owed to Allied pressure for the currency reform, for the CDU’s decision to adopt a comprehensive employment-based old-age pension system in 1957, and to collective bargaining between organized labor and organized employers (Weale in Jien & Joerges, 2017, pp. 237–239).

Running through the Hien and Joerges book, the Mirowski and Plehwe volume as well as the books by Vail, Blyth and especially Slobodian, is the persistent claim that ordoliberalism was antidemocratic. Like Ptak, some of the authors attribute ordoliberals’ call for a strong state to Carl Schmitt’s Nazi-inflected “political theology” (Bonefeld in Hien & Joerges, 2017, pp. 273–288). Others note that ordoliberals feared the potential that mass democracy could assume authoritarian or totalitarian forms. Still others claim that ordoliberalism was anti-pluralist because of its concern that strong interest groups sought to capture the state to advance their purposes. Thomas Biebricher claims that the ordoliberals wanted to “de-pluralize” democracy and replace it with “technocracy” (Biebricher in Hien & Joerges, 2017, p. 113). Michel Foucault, cited by several of the authors in the Hien and Joerges volume, interpreted ordoliberalism as statist and technocratic. For Maurizio Ferrera, the ordoliberals were “obsessed” by anxiety about pressure from “special interests,” that needed to be “caged” through market institutions (Ferrera in Hien & Joerges, 2017, p. 116). Albert Weale argues that ordoliberalism stressed, “in a partial form, a few elementary, but essential, economic truths.” However, while frugality and productivity are important to advancing prosperity, by themselves, they cannot solve Europe’s larger problems. For these, “Europe needs the true democrat to marry the Swabian housewife”⁹. Here again is the premise that

⁹ Weale in Hien and Joerges (2017, p. 244). The swipe at the “Swabian housewife” is a reference to a stereotype that Angela Merkel liked to use at the height of the crisis, referring to the virtues of frugality.

ordoliberalism offers only the discipline of the marketplace and the strong hand of a paternalistic, elitist, and technocratic state as its political theory. The same critique underpins Slobodian's book, which argues that neoliberalism represents an effort to "encase" and "inoculate" market capitalism against democracy.

The accusation that ordoliberalism is antidemocratic does not hold up to closer scrutiny. For one thing, it elides any distinctions among mass democracy, pluralism, interest group politics, parliamentary democracy, and the likelihood of state capture by oligarchs in a liberalizing state. It is hardly anti-democratic to point out that those groups amassing immense market power will use it politically to suppress any threats to their position either politically or economically. No more vivid example of this phenomenon exists than in the deployment of the accumulating power of immensely wealthy conservative and corporate interests in the United States to suppress the voting rights of African-Americans, to block any movement to protect workers' interests or enforce environmental protection laws, to expand the provision of public goods, and to weaken the enforcement of market regulation of financial markets. Under these conditions—described and foreseen by the ordoliberals—is it antidemocratic to argue that only robust market competition can prevent the amassing of great market power and thus lead to the suppression of both political and economic freedom? Yet this point, that concentrated market power will always join with political power to suppress freedom, was fundamental to Eucken and Böhm's writings and runs through them from the beginning. This was the premise on which they based their consistent position that a comprehensive constitutional order to protect competition is requisite both to prosperity and to social justice.

Likewise, to believe that policymaking should be based on facts and reason is hardly to cede power to "technocrats." In fact, one of the consistent themes of the ordoliberals is that economics has to look squarely at empirical data, and not rely only on pure deductive axioms; in this they differed from Hayek or the later Chicago School economists. They also argued against the "historical school" in German economics, which held that as conditions changed, so did basic principles of economics. Using this reasoning, many of the historical school argued that the rise of large-scale industrial and financial power, deploying all the resources of modern technology—such as railroads and telegraphy—were an inevitable stage in the evolution of capitalism. These views, shared both on the right and left by figures such as Rockefeller, Morgan, Debs and Lenin, were roundly rejected by the ordoliberals (as they had been by Louis Brandeis in the United States). There was no historical inevitability for the rise of giant trusts, monopolies, and state capitalist structures, Eucken and Böhm insisted. Even the seeming efficiency gains realized by larger economies of scale were nugatory in view of the inevitable tendency of the monopolist to claim rents by suppressing rivals and risk rather than to raise efficiency. Only competition could ensure a continuous stream of pressure for innovation, they held¹⁰. Most of the books reviewed here ignore this argument.

¹⁰ Likewise, Louis Brandeis argued in 1913 that when a monopoly is efficient, it will absorb the benefit, not the society. For the same reason, if we observe higher earnings on the part of a monopolistic firm, we should not interpret it as a sign of greater efficiency (Brandeis, 1913).

VII. Ordoliberalism and Conservative Liberalism

Kenneth Dyson has studied ordoliberalism for many years. He seeks neither to praise nor to bury it. He has no particular ideological axe to grind and does not seek to interpret ordoliberalism in such a way as to support an argument about the impact of neoliberalism. His study is (to my knowledge) the most authoritative available in English¹¹.

Dyson places ordoliberalism in the historical context of the “conservative liberal” tradition, which includes such figures as Louis Brandeis in the United States. He seeks to refute the idea that ordoliberalism is a peculiarly German phenomenon, reflecting German traditions and applied largely to specific German conditions. Dyson certainly shows that ordoliberalism plays a key role in the myth-making of German postwar history. Separating myth and memory from actual history is difficult. Both ordoliberalism’s champions and enemies position themselves on this issue. Some skeptics believe that its role was mainly myth and PR, as do some of its critics; some of its champions consider it a real force, far more than a myth, while others sympathetic to it consider its effects relatively marginal or limited in time to few early years in the postwar period. Dyson takes a middle ground on both points. He takes pains to show the limits of ordoliberalism’s actual influence on policy. He points out, for example, that for all their emphasis on the necessity of a sound currency and price stability to enable all agents in the economic process to make rational decisions about the use of resources, the ordoliberals had surprisingly little to say about the role of a central bank. The establishment of a strong, independent central bank in 1948 owed little to ordoliberal influence (Dyson, 2021, p. 377). They offered little guidance regarding monetary policy, or even fiscal policy. They “lacked a theory of public goods” (Dyson, 2021, p. 400). Many of the difficult policy choices German faced were influenced by ordoliberalism, if at all, only when figures associated with ordoliberal thinking accepted pragmatic compromises to their principles, generally by accepting a larger degree of autonomy for the collective bargaining institutions of labor and employers, a more comprehensive system of social insurance, more government intervention to stabilize employment and the balance of payments, and political compromises as the price of European integration. Often the purists in the movement opposed them. However, both in the early years and later, the fundamentalist and pragmatic wings of ordoliberals agreed on basic principles and values (Dyson, 2021, p. 400).

Dyson sees the importance of ordoliberalism above all in its insistence on moral values as the foundation of the market order, that a market economy must serve a larger good than private gain. One dimension of that normative position was based in Kantian universalism, another in Catholic social thinking about the just society. These strands of moral philosophy found their expression in the notion of the “social market economy,” which has proven to be much more workable than most observers thought

¹¹ Wilga Föste’s book (2006) *Grundwerte in der Ordnungskonzeption der Sozialen Marktwirtschaft*, offers a comprehensive review of the basic theories underpinning the social market economy concept. It therefore covers ordoliberalism in depth. It gives little attention, however, to the relationship of ordoliberalism to German or European policies and institutions, focusing rather on an exhaustive description of the values of freedom, equality, and justice as they are reflected in the social market economy philosophy.

possible at the time. Note that this means that if ordoliberalism can be criticized for reflecting the social conservatism of the *Mittelstand*, with the priority it gives to social attachments to family and community, they cannot be simultaneously be criticized for treating individual self-interest as the highest good. Dyson admires their moral integrity but shows dispassionately that they were silent or self-contradictory on many points, and that their actual influence as a result was relatively limited. He acknowledges that ordoliberalism has been surrounded by a somewhat self-congratulatory mythology, but he does not for that reason dismiss the myth as false or unjustified. As he notes, many of the latter-day decisions made by Germany's policymakers have been more influenced by American institutional economics than by older ordoliberal theory, and he points out that many of the great problems facing Germany—and other countries—today must find answers from other sources. These include problems such as global climate change, economic inequality, corporate governance, and the quality of public life. Yet he concurs that whatever the defects of ordoliberalism may be, laissez-faire liberalism is far more vulnerable to criticism, given the fact that it has served as ideological justification for a massive “accumulation of privileges of wealth, income, and access to office” that characterize the United States and some other capitalist democracies (Dyson, 2021, p. 442).

As thorough as Dyson's study is, it tends not to emphasize sufficiently the importance the ordoliberals assigned to competition as the best way to prevent accumulations of market power that would invariably become threats to both economic and political freedom. They treated competition as the antithesis of compulsion through public or private monopoly, and as a precondition of freedom¹². In direct contrast to Hayek, for example, or the Chicago school, they argued that the rules of a market order do not emerge organically or spontaneously; they are the products of human institutional choice. Economic order emerges through market coordination, but the rules ensuring fair and free competition themselves must be established and enforced by government. These basic propositions are not discussed in most of the works reviewed here, but were fundamental to all their writings from the start (for example, Böhm et al., 1937).

Moreover, these principles influenced German and European antimonopoly enforcement bodies, such as Germany's *Monopolkommission* and *Bundeskartellamt* and the European Commission's Competition Authority. Many interpretations treat Germany's postwar institutional order as dominated by corporate business interests (Angela Wigger, for example, writes that Germany has taken “a permissive approach to economic concentration to sustain Fordist accumulation structures by means of large corporations”) (Wigger in Hien & Joerges, 2017, p. 177). Certainly, in the immediate postwar years, the iron and steel and coal cartels were extremely powerful, deriving their power not only from their control over industrial resources critically needed for rebuilding but also by the corporatist ties with the centralized labor unions in their sectors. The ordoliberals, and Erhard, fought hard to minimize their influence, both in Germany, and then at the European level (Abelshausen 2004, p. 166 and passim). It is more than a little ironic that the American occupation

¹² Cf. Böhm et al. (1937), and in Eucken's many writings.

authorities, who had ardently backed most of Erhard's market-oriented policies, turned in the opposite direction once the Korean War broke out. A memorandum from John McCloy on March 6, 1951, demanded "a significant modification of the free market economy" and direct government intervention into production, prices, and currency in order to serve western war needs, making further US assistance conditional on German's compliance with its demands. Erhard made minimal concessions to appease the United States, confining cartel arrangements to the mining and metallurgy industries. In recent decades, industrial concentration has in fact declined, in contrast to the United States¹³. Meantime, the *Mittelstand* of small and medium-scale firms, which contribute over half of German value-added and over one third of total turnover, continues to remain crucial.

Germany's principle of social partnership is an element of the social market economy ideal, which contains ordoliberal ideas as well as an elite consensus that social peace is required to avert polarization and extremism as well as to achieve the collective commitment to high productivity that enables Germany to succeed in a globally competitive economy. Ordoliberalism is not the source of the social partnership model, but it influenced some of its major institutions.

VIII. Ordoliberalism and German Postwar Institutions

The Federal Republic's first economic minister, Ludwig Erhard, was strongly influenced by ordoliberal thinking and brought both Eucken and Böhm into his government. However, Erhard drew on ordoliberal thinking selectively, basing his decisions on his own judgment about how and when to apply principles to immediate problems. A practical thinker rather than a theoretician, Erhard combined a firm set of doctrinal inclinations with a forceful personality, a gift at articulating his thinking publicly, and a politician's pragmatic instinct about when to compromise and when to stand firm. In contrast, ordoliberal theoreticians such as Eucken and Böhm tended to view policy issues in a more abstract philosophical light. It was under Erhard that the ordoliberal philosophy had its maximum impact on government policy, although Eucken, Böhm, and other ordoliberals frequently opposed him on particular issues.

Erhard remained in power through 1966, serving as chancellor in the last three years of the period. In 1966, the government changed hands and a new Social Democratic government entered government. Although the new government retained many of the initial institutional choices made by the CDU government, they introduced a number of policies drawn from Keynesian theory. They saw their program as building on, not overturning, the paradigm established in the first two decades. As the SPD leader Karl Schiller put it, their vision was a "synthesis of Freiburg imperative and Keynesian message" or a "magic triangle" that "incorporated concepts of the Keynesian model, the Freiburg School, and the neoclassical synthesis

¹³ See Monopolkommission (2018); Heidorn and Weche (2021); Wambach and Weche (2018). Note that as in the United States, markups have risen across all industries, although they have risen more for firms in more concentrated branches and those with higher market power. However, profit margins are not rising when weighted by revenue shares.

for economic policy decisions”¹⁴. Consequently, it is not the case that Germany adopted a Keynesian program at any point. Germany has selectively employed policy measures aimed at boosting productivity, growth and employment without greatly expanding public sector employment or redistributive fiscal and social policy measures. Its system of social insurance remains firmly based in employment, but over the decades has expanded both coverage and financing to include more state budget subsidies and, most recently, a growing element of private provision (such as the “Riester pensions”). The change in German institutions has been continuous and adaptive, very different from the perspective presented by some analysts who believe that there was an initial equilibrium that subsequently broke down under the strain of inflation in the 1970s, globalizing pressures for liberalization or reunification (Cf. Streeck, 2010; Thelen, 2014).

Crucial elements of the social partnership principle are institutionally embedded. One is Germany’s apprenticeship system, called “dual education”, under which schools and firms share responsibility for providing technical and vocational education under a system of relations balancing cooperation and competition between business and labor (Remington, 2018). Other features of industrial relations also work to realize the broad principle of “social partnership” between labor and capital, which is embedded in multiple institutions. Over time it has evolved incrementally, loosening in some respects as corporatist elements have given way to more flexible labor markets, and tightening in others as the courts have defined the rights of employees and employers more concretely. One of the most distinctive forms of the principle is Germany’s co-determination system, under which workers are guaranteed representation on the governing boards—both the management board and supervisory board—of firms, as well as the enterprise-level works councils. Co-determination has been regularly modified and extended (Streeck & Hassel, 2004, p. 103). Workers’ right to participate in the selection of the director of a firm, granted by federal law, was upheld by the Constitutional Court over strong objections by business. The system of labor courts, which adjudicate labor disputes and are composed of representatives of business, labor and government, constitute another element of the social partnership principle (Streeck, 1984). Because collective bargaining has been relatively successful in balancing wage and price restraint, the ordoliberal’s insistence on price stability has been realized for the most part without imposing fiscal or monetary austerity. Austerity has never been an instrument or goal of German economic policy¹⁵. The objective of the social market economy is to ensure that sacrifices and gains are shared widely.

Moreover, so far at least, social partnership has not produced stasis or declining productivity. Rather, as Abelshausen argues, it encourages the sharing of the gains of productivity growth among workers and employers (Abelshausen 2004, pp. 431–433).

¹⁴ “Synthese von Freiburger imperativ und Keynesianischen Botschaft.” (Quoted in Abelshausen, 2004, p. 413; cf. Katzenstein, 1987, p. 112).

¹⁵ A point Erhard often made. See, for example, Ludwig Erhard (2020, p. 331). To be sure, following the Maastricht Treaty, Germany adopted a constitutional limit on national debt (the so-called “debt brake”). This has not required policies of austerity, however, because economic growth has enabled the budget to avoid running a structural deficit since 2012 and to reduce the state debt.

Although the social partnership concept is not based in ordoliberalism, it is part of the broader social market economy philosophy, and in practice has worked to constrain wage-price pressure and thus to maintain price stability. Because it has constrained competition between labor and business within a cooperative framework, it has helped to preserve the constitutional protections for equality of political rights.

Establishment of the new postwar policy paradigm in the late 1940s represented a sharp break from past systems, although the new system certainly adapted some older elements of Germany's political economy while introducing new features grounded in ordoliberal theory. Since then, Germany has not adopted a new policy paradigm¹⁶. Germany's liberalization in the late 1940s laid the foundations for a system that retained fundamental features of the original postwar system while adjusting it to new demands. 70 years later, Germany's postwar performance compares favorably to any other advanced capitalist democracy with respect to concrete outcomes such as the growth and distribution of incomes, employment and labor force trends, the quality of public goods, the extent of poverty and deep poverty, the vigor of electoral democracy, and the protection of political rights. Germany has not sacrificed equity to efficiency under the pressure of European integration, globalization, automation, social change, or unification or succumbed to polarization and extremism. Polarization and extremism are present in Germany, as they are elsewhere in Europe, but are nowhere near American levels. Growth has generated widely shared prosperity, as the ordoliberals hoped, reinforcing the stability of the original democratic compact.

IX. "Early Winners"

One final point. It is regrettable that the architects of market liberalization in Russia and other post-communist countries never took Germany's postwar reconstruction as a source of usable ideas. To be sure, Germany's wartime economy differed from that of the Soviet-type communist systems; the Hitler regime had imposed high centralization of control but not full nationalization of property relations. On the other hand, the suppression of workers' rights, consumption, entrepreneurship and market exchange under a totalitarian mobilization regime might have been considered at least somewhat relevant as a comparison. Moreover, the ordoliberal doctrine that economic and political freedom must rest in a competitive order that is formed and enforced by the state could have been considered useful guidance. In the event, however, the post-Soviet architects of reform and their Western advisors never referred to ordoliberal theory. Their theory rested rather on simple neoliberal dichotomies—private property rights must replace state ownership; market exchange must replace central planning; politicians serve special interests, never the public good, therefore government's role must be minimized (for example, Boycko et al., 1995). The concern of the reformers lay in preventing inflationary spending pressure, not in creating or protecting competition among producers.

¹⁶ I use the term policy paradigm in the sense in which Peter Hall defines the term: a major change of course entailing not only a shift in the policy instruments and operating procedures of government, but a significant alteration in the basic hierarchy of policy goals as well (Hall, 1993).

Although they recognized the immense concentrations of market power held by Soviet industrial enterprises, most reformers believed that a greater threat to reform than monopoly power was the large monetary overhang and repressed demand that would drive up prices. Therefore, tightening monetary and fiscal policy coupled with deregulation of prices would cure the harms done by monopoly (Kroll, 1991). Moreover, some believed, giant enterprises were potentially more efficient than their daughter enterprises and would be attractive targets for private investment. Market competition would follow of its own accord so long as privatization and the emergence of a new, private sector proceeded unimpaired (Broadman, 2000; Johnson & Kroll, 1991; Joskow et al., 1994; Leitzel, 1994). As James Leitzel put it, “industrial concentration is not an important reform issue, irrespective of its detrimental impact on the Russian economy” (Leitzel, 1994, p. 46). This position was justified by the faith that “with free enterprise, barriers to entry will largely disappear.” Market reform would do “much of this work automatically” (Leitzel, 1994, p. 49). Although major firms might seek protection from being forced to privatize, they were more likely to be seeking “better terms for privatization.” The possibility that monopolistic firms might prefer to invest in seeking protection from competition by allying with sympathetic political forces to taking entrepreneurial risk was ignored. Rather, reformers simply assumed that once property rights were established, competition would spontaneously arise and dissipate monopoly rents. That corporate managers and politicians would prefer to share rents by blocking competition seems not to have occurred to the reformers.

In fact, from the very beginning, liberalization was fatally compromised by manipulation on the part of insiders. Spontaneous privatization of state assets began well before shock therapy. Numerous small firms sprang up, often using the premises, materials, and labor of state enterprises. Large state enterprises and even entire ministries began to reorganize themselves into corporate forms such as “concerns” and “associations” to be able to engage in profit-seeking activity without risk of failure (Johnson & Kroll, 1991, pp. 289 ff.). The notorious loans-for-shares scheme and the dominant influence of the Yeltsin-era oligarchs, continuing into the era of Putin’s “silovarchs,” vividly demonstrate the continuing validity of Hellman’s insight (Aslund, 2019; Dawisha, 2014; Treisman, 2007).

Observing the tendency for the “early winners” of reform to become the real obstacles to liberalization, Joel Hellman published a prescient article in 1998 showing that it was not the initial “losers” from market reform—industrial workers and urban consumers—who were the greatest threat to liberalization, but rather the “early winners” who most profited from arbitrage opportunities in the market and used their privileged positions to shut out competitors (Hellman, 1998). By ignoring the theories and experience of establishing market economies in post-World War II Germany, the post-Soviet reformers failed to recognize that, given the enormous distributional implications of entering a globally competitive marketplace, it was far more advantageous for those who acquired ownership and control rights to use their market power to ally with those in government who could protect their streams of rents than to restructure their enterprises. They had no incentive to create a rule-of-law regime so long as they could use their power to extract rents and to share a portion of

them with their allies in government. Some awareness of ordoliberal theory might have awakened the reformers to the fact that power relations always shape the operation of a market economy. By itself, liberalization does not create a level playing field for market participants.

Ordoliberal principles do offer a third way to pure laissez-faire neoliberalism as well as to state socialism. As the ordoliberals themselves emphasized, behind ideologies stand power interests. Therefore, just as neoliberalism has been placed in the service of predatory rent-seeking by corporate interests in the United States and elsewhere, ordoliberalism in practice would need to be backed by a set of interests whose power resources were evenly enough balanced that they shared a stake in an order that encouraged competition under an agreed set of rules. However, far from implying the suppression of pluralism by a strong state, a market order based on the dispersion of power across society would be the strongest guarantee against the threat posed by concentrated market and political power. A government in such a system would treat the market economy as an instrument for serving the public good rather than as an end in itself.

References

Abelshauer, W. (2004). *Deutsche Wirtschaftsgeschichte: von 1945 bis zur Gegenwart* [German economic history: from 1945 to the present]. C. H. Beck.

Akman, P. (2012). *The concept of abuse in EU competition law: Law and economic approaches*. Hart.

Aslund, A. (2019). *Russia's crony capitalism: The path from market economy to kleptocracy*. Yale University Press.

Blyth, M. (2013). *Austerity: The history of a dangerous idea*. Oxford University Press.

Böhm, F. (1933). *Wettbewerb und Monopolkampf: Eine Untersuchung zur Frage des wirtschaftlichen Kampfrechts und zur Frage der rechtlichen Struktur der geltenden Wirtschaftsordnung* [Competition and monopoly struggle: An inquiry into the question of the economic right to struggle and the question of the legal structure of the current economic order]. Carl Heymanns.

Böhm, F. (1960). Das Problem der privaten Macht: ein Beitrag zur Monopolfrage [The problem of private power: a contribution to the monopoly question]. In F. Böhm, *Reden und Schriften: über die Ordnung einer freien Gesellschaft, einer freien Wirtschaft und über die Wiedergutmachung* (pp. 25–45). C.F. Müller. (Originally published in *Die Justiz*, Vol. III, 1928, pp. 324–345)

Böhm, F., Eucken, W., & Großmann-Doerth, H. (1937). Unsere Aufgabe [Our Task]. In Franz Böhm, ed. *Die Ordnung der Wirtschaft als geschichtliche Aufgabe und rechtsschöpferische Leistung* (pp. VII–XXI). W. Kohlhammer.

Böhm, F., Eucken, W., & Großmann-Doerth, H. (1989). The Ordo Manifesto of 1936. In A. T. Peacock & H. Willgerodt (Eds.), *Germany's social market economy:*

Origins and evolution (pp. 15–26). Palgrave Macmillan. (Originally published in German as “Unsere Aufgabe” [Our task] in F. Böhm, 1937, pp. VII–XXI). https://doi.org/10.1007/978-1-349-20145-7_2

Boycko, M., Shleifer, A., & Vishny, R. W. (1995). *Privatizing Russia*. MIT Press.

Brandeis, L. D. (1913). Competition. *American Legal News*, 44, 5–14.

Broadman, H. G. (2000). Reducing structural dominance and entry barriers in Russian industry. *Review of Industrial Organization*, 17(2), 155–175. <https://doi.org/10.1023/A:1007809813284>

Crane, D. (2013). Ordoliberalism and the Freiburg school. In D. A. Crane & H. Hovenkamp (Eds.), *The making of competition policy: Legal and economic source* (pp. 252–281). Oxford University Press. <https://doi.org/10.1093/acprof:oso/bl/9780199782796.003.0008>

Dahl, R. A. (1961). *Who governs? Democracy and power in an American City*. Yale University Press.

Dahl, R. A. (1982). *Dilemmas of pluralist democracy: autonomy vs. control*. Yale University Press.

Dawisha, K. (2014). *Putin's kleptocracy: Who owns Russia?* Simon & Schuster.

Dyson, K. (2021). *Conservative liberalism, liberalism, Ordo-liberalism, and the state*. Oxford University Press.

Erhard, E. (2020). *Wohlstand für Alle* [Prosperity for all]. Econ.

Eucken, W. (1938). *Nationalökonomie—wozu?* [National economy—what for?] Felix Meiner.

Eucken, W. (1947). *Die Grundlagen der Nationalökonomie* [The foundations of national economics]. Küpper.

Eucken, W. (1951). *This unsuccessful age: Or, the pains of economic progress*. W. Hodge.

Eucken, W. (2004). *Grundsätze der Wirtschaftspolitik* [Principles of economic policy] (7th ed.). Mohr Siebeck.

Fear, J. (2006). *Cartels and competition: Neither markets nor hierarchies* (Working paper, 07-011). Harvard Business School. <https://www.hbs.edu/ris/Publication%20Files/07-011.pdf>

Föste, W. (2006). *Grundwerte in der Ordnungskonzeption der Sozialen Marktwirtschaft* [Basic values in the regulatory concept of the social market economy]. Metropolis.

Gerber, D. J. (2001). *Law and competition in twentieth century Europe: Protecting Prometheus*. Clarendon Press. <https://doi.org/10.1093/acprof:oso/9780199244010.001.0001>

Haley, J. O. (2001). *Antitrust in Germany and Japan: The first fifty years, 1947–1998*. University of Washington Press.

Hall, P. A. (1993). Policy paradigms, social learning, and the state: The case of economic policymaking in Britain. *Comparative Politics*, 25(3), 275–296.

Heidorn, H., & Weche, J. P. (2021). Business concentration data for Germany. *Jahrbücher für Nationalökonomie und Statistik*, 241(5–6), 801–811. <https://doi.org/10.1515/jbnst-2020-0010>

Hellman, J. (1998). Winners take all: The politics of partial reform in postcommunist transitions. *World Politics*, 50(2), 203–234. <https://doi.org/10.1017/S0043887100008091>

Hien, J., & Joerges, C. (Eds.). (2017). *Ordoliberalism, law and the rule of economics*. Hart.

Johnson, S., & Kroll, H. (1991). Managerial strategies for spontaneous privatization. *Soviet Economy*, 7(4), 281–316. <https://doi.org/10.1080/08826994.1991.10641340>

Joskow, P. L., Schmalensee, R., & Tsukanova, N. (1994). Competition policy in Russia during and after privatization. *Brookings Papers on Economic Activity: Microeconomics*, 301–374.

Katzenstein, P. J. (1987). *Policy and politics in West Germany: The growth of a semisovereign state*. Temple University Press.

Kroll, H. (1991). Monopoly and transition to the market. *Soviet Economy*, 7(2), 143–174. <https://doi.org/10.1080/08826994.1991.10641334>

Leitzel, J. (1994). A note on monopoly and Russian economic reform. *Communist Economies and Economic Transformation*, 6(1), 45–53.

MacLean, N. (2017). *Democracy in chains: The deep history of the radical right's stealth plan for America*. Penguin Books.

Mirowski, P., & Plehwe, D. (Eds.). (2015). *The road from Mont Pèlerin: The making of the neoliberal thought collective*. Harvard University Press.

Monopolkommission. (2018). *Hauptgutachten XXII, Wettbewerb 2018* [Main report XXII, Competition 2018]. Nomos. <https://www.monopolkommission.de/de/gutachten/hauptgutachten/212-xxii-gesamt.html>

Müller-Armack, A. (1982). The social aspect of the economic system. In W. Stützel, C. Watrin, H. Willgerodt, & K. Hohmann (Eds.), *Standard texts on the social market economy: Two centuries of discussion* (D. Rutter, Trans., pp. 9–22). Gustav Fischer. (Originally published in German 1947)

Murach-Brand, L. (2004). *Antitrust auf deutsch: Der Einfluß der amerikanischen Alliierten auf das Gesetz gegen Wettbewerbsbeschränkungen (GWB) nach 1945* [Antitrust in German: The influence of the American allies on the Act against restraints of competition (GWB) after 1945]. Mohr Siebeck.

Nicholls, A. J. (1994). *Freedom with responsibility: The social market economy in Germany, 1918–1963*. Clarendon Press.

Peacock, A., & Willgerodt, H. (Eds.). (1989). *Germany's social market economy: Origins and evolution*. Palgrave Macmillan. <https://doi.org/10.1007/978-1-349-20145-7>

Quack, S., & Djelic, M.-L. (2005). Adaptation, recombination, and reinforcement: The story of antitrust and competition law in Germany and Europe. In W. Streeck & K. Thelen (Eds.), *Beyond continuity: Institutional change in advanced political economies* (pp. 255–281). Oxford University Press.

Remington, Th. F. (2018). Public–private partnerships in TVET: adapting the dual system in the United States. *Journal of Vocational Education & Training*, 70(4), 497–523. <https://doi.org/10.1080/13636820.2018.1450776>

Schweitzer, A. (1964). *Big business in the Third Reich*. Indiana University Press.

Simons, H. (1934). *A positive program for laissez faire: Some proposals for a liberal economic policy* (Public policy pamphlet No. 15). University of Chicago Press. <https://desmarais-tremblay.com/Resources/Simons%20Henry%20C.%201934%20A%20Positive%20Program%20for%20Laissez%20Faire.pdf>

Slobodian, Q. (2018). *Globalists: The end of empire and the birth of neoliberalism*. Harvard University Press.

Streeck, W. (1984). *Industrial relations in West Germany: A case study of the car industry*. Heinemann.

Streeck, W. (1997). German capitalism: Does it exist? Can it survive? *New Political Economy*, 2(2), 237–256. <https://doi.org/10.1080/13563469708406299>

Streeck, W. (2010). *Re-forming capitalism: Institutional change in the German political economy*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199573981.001.0001>

Streeck, W., & Hassel, A. (2004). The crumbling pillars of social partnership. In H. Kitschelt & W. Streeck (Eds.), *Germany: Beyond the stable state* (pp. 95–117). Frank Cass.

Thelen, K. (2014). *Varieties of liberalization and the new politics of social solidarity*. Cambridge University Press. <https://doi.org/10.1017/CBO9781107282001>

Treisman, D. (2007). Putin's silovarchs. *Orbis*, 51(1), 141–153. <https://doi.org/10.1016/j.orbis.2006.10.013>

Vail, M. I. (2018). *Liberalism in illiberal states: Ideas and economic adjustment in contemporary Europe*. Oxford University Press. <https://doi.org/10.1093/oso/9780190683986.001.0001>

Wambach, A., & Weche, J. (2018). Hat Deutschland ein Marktmachtproblem? [Does Germany have a market power problem?] *Wirtschaftsdienst*, 98(11), 791–798. <https://doi.org/10.1007/s10273-018-2368-6>

Webb, S., & Webb, B. (1936). *Soviet communism: A new civilization* (Vols. 1–2). Longmans, Green.