

# NORMATIVE ORDERS

Cluster of Excellence at Goethe University Frankfurt/Main

## *Normative Orders Working Paper*

*07/2010*

### **Ordoliberalism and the Evolution of Norms**

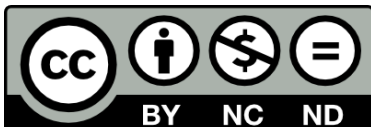
*Manuel Wörsdörfer*

Cluster of Excellence  
The Formation of Normative Orders  
[www.normativeorders.net](http://www.normativeorders.net)

Goethe-University Frankfurt am Main

Chair of Economic Development and Integration, FB2, Grüneburgweg 1, 60323 Frankfurt  
am Main, H.P.O. Box 47

Manuel.Woersdoerfer@normativeorders.net



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# Ordoliberalism and the Evolution of Norms

by Manuel Wörsdörfer

**Abstract:** The first part of the following paper deals with varying points of criticism forwarded against Ordoliberalism. Here, it is not the aim to directly falsify each argument on its own; rather, the author tries to give a precise overview of the spectrum of critique. The second section picks out one argument of critical review – namely that the ordoliberal concept of the state is somewhat elitist and grounded on intellectual experts. Based on the previous sections, the final part differentiates two kinds of genesis of norms: an evolutionary and an elitist one – both (latently) present within Ordoliberalism. In combination with the two-level differentiation between individual and regulatory ethics, the essay allows for a distinction between individual-ethical norms based on an evolutionary genesis of norms and regulatory-ethical norms based on an elitist understanding of norms. A by-product of the author's argument is a (further) demarcation within neoliberalism.

**Keywords:** German Neoliberalism, Individual and Regulatory Ethics, Elitism, Expertocracy, Evolution of Norms.

**Acknowledgment:** The author wishes to thank Rainer Klump, Goethe-University Frankfurt, and Viktor Vanberg, former director of the Walter Eucken Institute, for their useful comments and constructive criticism.

“Die Wettbewerbsordnung verwirklicht sich nicht von selbst. Sie ist in diesem Sinne keine natürliche Ordnung, kein ordre naturel. Es genügt nicht, gewisse Prinzipien des Rechts zu verwirklichen und im übrigen die Entwicklung der Wirtschaftsordnung sich selbst zu überlassen. [...] Gesetzte Ordnungen sind solche, die auf Grund einer wirtschaftspolitischen Gesamtentscheidung ein Ordnungsprinzip in einer Wirtschaftsverfassung zur Geltung bringen. [...] Es zeigt sich, daß die Politik der Wettbewerbsordnung [...] von einer Gesamtentscheidung ausgeht und eine Wirtschaftsverfassung aufstellt, mit anderen Worten, daß sie eine Ordnung setzen will.“

(Walter Eucken 1952/2004: p. 373)

## 1. Introduction

Many people have criticized Ordoliberalism from different perspectives and for different reasons. Three main groups of (interdependent) arguments can be distinguished in this regard: 1. critique put forward by the spokespersons of *Catholic social teaching* and *Catholic social ethics*, especially von Nell-Breuning, Nawroth, Höffner, and Emunds; 2. objections made by Foucault himself and his successors (i.e. *Foucault- and Governmentality-Studies*); and 3. critique expressed by Haselbach and Ptak accusing Ordoliberalism for its alleged *Authoritarian Liberalism*.

Several of these accusations may be refuted referring to the primary literature of Alexander Rüstow, Wilhelm Röpke, Walter Eucken, Franz Böhm and others.<sup>1</sup> What is necessary is a less stereotypical and less prejudiced way of interpretation and a more sophisticated one. In this regard, a distinction between the individual representatives and

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<sup>1</sup> Cp. Klump/Wörsdörfer 2009; Wörsdörfer 2010 and Wörsdörfer (forthcoming).

between the concepts of the Freiburg School of Law and Economics, Ordoliberalism in the broader sense respectively Sociological Neoliberalism/Economic Humanism, the (original) concept of Social Market Economy and Anglo-American Neoliberalism (i.e. Reaganomics and Thatcherism resting on the Washington Consensus) is absolutely essential: these unlike terms have to be kept conceptually apart.<sup>2</sup> Nevertheless, the subsequent critique of Ordoliberalism is worth studying – at least from one economic-ethical point of view: most of the critique put forward is used by many economic ethicists (e.g. Ulrich's concept of *Integrative Ethics*) and by the 'anti-globalization movement' as well in order to refute neoliberalism in its entirety. Moreover, the upcoming literature touches upon a topic which has received surprisingly little attention so far – the intellectual elitism latently integrated in Ordoliberalism. Therefore, it is the aim of the following paper to systematically explore and analyze this kind of criticism and to link it with one of the central topics of the Cluster of Excellence 'The Formation of Normative Orders': the formation and emergence of norms. My paper addresses these questions in three steps: Part one deals with varying points of criticism forwarded against Ordoliberalism (chapter 2). Here, it is not the aim to directly falsify each argument on its own; rather, I try to give a precise overview of the spectrum of critique. The second section picks out one argument of critical review – namely that the ordoliberal concept of the state is somewhat elitist and based on intellectual experts (chapter 3). Based on the previous sections, the final part differentiates two kinds of genesis of norms: an evolutionary and an elitist one – both (latently) present within Ordoliberalism (chapter 4). In combination with my essay on individual and regulatory ethics<sup>3</sup>, the following paper allows for a distinction between *individual-ethical norms based on an evolutionary genesis of norms* and *regulatory-ethical norms based on an elitist understanding of norms*. The paper ends with a summary of my main findings.

## 2. Criticizing Ordoliberalism

As stated in the introduction, three main groups of correlative arguments may be separated: arguments stemming from Catholic social teaching respectively Catholic social ethics, critique advanced by Haselbach and Ptak (i.e. authoritarian liberalism), and finally reasons advanced by representatives of the so called Foucault- and Governmentality-studies. In the following sub-sections I will briefly summarize the expressed objections dealing with current topics of economic ethics and I will also indirectly prepare for charging Ordoliberalism of elitism and expertocratic notion of science.

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<sup>2</sup> Cp. Renner 1999/2000.

<sup>3</sup> Cp. Wörsdörfer (forthcoming).

## 2.1. Catholic Social Teaching and Catholic Social Ethics

The Roman-Catholic theologian, *Oswald von Nell-Breuning*<sup>4</sup> – mainly responsible for Pope Pius XI's social encyclical *Quadragesimo Anno* (1931) – accuses Ordoliberalism for its formal and mainly negative definition of freedom and for not linking freedom with personal and ethical responsibility (Nell-Breuning 1954/1960: p. 91).<sup>5</sup> According to von Nell-Breuning the adjective 'social' in the term Social Market Economy is just a 'decorative fig leaf' or 'theoretical background music' (1975/1990: p. 224 and p. 236; see also 1956/1960). It is by no means sufficient to implement ex-post corrections in order to overcome structural, social deficits and mischief (1975/1990: pp. 227) or to try to reach social and ethical ideals as a mere by-product of economic policy. The state has to fulfil social-reforming and socio-political tasks – an aspect that is in the eyes of von Nell-Breuning completely lacking in the ordoliberal conception of the state focusing solely on economic-policy based on a fetishism of growth (p. 234). Von Nell-Breuning, therefore, concludes, that Ordoliberalism is merely advocating a 'socially tempered capitalism' (p. 237) – to use a term introduced by Götz Briefs<sup>6</sup> – far from being a real paradigm shift. In a further step, von Nell-Breuning broadens his perspective and incorporates a general criticism of mainstream economics as well. In a paper dating from 1975, von Nell-Breuning states that economic theory of today with its paleo-liberal apology of market mechanism would lead to a depersonalization of each market participant, and to a depletion of human beings (1975: pp. 462). The hypostatization of the anonymous and abstract market and the one-dimensionality of the homo oeconomicus model incorporate a far reaching heteronomy of the individual (controlled by external forces) and an economic determinism in the way that each market participant just reacts on market signals like a programmed computer or an automatic machine. The human being is degraded and humiliated to a passive object of a nomological process which confuses competition as an ordering *instrument* with competition as an all-pervading and ubiquitous ordering *principle*.<sup>7</sup> However, von Nell-Breuning admits that the position held by Franz Böhm and especially his concept of private autonomy<sup>8</sup> is similar to the one of Catholic social ethics. He

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<sup>4</sup> Von Nell-Breuning's essay from 1954/1960 is meaningful in at least one regard: here, von Nell-Breuning points at a fundamental weakness of Ordoliberalism, when he indicates that more and more socio-economic aspects are forced back into the so called *Datenkranz* by Ordoliberalism (p. 95), a set of data which cannot be directly influenced and which is exogenously fixed (cp. Eucken 1934: pp. 57; 1938a: p. 30).

<sup>5</sup> Cp. for an opposing view: Wörsdörfer 2010: pp. 25.

<sup>6</sup> See Briefs 1932/1980: p. 120.

<sup>7</sup> See Eucken 1948 as a direct reply to the objections raised by von Nell-Breuning; moreover, cp. the indicated literature of Rüstow and Röpke.

<sup>8</sup> Cp. Böhm 1966/1980.

concludes: on the assumption that Böhm represents ‘authentic Ordoliberalism’, a far-reaching compatibility between Ordoliberalism and Catholic social ethics would exist.

The second representative of Catholic social teaching worth mentioning is even more radical than von Nell-Breuning. *Egon Edgar Nawroth*, a Dominican priest, blames Ordoliberalism for its pre-established harmony respectively for its newly founded faith in harmony in the form of competitive order (Nawroth 1961/1962: p. 11). In addition, he criticizes the ordoliberal claim to absoluteness, its pseudo-theologian market fundamentalism, the individualistic concept of society, the notion of market obedience and submission (i.e. primacy of markets), the talking up of economics as transcendental metaphysics and the absolutization of markets (i.e. accusation of economism and *Prinzipienmonismus*; cp. pp. 12).<sup>9</sup> In the centre of his argument are the ordoliberal freedom pathos, the primacy of *economic* liberty and the notion of social justice merely reduced to a utilitarian-based and market-mechanical conception of justice (i.e. justice of market exchange; cp. pp. 130).<sup>10</sup> ‘Social ethics’ is thus nothing but an equivalent of a competitive-conform ‘functional (pseudo) ethics’ (*Funktionalethik*): justice criteria are subject to market-theoretical criteria and commutative justice is defined mainly in negative terms enabling and fostering market processes. A further point of criticism is the dominance of the principle of competition, the ‘mythical and ideological absolutization of competitive automatisms’ (pp. 141), which leads to a far-reaching neglect of the necessity of an ethically embedded and socio-ethically shaped societal structure (i.e. *soziale Durchformung*). Finally, Nawroth criticizes the idea of man proposed by Ordoliberalism (pp. 246): in the eyes of Nawroth and others, the ordoliberal idea of man rests upon

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<sup>9</sup> Some of the objections raised against neoliberalism as a whole might be true – no doubt; yet, most of them can be rejected as related to *German* Neoliberalism. E.g. Röpke pushes back against apologetic economization, economic imperialism, economic narrowing and against fetishism of growth (cp. Röpke 1944/1949: pp. 385) and he explicitly refuses the model of homo oeconomicus (cp. Röpke 1955/1981: p. 447) due to its mere material and egoistic profit seeking and its reductionism (i.e. reducing the complexity of human nature while ignoring the multiplicity of human motives of action; see for a similar estimation Rüstow 1957: S. 63, where he (indirectly) argues against pleonexia and chrematistics, and Eucken 1934: pp. 21 (critique of the homo oeconomicus model); 1938b: p. 81 (criticism of absolutization of economics and economic totality): In total, Eucken rejects both economic imperialism, economists’ ignorance and interdisciplinary separation; he opposes a neo-classical, game theoretical, transaction cost analysis image of humanity picturing man as an individualised brute utility maximiser. Moreover, he rejects un-tempered capitalism without checks and balances, he regards economic growth not as a target per se, and he argues against the glorification of individualism, egoism and materialism. The pursuit of self-interest should only be achieved within specific legal, political *and* moral boundaries (cp. Dietze/Eucken/Lampe 1941/1942: p. 32)). Finally, Böhm (1937), a further member of the Freiburg School, condemns materialistic individualism, reckless profit-seeking, the glorification of economic egoism and the dog-eat-dog-society. As a result, this exploitative and anarchic *bellum omnium contra omnes* leads directly towards the state of massification and a decline in values in general and a decline of public spiritedness in particular. In total, the homo oeconomicus model is far from being the dominant ordoliberal disposition of individuality.

<sup>10</sup> See Wördsdorfer 2010 and the chapter *Von Hayek and Ordoliberalism on Justice* in my PhD thesis for an opposing interpretation of the ordoliberal understanding of liberty and justice.

individualism and atomism. Society is just the aggregate of several free, autonomous and self-interested individuals cooperating solely for the single purpose of realizing mutual benefits.<sup>11</sup> Thus, (Böhm's private law) society is no better than a special purpose association (i.e. *Zweckverbund*). In total, German Neoliberalism with its utopian, mythical and hypothetical liberalism substitutes the jusnaturalistic-deistic liberalism of English-Scottish enlightenment; it is but the renaissance of Paleoliberalism.<sup>12</sup> Furthermore, the apologetic character of Ordoliberalism functioning as secularized doctrine of salvation is just an ideology defending the rights of rent-seekers and the (plutocratic) ruling class (*Interessentenideologie*) (pp. 392-425).<sup>13</sup> A few years after his dissertation, Nawroth published another work on Ordoliberalism (Nawroth 1965), in which he summarises, condenses and popularises the main allegations against Ordoliberalism: e.g. over-emphasis of market and exchange mechanisms, priority of the logic of markets, subordination to the inherent necessities and factual constraints of the market (*Sachzwänge*), mythical personification and absolutization of markets, belief in the (superhuman) rationality of the invisible hand, disregard of the relativity and of the limits of the 'laws' of market processes, favouritism of an ethically indifferent and socially blind automatism, idea of competition as a universal and everlasting natural order.<sup>14</sup>

To sum up the differences between Catholic social ethics and Ordoliberalism, we can draw on a paper recently published by *Bernhard Emunds* (2010: pp. 5)<sup>15</sup>, director of the Nell-Breuning Institute: the first subtle distinction concerns the anthropological fundament: Catholicism disapproves the ordoliberal idea of man which seems at first sight to rest upon atomism and individualism. Additionally, Ordoliberalism is accused of materialism and consumerism. Contrary to the (supposed) ordoliberal one-sided idea of man – i.e. biased and economized presentation of the idea of man focusing solely on the individual nature while neglecting man as a social being –, Catholic social ethics defines the individual as a social being, a *zoon politikon*, with its ability to communicate and cooperate within a community and to declare one's solidarity with others; secondly, according to Catholic social teaching, the economy is more than sheer market exchange (i.e. the market as a

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<sup>11</sup> See Emunds 2010.

<sup>12</sup> Cp. the contrary-minded theses of Rüstow in: Rüstow 1961 and 1945/2001.

<sup>13</sup> This is a complete misrepresentation and distortion of facts of one of the core criteria of Ordoliberalism.

<sup>14</sup> Ptak speaks in this regard of a quasi-religious outline of the natural order (Ptak 2007: p. 29); see Klump/Wörsdörfer 2009; Wörsdörfer 2010 and Wörsdörfer (forthcoming): chapter 2.2 dealing with these kinds of accusations in more detail.

<sup>15</sup> Emunds is absolutely right in his critique, when he refers to the reception or adoption of Ordoliberalism by mainstream economists (cp. the work of Homann (Homann/Blome-Drees 1992; Homann/Lütge 2004/2005); Starbatty (1994; 1997) et al. referring and citing mainly the alleged major works of Ordoliberalism); however, his critical review is not entirely correct when applied to the primary literature of the main representatives of Ordoliberalism.

*subsystem* is only a *partial* coordination instrument), and society consists of more than just the economy – thus, referring to the social embeddedness of the economic sphere.<sup>16</sup> In this context, Ordoliberalism is accused of postulating a reductionism of society to economy and of reducing economy to market processes. Thirdly and finally, the topic of *Berufsständische Ordnung* (i.e. a socio-economic order mainly consisting of occupational groupings – so called *Ordines* – with an emphasis on subsidiarity<sup>17</sup>), causes some indignation – this time on the part of Ordoliberalism. The ‘professional order’ was postulated by Catholic social ethics as the ideal type of order, but completely rejected by the main proponents of Ordoliberalism supporting the competitive order.<sup>18</sup>

Besides the divergences between Catholic social ethics and Ordoliberalism, the parallels should not go unmentioned: both kinds of ethics (endeavour to) combine the principle of subsidiarity and the principle of solidarity, they are both among the normative foundations of Social Market Economy – albeit with diverging priorities –, and both ethics are religiously grounded and rest upon transcendental values.<sup>19</sup>

## 2.2. Michel Foucault and Governmentality Studies<sup>20</sup>

According to *Michel Foucault*, Ordoliberalism rests on two pillars: the ‘society for the market’ and the ‘society against the market’ column (Foucault 2006: p. 335). The ‘*society for the market*’ pillar can be paraphrased with the key words ‘business or corporation society’ (*Unternehmensgesellschaft* (p. 208)) and ‘competitive market economy’ (*Wettbewerbsmarktwirtschaft* (p. 248)). The society is shaped by the model of entrepreneurship; competition and the homo oeconomicus model are the ordering rationales, and the laws of the market serve as the principles of societal regulation. Further key words relating to this pillar are: the market as the place of the establishment of truth (*Markt als Ort der Wahrheitsfindung* (pp. 55)), economic legitimacy of the state (i.e. ‘legitimacy through wealth’; pp. 124) and public authorities under the supervision of the market (p. 168).<sup>21</sup> The ‘*society against the market*’ pillar contains one of the central concepts within Ordoliberalism: *Vitalpolitik* (Vital Policy). According to Foucault, this component of Ordoliberalism offers compensation regarding the cold-hearted, rigorous

<sup>16</sup> Cp. the indicated literature of Rüstow and Röpke at the end of this paper, emphasizing the significance of embedding the economy in a broader socio-cultural framework (especially Röpke 1958/1961). See also Eucken 1926: p. 16, where he aims at implementing an “all-encompassing spiritual or intellectual order” (“umfassende(n) geistige(n) Lebensordnung”).

<sup>17</sup> See Höffner (a doctoral student of Eucken) 1959/2006: p. 194 and Messner 1936.

<sup>18</sup> E.g. Eucken 1952/2004: pp. 145 and p. 348.

<sup>19</sup> Cp. Wörsdörfer (forthcoming).

<sup>20</sup> Cp. for a critical-constructive assessment of Foucault’s analysis: Wörsdörfer (forthcoming).

<sup>21</sup> Cp. Ptak 2007: pp. 23, who speaks of a legitimacy of the total market society (*totale/entgrenzte Marktgesellschaft*) as one of the key elements of Ordoliberalism.

and severe (competitive) market apparatus. The *market-free sectors* – as one integral component of that pillar – function as an anti-thetical counterweight: They supply the need for social integration and restore cultural and moral values.

Subsequent to Foucault, several spokespersons of the so called *Foucault- and Governmentality studies* are making serious allegations against neoliberalism in general – without distinguishing between the diverse factions inside the neoliberal movement. The main accusations concern the all-pervading *economization* of society (i.e. “... self-sufficiency and autonomy of economic rationality, which is forced upon us by the inherent logic of the market. They argue in a reductionist and deterministic fashion for a ‘pure’ and ‘value-free’ economics which has no place in its axiomatics for ethical categories”<sup>22</sup>), *economic imperialism*<sup>23</sup> and the *homo oeconomicus* model.<sup>24</sup> According to the neoliberalism-definition of O’Malley (2009: 3) et al., neoliberalism consists of the advocacy of the market (i.e. markets as autonomous spheres applying to their own rules), the promotion of business-like relations and market governance, the economization of formerly non-economic spheres (i.e. commodification and implementation of market-like, self-regulating forms of governance), the universalization of market-based social relations, the reaffirmation of individual responsibility (i.e. *empowering* in a *risk-based society*), economized language, the differentiation between *Government* and *Governance* (i.e. less government, but not less (market) governance) and finally the entrepreneur as the neo-liberal hero (i.e. rational choice actor, homo oeconomicus and the individual equipped with specific resources investing in the competencies of the entrepreneurial self and its employability).<sup>25</sup>

### 2.3. Authoritarian Liberalism

*Ordoliberalism as the butt of calumny?* Dieter Haselbach (1991) and Ralf Ptak (2004; 2007) are both emphasizing the (alleged) ordoliberal critique of parliamentary democracy and its antagonism and rivalry with the Weimar Republic in particular.<sup>26</sup> As a proof they are

<sup>22</sup> Fearn, James in: Ulrich 2008: p. xiii; cp. Ptak 2007: p. 14.

<sup>23</sup> See Ptak 2007: p. 30; 2004: pp. 156 (i.e. all-encompassing socio-political validity claim) and Candeias 2003/2009: pp. 101 (i.e. neoliberalism as a hegemonic project).

<sup>24</sup> Cp. for a contrary view within German Neoliberalism: Röpke 1944/1949: pp. 385; 1955/1981: p. 447.

<sup>25</sup> Cp. Lemke 2000; Shamir 2008; Ptak 2007: p. 30 (i.e. analysis of politics as a quasi-market-relationship); Larner 2000; Heidenreich 2010 and for a dissimilar review of Ordoliberalism, falsifying most of the forwarded objections with regard to German Neoliberalism, the indicated literature of Klump and Wörsdörfer.

<sup>26</sup> According to Ptak, it was one of the central aims of Ordoliberalism to destroy the Weimar Republic and its constitution and to pave the way for National Socialism (Ptak 2004: p. 43; 2007: p. 19). In order to refute this unfounded accusation, the reader should just take a peek at Eucken’s controversy with Heidegger’s attempt to implement the *Führerprinzip* at the University of Freiburg, at Eucken’s activity within the Freiburg resistance circles and at Eucken’s lecture *Kampf der Wissenschaft*. Furthermore, he should consider Röpke’s appeal *Ein Sohn Niedersachsens an das Landvolk* dating from September 11, 1930(!): “No one,



referring to (neo-)conservatives like Carl Schmitt<sup>27</sup>, a German jurist, political theorist and professor of law who coined the term ‘Strong State’ – a phrase often used by ordoliberal thinkers like Eucken and Rüstow (albeit within a different context and with a dissimilar connotation<sup>28</sup>). Furthermore, Haselbach and Ptak are querying whether the representatives of the Freiburg School and other thinkers (vaguely) affiliated to Ordoliberalism, like Müller-Armack and Erhard, were really part of the resistance movement against National Socialism. According to Haselbach (and Ptak), Ordoliberalism over-emphasizes the strong state with its nearly dictatorial plenitude of power as one way of removing the weak interventionist state; it reportedly takes side of an authoritarian style of politics, of a dictatorial state order and it represents a comprehensive hostility towards (democratic) pluralism. Its ‘primacy of politics’ (Haselbach 1991: p. 38) becomes clear taking the ‘longing for autocratic leadership’ (p. 42) and the romantic-conservative or idealistic-communitarian cultural and social criticism of Ordoliberalism into account.<sup>29</sup>

*Reply and dismissal of the baseless allegations presented by Haselbach and Ptak:* Haselbach and Ptak are absolutely right when they are pointing at the fact that several ordoliberal thinkers acted as advisors and consultants *during* the Nazi era (i.e. *Arbeitsgemeinschaft Volkswirtschaftslehre* (Working Group on Economics) of the

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electing the National Socialists on September 14, should later on claim that he did not know what might happen. He should know that he will elect chaos instead of order, destruction instead of construction. He should know that he votes for war within and outside the country, for senseless destruction ...” (my translation of Röpke 1930/1965: p. 167); see also Röpke’s speech *Epochenwende?*, dating from February 8, 1933, one week after(!) Hitler’s seizure of power (Röpke 1933/1965: pp. 167).

Yet, it should also be noted, that Eucken and others were indeed sceptical of (unlimited) parliamentary democracy – although they were supporting the rule of law (i.e. separation of powers, fundamental rights charter, protection against arbitrariness; see Eucken 1952/2004: pp. 48) – due to the fact that parliamentary decision making processes are subject to the influence of socio-political pressure groups (i.e. rent seeking and power groups) (cp. Eucken 1932b: S. 307; 1948: pp. 68). They were uneasy about democracy regarding the influence of masses in combination with the impact of interest groups as dangerous – pointing once again to the at least ambivalent and reserved attitude towards democracy and masses. The Ordoliberals saw the Weimar Republic as a weak and party- and pressure group-dominated corporate state (*Verbändestaat*). E.g. Miksch is quite sceptical and doubtful whether the democratic state is able to withstand the pressure of lobbying groups (cp. Miksch 1937/1947: p. 217). Moreover, the Ordoliberals evidently opposed unlimited government and the rent-seeking society and they sought to implement institutional precautions in order to prevent the backfall into a state of re-feudalisation and collusion of private and public power in cartel-like corporatist arrangements in which the state authorities are captured by vested interests.

<sup>27</sup> Cp. for Eucken’s alleged affinity to Carl Schmitt: Tribe 1995: p. 212.

<sup>28</sup> Cp. Eucken 1932b: p. 307; see for Eucken’s anti-totalitarian stance: Eucken 1932a: pp. 85; 1948: pp. 74; cp. also Roser 1998: pp. 250 and p. 327; Böhm 1946/1996: pp. 311-318 for information about his critique of belief in authority (*Obrigkeitsgläubigkeit*) and idolization of power and for criticizing Schmitt for his authoritarian, totalitarian and despotic ideology.

The overall aim of the ‘strong state’ standing above power groups is to defend general public interests against particular interests. In order to reach this goal, public institutions require a certain amount of authority to exert power – yet, in a constitutional and rule-of-law framework with its checks and balances. In total, the strong state is no benevolent dictator or a totalitarian leviathan.

<sup>29</sup> According to Haselbach (1991: p. 110) and Ptak (2004: pp. 190), the ordoliberal *Wertkonservatismus* is anti-modernistic and cultural-pessimistic per se (i.e. romantic anti-liberal clothing and re-establishment of a strong small craftsman and peasant society). Ptak even speaks in this context of a metaphysical pseudo-integration and of an idealization of the medieval societal structures (Ptak 2004: p. 192 and p. 200).

*Akademie für deutsches Recht* (Academy for German Law/AfDR) primarily working on a post-war socio-economic order). Nonetheless, the ordoliberal scientists *did not* collaborate with the Nazi-regime prior and during wartime (the AfDR was later on, in March 1943, dissolved; yet, the work continued within the de facto resistance circle *Arbeitsgemeinschaft Erwin von Beckerath*). Once more it seems by far exaggerated to claim that Ordoliberals functioned as pragmatic and opportunistic experts of the Nazi-institutions (Haselbach 1991: p. 99; Ptak 2004: p. 139). To the contrary, the ordoliberal academics were highly critical of National Socialism *at least* when we read between the lines. In sum, the ordoliberal refereeing was not directly targeted at the Nazi institutions; rather, its primary aim was post-war planning and it contained a coded and severe critique of wartime economic policy!

Haselbach and Ptak are also right when they purport that Eucken's 'Grundlagen'-book was among the basis of discussion of one of the first meetings of the AfDR (which contained by the way many resistance fighters of the Freiburg circles) and that Müller-Armack<sup>30</sup> – although he is not a member of the definition of Ordoliberalism underlying this paper – and Fritz W. Meyer, as a Eucken-disciple, were members of the NSDAP. But they are totally misled when they are writing that a wide-spread compatibility and intersection existed between the economic-ethical program of Ordoliberalism gathering around the normative values individual liberty, social justice and human dignity on the one hand and the racist and totalitarian ideology of National Socialism on the other hand. This is an entire misinterpretation of the economical and ethical aims of the founders of the ordoliberal 'competitive order'.

In sum, the conclusion drawn by Haselbach and especially Ptak that the 'myth' or 'fairy-tale' of the alleged resistance fighters is a good example of apologetic creation of legends (Ptak 2004: p. 63) has to be repudiated. Haselbach even speaks of a 'belatedly self-fashioning' of ordoliberal scientists as NS-oppositionists and freedom fighters (Haselbach 1991: pp. 94).

Yet, utterly unconsidered are the so called Freiburg Circles, the Diehl-seminar, the essay *Wirtschafts- und Sozialordnung* (Economic and Social Order) written by von Dietze, Eucken and Lampe, the so called *Volkswirtschaftsfibel* and its vehement critique of National Socialism, Eucken's friendship to Husserl, Eucken's debate with Großmann-Doerth about anti-Semitism and the subsequent abandonment of friendship, the

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<sup>30</sup> Cp. for more information about Müller-Armack and National Socialism and about his work *Staatsidee und Wirtschaftsordnung im neuen Reich*: Dietzfelbinger 1998: pp. 36 and Oswald 2001; see for a similar critique on Erhard's work *Kriegsfinanzierung und Schuldenkonsolidierung*: Oswald 2001 and Ptak 2004: pp. 145.

controversies surrounding the Heidegger rectorship at Freiburg University, the trial against Böhm because of his lack of national-socialist weltanschauung, etc.<sup>31</sup> In addition, Ptak and Haselbach are not differentiating between the diverse representatives of the dissimilar economic-ethical schools. Nevertheless, Haselbach and especially Ptak are of eminent significance with regard to the elitism-critique corroborated in this essay. That is the reason for incorporating their interpretations of Ordoliberalism.

Besides mentioning the authoritarian and dogmatic characteristics of Ordoliberalism<sup>32</sup>, Ptak (2004 and 2007) brings up further (suspected) features of Ordoliberalism: first of all, its putative anti-egalitarianism and its social Darwinism, and secondly, its possible ideologisation. The thesis that Ordoliberalism pursues a social Darwinistic order is often demonstrated with some of the titles of 'ordoliberal' publications like the following one edited by Günter Schmölders<sup>33</sup>: *Der Wettbewerb als Mittel volkswirtschaftlicher Leistungssteigerung und Leistungsauslese* (competition as a means to increase economic efficiency and as a means to economic selection)<sup>34</sup> (Ptak 2004: pp. 292; 2007: p. 73). As we will see in chapter 3, Ordoliberalism indeed stresses the principle of efficiency, incentive wages and payment by results and achievement. And they are undeniably making use of the term 'selection' or '*Auslese*' (cp. Eucken 1942: p. 39; 1944: pp. 200; 1953: p. 16<sup>35</sup>) – however, without social-Darwinistic connotations. To the contrary, the terms are applied to a situation describing an economic contest with different competitors equipped with equal(!) socio-economic power offering highly innovative products and competing for the favour of consumers. This economic race takes place under equal starting conditions(!) guaranteed and monitored by the state as an impartial(!) referee and neutral arbitrator. At the end, the entrepreneur wins who has mostly satisfied the needs of consumers (i.e. competition on the merits and in terms of better services to consumers). Thus, the focus on *Leistungskonkurrenz* (competition in efficiency) or *Leistungsprinzip* is

<sup>31</sup> Cp. Dietze/Eucken/Lampe 1941/1942; 1943/2008; Blumenberg-Lampe 1973; In der Stunde Null 1979; Roser 1998: pp. 111; Goldschmidt 2002: pp. 117; Oswald 2005.

<sup>32</sup> See Candeias 2003/2009: pp. 413: Like Ptak and Haselbach, Candeias takes a similar view that (German) Neoliberalism consist of a conservative-authoritarian idea of man and society. Furthermore, he states that an ideological proximity exists between orthodox neoliberalism and neo-fascism and between neoliberalism and cesarism (as opposed to this cp. Röpke's critique of Caesaro-economism in: Röpke 1965: pp. 48). According to Candeias, neoliberalism (paradoxically) requires a strong, sometimes repressive, and at the same times a lean and non-intervening minimal government or night-watchman state (cp. Ptak 2007: p. 63). See for more information about the putative authoritarian roots of neoliberalism and the neoliberal security state: Candeias 2003/2009: pp. 429.

<sup>33</sup> Although Schmölders was not a member of Ordoliberalism, the mentioned book edited by him contains essays by Böhm, Eucken and Miksch, the core members of Ordoliberalism in the narrow sense.

<sup>34</sup> See also Eucken 1953: p. 16 stressing the significance of competition as a tool of selection.

<sup>35</sup> Böhm even distinguishes between a domination-free *Kampfordnung* based on *Auslesekampf* and *Leistungsprinzip* and a centrally planned *Friedensordnung* based on *Nicht-Leistungswettbewerb* and *Monopolkampf*; cp. Böhm 1933/1964.

not to be confused with social Darwinism, social selection or a reckless disregard of the worst-off in a society (cp. Rüstow 1957: p. 20 where he criticises vulgar-Darwinist evolutionism). After all, the ideal socio-economic order imagined by Ordoliberalism is not simply a functioning and efficient one; it is at the same time a humane one which provides human dignity and social justice.<sup>36</sup>

The topic of ideologisation presented by Ptak refers to the establishment of an 'ideological phalanx' against collectivism (i.e. economic democracy/*Wirtschaftsdemokratie*, economic steering and planning, Keynesian policy of full employment) established by the 'sect' neoliberalism (Ptak 2007: p. 27). This involves a pointed emphasis or an aggravation of its own model and a systematic and aggressive campaign of discrimination against all other oppositional socio-economic theories (i.e. anti-socialist and anti-capitalist propaganda, deliberate construction of anti-poles and friend-foe-thinking; see Ptak 2004: pp. 156; 2007: p. 24<sup>37</sup>). In order to reach such an ideological phalanx, an ideological bond was needed. Therefore, many Ordoliberals instrumentally use a mythical recourse to the occidental (i.e. antique and Judeo-Christian) tradition of values (p. 42). Additionally, a good publicity was needed in order to win the fight for cultural and socio-economic hegemony. The ideological embeddedness of the ordoliberal concept was found in the model of Social Market Economy as a Third Way between socialism and collectivism on the one hand and laissez faire Manchester-capitalism on the other hand (pp. 156).<sup>38</sup> I will come back to Ptak's in a certain way legitimate point of ideologisation as one major step of implementing Ordoliberalism in chapter 3.5.

### 3. Ordoliberalism and Science as an Ordering Power

Most of the just mentioned accusations can be refuted by referring to the primary literature of Rüstow, Röpke, Eucken and others. Yet, there is one point of criticism missing respectively one point which has received surprisingly little attention. Ptak, Fischer et al. are mentioning this kind of argument en passant. Fischer e.g. writes: "Eucken instead looks for the *independent, expert and intellectual instance [or authority]* that has gained valuable insights into the overall economic problem of steering and managing, that has

<sup>36</sup> Cp. Wörsdörfer (forthcoming): chapter 2.2 explaining the essence of markets and competition as *instruments* of disempowerment, of promoting the overall wealth of a society, of increasing the level of liberty and thus, of ensuring human dignity.

<sup>37</sup> Ptak even states that the whole concept of Ordoliberalism is just a negative one building up fronting positions: against dirigisme, interventionism, collectivism, the modern welfare state, centrally planned economy, democracy and social justice (Ptak 2007: p. 50).

<sup>38</sup> This is an excellent example of not distinguishing between the model of Social Market Economy, the conception of Müller-Armack and the notion of state and economy favored by the Freiburg School and Ordoliberalism – although several differences exist particularly in the context of social as well as business cycle policy (cp. Blum 1969: pp. 116; Quaas 2000: pp. 254 and Ulrich 1997/2008: pp. 369).

acquired knowledge of the *objective* needs of socio-economic interdependencies and that can thus make use of his or her *authoritarian certainty*. With due regard to this requirement profile, the number of conceivable *elitist ordering potencies* is reduced to just one: none but the reasoning of ‘*men of science*’ with its ‘rigorous theoretical-economical training’, which cannot satisfactorily be shown by laymen and ideologists, comes basically into question as an ordering power. [...] Science in the manner of Eucken is that [anti-democratic] authority, which is not only in the possession of theoretical truth, but also in the possession of *practical-political truth*. This possession of truth makes science the one and only approved vital power in the rank of a formative and constituting power [i.e. exclusive ordering function of science]” (my translation of Fischer 1993: pp. 146; emphasis added by M.W.).

In this paper, I would like to sustain and corroborate this verdict (i.e. accusation of an elitist-hierarchical thinking and claims of objectivity and absoluteness). I will pursue this lead by analyzing the primary literature of the main representatives of Ordoliberalism in the strict and wider sense, namely Alexander Rüstow, Wilhelm Röpke and Walter Eucken. Eucken is in this regard of special importance, because his pursuit of absolute truth reminds the reader of the work of Edmund Husserl’s phenomenology and Rudolf Eucken’s ‘*realm of truth*’ (*Reich der Wahrheit*) – thus, this paper closes the circle of my PhD thesis by linking the last to the first paper on the affiliation of Ordoliberalism and phenomenology.<sup>39</sup>

A further link will be established by referring to my paper on individual and regulatory ethics<sup>40</sup>: the differentiation between these kinds of ethics allows for a further segregation with regards to the formation of norms: *individual ethics* with its Christian foundation of values and its liberal-Kantian heritage refers to the *evolutionary genesis of norms* (and bearing resemblances to von Hayek’s conception of Cultural Evolution and Spontaneous Order), while *regulatory ethics* refers to the ordoliberal realm of truth and, consequently, to an *elitist genesis of norms*.

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<sup>39</sup> See Klump/Wörsdörfer 2010.

<sup>40</sup> Cp. Wörsdörfer (forthcoming).

### 3.1. Performance-oriented and Elite-Hierarchy<sup>41</sup>

Already in his work *Civitas Humana* – the first edition dating from 1944 – Röpke mentions the eminent significance of leadership and guidance (Röpke 1944/1949: p. 17; see Eucken 1953: p. 24). According to Röpke, leadership restricted to a(n elitist) minority<sup>42</sup> or ruling class (Röpke 1944/1949: p. 210) is necessary – otherwise the decay and disintegration of the occidental society, of the real community, will occur (p. 339); the hierarchical nature of society belongs to its essence. Each attempt to level and flatten the societal hierarchy will lead to chaos and anarchy (i.e. intellectual massification as a major component of the societal crisis of the present) and to a devoid of relationship. Therefore, Röpke’s ideal-typical society is structured and arranged in a pyramid-like and hierarchical manner (p. 245). However, although the hierarchical and non-egalitarian nature belongs to the core of each society<sup>43</sup>, Röpke distinguishes between a hierarchy based on privileges and (an

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<sup>41</sup> It is remarkable that – although the Ordoliberals are not quite often referring explicitly to the term ‘elite’ (elite simply means elected, selecting or chosen (lat.: *exlegere/electus*; fr.: *élide*); cp. Röpke 1963/1965: pp. 217) – they refuse elites qua birth, social origin/background and descent (often accompanied by inherited richness). This kind of *Herkunftselite* associated with feudal aristocracy, bourgeoisie or oligarchy and all their exclusive privileges and prerogatives is totally condemned by Ordoliberalism. Another type of elite – so called *Machtelite*/power elite – is disapproved as well. Yet, Ordoliberalism favors a different terminology/concept of elite – namely the so called *Leistungs- and Wertelite* (elite based on individual achievements, qualifications and/or special habitus (canon of values) characterized by distinguished moral-ethical qualities) or the *Positions- and Funktionelite* (e.g. achievement-dependent economic, political, administrative, jurisprudential, and scientific/expert elite). The focus of Ordoliberalism is on the education elite; scientific experts – as seen by Ordoliberalism – are one central part of the societal elite. The meritocratic principle of achievement and performance (*Leistungsprinzip*) is highlighted by several Ordoliberals on different occasions. The selection of elites is primarily based on individual merits and qualifications (performance as selection criterion); the elite is composed of key personnel of a society (*Leistungsträger*). Society consists of a (heterogenic) plurality of *Teileliten* (sectoral elites) depicting the functional social differentiation. What is essentially important from an ordoliberal perspective is that the elitist position is not dependent on (educational) privileges, exclusive and network-dependent access to class-specific institutions (societal segregation, distinction, exclusion and closure) and/or (socio-economic) power. They are pleading for equal opportunities for advancement and upward mobility as one major precondition for recruiting the ‘strategic elites’. Additionally, the Ordoliberals are adopting the common distinction between elites (as the ruling class) and masses respectively the mass society (cp. the ordoliberal topic of *Gesellschaftskrisis*). Rüstow, Röpke, Eucken et al. fear the ruling of uncivilized masses; thus, they fight the process of massification. The uneducated ‘mob’ requires leaders (masses vs. leaders) which are (presumably) intellectual superior. The Ordoliberals are convinced that societal leadership is indispensable and that some people (as an elitist minority) are predestined for leading and guiding the majority of the population (i.e. ordoliberal scientific experts as part of the elite are ideally in charge of fulfilling this task). Inseparably connected with the distinction between masses (=lower classes) and elites (=upper classes) is the criticism of parliamentarism, democracy and pluralism. The ruling of masses – in combination with the impact of interest groups – has to be prevented by all means. Moreover, Ordoliberalism not only emphasizes the dynamic and meritocratic elements concerning the circulation of elites/the social advancement and decline, they highlight the eminent importance of elites concerning the genesis of norms and the formal as well as informal institutional change (cp. for more information about the sociology of elites: Hartmann 2004/2008).

<sup>42</sup> Röpke refers often to the elitist nature of so called *Stammfamilien* (Röpke 1944/1949: p. 211), families which are part of the elitist hierarchy based on individual performance; Böhm (1937: p. 118) even claims that certain social classes were born to rule and that they were destined for leadership.

<sup>43</sup> See for further information: Rüstow’s *Ortsbestimmung der Gegenwart* (Determination of the Present’s Location), his essay *Wirtschaftsethische Probleme der Sozialen Marktwirtschaft* (Economic-ethical Problems

elitist) hierarchy based on performance (and virtue<sup>44</sup>) (i.e. Confucian-like leading by example<sup>45</sup>; p. 339). Röpke leaves no doubt about his preferences: like Rüstow and Eucken, he prefers a performance-based hierarchy or in Röpke's terminology: a *Leistungs- and Elitehierarchie* (societal hierarchy based on performance and elitist expertocracy; p. 211)! Thus, the ordoliberal elitism and societal hierarchy is highly related to special intellectual and mental capabilities or skills. All this goes along with a high degree of faith and trust in elite and experts. The ideal state is in a certain way a corporative system, a *Ständestaat*, yet, with pervious class barriers and what is equally vital: it is not simply a meritocracy<sup>46</sup>; rather, it is an expertocracy as well! Each person is able to climb up the social ladder according to individual capabilities, achievements, performances and personal merits and the just described making up of *intellectual* elite is guiding and directing society.

### 3.2. Meritocracy: The Special Role of Performance Capability

The principle of performance capability (i.e. *Leistungsfähigkeitsprinzip*<sup>47</sup>) is omnipresent in the writings of Ordoliberalism. It shapes the notion of justice, the concept of competitive order and the social policy recommendations based on the ordoliberal diagnosis of the present.

The ideal society of Ordoliberalism is based on the meritocratic principle: every man is the architect of his fortune and fortune favours the brave – to use two well-known sayings. Each person should be able to socially ascend according to his or her (physical and) intellectual competencies and skill<sup>48</sup> and should be rewarded according to one's merits. Social climbing and upward mobility has to be allowed for and facilitated by making the socio-economic structures more transparent and more achievement-oriented. In addition, the public authorities are responsible for guaranteeing justice of the starting conditions

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of the Social Market Economy (1955)) and Röpke's *Gesellschaftskrisis der Gegenwart* (The Social Crisis of Our Time (1942)).

<sup>44</sup> According to Röpke (1963/1965: p. 216), intellectual skills form a unified whole with exemplary character traits and virtues.

<sup>45</sup> See the indicated literature about meritocratic and expertocratic elitism inside Confucianism in: Wörsdörfer 2007.

<sup>46</sup> Röpke states a natural hierarchy of performances and functions. Such a societal structure is necessary in order to prevent intellectual massification and the flattening of the pyramid of ranks.

<sup>47</sup> Cp. Rüstow 1950; Röpke 1950: i.e. social advancement of the diligent persons and social decline of the non-diligent ones; cp. Lenel/Meyer 1948: p. IX: "Competition does not tolerate the conservation and preservation of social classes. It is the order of social advancement and decline depending on the principle of pure performance" (my translation); see also Böhm 1933/1964: pp. 273 (i.e. meritocratic competitive order as the principle of individual justice).

<sup>48</sup> Though, Ordoliberalism incorporates *physical* gifts and talents into its analysis as well, a clear favouritism or bias towards *intellectual* skills is more than obvious.

(equality at the start of life or justice at the start: *Startgerechtigkeit*)<sup>49</sup>, i.e. just and equal opportunities with regard to education, training and qualification (Rüstow 2001: pp. 83). Education should not depend on the social background or the financial means of a person; rather, what matters are the individual talents and gifts as well as the willingness and the proof to work hard (Rüstow 2001: pp. 83). The education policy, therefore, has to provide scholar- and fellowships for promising and auspicious pupils and students.

Equal opportunities and justice of the starting conditions are two central requirements of the principle of performance capability. To facilitate the implementation of this principle it is necessary to abolish the 'aristocratic' nobility by birth and the 'feudal' law of inheritance which is responsible for inherited inequalities (Rüstow 2001: pp. 83). Here, Rüstow pleads for progressive death duties so to overcome the current plutocracy.

Additionally, the principle of performance capability may also be found in the context of economic policy: the conception of competitive order rests upon the distinction between *Leistungs-* (competition through achievement or competition in terms of better services to consumers) and *Behinderungs-* or *Vernichtungswettbewerb* ('competition' based on market powers instead of performance<sup>50</sup> and aiming at the restriction and hindrance of (further increasing) competition/'competition' to prevent competition). The Ordoliberals speak in this context of *Leistungskonkurrenz* which has to be established. *Leistungskonkurrenz* and *Leistungswettbewerb* assure a just income and assets distribution according to individual efforts and achievements. Additionally, justice consists of the equivalence of performance and counter-performance (i.e. principle of equivalence) (see Rüstow 1950).

### 3.3. 'Expertocracy': The Special Role of Clerics

In *Civitas Humana*, Röpke mentions the importance of special countervailing powers, acting as a counterbalance to public authorities – a concept quite similar to Eucken's ordering potencies developed in his *Grundsätze*-book: in line with Eucken, Röpke includes science respectively academics at the forefront. Moreover, Röpke mentions judges and journalists as other countervailing powers. Journalists, judges and scientists are subsumed

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<sup>49</sup> The principle of equality of opportunities and of the starting conditions has not to be confused with egalitarianism. All ordoliberal thinkers are highly critical of egalitarianism which seems to be interlinked with von Mises' 'spiral of interventions' (e.g. Mises 1926/1981) and the modern welfare state (cp. Röpke's critique of the welfare state in: 1933/1965: p. 175; 1942: p. 261 and p. 271; 1944/1949: pp. 171 and pp. 255; 1958/1961: p. 75, pp. 226 and p. 244.; see also Röpke 1950: pp. 65ff., where he pleads against absolute material equality of the living conditions. Equality of opportunity is just a relative principle and it has to be commensurable with the ethical ideal of liberty.

<sup>50</sup> Entrepreneurial freedom is only legitimately justifiable when it is based on market performance and not on market powers (see Erhard/Müller-Armack 1972: p. 222).



under the term *clerc*. Clercs are not part of a separate institution or profession; the term rather refers to a special kind of people and to a unique attitude of mind and in thinking. The characteristics of clercs are: sense of responsibility and justice, pursuit of truth, and steeliness. They (have to) serve the uncorrupted truth and the values which are supranational and antecedent of the state. Remarkable is the fact that many clercs are part of the middle classes (equally apart from proletarianisation and corrupting opulence and prosperity; a certain degree of material independency is necessary). Some clercs are even part of a religious community (i.e. clergyman) – religion<sup>51</sup>, therefore, serves as a further countervailing power and as a constitutive force of the economic, political and social order as well (cp. Eucken 1952/2004).

As already stated, the major groups within the clercs are scientists, judges and journalist.

1. *Scientists and scholars* function as an independent authority of society just as judges and journalists. They have to represent the truth; they are obliged to genuine truth – even though verity might conflict with state doctrines. Should it be necessary, the scientist as a ‘secularized clergy’ has to swim against the tide; he has to be intellectually independent of prevailing opinions (see also Böhm/Eucken/Großmann-Doerth 1936/2008: p. 27: “men of science are the only objective, independent advisor due to its position standing above economic interests”). Their task is to banish ideologies and unjustified prejudices as well as the disclosure and critical evaluation of pseudo-scientific value-judgments.<sup>52</sup> But what is most important is the fight against relativism of values and the defence of binding core ethical values like trueness, justice, peace and community (Röpke 1944/1949: p. 156). Science – so to speak – is the shrine of the pursuit of absolute verity and the diligent defence of last and absolute values (p. 229).<sup>53</sup> Science is the array of free thinking of independent minds that are responsible for preventing society taking a wrong track (i.e. pseudo-scientific demagogy, desires of bossiness and ambition). The potential danger that comes up within scientific community is infection with the virus of massification and stereotyping. Röpke speaks of the danger that science becomes a kolkhoz and a collective farm.

2. The second group of clercs form the *Judges*: like scientists, judges have to be independent and they have to serve justice and truth (p. 231). They are responsible for

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<sup>51</sup> Röpke in this regard opposes religions in disguise (‘verkappte’ Ersatzreligionen), e.g. nationalism, collectivism and biologism (Röpke 1944/1949: pp. 224).

<sup>52</sup> Value judgments are inextricable linked to science; they are not per se illegitimate – to the contrary. Value judgments are necessary especially in the context of (justifying) absolute ethical values; cp. on the opposite Weber’s postulate of freedom from value judgments (Weber 1904/1968).

<sup>53</sup> According to Röpke, last values are scientifically objective and therefore, legitimate. They refer to anthropological facts and elementary, normative-ethical ideals as anthropological constants of the psycho-physical nature of human beings (Röpke 1944/1949: p. 158).

monitoring and implementing the ‘supranational and antecedent to the state majesty of law’. Of great significance are the division of powers, institutional checks and balances, and the rule of law. Here, Röpke explicitly opposes arbitrariness, despotism and tyranny.<sup>54</sup>

3. Last not least, the *Journalists* constitute the third group of clerics: Röpke points at the eminent relevance of the freedom of the press as well as the sense of responsibility of journalists. They have to meet high intellectual qualifications *and* ethical standards and they are highly responsible to save society from political despotism. After all, press and media are the fourth estate. The danger that might come up is the unscrupulousness regarding the choice of means in order to increase the number of publications of the yellow or tabloid press. Additionally, Röpke sees the danger, that newspapers and magazines are growingly dependent on advertisement and investors. So, they are compelled making concessions to the mainstream and – as a consequence – they tend to promote the process of massification (pp. 235).

All different kinds of clerics share one moment: they all have equally access to the realm of truth, they are holders of the truth and they are pre-destinated to be a part of the elitist and meritocratic expert-culture envisioned by Ordoliberalism; they are part of the leading class or as Fischer has put it: they belong to the ruling class of the knowing or the reign of the knowing (Fischer 1993: p. 149).<sup>55</sup> Röpke sums up the Eucken-like *ordering function of clerics* when he comments: “... nowadays more than ever indispensable leadership by real intellectual authority [...]. Indeed, when science willingly abandons its own authority, whereto should we address ourselves? When science does not show us the way through all the chaos of opinions and ideas and when science does not draw up general (ethical) guidelines for values and aims – because it is beneath its dignity – to whom can we apply and from whom can we expect it?” (my translation of Röpke 1944/1949: p. 152).

Clerics are advising politicians and other representatives of the state and the economy. In addition – and that is essential for the argument of this paper –, they are mainly in charge of modifying the institutional, socio-economic framework of the society. The elitist experts are accountable for altering and reforming societal norms (Röpke 1950: 231). Thus, the clerics are in a certain way prescribing norms in a paternalistic-heteronomous and anti-

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<sup>54</sup> Equally important is that the hierarchical, elitist and paternalistic concept of the state has not to be confused with an authoritarian regime based on violence and oppression (Röpke 1944/1949: p. 245) – thus, the accusations put forward by Haselbach and Ptak can be refuted once more.

<sup>55</sup> Fischer (1993: p. 149) also speaks in this context of “enlightened dictatorship”.

pluralistic<sup>56</sup> manner. The reason for this is that the experts have gained access to the realm of absolute truth.

### 3.4. Ordoliberalism and the Quest for Truth

In his book *Mass und Mitte*, Röpke criticizes *progressism* for its alleged nihilism. In the eyes of Röpke, nihilism is responsible for destructing the notion of truth and for eliminating fundamental ethical values (Röpke 1950: p. 59). Nihilism is highly correlated with relativism and so this process ends in secularisation, emancipation from religion and traditions, nomad-like lives, the cult of technology, and proletarianisation with its dissolving footholds and disintegrating values and traditions.

Röpke writes: “The resolute *secularisation* of intellectual contents of our time with its bluntness and in the end resolution of religious minds, the decomposition of ultimate and transcendental norms, values and beliefs, the ‘nihilism’ in the sense of destructing truth, absolute values and the immaterial sense of life and world” (my translation of Röpke 1950: pp. 58). “... the urge to get completely rid of anything that seems to constrain the absolute self-aggrandisement of humans. It is the advance towards *utterly emancipation of the human being*. The ultimate aim is to cut off the human being from its roots and to break away from all bonds and exterior forces [...]. The emancipation from all absolutes involves a tendency towards *total relativisation*. Thereby arbitrariness and randomness will become domineering. [...] No distinct boundaries, no unalterable points, no rigid fundamentals that stabilize. We are linearly aiming for a world of entire despotism” (my translation of Röpke 1950: pp. 62).

What is required in such a situation of massification and stereotyping, a state of an overall intellectual-ethical and socio-political crisis, is a return to truthfulness, to an absolute secure foundation of values. The only way out is the philosophical search for truth (cp. Röpke 1944/1949: p. 25); here, clerics and their ‘service to truth’ (*Dienst an der Wahrheit*) are vital.<sup>57</sup>

Eucken in turn aspires to overcome the ‘Great Antinomy’ in economic methodology, the *Methodenstreit*, as well as the (scientific) crisis of humanity by laying a revolutionary new

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<sup>56</sup> *Anti-pluralistic* in this regard means that the development of norms takes place without the approval of *legitimate* interest groups and without the citizens’ involvement and participation in a democratic decision making process (i.e. non-consensus-seeking approach). Not all interest groups are per se illegitimate and in danger of misusing their powers in terms of rent-seeking, think of parties, non-governmental organizations, etc. – provided that appropriate constitutional checks and balances are implemented. Here, Ordoliberalism is overstating the fear of the influence of power groups in an unsophisticated manner.

<sup>57</sup> See Röpke 1933/1965: p. 173: “... the will to emancipate the mind from each heteronomous authority, the absolute aspiration for truth while rejecting any kind of obscuration, mythology and of any kind of whatsoever engagement. [...] intellectual integrity [...] the liberal ideal of using ratio in the service of truth” (my translation).

methodological fundament of science in general and economics in particular: he intends to establish *economics as a rigorous and crisis-proof science* – to use a title of one of Husserl's essays and lectures – and searches for a solid and absolute epistemological basis of economics: a search seeking evidence, objectivity, apodictic truth and ultimate justification based on an eidetic cognition, as Husserl puts it. Moreover, Eucken's epistemological aim is not only to implement a true, i.e. ultimately justified and crisis-proof science.<sup>58</sup> He seeks gaining access to Rudolf Eucken's *realm of truth*<sup>59</sup> as well.

Via applying an analytical raster which interlinks (Weberian) ideal-type- as well as (Rudolf Euckenian and Husserlian) isolating-abstraction-elements it is possible – at least in the eyes of Walter Eucken – to deduce theoretical knowledge arriving at (Husserl's and Rudolf Eucken's) realm of truth. Pointedly distinguishing abstraction simply means interpenetration of economic reality, radical turn towards reality, steering towards eidetic essences, to essential truth<sup>60</sup>, and the founding of an atemporal valid morphology. The feedback of the *evident truth of reasons* (*Wesenswahrheit*; cp. Eucken 1934: p. 29) enables the overcoming of the scientific dualism of theoretical and historical economics (i.e. Great Antinomy or Methodenstreit); moreover, it allows the founding of a crisis-proof science.

In sum, Eucken's methodology is therefore an instrument or a tool in order to overcome the *Gesellschaftskrisis* (by reaching the realm of truth via a crisis-proof science) and in order to explore economic systems capable of meeting the twofold condition of a functioning and humane socio-economic order based on religious values.

## Excursus: Ordoliberalism and Historism

All this goes along with the ordoliberal antipathy towards *historism*. Its aim was the refutation of historism due to its fostering of relativism, determinism and fatalism. The only way of overcoming historism was a new method of thinking in orders and economic

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<sup>58</sup> By quoting Husserl, Eucken applies directly *early* phenomenology to economics. Husserl (as cited in Eucken 1950/1992: p. 304) writes: "The systematic character of a science, if genuine, is not something invented, but lies in the facts, and its existence therein has to be discovered. A science must be the means by which the realm of truth is extended, and this realm is no disordered chaos but governed by uniformity and regularity."

<sup>59</sup> *Rudolf Eucken's epistemology and methodology* uses a method of abstraction and reduction, and a Weberian method of isolating ideal types. He calls this technique *noological method* which is close by the phenomenological approach. He aims at the substance or the being of facts, he highlights the entirety, totality, the intuitive, direct and straight look, and the advance towards the essence, and he pursues – in complete concurrence with Husserl – the realm of truth (cp. Rudolf Eucken 1918; 1922: pp. 70 and (without publication date): pp. 59 and pp. 66; cp. Walter Eucken 1950/1965: pp. 230; Goldschmidt 2002: pp. 80; 2007: pp. 7 and 2009; see for more information about parallels of the noological and the phenomenological method: Goldschmidt 2002: pp. 83, Fellmann 2009; Klump/Wörsdörfer 2010).

<sup>60</sup> Cp. Rudolf Eucken (without publication date): p. 94.

constitutions based on the already mentioned phenomenological *Wesensschau* (i.e. contemplation or intuition of essences).

As Eucken (1938b: pp. 64) states, historicism is responsible for the relativization of all religious and ethical norms and values<sup>61</sup> and worst of all for the denial of absolute truth. This relativization of the idea of truthfulness (see also Eucken 1950/1965: p. 271) is inseparably connected with subjectivism and a distrust in reason, rationality and prudence. Science is regarded as a minor subject and it loses its constitutive and ordering function. The actual fundamental aim of science is the search for objectively valid knowledge which has to be defended at all events against public authorities. However, since the victory of historicism at the end of the 19<sup>th</sup> and the beginning of the 20<sup>th</sup> century and since historicism has become the predominant force and ideology of the present, irrationalism is pervasive as well as *punktuelles Denken* (unsystematic and selective thinking) and a neglect of answering fundamental (scientific) questions and of pursuing pure science and scholarly activities. Due to the historic-relativistic mentality with its irrationalism and its idea of a deterministic and fatalistic development, science loses its role of analysing and influencing historic reality. All 'scientific' insight is time-dependent and relative (i.e. *Daseinsbedingtheit der Wahrheit* and *Daseinsrelativität der Existenz*); obligatory and lasting rational knowledge does simply not exist – so historicism claims. Therefore, science is no longer an ethical and ordering power.

According to Eucken's own account, who is convinced that we are living in an 'era of historicism', this mental attitude of historicism has to be overcome. Historicism has to be challenged and combated. The decay of science has to be abandoned, the sceptical atmosphere towards science has to be ended and the dethronement of ratio has to be undone. The real objective of (economic) science is to approach truth and to reach veritable and genuine cognition. Additionally, science is responsible for revealing the actual and true connections of the facts of everyday (economic) life, for pushing aside the ever changing and subjective 'surface-opinions' (*Oberflächenansichten*), for approaching non-relative truthfulness and for the penetration of historical reality in order to understand everyday economic experience and in order to solve real problems. Here, Eucken's belief in the power of rational and scientific thinking and in the power of ideas becomes evident. The faith in human reason (Eucken 1933; 1938b: p. 74) seems to be limitless and in some senses it seems to adjoin hybris.

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<sup>61</sup> This questioning of all religious and ethical values is regarded as a serious threat. It will inevitably lead to nihilism and a decline in values – so Ordoliberalism claims. Thus, it is highly related with the ordoliberal topic of the societal crisis of the present and with its thorough critique of the conflicts in modern civilization.

By intensely discussing (a caricature(?) of) historicism, two things become clear. First of all, Eucken is again criticizing Schmoller and the Historical School as one major representative of historicism and, thus, as one major component fostering relativism, fatalism and irrationalism and for querying the creative and formative function of science (see also Böhm/Eucken/Großmann-Doerth 1936/2008: pp. 32). As said by Eucken, the Historical School is not able to explain economic reality; characteristic of the Ethical-Historical School is its evasion of fundamental questions and of finalizing constitutional choices; on the contrary, the Historical School just focuses on minor individual (i.e. selective and unsystematic) questions without considering the socio-economic interdependencies and without using tools of theoretical methodology. Secondly, what becomes clear is the *connectedness of unprejudiced love of truth, science and religion*: Ordoliberalism is not only fighting the decay of reasoning and truth; furthermore, they are fighting for eternal and imperturbable values<sup>62</sup> which help to stabilize and secure individual existences in an era which has lost its ethical benchmarks (Eucken 1950). These ethical-normative values are stemming from human ratio, but in the end, they rest upon God (Eucken 1938b: p. 68). The overall aim is to establish an ‚*order of truth*‘ based on ORDO as a natural order of essence respectively as an exact image of the order of reason willed by God. The ideal normative order, therefore, equals the order willed by God which functions as a regulative normative ideal (cp. Eucken 1950/1965: p. 239).

### 3.5. The Implementation of Ordoliberalism and Social Market Economy<sup>63</sup>

The implementation strategy of Ordoliberalism rests fundamentally on influencing politics and the public opinion – especially via educational institutions (i.e. public enlightenment<sup>64</sup>) and via consulting academies and advisory councils (i.e. Eucken’s ordering function of science and education). Accordingly, Ordoliberal academics pushed their agenda in both the scholarly and popular press.

The pursuit of hegemony in the scientific community started already in the NS-era when several ordoliberal thinkers were working as referees and advisors (cp. chapter 2.3.). Right after the collapse of the NS-regime, the ordoliberal expert-counselling continued when Eucken and others delivered expert opinions on socio-economic topics to the allies. The

<sup>62</sup> Cp. Miksch 1950: p. 279: “It was a struggle for eternal values of humankind. For him [Walter Eucken], economic theory was just a means in order to create an order capable of liberating these values clasped by chaotic, anarchistic and collectivistic and fundamentally nihilistic forces” (my translation).

<sup>63</sup> Cp. for foundation: Gutmann 1998; Reuter 1998; Klump 2001; Wünsche 2001; Rittershausen 2007; Körner 2007; see in particular Ptak 2004: pp. 38.

<sup>64</sup> See also the so called *Volkswirtschaftsfibel* written by Dietze/Eucken/Lampe (1941/1942), aiming at the general education of the public. Accordingly, although the scientific concept of Ordoliberalism is an elitist one, elements of general (and democratic) education are incorporated as well (cp. Rüther 2005).

aspiration after cultural and socio-economic supremacy was interconnected with the filling of strategic key positions within the sector of political consulting. The overall aim was to directly influence political decision makers in order to implement ordoliberal ideals or at least to prevent anti-ordoliberal policies. In addition, the Ordoliberals indirectly exerted pressure on politics by influencing the *vox populi*, the public opinion and by being ever-present in public debates (i.e. media support and media as multipliers).

According to Ordoliberalism, no more than the scientific experts know what is best for their country – based on the assumption that they are the only ones having gained access to the realm of truth.<sup>65</sup> Mass influence has to be limited; otherwise the chaotic and anarchic forces of the masses will destroy order and security. The masses are often regarded as a synonym for an uneducated and uncivilized mob following primitive instincts and passions.<sup>66</sup> The majority of the people, the mass population, have to be led by a strong and assertive intellectual elite (i.e. leading by elitist experts).<sup>67</sup>

Prior and especially after 1949, scientific counselling was an eminent factor of power and the expert culture and intellectual elites framed much of Germany's post-war history. The work of Böhm, Eucken, Miksch, Röpke and others were reasonably influential especially with regard to the monetary and economic reform of 1948 (i.e. *Leitsatzgesetz/Währungs- und Wirtschaftsreform*), the anti-cartel legislation (i.e. Monopolies Commission Act and establishment of a cartel office in 1958), the monetary policy focusing on price stability and the independency of the German central bank (i.e. *Bundesbankgesetz*, 1957<sup>68</sup>). Of particular importance are furthermore Röpke's expertise for the Adenauer government *Ist die Deutsche Wirtschaftspolitik richtig?* (Röpke 1950/1981) and Böhm's political commitment to competition policy (e.g. Law against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*, 1957) as a supplement of the Fair Trade Law (*Gesetz gegen den unlauteren Wettbewerb*)).

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<sup>65</sup> In this context a further similarity between phenomenology and Ordoliberalism can be detected: according to Eucken and Husserl, Ordoliberalism/phenomenology is mainly responsible for overcoming mental immaturity and reaching autonomy and self-confidence. Transcendental economic ethics/philosophy incorporates a claim to *ordoliberal/phenomenological leadership* similar to that of Platonism (i.e. philosopher kings). Ordoliberally/ phenomenologically trained persons are the teachers of the people, they are the bearers of rationality, and they teach and educate their milieu until an ordoliberal/phenomenological movement and finally an overall ordoliberal/phenomenological society has been established (cp. Husserl's unpublished manuscripts: Ms. K III 9/64a and K VI 334 cited in Klump/Wördsdörfer 2010 and for a similar elitist understanding of science Eucken 1952/2004: pp. 338 and Rudolf Eucken 1922: p. 80, where he regards himself as an intellectual leader and advisor of the people).

<sup>66</sup> However, it is not correct to state that the masses are a synonym for the poor people. Everyone has the chance by educating him-/herself to become part of the intellectual and meritocratic elite (cp. Röpke 1942: p. 27).

<sup>67</sup> Cp. Ptak 2007: p. 34; 2004: p. 193: "... oriented towards a corporatist structure of society, influence of elites rather than masses in the context of political decision making..." (my translation).

<sup>68</sup> Cp. already Eucken 1923: p. 80, where he additionally pleads for the gold standard; see also Dietze/Eucken/Lampe 1941/1942: pp. 81.

The so called *Brigade Erhard*, or as Hutchison (1981/1992: p. 168) put it: Erhard's "satellite economists and experts", these (academic) supporters of the policy of Ludwig Erhard were mainly responsible for implementing, strengthening and securing ordoliberal ideals and for consolidating and advancing the Social Market Economy-policy of Erhard and Müller-Armack by legitimizing and justifying the newly established socio-economic concept as an Irenic Formula and as a Third Way. Furthermore, the *Frankfurter Allgemeine Zeitung* (FAZ) and the *Neue Zürcher Zeitung* (NZZ) were of eminent significance in providing journalistic and in a certain way propagandistic 'fire protection'.<sup>69</sup> This process of legitimizing a new *justification narrative* was accompanied by the setup of a scientific infrastructure at the Federal Ministry of Economy (BMWi) and elsewhere. An academic advisory council (*Wissenschaftlicher Beirat*) was founded in 1948 at the Economics Administration in Frankfurt – the successor organisation of the so called Arbeitsgemeinschaft Erwin von Beckerath and the predecessor organisation of The German Council of Economic Experts (*Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung*).<sup>70</sup> Among the first members were many ordoliberal or ordoliberal-affiliated thinkers like Franz Böhm and Walter Eucken. Other appreciable founding members were von Beckerath, Hallstein, Lampe, Liefmann-Keil, Miksch, Müller-Armack, von Nell-Breuning, Preiser, Rittershausen, Schiller, Veit, and Wessels – to name just a few. In the following years, further neo- or ordoliberal think tanks and multipliers have been setup, e.g. the economic-political society WIPOG *Wirtschaftspolitische Gesellschaft* (founded in 1947)<sup>71</sup>, Die WAAGE *Gemeinschaft zur Förderung des sozialen Ausgleichs e.V.* (1952-1965), *Aktionsgemeinschaft Soziale Marktwirtschaft* (ASM, 1953), Walter Eucken Institute (WEI, 1954), and the *Kronberger Kreis* (1982). Internationally, the *Mont Pèlerin Society* (MPS) founded in 1947 provides the ordoliberal program (and Social Market Economy) with worldwide credit, acknowledgement and political clout.<sup>72</sup> In the

<sup>69</sup> Ptak speaks here of an ordering-political indoctrination and of the mythical and legendary triumvirate: Erhard – Social Market Economy – Economic Miracle (Ptak 2004: p. 263 and p. 282).

<sup>70</sup> See Ptak 2004: p. 256.

<sup>71</sup> Cp. Schulz 1986.

<sup>72</sup> Cp. Plickert 2008. The hour of birth of neoliberalism was the so called *Colloque Walter Lippmann*, organised by Rougier in 1938. The basis for discussion was the book *The Good Society* written by Lippmann (1945). Among the participants of this colloquium were Aron, von Hayek, Lippmann, von Mises, Polanyi, Röpke, Rueff, Rüstow et al. (in total 12 of the 26 participants of the Lippmann-colloquium were later among the founding fathers of the MPS). Neoliberalism is, thus, a product of the crises of the 1920ies and 1930ies (i.e. Great Depression and rise of totalitarianism). What becomes clear right from the start is that the neoliberal movement is split into (at least) two poles or camps: the one faction was led by spokesperson Ludwig von Mises; the other one was led by Rüstow and Röpke, the two major representatives of Sociological Neoliberalism. This subdivision was also characteristic of the first meetings of the MPS. The MPS itself was founded in 1947. Among the invited were Friedman, Knight, Machlup, von Mises, Stigler, von Hayek, Popper, Robbins, Röpke and Eucken (who later became Vice-President of the MPS). The aim was to establish an international network of neoliberal economists. Noteworthy is the fact that the weights within the



meantime, some of these think tanks<sup>73</sup> function just like ordinary lobbying institutions with all their public relations instruments<sup>74</sup> shifting their focus from public enlightenment and education to rent seeking and thus, diverging from the origins of Ordoliberalism.

In sum, the *implementation strategy* of Ordoliberalism rests on four pillars: after having gained access to the realm of truth, Ordoliberalism aims at the circulation and spreading of ordoliberal *Wirtschaftsordnungspolitik* as the only reasonable way of economic policy (i.e. the competitive order as the one and only socio-economic order) within the scientific community. The *first step* is accompanied by an argumentative and in some ways ideological fight against opposing and rival economic theories competing for academic hegemony (*second step*) – thus, referring once again to the ideological moment within Ordoliberalism (cp. Chapter 2.3.). The *third step* involves the circulation of the ordoliberal ‘doctrine’ via multipliers in the media and in the education sector (i.e. ordoliberal academics pushed their agenda in both the scholarly and popular press in order to win the battle of ideas) and the *fourth and final one* contains the convincing of political, administrative and economic decision makers that the ordoliberal alternative is the only one guaranteeing individual liberty, social security and justice. All other alternatives will lead to a policy based on privileges and arbitrary interventions into the plays of the game (mainly induced by the influence of powerful interest groups setting the rules of the game) reducing the overall wealth of a society. Therefore, the main focus of the implementation strategy lies on influencing the political elite – confirming once again the allegation of an elitist and expertocratic societal ideal.

Astonishing is the *epistemic optimism* displayed by ordoliberal thinkers: they were convinced of the malleability of economics and politics with the help of scientists. From their point of view, science functions as a corrective containing the influence of interest groups and ideologies alike. In the idealistic<sup>75</sup> eyes of Böhm, Eucken and Großmann-Doerth (1936/2008: p. 27; see also Böhm 1937), scientists are the only objective and

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MPS shifted gradually over time. At the beginning, the MPS was mainly dominated by European thinkers and a balanced equilibrium between the two poles could be detected within the neoliberal community; since the 1960ies, however, the MPS is successively dominated by Anglo-Saxon economists and the sociological element so characteristic of early neoliberalism faded away (i.e. Sociological Neoliberalism is no longer part of the MPS). Especially after the demission of Röpke and the resignation of Rüstow (the so called Hunold-affair was a major caesura) the transformation of the MPS into a mere economic association began.

<sup>73</sup> Worth mentioning are furthermore the Initiative New Social Market Economy (INSM) founded in 2000 and the Hamburg Institute of International Economics (HWWI) founded in 2005.

<sup>74</sup> Cp. Ptak 2007: p. 75; Candeias 2003/2009: pp. 316.

<sup>75</sup> Here, it should be noted that science is anything but independent of the influence of interest groups. In addition, this apodictic belief in the salutary role of science is a special kind of authoritarianism as well. So, Ordoliberalism is free of totalitarianism, yet not free of authoritarianism of all kinds – although, they are warning against political subordinate mentality (*Obrigkeitsdenken*). By the way, this is a further aspect of repugnancy!

independent advisors due to its position independent of the influence of economic interests. Therefore, they have a duty to intervene in public affairs (i.e. relativisation of Weber's postulate of value-free scientific judgements) and help to resolve concrete politico-economic problems. Their belief in the ordering power of ratio includes the feasibility of (completely) rationalizing public-political debates and discourses; moreover, they believed that it is indeed possible to educate and enlighten the public – although certain ambivalences exist towards the masses.<sup>76</sup> In order to rationalize public debates scientific enlightenment, clarification and explanation is indispensable. Additionally, what is required is an economic national education (in combination with role-models, i.e. scientists that help ordinary people to find their orientation and to establish moral certainties). E.g. Eucken has written a *Volkswirtschaftsfibel* – together with von Dietze and Lampe – in order to educate ordinary people about fundamental economic facts and interdependencies (cp. Dietze/Eucken/Lampe 1941/1942; Rütger 2005). And Röpke is convinced that it is possible to educate consumers in a way that they build up their own autonomous power of judgement, that they withstand suggestive advertisement and the mass psychology of promotion and that they are immunized against the allure of ideologies and their power of seduction (cp. Röpke 1950: p. 208). It is the mission of scientists (and teachers) as the 'organ of wisdom' and with their intellectual integrity and authority to provide the public with overall and general uninterested and objective enlightenment – starting right away in primary schools. Finally, the Ordoliberals believed that the advice of expert circles would directly or indirectly influence the composition of a new socio-economic order by shaping the ordering thinking of the leading class. People in the ivory tower are searching for objective and absolutely valid knowledge and they try to implement it by advising the leaders in the world of politics (and economics) how to build up a humane and functioning order (Eucken 1947: p. 150).

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<sup>76</sup> Röpke (1933/1965) warns of the tyranny of the masses, he discusses the problem of mass stultification (p. 168) and he notes that the masses endanger European culture: „*Die Masse steht im Begriff, den Garten der europäischen Kultur zu zertrampeln ...*“ (p. 178). Miksch, on the other side, admits that economic laymen and the masses will never understand the functioning of the price or the interdependencies of economics (Miksch 1949/2008: pp. 164) – pointing once more at the underlying ordoliberal elitism or at least intellectual-aristocratic tenor (see also Röpke 1963/1965: p. 216). My conjecture is that the ordoliberal (partial) negative attitude towards masses is closely related to the mass movement of the NS-regime and that it has its roots in NS-ideology which Ordoliberalism abhors.

## 4. The Genesis of Norms

### 4.1. Norms Evolution on the Individual-Ethics Level

In one of my last papers I draw a distinction between individual and regulatory ethics within Ordoliberalism.<sup>77</sup> The *formal-institutional or regulatory level* encompasses the typical ordoliberal framework, the ordering policy and Eucken's so called competitive order. The second level – the so called *individual or virtue ethics level* – can be subdivided into two sections: the first type of individual-ethical norm commitment refers to the religious-sociological background (i.e. Christian foundation of values), while the second one refers to the liberal-Kantian heritage of Ordoliberalism (i.e. Kantian understanding of autonomy, freedom and idea of man). Each kind of ethics-level is now subject to different processes as related to norm generation. While the individual-ethical level is part of an evolutionary genesis of norms (i.e. emergence of norms as a spontaneous process), the formal-institutional-ethical level is part of an elitist genesis of norms.

At the heart of Ordoliberalism are the individual-ethical values (Kantian) liberty and autonomy, human dignity, but also Christian maxims like solidarity, benevolence and love of neighbour. Other examples of evolutionary developed ethical maxims and norms include the Golden Rule, the Decalogue, the *do ut des* formula, and the tit for tat strategy (i.e. an eye for an eye, a tooth for a tooth). All these kinds of values have evolved spontaneously and evolutionary in the course of time and they are formed bottom up by local associations (as opposed to a top-down construction): They are to a considerable degree the non-intentional (by-)product of evolutionary forces and they have not been consciously invented or implemented by deliberate design or a master plan. Instead, they gradually evolved along the 'path of tradition' over centuries<sup>78</sup>; they were generated (through human action, yet not through human design), proved themselves in practise and finally became prevalent through experimental trial and error learning processes – first in small-scale communities and later on in large, loose-knit and anonymous societies (i.e. historically evolved framework of rules and institutions). This kind of genesis reminds the reader of von Hayek's concept of Cultural Evolution (and Poppers' *piecemeal social engineering* which allows for perpetual revisions and which provides for the fallibility, irrationality, partial knowledge and uncertainty of individuals). According to von Hayek, formal as well as informal norms and institutions are mainly an unintended by-product of

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<sup>77</sup> Cp. Wörsdörfer (forthcoming).

<sup>78</sup> Cp. Röpke 1933/1965: p. 169.

self-regulating und self-organizing *Spontaneous Orders*<sup>79</sup> and of the dynamic process of *Cultural Evolution* – relying on abstract, impersonal and negative general rules (of prohibition), making use of de-centrally scattered knowledge (i.e. widely dispersed, hidden and tacit knowledge) and the division of knowledge. The spontaneous emergence of the market order – to give an example – is not a deliberately intended product of constructivist organizations; it is not invented or implemented by deliberate design or a master plan, but has gradually evolved over millennia and gone through a constant and ongoing selection and learning process. Self-interested individuals are pursuing their own personal goals and by doing that they – together with Smith’s invisible hand – ‘create’ a new kind of societal order which is not an intentionally created order through planning. Due to its complexity and due to unforeseeable coincidences, future socio-economic development cannot be predicted and rationally planned. It is up to the individuals and their preferences to choose the formal and informal institutions which – in their eyes – have proved to be beneficial and valuable in everyday-life and which are, therefore, worth imitating, and which institutions on the contrary are not and, thus, should be outperformed. Additionally, new (and highly innovative) institutions come into being when they succeed the test of the selection process and when they are imitated by a large number of people (cp. Schumpeter’s model of innovation and imitation). According to von Hayek and others, this model of cultural evolution allows for a highly innovative and prosperous open society. Finally, already existing institutions are not rigid, fixed and inflexible always and evermore. Rather, (economic) orders can be improved step by step by deliberate reform (cp. Vanberg 2004: pp. 8): The political-cultural product, based on a constitutional order requires careful cultivation for its maintenance and proper functioning. Vanberg uses in this regard the metaphor of a gardener (instead of using the metaphor of an engineer). The economic order is not a self-generating and self-maintaining gift of nature but something that needs to be actively pursued and cultivated. He also speaks of the competitive order as a care-dependent park landscape (Vanberg 1997/2008: p. 91).

## 4.2. Genesis of Norms on the Regulatory-Ethics Level

So far, parallels between von Hayek and the members of Ordoliberalism exist. However, when we take a closer look at the regulatory-ethics level, then we can detect several divergences between von Hayek on the one hand and Ordoliberalism on the other hand.<sup>80</sup>

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<sup>79</sup> Cp. Hayek 1966/1996: 263; 1970/1996; 1971/2005: pp. 51 and pp. 68; 1983/1996; see also Streit/Wohlgemuth 2000 for a comparison between Eucken and von Hayek.

<sup>80</sup> Therefore, it is doubtful, whether von Hayek can be classified as an Ordoliberal as stated by Kolev (2010) et al. Kolev draws a three-fold division of von Hayek’s work: von Hayek I as the business cycle theorist, von

While von Hayek transfers his concept of Cultural Evolution to both kinds of institutions – formal as well as informal –, the representatives of Ordoliberalism limit this evolutionary and spontaneous concept to the field of informal institutions. In the area of formal institutions or in my terminology, the area of regulatory ethics, Ordoliberalism pursues an elitist and expertocratic genesis of norms and not a spontaneous or evolutionary one.<sup>81</sup> The decisive determinant of a new genesis of norms comes from science and academics (i.e. constructivist instead of a spontaneous order).<sup>82</sup> Sally (1996: pp. 5) concludes: „... [Ordoliberalism] is really asking too much of both political intelligence and political practice in believing that these principles can be fully and rigidly implemented. There is an element of perfectionism and impracticability in the overall scheme. [...] its leading lights are rather constructivist in the Hayekian sense of the term. There is a faith in human intelligence and knowledge to design or make a new order or Ordo, and in the subsequent ability of the state to regulate such an order. [...] A free order should accommodate highly imperfect, irrational and fallible human beings; it should not be designed for saints or even rational and intelligent maximisers.”

Under the condition that science is capable of conquering the three prevalent prejudices and resentments, namely positivism, historicism and Punktualismus (i.e. isolated and selective thinking)<sup>83</sup>; it becomes a constitutive, formative and creative ordering power or

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Hayek II as the ordoliberal philosopher (i.e. 1930ies-1940ies; the time of *The Road to Serfdom* and the founding of the Mont Pèlerin Society), and von Hayek III as the evolutionist philosopher (starting in 1950ies and continuing to the end of his life). What becomes clear is that von Hayek's arguments underwent substantial changes and especially with regard to von Hayek III the distinctions between von Hayek and Ordoliberalism become more than obvious – although some parallels exist especially in relation to von Hayek's *Road to Serfdom*.

<sup>81</sup> For Eucken, a functioning market economic order neither emerges nor prevails spontaneously, but has to be generated by science and instituted and protected by the state (Eucken 1952/2004: p. 14 and pp. 372). Thus, we can speak of a deliberate framework-*setting*.

<sup>82</sup> Contrary to Ordoliberalism, von Hayek would probably blame such a concept for its 'pretence of knowledge'.

<sup>83</sup> According to Eucken, *positivism* (cp. Eucken's criticism of Weber's postulate of freedom from value judgments in: 1952/2004: p. 341) runs into the danger of getting swept up into daily politics and the prevalent fight of vested interests. Thus, positivism would become increasingly dependent on rent-seeking groups and subordinated to socio-political powers. As specified by Ordoliberalism, scientists and academics have to stand above power groups and daily business and politics. They have to function as independent intermediaries only committed to truth, objectivity and facts (Eucken 1952/2004: pp. 342). The second kind of prejudice which has to be overcome is *relativism*. Historicism and romanticism strongly interconnected with relativism have begun the flight from reason (see Böhm/Eucken/Großmann-Doerth 1936/2008). In consequence, this arbitrary irrationalism and uncritical wallowing in passions and emotions leads to a far-reaching rejection of the creative power of rational thought (cp. Eucken 1938b). Moreover, relativism and its all-pervasive anti-rational views suffer in Eucken's portrayal from an inherent repugnancy: It denies all ultimate values and truth, although it believes that this thesis – that truth is only relative to its historical context – is objectively valid (Eucken 1952/2004: pp. 342). The final resentment is related to the advancing *specialization* and fragmentation of science and industries. This development leads to Punktualismus with its focus on isolated and selective facts without recognizing socio-economic interdependencies and interconnectedness and without overlooking the broader picture beyond all the details (pp. 344). Noteworthy is the fact, that Eucken criticises in this context Schmoller's (younger) Historical-Ethical School for not

ordering potency – besides the state and (possibly) religion (Eucken 1952/2004: pp. 340; see also Böhm/Eucken/Großmann-Doerth 1936/2008).

Science has to study and analyse socio-economic reality in an unprejudiced manner relying solely on facts and not on prejudices. A phenomenological method or as Eucken puts it, a method of isolating abstraction is required aiming at the essence of being and searching for evidence, objectivity, apodictic truth and ultimate justification. As stated above, pointedly distinguishing abstraction simply means interpenetration of economic reality, radical turn towards reality, steering towards eidetic essences and the founding of an atemporal valid morphology. By capturing the essence of being it is possible to get an insight into and to gain knowledge about reality. In a second step science will arrive at a well-informed and considered (constitutional-economic) leading decision, a *wirtschaftsverfassungsrechtliche Gesamtentscheidung* (i.e. deliberate constitutional choice) which allows for holistic designing and for a deliberate and conscious arrangement of terms and orders (*bewusste Gestaltung der Ordnungen*) (Eucken 1952/2004: pp. 340; cp. Eucken 1934: p. 41). The economic order cannot be left to chance but must be consciously guided. In the eyes of Eucken, scientific reasoning, thus, is responsible for making or at least for preparing such a fundamental decision regarding the institutional and legal framework. If science does not take over this task, if it does not fulfil its responsibility, the decision will be made by anarchic political and economic power groups and their ideologists. This last scenario will lead to group egoism and finally towards anarchy, arbitrariness, despotism and to violation of human rights (Eucken 1952/2004: p. 342).

By overcoming the three mentioned prejudices and by gaining access to the realm of truth and hence generating norms (i.e. elitist and expertocratic genesis of norms), science becomes a real constitutive force of the economic, political and social order and is now able to influence or to give direction to political, administrative and judicial decision makers.<sup>84</sup> The implementation strategy is quite similar to the one favoured by phenomenology: first of all ordoliberal scientists have to overcome mental immaturity, they have to reach autonomy, self-confidence and the realm of truth. This kind of transcendental philosophy incorporates a claim to ordoliberal leadership. Ordoliberally trained persons are the teachers of the people, they are the bearers of rationality, and they

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'thinking in orders' and for neglecting the socio-economic interdependencies – although Eucken praises Schmoller's school for its ethical attitude of social humanism (p. 344; see also Eucken 1937: pp. 562).

<sup>84</sup> According to Röpke, the so called clerics are even in charge of *modifying* the institutional, socio-economic framework of society; the elitist experts are responsible for altering and reforming societal norms (cp. Röpke 1950: 231). Thus, clerics are in a certain way prescribing norms in a paternalistic-heteronomous and anti-pluralistic manner – all that because these kinds of experts have gained access to the realm of truth.

teach and educate their milieu – starting at the top of the societal hierarchy by influencing and warping decision makers like politicians, judges and journalists and proceeding in concentric circles until an ordoliberal movement and finally an overall ordoliberal society has been established. This is what actually happened right after World War II (cp. chapter 3.5.).

Before coming to a conclusion, a further point is worth mentioning: the two kinds of genesis of norms – the evolutionary and the elitist one – are not independently of one another; rather they are mutually dependent and correlative. The norms of regulatory ethics aim at safeguarding individual-ethical ideals; regulatory ethics functions as a guarantor of freedom, human dignity and a humane socio-economic order. So, this kind of level is interlinked with the individual-ethical conception of liberty based on religiosity as well as Kantianism. In other words: the elitist genesis of norms of the competitive order is responsible for safeguarding the individual ethical norms which evolved over time in an evolutionary manner. Even if both levels and both kinds of genesis of norms are interdependent, a contradiction turns up: this inconsistency refers to the incompatibility and irreconcilability between *Kantianism* as one normative fundament of Ordoliberalism resting on *autonomy* and the *paternalistic and elitist notion of norms* resting on *heteronomy*.

## 5. Concluding Remarks

The argument of this paper was structured as follows: in the first part, several kinds of criticism forwarded against Ordoliberalism were analysed – critique stemming from Catholic social ethics, from Ptak and Haselbach accusing Ordoliberalism of authoritarian liberalism, and objections raised by Foucault and Governmentality-studies. In the second part, one class of critical review – the accusation of elitism and expertocracy with its truth claim (*Wahrheitsanspruch*) – was evaluated in particular by studying the primary literature of Ordoliberalism. In the final part, a distinction between an evolutionary and an elitist genesis of norms was drawn building up on the differentiation between individual and regulatory ethics.

What becomes clear right from the start is that the main representatives of Ordoliberalism in a strict *and* in a wider sense belief in science as an absolute and that their program rests upon a philosophical search for absolute truth. Consequently, this unprejudiced love for truth and its retrospective dependence on objective and generally valid range of values and truth independent of any subjectivity, arbitrariness and randomness (*Rückbindung an objektiven Werte- und Wahrheitsbereich*), corroborates the verdict of an elitist-hierarchical and expertocratic thinking. According to Ordoliberalism, no more than the metaphysical

and transcendental realm of truth<sup>85</sup> guarantees an ideal-typical order. Thus, by gaining access to that realm of truth and by implementing the entirely valid socio-economic order it is likely to overcome the multi-dimensional and interlinked *crises*: i.e. the societal crisis respectively the crisis of contemporary culture (cp. Ordoliberalism in the wider sense including Rüstow and Röpke), the crisis of intellectual life (cp. Rudolf Eucken's *Krise des Geisteslebens*), the crisis of capitalism (cp. Walter Eucken) and the crisis of science and scientific justification (cp. Walter Eucken and Husserl who postulate a twin-crises, a crisis of science intertwined with a crisis of European manhood).<sup>86</sup> Furthermore, it is feasible to fight the different ideologies of interest groups (*Interessentenideologien*<sup>87</sup>) and to 'scientificate' politics ('*Szientifizierung der Politik*'<sup>88</sup>).

This critical review of Ordoliberalism might be used in order to draw a distinction between the two ways of genesis of norms and furthermore, to hint at a far-reaching incompatibility inside Ordoliberalism which has to be taken into consideration when reforming and updating the ordoliberal program of freedom and human dignity (i.e. Kantian autonomy vs. paternalistic and elitist heteronomy).

At the end, two questions remain open: first of all, is Ordoliberalism standing in the natural law tradition and if so, in which category fall natural right arguments – into the evolutionary one or into the elitist genesis of norms? Secondly, and more importantly, we have to debate the in-between position and the special role played by (the late?) Franz Böhm who just played a minor role in my essay due to different reasons. Especially in his 1950 and 1966 essays remarkable parallels between Böhm and von Hayek exist as well as differences compared to the position held by Eucken (cp. Sally 2003: p. 34). Here, Böhm describes the ordoliberal *Ordo* as a pre-established harmony which has to be discovered, yet not created. The societal order is not invented by humans; rather, it has to be detected. Evolutionary reminiscences can also be found in terms of the genesis of norms: Böhm admits that norms evolve in a supra-individual manner: according to him, they are the 'product' of a cooperative order which allows for game-like experiments, trial and error processes and voluntary transactions and exchange processes via markets. Compare the following quotes relating to von Hayek's concept of cultural evolution: "... daß es *solche Signalsysteme tatsächlich gibt*, daß sie im Laufe ganzer geschichtlicher Zeiträume mehr

<sup>85</sup> This is a direct rebuttal of Pies' thesis that Eucken pursues a *metaphysics-free* Ordnungstheorie and a solely *economic* research agenda (cp. Pies 2001: pp. 8). Instead, Eucken mixes metaphysical and religious elements with scientific ones – all together embedded in a broader socio-economic and cultural framework.

<sup>86</sup> Hence, the parallels between Husserl, Rudolf and Walter Eucken are not restricted to the field of methodology as often claimed (see also Renker 2009).

<sup>87</sup> Cp. Eucken 1938a: pp. 13 and 1950/1965: pp. 12: rational-objective and true scientific judgments vs. subjective ideologies of interest groups respectively science vs. ideologies.

<sup>88</sup> Ulrich 1997/2008: p. 394.



oder weniger ohne Zutun planender Staatsgewalt, ja sogar ohne Zutun bewußter menschlicher Einsicht durch unbewußt intelligentes Alltagsverhalten zahlloser Generationen von Individuen zurechtgeschliffen und zurechtpoliert worden sind“ (Böhm 1966/1980: p. 118). Or the following one referring to the peculiarity of market prices as an indirect, yet superior steering technique (i.e. inherent and highly sensitive intelligence incorporating numerous data and informations): „Marktpreise sind Lenkungssignale, in deren Entstehungsprozeß und Urteilsfindung mehr natürliche und soziale Daten eingehen und verwertet werden, als dies bei jeder denkbaren anderen Art des Lenkens möglich ist“ (Böhm 1966/1980: p. 123). In contrast to the previous mentioned quotes taken from Böhm's late work, see his work *Die Ordnung der Wirtschaft als geschichtliche Aufgabe und rechtsschöpferische Leistung* dating from 1937, in which Böhm holds a reverse position. In this book, Böhm claims, that the socio-economic order is not the result of an evolutionary process; rather, it is the product of a conscious, professional and authoritarian (sic!) decision of political leaders (Böhm 1937: p. 56). In addition, Böhm is convinced that the indirect steering of markets via competition and price mechanisms has to be complemented by the direct method of steering accomplished by state authorities. He even speaks of authoritarian market regulation and market control by state command and he concedes price-fixing by the state, expropriation and socialization of private property (pp. 161), which is all highly incompatible with his late work. Von Hayek would speak in this regard of pretence of knowledge. Finally, it becomes clear, that Böhm's early work is quite uncritical of the economic policy of National Socialism and that he places great faith in public authorities (p. 146) – sometimes, he even uses the terminology of NS-ideology. As a result, we conclude, that Böhm's argument was subject to a profound change during his lifetime. In sum, it seems appropriate to classify Böhm in a certain way as a missing link and an intermediary between Eucken and von Hayek linking the ordoliberal topic *Gesellschaftskrisis* (cp. Böhm's *Himmelsgabe*, his Tatwelt-essays and his monograph *Die Ordnung der Wirtschaft als geschichtliche Aufgabe und rechtsschöpferische Leistung* and especially pages 46-47) with von Hayek's concept of cultural evolution. The work of Böhm deserves further investigation with a special emphasis on a comparison between Böhm's early and his late work and with regard to the distinction presented in this paper between an evolutionary and an elitist genesis of norms.

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