

## **Individual versus Regulatory Ethics: An Economic-Ethical and Theoretical-Historical Analysis of German Neoliberalism**

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Forthcoming in: *OEconomia. History, Methodology, Philosophy* Vol. III-4-2013.

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**Keywords:** Neo-/Ordoliberalism, Freiburg School of Economics, Individual Ethics, Regulatory Ethics, Michel Foucault.

**JEL Classification:** B2, B3, B25, B52, P0 and Z1.

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# Individual versus Regulatory Ethics: An Economic-Ethical and Theoretical-Historical Analysis of German Neoliberalism

Manuel Wörsdörfer<sup>2</sup>

**Abstract:** Following Foucault's analysis of German Neoliberalism (Ordoliberalism) and his thesis of ambiguity, this paper introduces a two-level distinction between individual and regulatory ethics. In particular, its aim is to reassess the importance of individual ethics in the conceptual framework of Ordoliberalism. The individual ethics of Ordoliberalism is based on the heritage of Judeo-Christian values and the Kantian individual liberty and responsibility. The regulatory or formal-institutional ethics of Ordoliberalism which has so far received most attention on the contrary refers to the institutional and legal framework of a socio-economic order. By distinguishing these two dimensions of ethics incorporated in German Neoliberalism, it is feasible to distinguish different varieties of neoliberalism and to link Ordoliberalism to modern economic ethics.

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“Nur sechs Größen oder vielmehr Gruppen von solchen bleiben als Daten für die gesamtwirtschaftliche Betrachtungsweise: Die Bedürfnisse der Menschen; die Gaben und die Bedingungen der Natur; die Arbeitskräfte; die Gütervorräte aus früherer Produktion; ferner das technische Wissen und schließlich die rechtliche und soziale Ordnung, die den Handlungen der Wirtschaftssubjekte Richtung geben kann und Grenzen setzt. Dieses letzte Datum muß in einem weiten Sinne aufgefaßt werden: Nicht nur die Gesetze, die Sitten und Gewohnheiten sind gemeint, sondern auch der Geist, in dem die Menschen leben und sich an die Spielregeln halten“ (Eucken, 1952/2004, 377).<sup>3</sup>

## 1. Introduction: Foucault's 'Thesis of Ambiguity'

The starting point of my considerations is Michel Foucault's *The Birth of Biopolitics. History of Governmentality* (Foucault, 2008). The book contains Foucault's lectures at the Collège de France in 1978-1979, where he intensively discusses the evolution of neoliberalism in general and the German version of neoliberalism – so called Ordoliberalism – in particular. In here, he proclaims the 'thesis of ambiguity', which has received surprisingly little attention. In a first step, I critically reassess this thesis, hint at possible strengths and weaknesses of Foucault's argument and – in a second step – I refine and advance Foucault's thesis pointing at a similar two-level differentiation between *individual ethics* and *regulatory* or *formal-institutional ethics*.<sup>4</sup> The intention is to retain the strengths of Foucault's thesis of ambiguity without incorporating its weaknesses.

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The author would like to thank Jean-Sébastien Lenfant as well as two anonymous referees for their valuable and constructive comments which helped to improve the paper significantly.

<sup>3</sup> “Only six variables or groups of variables remain valid as [relevant] data for the overall economic analysis: human needs, natural/environmental conditions, the workforce, stocks supplies from previous production [periods], technological know-how, and last not least the legal and social orders which guide and limit the behavior of economic actors. The last variable, however, needs to be understood in a broader sense, containing laws, customs and habits as well as the 'spirit' which guides human lives and makes people comply to the rules of the game“ (translation by the author).

<sup>4</sup> Individual ethics is understood here in the sense of German Neoliberalism exhibiting a triple nature: a religious-sociological one, a liberal-Kantian respectively deontological one, and a virtue-ethical one. Regulatory ethics, on the

The aims of the following essay are multi-layered: a by-product of my critique is to relativise and to invalidate the criticism of neoliberalism subsequent to Foucault's analysis of neoliberalism. The main aims, however, are the distinction between dissimilar varieties of neoliberalism and the connectivity of Ordoliberalism – as one variety of neoliberalism – to modern economic ethics. In this regard, the paper tackles the question of a potential compatibility between self-interest and the common good. The unique answer Ordoliberalism gives is that on the supposition of an existing concord of the two levels – individual and regulatory ethics – can the harmony of private and public interests be reached. Equally important is the fact that the somehow deficient regulatory ethics level has to be complemented by the individual and virtue ethics level. With the help of a differentiated, less stereotypical and less prejudiced interpretation of Ordoliberalism it seems feasible to revise the dominant reception of Ordoliberalism which focuses solely on the formal-institutional ethics level while mainly neglecting the individual ethics level (Foucault in this context is no exception).

What does the *thesis of ambiguity* amount to? According to Foucault, Ordoliberalism rests on two pillars: the 'society for the market' and the 'society against the market' pillar (Foucault, 2008, 239ff.). The '*society for the market*' pillar can be paraphrased with the keywords "enterprise society" (ibid., 242) and "competitive market economy" (ibid., 159ff.). 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 keywords relating to this pillar include: the market as the "site of truth" (ibid., 30ff.), *economic* legitimacy of the state or 'legitimacy through wealth' (i.e., "The economy produces legitimacy for the state that is its guarantor" (ibid., 84)), and the "state under the supervision of the market" (ibid., 116).

The '*society against the market*' pillar contains one of the central concepts within Ordoliberalism: *Vitalpolitik* (Vital Policy) (Rüstow, 1955; Rüstow, 1961).<sup>5</sup> According to Foucault, this component of Ordoliberalism offers compensation regarding the cold-hearted, rigorous and severe (competitive) market apparatus. The *market-free sectors* – as one integral component of this pillar – function as an anti-thetical counterweight: They supply the need for social integration and restore cultural and moral values.

Foucault's main points of criticism of neoliberalism refer to the 'society for the market' pillar: They concern the all-pervading economization of society<sup>6</sup>, economic imperialism and the Homo

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contrary, refers to the ordoliberal competitive order or 'framework policy' (Weise, 2000; Noll, 2002, 153ff.; Ulrich, 2008, chapter 9; and Vanberg, 1999/2009).

<sup>5</sup> Rüstow's concept of vital policy may be described as follows: "... the true purpose of the economy lies in the service of values beyond the economy, in the service of human dignity. *Vital* is whatever promotes the *vita humana* and a life which is worthy of a human being and hence *Vitalpolitik* takes into consideration 'all the factors on which the happiness, well being and contentment of man truly depend' (Rüstow)" (James Fearn quoted in: Ulrich, 2008, xiii).

<sup>6</sup> 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" (James Fearn quoted in: Ulrich, 2008, xiii).

oeconomicus model. 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, and the individual equipped with specific resources investing in the competencies of the entrepreneurial self and its employability).<sup>7</sup> Beside Foucault’s criticism, he also emphasizes some positive aspects of (German) neoliberalism. They mainly refer to the ‘society against the market pillar’ and its market-free sectors.

What are the strengths and weaknesses of Foucault’s thesis of ambiguity? The *strengths* comprise the following aspects: First, Foucault’s analysis references (correctly) to the inner ambivalences and tensions inside Ordoliberalism; second, it points to the uniqueness of German Ordoliberalism by highlighting the prominence of market-free and non-commercialised sectors; third, it admits the separation between the different varieties of neoliberalism in such a way that only Ordoliberalism is equipped with Foucault’s ‘society against the market’ pillar or in my terminology: with the individual and virtue ethics level.

Besides the strengths, there are also some remaining *weaknesses* of Foucault’s analysis: first of all, Foucault misinterprets the means-end-relation of German Neoliberalism, and the essence of competition and (a socially committed) market economy; second, Foucault portrays the two pillars as opposed to each other – according to Foucault, there exists a dichotomy and a dualism within Ordoliberalism – instead of an interdependent unity; third, further ambiguities are disregarded (e.g. the latent tension between liberalism and paternalism, between liberalism and the elitist-expertocratic doctrine of the state (i.e., ‘expertocracy’ and meritocratic hierarchy) or between (heteronymous) religiosity and Kantian (autonomy-seeking) ethics).

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<sup>7</sup> Cp. for more information: Biebricher, 2012; Biebricher et al., 2012; Candeias, 2003/2009; Heidenreich, 2011; Larner, 2000; Lemke, 2000; O’Malley, 2009, 3; Shamir, 2008. Some of these objections raised against neoliberalism 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 (Röpke, 1944/1949, 385ff.); he explicitly refuses the model of Homo oeconomicus (Röpke, 1955/1981, 447) due to its mere materialistic and egoistic profit-seeking and its reductionism, i.e., reducing the complexity of human nature while ignoring the multiplicity of human motives of action (cp. for a similar estimation: Eucken, 1934, 21ff., and Rüstow, 1957, 63, where he (indirectly) argues against *pleonexia* and *chrematistics*). See also Böhm (1937), where he condemns materialistic individualism, reckless profit-seeking, the glorification of economic egoism and the ‘dog-eat-dog-society’. Following Böhm and others, this exploitative and anarchic *bellum omnium contra omnes* leads directly towards the state of massification, a decline in values in general and a decline of public spiritedness and civic mindedness in particular. In sum, the Homo oeconomicus model is far from being the dominant ordoliberal idea of man.

As mentioned above, it is the aim of the paper to overcome the weaknesses of Foucault's analysis while fostering the strengths of his arguments. The remainder of the paper is, therefore, structured as follows: Chapter 2 analyzes the essential (ordoliberal) requirements of a socio-economic order (i.e., functionality/efficiency vs. humanity), the means-end relationship between market and society as well as the ordoliberal scale of values. Chapter 3 discusses the distinction between individual ethics and formal-institutional ethics in great detail. It becomes clear that the individual ethics level contains Judeo-Christian values and the Kantian 'program of liberty'. The Judeo-Christian and Kantian fundament of Ordoliberalism is mainly explicated by referring to the work of Walter Eucken, main representative of the Freiburg School of Law and Economics (i.e., *Ordoliberalism in the narrower sense*). After exemplifying the regulatory ethics level containing the key features and most prominent catch phrases of Ordoliberalism, chapters 4 and 5 widen the perspective by incorporating the writings of the two main representatives of *Ordoliberalism in the broader sense*, namely Alexander Rüstow and Wilhelm Röpke. The paper ends with a discussion of the special role of individual ethics in a globalised economy.

## **2. The Ordoliberal 'Competitive Order'**

### **2.1. Workable and Humane Socio-Economic Order**

At the centre of Ordoliberalism lies the question, whether it is possible to implement a functioning *and* humane socio-economic order – an order which fulfils and realizes the Kantian absolute values human dignity, human rights and autonomy coupled with justice and fairness considerations (Eucken, 1952/2004, 14, 166 and 369; Eucken, 1950/1965, 239ff.; Rüstow, 1945/2001, 153.). Therefore, Ordoliberalism tries to solve the dilemma or trade-off between efficiency, performance capability and productive capacity on the one hand and positive freedom (as capability), formal equality and social justice on the other hand. The primacy of ethics and the primacy of economics have to be avoided. Pies speaks in this context of "orthogonal positioning" (Pies, 2001, 130ff.), a normative-integrative perspective which is capable of conquering the (alleged) antagonism between freedom, security and social justice (i.e., integrative approach to economic dynamism and social cohesion). In order to realise this aim, Ordoliberalism pursues a two-stage argument similar to that of Adam Smith: the ideal economic and societal order of Ordoliberalism – the so called 'competitive order' (we will come back to Eucken's *Ordnungstheorie* in chapter 3.1) – has to be justified by efficiency, allocation *and* ethical arguments alike pointing towards the twofold requirements profile of a market-based and at the same time socially embedded competitive order. The socio-economic order has to overcome economic shortages and scarcities; it has to conquer absolute material poverty, mass unemployment and solve the 'Social Question'; it is responsible for satisfying the basic needs of the people and for the maintenance and provision of vital goods. Furthermore, the socio-economic order has to be organised in a way that

it enables an autonomous, self-reliant life in freedom (i.e., Kantian autonomy and liberty) as well as a humane and ‘vital political’ life according to Judeo-Christian social ethics (Eucken, 1952/2004, 199). What is essential is that the criteria of functionality and humanity are closely connected; they are interdependently and reciprocally linked – a super- or subordination does not exist (at least in theory).

## 2.2. The Essence of Markets and Competition

Which role do markets and competition play with regard to the twofold requirements profile of the ordoliberal socio-economic order? ‘Competition on the merits’ (*Leistungswettbewerb*), to use the ordoliberal terminology, is mainly considered to be a tool. Eucken and Böhm as well as Rüstow and Röpke regard competitive markets as instruments of disempowerment (“Wettbewerb als Entmachtungsinstrument”) (Böhm, 1961, 22; Eucken, 2001, 83; Lenel/Meyer, 1948, XI) or ‘anti-power’<sup>8</sup>; competitive markets are important control mechanisms in a society. Furthermore, competition is not an end in itself; rather it is a means to an end (a fact that has received little attention among scholars, including Foucault himself). Moreover, it is not only a means in economic terms; it is the most prominent and elementary means regarding the twofold requirements profile of a socio-economic order (i.e., means-end-relations). As we have already seen, it is the main aim of Ordoliberalism to establish a functioning and humane socio-economic order. Competition now serves as a hinge (i.e., *Scharnierfunktion*): It allows for the accomplishment of the economic as well as ethical goals<sup>9</sup>: On the one hand, competition enhances economic efficiency and the performance capability of a market economy. It increases the innovative and creative spirit and the overall prosperity of an economy. Beside these economic goals, competition also creates the material prerequisites for the realisation of positive freedom (i.e., competition as a complement of freedom). By removing market powers, by dissolving the concentration of power and by minimising coercion, competition and market mechanisms make room for the free development of the individual in economic and socio-cultural terms: (ideal) competitive markets help to protect civil rights and liberties (i.e., freedom through competition) and thus, safeguard human dignity.

All this goes along with a *negation of a one-sided absolutization of economics*: Ordoliberalism strives for an economically *and* ethically justifiable order!<sup>10</sup> Therefore, Ordoliberalism cannot be blamed for super-elevating normative economic aspects or for neglecting the *Zweck-* or *Lebensdienlichkeit* of the

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<sup>8</sup> Cp. Pettit’s concept of ‘freedom as antipower’ (in contrast to the concept of ‘freedom as noninterference’) in: Pettit, 1996.

<sup>9</sup> Röpke (1942, 170) differs between *material* (i.e., raised standard of living) and *immaterial* gains (i.e., guarantee of freedom, personal independence and security, and social justice) stemming from a competitive market economy. Müller-Armack (1972/1981, 163ff.) adds the creation of social cohesion, the solving of social conflicts and the easing of tensions as further immaterial gains of a competitive order (i.e., Social Market Economy as a peace-making ordering); see also Wohlgemuth, 2008, 73ff. (i.e., ethics of competition: competition as a result and expression of individual liberty and private autonomy, competition as a result and cause of the emasculation of privileged (market) power, and competition as a source of unintended good works for unknown others).

<sup>10</sup> I.e., referring once again to the two-stage argument of German Ordoliberalism. In sum, the ordoliberal competitive order is considered to be superior on both levels – the economic and the ethical one – compared with a centrally administered economy (Dietze/Eucken/Lampe, 1941/1942, 40ff.). It provides society with material as well as immaterial benefits.

market economy, the market economy's ability to serve (Ulrich 2008). Ordoliberalism incorporates economic and ethical control mechanisms alike – reminding the reader of Smith's *Wealth of Nations* and his *Theory of Moral Sentiments*: the market form of complete competition, the principle of accountability and liability, the principle of market conformity – to name just a few economic control variables.<sup>11</sup> On the ethical side, Judeo-Christian values act as a control device (cp. chapter 3.2).

### 3. Individual and Regulatory Ethics

“Christen sind zu erheblich mehr verpflichtet als zur Innehaltung der allgemeinen Ordnungsgrundsätze“ (Constantin von Dietze (in cooperation with Böhm, Eucken and Ritter), 1946/1994, 368).<sup>12</sup>

The two-level distinction between individual ethics and regulatory ethics is not an invention by the author; it is part of the oeuvre of at least two of the most prominent ordoliberal thinkers – namely Wilhelm Röpke and Walter Eucken.<sup>13</sup> Röpke, for example, differentiates in his work *Civitas Humana* between a formal-institutional and a moral-psychological level (Röpke, 1944/1949, 28) respectively between material-institutional and immaterial control mechanisms and counterweights (ibid., 202ff.). Eucken, on the other hand, remarks that the legal order and the state of the market alone are not sufficient – an adequate individual ethics and adequate moral standards are needed as well in order to complement the legal order (cp. *Wirtschafts- und Sozialordnung* (Economic and Social Order) and *Nationalökonomische Fibel* (National Economic Primer; both written in co-authorship with von Dietze and Lampe (Dietze/Eucken/Lampe, 1943/2008, 110; Dietze/Eucken/Lampe, 1941/1942, 101 and 119ff.)). What is essential here is that both levels are not super- or subordinated to each other; rather, both Eucken and Röpke highlight the interplay, the equal status and the interdependent complementarity between individual and regulatory ethics. No dichotomy can be detected, as assumed by Foucault.

Let's take a closer look at the two levels and their specific characteristics: the *formal-institutional or regulatory ethics level* encompasses the typical ordoliberal regulatory framework, the ordering/regulatory policy and Eucken's so called competitive order. In chapter 3.1 I analyse this level in more detail. So far, it is important to note, that the regulatory ethics level has to be supplemented by the individual ethics level due to its eventual deficiencies. This second level – the so called *individual ethics level* – may be subdivided in three sections: the first type of individual-ethical self-commitment refers to the religious-sociological background (i.e., Judeo-Christian foundation of values), the second one refers to the liberal-Kantian heritage of Ordoliberalism (i.e., Kantian understanding of autonomy,

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<sup>11</sup> Cp. also Eucken's Constituent and Regulative Principles in: Eucken, 1952/2004.

<sup>12</sup> “Christians are morally obliged to not only adhere to and obey the general ordering principles [that is, to obey the law; but to go beyond legal positivism and to adhere to the ‘spirit’ of these social norms]“ (translation by the author).

<sup>13</sup> See also Böhm, 1937: In here, Böhm pleads for a combination of a highly efficient and productive economy, and a society based on noble sentiments and public-spiritedness. Furthermore, he points at the embeddedness of the economy into a broader context of a moral and legal order.

positive freedom and the idea of man), while the third one refers to (neo-Aristotelian) virtue ethics. This two-level distinction between individual and regulatory ethics is reminiscent of Adam Smith's formal and informal control mechanisms and sanctions already developed in the *Theory of Moral Sentiments* and in the *Wealth of Nations: Formal* (Smithian) control mechanisms include the following ones: institutionalized competition and market mechanisms (under the rule of law), and the freedom of entering into contracts and market transactions which are carried out freely and voluntarily by equal contracting partners and which are enforced by the rule of law. As *informal* control devices function Smith's impartial spectator (i.e., the inner voice of conscience), the notions of sympathy (i.e., empathizing with someone, putting oneself in the shoes of others, and the mental ability to change roles) and benevolence and informal norms of conduct enforced by the general public (Recktenwald, 1985, 112ff. and 380ff.). Furthermore, the distinction between individual and regulatory ethics underlines the normative, meta-economic embeddedness of Ordoliberalism and Social Market Economy<sup>14</sup>: According to Eucken, Böhm, Rüstow and Röpke, the economic order is invariably integrated into a higher trans-economic societal order.<sup>15</sup>

In the following paragraphs, I examine the different levels – the individual ethics level as well as the regulatory ethics level – step by step. First of all, I take a closer look at the commonly known regulatory ethics level.

### **3.1. Ordoliberal Regulatory Ethics**

The keywords often associated with Ordoliberalism are part of the regulatory ethics level. Among the most prominent ordoliberal catch phrases are the differentiation between Ordnungs- and Prozesspolitik (Eucken, 1950/1965; Eucken, 1952/2004; Eucken, 1999; Eucken, 2001): According to the 'Freiburg Imperative', *Ordnungspolitik* (i.e., regulatory or ordering policy) is favoured, which means that the state as a legislator and rule-maker (*Regelsetzer*) – and not as a major player – is responsible for setting, preserving and maintaining the regulatory framework, that is, economic policies that institutionally frame in the sense of defining the general terms under which market transactions are carried out. In other words: The state has to focus solely on the rules of the game instead of steering, influencing or intervening in market processes and the play itself (i.e., procedure-oriented order of rules instead of an output-driven or results-oriented order of actions). The aim of *Ordnungspolitik* – including Eucken's Principles of Economic Policy<sup>16</sup> and his Constituent and Regulating Principles – is

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<sup>14</sup> Ordoliberalism is often considered to be among the main pillars of German Social Market Economy, the socio-economic system which was implemented after World War II and which aims at the harmonization and reconciliation of constitutionally guaranteed liberty rights, social security, social justice and solidarity, and market freedom (so called synthetic or Irenic Formula (Müller-Armack, 1956; Müller-Armack, 1965/1998)).

<sup>15</sup> Eucken speaks in this regard of an "encompassing spiritual or intellectual order" (in German: "umfassende geistige Lebensordnung") (Eucken, 1926, 16).

<sup>16</sup> I.e., principles of state policy: 1. the state has to limit the power of rent-seeking groups, 2. all state interventions have to be in the form of regulatory policy or policy of the economic order, not of the economic process (this implies that economic and social policies have to be systematic and long-term oriented rather than ad hoc) (Meijer, 2007, 181).



to implement a socio-economic *Wettbewerbsordnung* (competitive order) which is capable – as a means to an end – of safeguarding individual liberty, autonomy, and human dignity.<sup>17</sup>

Eucken's Principles of Economic Policy demand not only the disempowerment of political and socio-economic lobbying or pressure groups; they also ask for a 'market-conform' Ordnungspolitik and the neglect of a market-'in-conform' Prozesspolitik (Eucken, 1952/2004, 334ff.). The latter one is rejected for different reasons: *Prozesspolitik* as a form of 'privilege-granting policy' is based on isolated and ad hoc case-by-case decisions, it enables arbitrary and selective interventions in the economic 'game of catallaxy' (Hayek 1973, 117) – and what is most important – it is subject to the particularistic influence of rent seeking or special interest groups and their influence on the legislative process.<sup>18</sup> This kind of interest groups based policy reduces the overall wealth of a nation (due to granting costly and exclusive privileges). Furthermore, it endangers and threatens the liberty of each individual (due to the increasing market and political power of special interest groups). Here, once again, an economic *and at the same time* ethical argument is put forward (cp. chapter 2).

According to Ordoliberalism, it is essential to discuss the relationship between market and the state and to clearly define the state's tasks and the limits of the state's responsibilities. The ideal ordoliberal state is a strong (i.e., powerful and efficient) and independent (i.e., standing above special interest groups) constitutional state (Röpke, 1942, 86 and 286; Röpke, 1944/1949, 76ff.; Röpke, 1950, 142; Rüstow, 1955, 63) which serves as a market police (*Marktpolizei* (Röpke, 1942, 86; Rüstow, 1957, 98; Rüstow, 2001, 54)), as an ordering potency or power and as a guardian of the competitive order (*Ordnende Potenz* and *Hüter der Wettbewerbsordnung* (Eucken, 1952/2004, 325ff.; Röpke, 1944/1949, 222ff.)). The state should be able to fend off particular interests, keep to the principle of neutrality and confine itself to Ordnungspolitik. The underlying liberal ideals are equality before the law, the rule of law, freedom of privileges, and the principle of non-discrimination (quite similar to that of modern Constitutional Economics).

Other major characteristics of Ordoliberalism in addition to the favouritism of Ordnungs- over Prozesspolitik (rules of the game vs. plays of the game) are the already mentioned *Leistungswettbewerb* (competition on the merits and in terms of better services to consumers (Eucken, 1952/2004, 247, 267 and 297; see also: Röpke, 1944/1949, 76ff.)) and *Wettbewerb als Entmachtungsinstrument* ('competition as an instrument of disempowerment') (Böhm, 1961, 22; Eucken, 2001, 83; Lenel/Meyer, 1948, XI), as well as Röpke's principle of market conformity

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<sup>17</sup> This of course also requires the rule of law and a constitutional state.

<sup>18</sup> I.e., given that a high discretionary leeway for decision making exists. Prozesspolitik is more prone to the particularistic influence of special interest groups on the legislative process. This in turn might imply a lack of transparency, democratic legitimacy, accountability and democratic control.

(*Marktkonformität*<sup>19</sup> (Röpke, 1942, 252ff.; Röpke, 1944/1949, 77ff. and 350)) and economic adjustment or adaptation interventions instead of conservation or status quo interventions (*Anpassungs- instead of Erhaltungsinterventionen*<sup>20</sup> (Röpke, 1942, 295ff.; Röpke, 1944/1949, 77ff.; Rüstow, 2001, 51)). The Ordoliberals themselves are searching for an integrative or irenic *Third Way* (Oppenheimer, 1933; Rüstow, 2001, 43ff.) between social Darwinism of laissez faire on the one side (i.e., Scylla of paleo-liberalism) and totalitarian collectivism and Hobbes' Leviathan on the other side (i.e., Charybdis of socialism). Their own description of neoliberalism is that of Social Liberalism (*Sozialliberalismus* (Rüstow, 2001, 50)), Economic Humanism (*Wirtschaftshumanismus* (Röpke, 1944/1949, 46)) or *Social Market Economy* (Müller-Armack, 1956).

So far, the paper has mainly focused on the already known regulatory ethics level; it now turns to the often neglected individual ethics level. As mentioned before, individual ethics is understood here in the sense of German Neoliberalism exhibiting a triple nature of individual-ethical self-commitment: a religious-sociological one (chapter 3.2.), a liberal-Kantian respectively deontological one (chapter 3.3.) and a virtue-ethical one mainly present in the works of Röpke and Rüstow (chapters 4 and 5).

### **3.2. Individual Ethics I: Eucken's Religiosity<sup>21</sup>**

A good way of approaching Eucken's understanding of religion is his biography: Eucken was a member of the (Protestant) Confessional Church and an associate of the Protestant resistance movement against the Nazi regime, the so called Freiburg Circles consisting of the *Freiburger Bonhoeffer Kreis*, the *Freiburger Konzil* and the *Arbeitsgemeinschaft Erwin von Beckerath* (Blumenberg-Lampe, 1973; Blumenberg-Lampe, 1986). Furthermore, we are aware of certain autobiographical notes pointing at the importance of religion and Christianity in the life of Eucken himself. In a letter to Rüstow dating from January 1942, Eucken confesses that he could neither live nor work, if he did not know of God's existence (Lenel, 1991, 12) and that his Christianity is similar to that of Montaigne, Leibniz, and Kant.<sup>22</sup> At a conference of the Mont Pèlerin Society(!) in 1947, Eucken admits that he – as a Christian – is arguing from a unique Christian standpoint.<sup>23</sup>

Besides the autobiographical hints at Eucken's religiosity and piety, his *Tatwelt*-essays are a further proof: In his religious-sociological and so called crisis-writings (e.g., *Die geistige Krise und der*

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<sup>19</sup> Market-conform instruments are measures which are compatible with the market economy; they leave the market mechanism intact and do not interfere in the proper working of the price mechanism.

<sup>20</sup> Adjustment interventions contain measures which make the adjustment process less painful and quicker.

<sup>21</sup> Eucken is not the only member of Ordoliberalism which adheres to Christian religion (Goldschmidt, 2009); cp. the indicated publications of Röpke, Rüstow (and Müller-Armack) in this paper, the primary and secondary literature concerning the Freiburg resistance circles, and for the protestant roots of Social Market Economy with special emphasize on Franz Böhm: Roser, 1998.

<sup>22</sup> Eucken (cited in: Lenel, 1991, 12) writes: "Mein Christentum ist das ... eines Leibniz oder Kant. Seneca und Montaigne sind mir unentbehrlich. Ethik bedeutet für mich Bindung an Werte, Unterordnung, Anerkennung eines Sollens. D.h. der Mensch soll Geboten folgen, die gleichsam über ihm sind" (letter to Rüstow dating from March 1944).

<sup>23</sup> Eucken (cited in: Plickert, 2008, 148) notes: "Ich bin Christ und ... von einem rein christlichen Standpunkt aus betrachte ich die Wettbewerbsordnung als essentiell."

*Kapitalismus* (Spiritual Crisis and Capitalism) (Eucken, 1926), *Staatliche Strukturwandlungen und die Krisis des Kapitalismus* (Structural Transformations of the State and the Crisis of Capitalism) (Eucken, 1932b), Eucken's argument are based on Judeo-Christian values. Moreover, he pleads for an ethical-religious renewal and a spiritual reformation in order to overcome the societal crisis of the present. The *Gesellschaftskrisis der Gegenwart*<sup>24</sup> is a state of social 'massification', mass existence and 'stereotyping' (*Vermassung*), proletarianisation and disintegration. The reason for the current ethical vacuum and nihilism – accompanied by decadence and a decline in values – is, according to Eucken, the loss of the religious ways of life respectively the suppression of religion in the public sphere. Röpke and Rüstow speak in this context of '*Erbgutverbrauch*' (i.e., wastage of the socio-cultural inheritance and loss of Judeo-Christian-humanist values<sup>25</sup> (Röpke, 1942; Rüstow, 1952/1963; Rüstow, 1957; Rüstow, 2001; Müller-Armack, 1948/1981)) and they envision the potential danger of being incapable of regenerating the traditional constitution (Rüstow, 1957, 184). Following Eucken, Röpke and Rüstow, the present situation requires a religious-spiritual reformation, a re-Christianization and the creation of a new social way of life, which allows for overcoming the spiritual crisis and to fill the ethical-religious vacuum.

In his essay *Religion – Wirtschaft – Staat* (Religion – Economy – State) (Eucken, 1932a) Eucken offers the reader new insights into his Protestant piety when he emphasizes the personal or private relationship between the individual and God.<sup>26</sup> Here, he also criticizes the institutionalization of religion in general and the churches in particular.<sup>27</sup> Yet, the unique mixture of (New) Protestantism and Catholicism – autonomy of the divine soul, inwardness and religious conscience vs. supra-individual indebtedness to social orders and institutions (i.e., family, marriage, community and the state) – is present in Eucken's (and others') writings as well.

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<sup>24</sup> In his early works (e.g. the *Tatwelt*-essays), Eucken often speaks of 'crisis of capitalism' and 'spiritual crisis'. In his late works, however, e.g. in his *Grundsätze*-book, he frequently refers to the term of massification.

<sup>25</sup> Further individual and institutional-ethical causes of the *Gegenwartskrisis*, a status of cumulative anonymity (i.e., "state of termites" (Röpke, 1944/1949, 33)), de-humanization, uprootedness, ethical decadence, nihilism and spiritual vacuum (filled by *Ersatz*-religions and leading towards an upheaval of norms and traditions), include the following ones: the pathological governmental form of pluralism (i.e., public authorities as preys in the hands of interest groups; see also: Rüstow, 1932/1981, 224; Rüstow, 1957, 178; Rüstow, 2001, 108: "Interessentenhaufen" (see also Lippmann, 1945, 165ff.), "Der Staat als Beute", "Füttern der Interessenten aus der Staatskrippe", "Chaos einer pluralistischen Beutewirtschaft"); re-feudalization, corporative state and plutocracy; degeneration and distortion of the market economy towards monopolistic, subsidized and interventionist capitalism (i.e., distinction between (ideal(ized)) market economy and capitalism as "Neo-mercantilism" (Rüstow, 1945/2001, 115ff.)); economization and technocracy ("The Cult of the Colossal" (Röpke) and "megalomane Elephantiasis" (Rüstow)); and finally, structural changes following the industrial revolution (i.e., increasing importance of global players, amalgamation, mergers and acquisitions; division of labor; specialization in the age of machinery and technology; urbanization and population growth). The topic of *Gesellschaftskrisis* is also indirectly addressed by Franz Böhm, co-founder of the Freiburg School of Law and Economics: cp. Böhm, 1946; see also 'The Good Society' (Lippmann, 1945) as the birth of neoliberalism.

<sup>26</sup> The concept of personhood (in German: *Personalität* or *Personalismus*), so prominently present in Catholic social ethics, might be a possible linkage between ordoliberal religiosity and their Kantian understanding of liberty; see for a similar combination of Kantianism and Catholic and(!) Protestant religiosity: Rudolf Eucken, 1922, 50.

<sup>27</sup> Cp. for a similar argument: Rudolf Eucken, 1901, 15ff.

In his *Grundsätze der Wirtschaftspolitik* (Principles of Economic Policy, posthumously published in 1952), Eucken discusses the potential ordering role of religion – beside science and the state – and in the already talked about work *Wirtschafts- und Sozialordnung* (written together with von Dietze and Lampe), the authors not only mention the term individual ethics which has to supplement the legal and market order of society; they also condemn the rape and mutilation of individuals, mammon worship, unjust and unequal distribution of wealth and exploitative wages; in addition, they distance themselves from laissez faire or paleo-liberal capitalism and demand an ordoliberal post-war socio-economic order based on Judeo-Christian values, that is a Christian humanist liberalism.

### **3.3. Individual Ethics II: Eucken's Kantian Concept of Liberty<sup>28</sup>**

Eucken's understanding of liberty bears remarkable terminological and content-related resemblances to the writings of Immanuel Kant.<sup>29</sup> Especially Eucken's ORDO-papers from 1948 and 1949 are fundamental in this regard: *Das ordnungspolitische Problem* (The Regulatory Problem) and *Die Wettbewerbsordnung und ihre Verwirklichung* (The Competitive Order and Its Realization). At the centre of Eucken's discourse on liberty are the (Kantian) terms autonomy<sup>30</sup>, self-legislation, self-determination and human dignity. The overall aim is to overcome immaturity and to reach the state of personal enlightenment and emancipation. In this regard, Eucken opposes socio-economic and political dependency, oppression, and exploitation as well as totalitarian ideologies (Eucken, 1932a; Eucken, 1932b; Eucken, 1948a). Liberty is incompatible with authoritarian and imperialistic systems.<sup>31</sup> Furthermore, it cannot be reconciled with the process of social 'massification' and 'stereotyping', whereby the individual's personality is 'expunged' and a wide-scale 'de-souling' (*Entseelung*) and 'de-individualization' (*Entindividualisierung*) takes place (Eucken, 1932a, 86). In the wake of such a development, the individual becomes increasingly incapable of expressing his or her right to self-determination.

Beside the already mentioned topic of the societal crisis of our time, Eucken's program of liberty is related to *historism*: Eucken's essay of 1938 entitled *Die Überwindung des Historismus* (*The Conquest of Historism*) seizes on the topos of the social crisis and links it neatly with the Kantian understanding

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<sup>28</sup> Cp. for more information about the (Neo-)Kantianism of Rudolf Eucken: Rudolf Eucken, 1901; Rudolf Eucken, 1950, 370ff. and 391; Rudolf Eucken (without publication date), 82ff. (i.e., Kantian realm of freedom and critical-mature thinking).

<sup>29</sup> Parallels between Kant and Eucken can be found on the following topics: understanding of liberty (almost identical definition of freedom: cp. Eucken, 1949, 27; Eucken, 1952/2004, 48, 176 and 360; Kant's *Metaphysics of Morals*); significance of autonomy, maturity, and the faculty of reason and prudence (Eucken's belief in rationality and his 'Kantian rationalism' (*Vernunftglaube*) becomes clear when he criticizes historism for its irrationalism and relativization of the notion of truth (Eucken, 1938)); the idea of man (i.e., each individual is regarded as an end in itself, s(he) is no means to an end: Eucken and Röpke – in complete accordance with Kant – are condemning the instrumentalization, exploitation and functionalization of the individual; each person is a subject, and no object, instrument or tool (Röpke, 1944/1949). In this regard, Eucken as well as Röpke are referring to the Kantian Categorical Imperative and especially its Formula of the End in Itself, and attaching great importance to the term human dignity).

<sup>30</sup> Cp. Böhm's Kantian-like concept of *Privatautonomie* (private autonomy) in: Böhm, 1966/1980.

<sup>31</sup> Here, the historical context (i.e., National Socialism and Eucken as member of the Freiburg resistance circles) needs to be borne in mind.

of liberty and rationalism (Kant 1977b). By taking the fight against historicism and its (alleged) relativism and irrationalism, Eucken directly refers to the tradition of the Enlightenment in general and Kantian philosophy in particular. He specifically accuses the proponents of historicism, such as Sombart, Gottl-Ottlilienfeld and Spann, of expounding a fatalistic, deterministic and romanticized ideology. Eucken warns against the relativization of values, the relativization of the notion of truth, the relativity of knowledge and the danger that science might lose its ordering function (i.e., relativism accusation). Furthermore, he criticizes the skepticism and mistrust several historicists have towards the ratio and rationality (i.e., irrationalism accusation) (Eucken, 1952/2004, 340ff.). From an Euckenian perspective, the overcoming of historicism is crucial, since historicism is synonymous with fatalism, determinism, irrationalism and relativism. If not contained, historicism would reinforce the societal crisis of the present ending in total nihilism, unfreedom and illiberalism.

Since Eucken's program of liberty is analyzed elsewhere (Wörsdörfer, 2010), I will only briefly summarize Eucken's actual understanding of liberty: Liberty is – according to Eucken – a constituent of human existence.<sup>32</sup> It is closely connected with humanity, human dignity and social justice, as stated by Eucken (Eucken, 1948a, 73). In addition, liberty is not limitless or anarchic; individual liberty finds its boundaries where another's sphere of liberty begins.<sup>33</sup> Moreover, there is no absolutization of freedom in Eucken's writings; to the contrary, several economic-ethical limits exist, e.g., in the form of the Judeo-Christian value system – pointing towards the interconnectivity between the two individual ethics levels. For Eucken, liberty must always be coupled with a comprehensive sense of liability and responsibility – towards oneself and towards others (i.e., double form of responsibility: individual/personal *and* social/collective responsibility (Eucken, 1953, 24ff.)).

Finally, Eucken strives to connect negative and positive as well as economic and political liberty pointing towards the fact that freedom is undividable! Liberty is not just limited to *negative freedom* (i.e., freedom from coercion and (state) interventions) – it also incorporates a *positive* notion of *liberty* strongly related to the Kantian idea of autonomy and self-determination/-legislation (Berlin, 1995/2006, 197ff.) (i.e., freedom to act *and* freedom to achieve). In addition, freedom is just not limited to economics (i.e., equipment and distribution of basic goods *and* rights of disposition); it is also relevant in a *political* context<sup>34</sup>: Inalienable basic and human rights guaranteed by a constitutional state under the rule of law enable the free development of the individual (Eucken, 1952/2004, 48ff.); *political liberty* is thus closely connected with the terms human rights and human dignity – the central (ordoliberal and Kantian) values. *Economic liberty* on the other hand is coupled with *consumer*

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<sup>32</sup> Eucken (1948a, 73) writes: “Ohne Freiheit, ohne spontane Selbsttätigkeit ist der Mensch nicht „Mensch“.“

<sup>33</sup> Cp. Kant's definition of liberty in: Kant, 1977a, 337ff.

<sup>34</sup> Cp. Eucken, 1946/1999a, 18 (i.e., economic *and* political freedom); Röpke, 1944/1949, 51, where he emphasizes the primacy of *political-cultural* liberalism and the subsidiary role played by *economic* liberalism; see also Rüstow's critical review of the failure of economic liberalism in: Rüstow, 1945/2001.

*sovereignty*<sup>35</sup> and the postulate of ‘coordination’ of individual plans about competitive markets instead of (authoritarian and collectivist) ‘subordination’ (Eucken, 1952/2004, 244ff.). The economic, liberal ideals, which underlie the basis of this idea, include the principle of non-discrimination, the freedom of privileges, and the rule of law (Böhm, 1966/1980; Vanberg, 2008, 7ff.).

At the close of this paragraph we should give Eucken himself the chance to speak. The following quotes are taken out of Eucken’s criticism of state interventionism/the interventionist state, which again make clear his anti-totalitarian stance. In here, Eucken criticizes the “position of power held by the [totalistic], all-pervasive, modern, industrialized, technological state” and the “superiority of the [interventionist and concentrated (*Vermachtung*; Eucken, 1932b)] economic state”. The link between political and economic power, i.e., the politicization of the economy and the economization of politics, increases the danger of abuses of power. In addition, it conflicts with the central Kantian ideal. Eucken notes: “The state monitors and controls economic day-to-day activity and it [...] partly or wholly controls the economic machine. Man is merely a small piece of an anonymous, state-economic machine [...]. The individual becomes a thing and is no longer a person. The machine is an end, man the means.” Here, and in other places, Eucken’s advocacy of political liberalism becomes clear. He strives to protect the privacy and liberty of the individual against state intervention and collective usurpation. He asks: “Which forms of regulation guarantee freedom? Which forms can also limit the misuse of liberty? [...] Is it possible to create an economic system, in which man is not just a means to an end, not just part of a machine?” (Eucken, 1948a, 74ff.).<sup>36</sup> The answer, which Eucken himself gives, is, of course, the ordoliberal competitive order based on Judeo-Christian and Kantian values.

As we have seen, multiple links between the different elements of the ordoliberal individual ethics conception exist (e.g., the ordoliberal theory of liberty is based on Judeo-Christian religiosity as well as Kantianism). Moreover, individual ethics and regulatory ethics are interconnected: The main aim of regulatory ethics (i.e., ordoliberal competitive order and rule of law) is to safeguard individual-ethical ideals such as Kantian liberty and autonomy: Regulatory ethics functions as a guarantor of individual freedom (as the cornerstone of Kantian ethics), human dignity and justice. From an economic-ethical

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<sup>35</sup> Cp. Miksch, 1937/1947, 214ff., who speaks of ‘autonomous and mature consumers’; see also: Eucken, 1953, 15, where he argues against the ‘dethronement of consumers’. In his 1950 essay on the German currency reform (Eucken, 1950/1996, 340), Eucken classifies consumers as the ‘directors of the economic process’ and in 1953 he speaks of consumers as the ‘actual masters of the economy’ (Eucken, 1953, 18; cp. Eucken, 1948b; Eucken, 1950/1996, 340).

<sup>36</sup> A similar argument is put forward by Lenel and Meyer (1948, IXff.) who dismiss centrally planned economies due to their infringement on basic liberty rights. In these human rights-hostile politico-economic systems, individuals are degraded to ‘slaves of bureaucracy’. At the same time, however, the authors warn of a boundless exercise of liberty; such an anarchic system will inevitably lead towards a clash of self-interest and public interest as well as an accumulation of socio-economic power which is even worse than the omnipotent national state. They write: “Wir wollen – besonders nach den Erfahrungen der letzten Jahre – von keiner planwirtschaftlichen Ordnung wissen, weil sie die unabdingbaren Freiheiten des Menschen zwangsläufig mißachtet und ihn zum Sklaven der Bürokratie macht. Und wir haben auch erkannt, daß schrankenlose[!] Freiheit der wirtschaftlichen Betätigung ebenfalls zu Gegensätzen zwischen Einzel- und Gesamtinteresse führt, zur Zusammenballung von privater Wirtschaftsmacht, die wirtschaftlich und sozial nicht minder schädlich ist als die staatliche Omnipotenz“ (Lenel/Meyer, 1948, IXff.).

perspective we can conclude that the *economic plays of the game of the economic subjects are not (!) free of morality* (as stated by some economic ethicists) and that the *systematic place of the moral* in a free and socially committed market economy is not only the basic order or – to use the terminology of this paper – the regulatory-ethical framework; rather, the systematic place of the moral is *regulatory ethics in combination with individual ethics!*<sup>37</sup>

The next paragraphs further elaborate on the distinction between individual and regulatory ethics by focusing on the writings of Alexander Rüstow and Wilhelm Röpke, two other important representatives of German Ordoliberalism or – as it is often referred to – Sociological Neoliberalism, who highlight the importance of virtue ethics as a further sub-level of individual ethics.

#### 4. Wilhelm Röpke

Typical of the publications of Röpke is his distinctive combination of *revolutionary radicalism* and structural *conservatism* (Röpke, 1944/1949, 25; see also: Rüstow, 2001, 57ff.): His revolutionary radicalism becomes clear when we take into consideration his anti-capitalistic arguments.<sup>38</sup> According to Röpke, capitalism as the de facto status quo is a historical degeneration, distortion, and perversion of the market economy. Consequently, he distinguishes between capitalism – which has to be overcome – and market economy – which has to be preserved (a distinction neglected by Foucault and others). As with Eucken and Rüstow<sup>39</sup>, Röpke rejects stock corporations and limited liability companies due to their violation of the principle of liability<sup>40</sup>; he rejects patent laws due to the potential threat of a monopolization of the economy via patenting; and he rejects multinational corporations, monopolies, oligopolies and cartels due to their enormous politico-economic powers.<sup>41</sup> Röpke and other ordoliberal thinkers are pleading for the fostering of the small and medium sized business sector – the so called *Mittelstand* –, a broad distribution and diffusion of private property, and a far-reaching decentralisation of power structures. The ordoliberal conservatism relates to the preservation of traditional Judeo-Christian values (cp. chapter 3.2.) as well as the conservation of the primary organizing principles of a

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<sup>37</sup> Cp. for an opposing view: Homann/Blome-Drees, 1992; Buchanan, 1987; Vanberg, 1999/2009; a fundamental drawback of locating moral solely in the regulatory framework would be that individuals are totally relieved in terms of ethical and social responsibility. Contrary to that, Ulrich stresses the outstanding importance of ethical obligation to provide (*Bringschuld*) (Ulrich, 1997/2008, 398).

<sup>38</sup> See also: Eucken, 1927, 131ff.: Eucken rejects capitalism due to its incompatibility with religion/Christianity and its utilitarian stance (“Tatsache ist weiter, daß dieser Kapitalismus eine große Maschinerie darstellt, die in ihrem Wesen mit der Religion unvereinbar ist. [...] Eingespannt in eine gewisse Sklaverei anonymer Verhältnisse beobachtet der Einzelne mit Recht überall die Herrschaft des kapitalistischen Kalküls. [...] Utilitarismus und Relativismus als Zerstörer des Geisteslebens [...]. Wir stehen heute nicht, wie so oft fälschlich gesagt wird, in einer Epoche der Umwertung aller Werte, sondern der Beseitigung aller Werte überhaupt – bis auf einen: den des Nützlichen“; see also: Dietze/Eucken/Lampe, 1941/1942, 47 and Dietze/Eucken/Lampe, 1943/2008, 106, where the authors attempt to avoid using the capitalistic terminology).

<sup>39</sup> See also: Rüstow, 1957, 180, where he compares the GmbH with a robber band.

<sup>40</sup> Cp. Eucken’s Constituent Principles in: Eucken, 1952/2004; see also: Miksch, 1937/1947, 56 and 220.

<sup>41</sup> Interestingly, Eucken was debating the ‘too-big-to-fail’-problem, the problem of system-relevant banks as well as the problem of concentration of power/market power within the banking sector already in the 1940ies. Here, he argues for the break-up and destruction of powerful (multinational) (investment) banks (Eucken, 1946/1999b).

market economy (i.e., competition on the merits and price mechanism) – although it has to be purified and the capitalistic elements have to be ‘washed up’.

The anti-capitalistic stance in Röpke’s (and other ordoliberal) writings is interlinked with the significance of *market-free* and non-commercialised sectors as counterweights to the market economy (Röpke, 1942, 187; Röpke, 1950, 212).<sup>42</sup> Some socio-cultural sectors within society should not be governed by economic principles (i.e., rejection of economic imperialism); ideally, economic policy and non-commercialised social policy form a unified whole. Foucault’s thesis of ambiguity (i.e., society for the market vs. society against the market) is absolutely correct – however, Foucault is misled when he assumes that both pillars are diametrically opposed to each other rather than intertwined.

Beside the market-free sectors and the significance of virtue ethics as a further sub-level of individual ethics, Röpke is more than clear, when he writes, that the constitution of the market, the strong state as a market police and the rule of law are not sufficient in order to reach the ordoliberal goals (i.e., the realisation of a true Kantian economic ethics of ensuring independency and liberty of the individuals, implementation of a functioning and humane socio-economic order, and compatibility between self-interest and the common good). Beside the legal, political, formal-institutional regulatory framework, an adequate ethical framework is required, a (Kantian) economic ethics (Röpke, 1942, 86 and 286) and an Aristotelian virtue ethics, ergo a combination of individual and regulatory ethics or a triad of law, economics/economic policy, and ethics (i.e., meta-economic framework of moral, legal, political and socio-economic conditions)!

The competitive market economy is described as a *Moralzehrer*, a system which drains and erodes morality and tends to undermine social cohesion (Röpke, 1942, 86).<sup>43</sup> It requires external moral standards and ethical norms and values which are generated outside the market economy. The ‘normative reserves’ cannot be ‘produced’ within the economic system. According to Röpke, the market is part of a higher social order – beyond supply and demand (*Jenseits von Angebot und Nachfrage*)<sup>44</sup>, to use the title of one of his major works – and daily economic life does not take place

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<sup>42</sup> The appropriate mixture consists of an enforcement of markets (i.e., *Marktdurchsetzung* in the form of opening and liberalisation of markets and maintenance of competition) and a limitation/ demarcation and governance/steering of markets according to ethical-normative criteria derived from vital policy (*Marktbegrenzung* and *Marktlenkung*) (Ulrich, 1997/2008, 366ff.).

<sup>43</sup> See also: Röpke’s preface (in: Lippmann, 1945): Röpke assumes that ethical norms are endangered in a market economy; thus, he demands a ‘steady renewal of the meta-economical moral funds’ (p. 33); see for a similar argument: Müller-Armack, 1946/1976, 127; Müller-Armack, 1962/1976, 298; Müller-Armack, 1952/2008, 460ff. In his essays, Müller-Armack highlights the significance of religion when he alludes that the regeneration of values might only be achieved by (Christian) religion; furthermore, he claims that the Social Market Economy has to be filled with a Christian ethos. Beside religion, a social policy is required which implements (non-economic) stabilizers as part of the so called Second Phase of Social Market Economy (Müller-Armack, 1955; Müller-Armack, 1960/1981).

<sup>44</sup> “Röpke and Rustow [sic!] were concerned with the sociological preconditions for successful economic reform, the ethical environment required for a sustainable market order and, at base, the non-economic foundations of society – ‘what lies beyond supply and demand’” (Sally, 1996, 8).



within an ethical vacuum. Economic integration expects an (a priori) outer-economic (social) integration (i.e., need for non-economic forms of integration).<sup>45</sup> A basic pre-disposition to trust and other social norms must be already present and be perceived for a cooperative equilibrium to prevail (i.e., economic plays of the game of the economic subjects are not free of morality).

To put it differently: the pursuit of egoism (and self-interest) has to be cleared and restrained; it has to be channelled into canals which foster the common good.<sup>46</sup> In the end, (enlightened) self-interest has to serve the general public/public interests. The proper way to achieve this is the ordoliberal competitive order (i.e., regulatory ethics) in combination with Kantian (economic) ethics, virtue ethics and Judeo-Christian norms and values (i.e., individual ethics). There are certain preconditions (and barriers) of the market economy which have to be recognized – otherwise the market economy cannot fulfil its steering functions. Competition (restrained by the rule of law) and economic ethics in the sense of ‘moral capital’ are among those assumptions. A competitive market economy demands an ethical fundament and a minimum of ethical standards (Watrin, 1999/2009, 241ff.). Röpke mentions several *trans-economic values* – virtues that lie beyond the economy and that serve human dignity – which have to be met (Röpke, 1950/1981, 52): public spiritedness, civic mindedness, a sense of social responsibility, honesty, fairness, reciprocal altruism, moderation and self-discipline, respect of human dignity, solidarity, benevolence and Christian love respectively love of neighbour.<sup>47</sup> In this context, the bonding and integrative forces of family, religion and local communities (i.e., neighbourhood, clubs and associations) (Röpke, 1942, 86) as well as parenting, socialization and education are of eminent importance in terms of embedding and enclosing markets. They are primarily responsible for the generation of these normative reserves – provided that a social policy is carried out which allows for a de-proletarianisation, de-massification, a support of small and medium sized (handicraft) companies, and decentralisation of socio-political structures (according to the principle of subsidiarity) (here again, Röpke highlights the interplay of individual and regulatory ethics). The overall aim is the social embeddedness of each individual and the satisfactory ‘vital situation’ (*Vitalsituation*). In this regard, self-responsibility, independency, self-employment and the diffusion of private property (i.e., private property not only fosters independency and autonomy, it also provides the necessary material foundations for the de facto realisation of positive rights of freedom) have to be promoted and encouraged as well as equality before the law, equal access (to education and other public institutions), equal opportunities and equal starting conditions (*Startgerechtigkeit*) (Wörsdörfer, 2013).

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<sup>45</sup> In a letter from Eucken to Rüstow dating from December 1943 (see Lenel, 1991, 13), Eucken admits: “The economic order is not able to render the people more ethical. This has to be achieved by other forces. Yet, the economic order should guarantee the freedom of each individual in a way that the individual can act this way or that way and in a self-responsible manner” (translation by the author).

<sup>46</sup> I.e., channelling market economic development along a socio-ethical path and creating an economic and regulatory framework with a Christian and humanitarian outlook.

<sup>47</sup> Cp. Foucault’s thesis of ambiguity and his ‘society against the market’ pillar.

Another noteworthy aspect of Röpke's individual ethics is the so called 'Deontology of Profession and Occupation' (*Deontologie des Berufs* (Röpke, 1958/1961, 189)) referring to the ideal of the honourable merchant (i.e., professional honour; honour as a nobleman). This codex of tradesman's morality is an excellent application example of individual ethics, since it incorporates the just mentioned trans-economic values and virtues.<sup>48</sup> I will return to this aspect of Röpke's individual ethics in the concluding remarks.

## 5. Alexander Rüstow

A similar combination of individual and regulatory ethics can be found in the oeuvre of Alexander Rüstow, a further member of extended Ordoliberalism or, as it is often referred to, *Sociological Neoliberalism*. Starting point of Rüstow's argument is the failure of paleo-liberal and laissez faire economic liberalism (*Versagen des Wirtschaftsliberalismus* (Rüstow, 1945/2001; Rüstow, 1961; Rüstow, 2001, 99)). *Economic* liberalism alone – according to Rüstow and Ordoliberalism – is not sufficient. What is needed is a political, democratic and socio-cultural form of liberalism. Furthermore, Rüstow claims that formal-institutional *and* sociological or socio-cultural requirements have to be met in order to secure the convergence between self-interest and the common good. In this regard, Rüstow often speaks of the required counterweights to markets, i.e., strong, framing (outer-market) integrative appeal and an appeal to the ethical bonding forces within a society (i.e., religion, family, et al. (Rüstow, 2001, 27ff. and 90)). The importance of ethical bonding forces reminds the reader of Foucault's 'society against the market' pillar. Like Röpke, Rüstow stresses the existence and the prominent role of meta-economic values (Müller-Armack, 1948/1981, 447 and 506) like solidarity, benevolence, Christian love, justice and freedom (!) and of the societal auxiliary conditions of the market society.

Markets and the economy are designed to serve the community (and meta-economic normative values) and not vice versa. They are subordinated and taken as means to an end (i.e., the market economy's ability to serve/*Dienende Funktion des Marktes*<sup>49</sup> (Rüstow, 2001, 142ff. and chapter 2.2; Rüstow, 1960)). The end in itself is the 'boundary of the market' (the *Marktrand*)<sup>50</sup> and the 'vital situation' (*Vitalsituation*), a situation characterized by a high level of integration, inclusion, participation and embeddedness and a situation which enables an autonomous and self-reliant life in freedom. The task

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<sup>48</sup> Cp. for more information about codes of conduct, business ethics and Ordoliberalism: Müller-Armack, 1959; Müller-Armack, 1961/1976; Simma/Heinemann, 1999/2009.

<sup>49</sup> Cp. also: Dietze/Eucken/Lampe, 1941/1942, 119ff. Here, Eucken, Lampe and von Dietze claim that the economy has to serve the people, the present as well as the coming generations.

<sup>50</sup> "This term [Marktrand] emphasizes that the market is only a means to an end, whereas the Marktrand designates those areas of human life which are an end in themselves and possess a human value of their own. They are a 'hundred times more important' (Rüstow) than the market itself, as they are decisive for the development of cultural and educational patterns and the moral and social guidelines of behaviour" (James Fearn quoted in: Ulrich, 2008, xiii). Thus, competitive market economies have to be bounded and moderated according to "vital-political oriented Ordoliberalism" (Ulrich, 1997/2008, 378).

of public policy is a (meta-economical) amendment and design of the *Marktrand* and – what is equally important – a demarcation of the limits of markets (cp. Röpke’s market-free sectors) (Rüstow, 2001, 62 and 100). That is what Rüstow calls *Vitalpolitik* (vital policy).<sup>51</sup> Moreover, Rüstow not only demands the primacy of meta-economic values, he also states that it deems valid to offer a sacrifice in economic terms in order to support and enhance meta-economic values (Rüstow, 1960).<sup>52</sup>

In sum, several parallels between German Ordoliberalism (a la Röpke and Rüstow) and Aristotelian (economic) ethics exist. They include the interdependency between economics, ethics and politics – the Aristotelian *trias*; the embeddedness of the economy in a higher, meta-economic society (i.e., all economic activities have to be regarded as a means to an end serving the ultimate end, *eudaimonia*); the distinction between economics and *chrematistics* (in the latter, the sole purpose is to accumulate money and wealth as an end in itself; the exchange of money for money as in some financing and investment activities does not create a value-added product; moreover, this activity is to be regarded as unnatural, since it dehumanizes those that practice it); a criticism of wealth accumulation and immoral enrichment (including excessive usury); and a condemnation of profit maximization, greed (for profit) as well as hedonism and utilitarianism. The main aim of the ancient Greek *oikos* (Greek for house(hold) or family) economy was the pursuit of independency and autarky (in the sense of self-reliance and self-sufficiency). The economy served as a means to an end in order to provide for the basic needs that allow for ‘human flourishing’ and a happy life. The polis – the ancient Greek city-states – consisted of several independent households (*oikos*) living in peace, harmony and social justice. Social cohesion was the keyword characterizing the ancient Greek societies. Socio-economic inequalities had to be prohibited since they were threatening social cohesion and social justice. The economy was seen as being embedded in a higher, meta-economic society pervaded by ethical norms and values. The marketplace (*agora*) was primarily the site of public discussions and (‘democratic’) participation and not the site of economic transactions and exchange. Further parallels between Röpke, Rüstow and Aristotle exist with regards to their theories of justice distinguishing between distributive and commutative justice (Wörsdörfer, 2013), and in terms of (Aristotelian) virtue ethics (i.e., *areté/virtus* as being part of a happy life (*eudaimonia*); theory of *mesotes* (the golden mean)) (Aristotle, 2012; Schefold, 1994; Schefold, 1999; Schefold, 2003).

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<sup>51</sup> This includes a policy fostering the acquisition and diffusion of private property, a policy fighting the unequal distribution of wealth, excessive inequalities and income disparities (since they are threatening social cohesion), a policy fighting proletarianisation, massification and disintegration, an education policy aiming at realizing justice of the starting conditions, and a policy promoting inclusion, integration and participation of all classes of society (e.g. co-determination and worker’s participation in management, voting rights for children and immigrants) and especially of marginalized and voiceless people (i.e., notion of *Teilhabe*; cp. Sen’s capability approach).

<sup>52</sup> See also: Müller-Armack, 1946/1976, 84: “Unter dem Gesichtspunkt der Freiheit dürfte die Marktwirtschaft auch dann noch vorzuziehen sein, wenn ihre ökonomischen Leistungen geringer wären als die der Wirtschaftslenkung“ (“Taking the freedom-aspect of a market economy into account, it becomes clear that a market economy is even then preferable to a centrally planned economy when its economic performance would be inferior“ (translation by the author)).

## 6. Concluding Remarks: The Special Role of Individual Ethics

The starting point of my argument was Foucault's analysis of neoliberalism in general and the thesis of ambiguity in particular. Following Foucault, German Neoliberalism rests on two pillars: the 'society against the market' and the 'society for the market' pillar. This thesis has several strengths and some weaknesses. The purpose of this paper is to maintain and strengthen the advantages of Foucault's study while at the same time to abandon its disadvantages. Foucault is absolutely right when he points at the ambivalences and tensions inside Ordoliberalism; he is right when comments on the significance of market-free and non-commercialized sectors within Ordoliberalism (cp. chapters 4 and 5), and when he distinguishes between divergent varieties within the neoliberal movement (i.e., Freiburg School of Law and Economics vs. Chicago School of Economics/Monetarism). However, Foucault seems to be misguided with regard to the essence of competition and the market mechanism (i.e., Ordoliberalism regards a competitive market economy as a means to an end and not as an ends in itself), and what is essential: he is incorrect when he assumes a dichotomy<sup>53</sup> between the different levels or stages inside Ordoliberalism. Instead of proclaiming a dualism between the 'society for and against the market' pillar, this paper argues that an interdependency between the two kinds of ethics exist: individual and regulatory ethics are complementary and they are forming a unified whole (Dietzfelbinger, 1998, 249ff.).

Although, the paper pursues a different two-level distinction, my argument is based on Foucault's analysis which allows for an advancement of Ordoliberalism in the direction of modern economic ethics: To show the topicality of Ordoliberalism from an economic-ethical standpoint, I will only briefly mention some fields of future scientific research: At the heart of economic ethics lies the question of whether it is possible to implement an (irenic) socio-economic order which is capable of meeting the (ordoliberal) criteria of economic functionality/efficiency *and* ethical humanity (cp. chapter 2.1). Another important task is to solve the potential conflict between self-interest and the common good. Here, Ordoliberalism states, that only under the condition of a far reaching compatibility of individual and regulatory ethics can this ideal state of harmony be achieved; regulatory and individual ethics on their own are not sufficient!

Finally, one question remains open: What is the function of individual ethics in a globalised economy? What is the crucial role of individual ethics contrasted with regulatory ethics – especially when considering the fact that today the focus of mainstream economics is on formal-institutional ethics?<sup>54</sup> First of all, it is important to note, that the distinction between individual and regulatory ethics so typical of German Ordoliberalism is a characteristic feature of a certain kinds of social philosophy

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<sup>53</sup> Cp. on the contrary Vogt, 1999/2009, 275ff. Vogt's starting point is also the dichotomy between individual and regulatory ethics, but he aspires a paradigm shift from individual-ethics and virtue ethics towards an institutional-ethical Ordnungstheorie.

<sup>54</sup> In what follows, I argue from a moral-economic respectively institutional-economics perspective.

which has its roots in a transitional time period, a period characterized by several socio-economic caesuras and multiple deficiencies of the regulatory framework (i.e., imperfect formal-institutional or regulatory ethics). This might be one of the reasons – besides the Christian religiosity of the representatives of Ordoliberalism – for not completely disentangling or detaching individual ethics from regulatory ethics.

However, even today, individual ethics has a prominent role to play: We are living in a socio-economic order with different sub-systems and diverging ordering and regulating mechanisms. The market society based on anonymous, loose-knit and large scale society mechanisms (i.e., regulatory ethics) exists side by side with club-like and small-scale communities of solidarity with their face-to-face relationships (i.e., individual ethics). The – at first sight – large-scale societies, therefore, consist of several small group communities relying on individual-ethical norms.

Moreover, individual ethics is essential from an economic perspective as well: think of trust/trustworthiness, self-commitment, reputation, ethical integrity, norms like fairness and honesty and all the other secondary virtues which play a crucial role within socioeconomic personal networks. In recent times, all these are subsumed under the economic heading ‘social capital’. It is one of the lasting legacies of New Institutional Economics (and in cooperation with game theory and experimental/behavioral economics) to have elaborated the vital role of individual ethics within the market economy (North 1990; Putnam 1993a; Putnam 1993b; Putnam 2000; Coleman 1988; Coleman 1990; Kirchner, 1999/2009) – although they are not referring to the term individual ethics in itself: Individual ethics serves as a central precondition for the functioning of the market and price mechanism and it is providing the economy with necessary ethical reserves, so to speak (cp. chapters 4 and 5). In some sense, individual ethics is the lubricant of the market society. Thus, individual ethics is not a matter of perfecting regulatory ethics. Rather, it is fundamental especially when relieving the regulatory framework via self-control, self-regulation and internalization of values (referring to socialization and upbringing)<sup>55</sup> and in order to lower transaction costs, that is information, decision making and monitoring or control costs. Internalized individual-ethical norms are much cheaper to implement and control for compared to external-formal norms and sanctions, since the compliance with formal institutions has to be controlled for and violations have to be sanctioned – both aspects can be extremely costly.<sup>56</sup>

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<sup>55</sup> The internalization of standards refers to the process of socialization through which attitudes, values, and behavior patterns come to be maintained even in the absence of external rewards or punishments. As a result, social norms are followed even when violations would be undetected, and therefore unsanctioned, because the moral act, which appears to be in conflict with the immediate or direct interests of the actor himself, is valued for its own sake. One motivating force behind moral behavior is the desire to avoid feelings of guilt and shame (i.e., internal rewards and sanctions respectively self-satisfaction and guilt feelings; see Platteau, 2000/2006).

<sup>56</sup> Furthermore, individual ethics is compatible with the principle of subsidiarity relocating responsibility from the *macro*- (i.e., regulatory framework) to the *meso*- (i.e., Corporate Social Responsibility, Corporate Citizenship, the concept of ‘Social Partnership’, or other so called *Branchenvereinbarungen/-kodizes* as formalized versions of individual ethics

Of eminent importance is the relationship between individual and regulatory ethics and between formal and informal institutions: Either they are complementary to each other, which means that they are mutually enhancing and reinforcing, or they are mere substitutes, which implies that their affiliation is conflict-laden (Kiwit/Voigt, 1995, 138ff.). If a conflict occurs between internal and external forms of motivation respectively between informal and formal norms, the control and transaction costs are rising tremendously and the danger comes up that individual and regulatory ethics replace each other. As a consequence this might not only lead to the evasion of external-formal norms, it might also lead to a far-reaching erosion of informal (Kantian and/or religious) norms as well. In case of complementarity, informal norms and values enhance, facilitate and encourage the adherence of formal norms while at the same time reducing the costs of transactions; this implies informal (= low-cost) monitoring, while formal (= costly) controls and sanctions are less likely. Traditions, ethical standards of behavior and the like can amend and stabilize formal institutions. Therefore, it must be the aim – in order to minimize transaction costs – to develop a regulatory framework which fits the individual-ethical standards.

As mentioned above, several disadvantages of regulatory ethics and formal institutions (i.e., higher control, sanction, and transaction costs and the possible erosion of individual-ethical norms resulting in a further increase in costs) exist; yet, these deficits might be overcome with the help of individual ethics. A further aspect of great weight is accentuated by König (2000) when he underlines the meaning of individual ethics with regard to the formal-institutional ethical genesis and evolution of norms (*Normengnese*) respectively the further advancement of norms (*Normenfortbildung*) (i.e., socio-cultural foundations of the economic order): the design and enforceability of the regulatory framework is fundamentally based on individual-ethical norms. Here, too, the complementarity between both kinds of ethics and norms is vital; otherwise, the democratic legitimacy of formal norms would degrade and the societal acceptance decline (this affects the enforceability of formal institutions as well).

Finally, individual ethics is essential when facing the problem of a deficient and fragmented (and therefore, open to abuse) or a non-existing regulatory framework (i.e., institutional vacuum in case of revolutionary transitional societies<sup>57</sup>) or when there are wide-spread insecurities of how to react within state and market-free sectors (i.e., ample scope of behavior). Not least the current financial market

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referring again to the interdependency between individual and regulatory ethics) and *micro*-level (i.e., codes of conduct; honorable merchant) (by putting the meso and micro level in charge (i.e., industry branch and management level), public authorities have to ensure that a process of cartelization does not occur).

<sup>57</sup> A further problem comes up: formal and informal norms and institutions are subject to diverging rates of change: While formal institutions can be changed rapidly respectively straightaway (i.e., revolutionary shock-therapy-like alteration), informal institutions are relatively persistent, i.e., the rate of change is slow compared to the one of formal institutions (i.e., gradual transition).

crises<sup>58</sup> have shown that the regulatory order is incomplete and deficient due to different reasons: missing competencies of the regulatory bodies, information asymmetries between regulatory agencies and major players of financial markets, complexity of financial market products, high innovative ability, sidestepping or bending the rules (i.e., regulatory arbitrage), inadequate regulation/ regulatory deficits, the direct influence of lobbying groups often being part of the staff of regulatory bodies itself, to name just a few. In this context, the following question comes up: Is it after all feasible and realistic to implement a somewhat complete and perfect financial markets regulatory framework which is capable of preventing future economic crises? This question is all the more important considering the fact that the regulatory bodies are only able to *(re-)act ex post, not ex ante* (i.e., problem of time-lag for the just stated reasons), and that they cannot anticipate particular trends.

Therefore, it is at least questionable whether the regulatory ethics level alone is sufficient to prevent economic crises, and the question remains open, whether the (inherent deficient and fragmented) formal-institutional ethics level (= macro-level) has to be supplemented by individual and virtue ethics and whether codes of conduct on the corporate or branch of industry level (= meso-level) are a proper way out of the dilemma?<sup>59</sup> The ethos of the honorable banker or businessman (= micro-level), already discussed by some ordoliberal thinkers, might be taken as a first approach, which suggests both individual- and corporate-ethical implications.

The purpose of this paper is not to minimize or downplay the significance of regulatory ethics.<sup>60</sup> It rather aims at emphasizing the relevance of individual ethics and to stress the overriding importance of the mutual obligations of individual and regulatory ethics. It is exactly this interdependency and reciprocity of the two ethics levels which is one of the peculiarities of Ordoliberalism. It allows distinguishing German Neoliberalism from other varieties within neoliberalism (Meijer 1987) and to link it to modern economic ethics!

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<sup>58</sup> Formal-institutional rules and external norms are quite often missing and only implemented ex post (due to different reasons; cp. chapter 3). Thus, until the formal regulation has been institutionalized, individual ethics can fill the institutional gap (König, 2000); see also: Korff, 1999/2009, 267: “Dennoch kann auch die bestmögliche Rahmenordnung den sittlichen Willen der Subjekte nicht ersetzen. Bleibt diese doch selbst bei größter Regelungsdichte ihrer Natur nach fragmentarisch und sonach missbrauchsanfällig. Wer meint, das Recht von der Sittlichkeit völlig ablösen zu können, bringt es damit letztlich auch um seine Bestimmung als Instrument der Freiheit“ (“Even the best regulatory order cannot replace the moral will of the individuals. It remains inevitably in a state of fragmentation and open to abuse. People who think that they can detach law from morality [are mislead]; this [detachment] would also prevent law from being an instrument of freedom” (translation by the author)).

<sup>59</sup> Codes of conduct are already discussed by ordoliberal thinkers in the 1950ies and 1960ies. Röpke for example speaks in this regard of a ‘deontology of profession’ (Röpke, 1958/1961, 189); see also: Müller-Armack, 1959; Müller-Armack, 1961/1976.

<sup>60</sup> Thus, regulatory ethics enables and facilitates individual ethics and in particular the free development of individuals. As Eucken (1952/2004, 199 and 324) points out: “Formal-institutional ethics should allow a life according to ethical principles” (translation by the author). In that instance, regulatory ethics impinges on individual ethics. Other cases, however, are imaginable, in which the reverse effect occurs. Therefore, it is essential to highlight the reciprocity and interdependency of individual and formal-institutional ethics.

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