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1. Introduction

2008/9 sees the 60th anniversary of the German economic and currency reform of June 20, 1948, and the adoption of the Grundgesetz on May 23, 1949, which committed the country to the ideals of a socially committed market economy. Both of these events are important points along the path taken by the Federal Republic of Germany to reach the system of a social market economy. Since the term, *Social Market Economy* is often used in several different contexts and sometimes to mean contradictory things, we must ask: what exactly does the term social market economy entail? What economic-ethical ideas and theories are behind it? This paper will trace the origins **and genealogy** of the social market economy (chapter 2) and explain the central characteristics of the Freiburg School of Law and Economics (chapter 3), one of the main pillars of the social market economy. Central to this paper is the oeuvre of Walter Eucken, one of the leading representatives of the ordoliberal Freiburg School. The aim is to identify socio-political factors of influence and inspiration on his theory of economic policy (chapter 4) and evaluate similarities to the works of Kant, Smith and other economic philosophers. Chapter 5 will seek to elucidate Eucken's "Program of Liberty". We shall also allow ourselves a slight diversion to elaborate on the parallels between this work and Kant's understanding of freedom and autonomy. Chapter 6 deals with Eucken's dual requirements of an economic and social order (i.e. functioning and humane socio-economic order). In chapter 7, we seek to answer – with considerable reference to Adam Smith – to what extent it can be assumed that self-interest and the common good are mutually compatible. This paper concludes with a few remarks about the topicality of ordoliberalism in relation to modern, German-speaking economic ethics (chapter 8).

2. The Normative Origins of the Social Market Economy

The fact that the idea of the social market economy rests on several pillars is of fundamental importance. The following normative origins should be mentioned: 1.

The ordoliberal *Freiburg School of Law and Economics*. The founding members of this movement included the economist Walter Eucken, and the jurists Franz Böhm and Hans Großmann-Doerth. 2. *Sociological Neoliberalism* respectively the extended circle of Ordoliberalism gathering around the emigrants Alexander Rüstow and Wilhelm Röpke. 3. The *Cologne School of Economics* and its main proponent, Alfred Müller-Armack.¹ 4. (Franz Oppenheimer² and his disciple) *Ludwig Erhard*.³ In addition, *Christian Social Ethics* and *Catholic Social Teaching* (5.) also gave sustained impetus to the social market economy; here, we are drawn to the works of Oswald von Nell-Breuning (1954/1960; 1956/1960; 1975/1990) and Joseph Höffner (1959/2006), as well as their emphasis on the principles of subsidiarity and solidarity. Finally, we must not neglect to mention media support (FAZ, NZZ, etc.), particularly with reference to the popularization and social legitimization of the social market economy (cf. i.a. Erich Welter, co-founder of the *Frankfurter Allgemeine Zeitung*)

3. The Freiburg School of Law and Economics

One of the main distinctions drawn by the ordoliberal Freiburg School is in relation to regulation and process policy (*Ordnungs-* vs. *Prozesspolitik* respectively rules of the game (**choices of rules**) vs. plays of the game within these rules (**choices within rules**)) (see Eucken 1999). The state must limit itself to the formation of regulation, or frameworks; state intervention in the economic plays of the game must be on the grounds of *market conformity* (Röpke 1942: p. 252 et seq.), i.e. it must not impair the functioning of market and price mechanisms. Process policy-oriented intervention, which does not conform to the market, must be avoided. In this instance, state

¹ As undersecretary at the Federal Ministry of Economics (i.e. Head of the Policy and Planning Section Department and Parliamentary Secretary for European Affairs), Müller-Armack was heavily involved in implementing the social market economy (see Schefold 2004). The emergence of the term social market economy **as a consciously and socially guided market economy** can be traced back to him (see Klump 1997; 2001); he defined the social market economy as an “irenic formula”, an integration formula, which always aimed to strike a balance between economic liberty and social fairness **respectively between freedom (in the market) with social adjustment** (Müller-Armack 1956).

² See Oppenheimer’s essay *Weder so - noch so. Der Dritte Weg*, in which he sought to elaborate an intermediate position (i.e. ‘Third Way’) between capitalism on the one hand and socialism on the other hand; see also Eucken 1942: p. 37, Röpke 1942: p. 43, p. 278 et seq., Rüstow 2001: p. 41 et seq. **and Lippmann 1945: p. 350.**

³ Ludwig Erhard was – along with the ordoliberal, Leonhard Miksch – the architect of the economic and currency reform in 1948. The spiritual “father of the German economic miracle”, Erhard, was Minister of Economics between 1949 and 1963, and Federal Chancellor of the FRG from 1963 to 1966; **cp. Commun 2004 for information about the relationship between Erhard and Ordoliberalism.**

regulation must take into account the “*Interdependency of Orders*”⁴ (Eucken), i.e. the fact that economic intervention can also have an impact on the remaining social structures. (Interdisciplinary) “*Thinking in Orders*” (Eucken), which takes account of these interdependencies, is, therefore, of great importance. It is incumbent upon the “*strong state*” (Rüstow⁵), as an “*ordering power*” and “*defender of the competitive order*” (*Hüter der Wettbewerbsordnung*) (Eucken 1952/2004: p. 325 et seq.), to use regulation to establish an economic system, which allows competitive performance to flourish, as this promotes innovation (i.e. competition on the merits and in terms of better service to consumers (*Leistungswettbewerb*)) (Eucken 1952/2004: p. 247, p. 267 and p. 297), and in which complete competition (*vollständige Konkurrenz*) ensures that socio-economic interest groups are stripped of power (“*competition as an instrument of disempowerment*” (Böhm 1971/2008: p. 306)). The liberal ideals, which are at the basis of Ordoliberalism, include *freedom of privileges* and *non-discrimination* (see Vanberg 2008). The ‘strong’, ‘powerful’ state – governed by the rule of law – must be, constitutionally speaking, in a position to ward off particular interests; it should ideally be above interest groups, seek to remain neutral and serve the common good. In this respect, it is particularly important that the role of the state, but also the boundaries for state activity, are clearly defined, so as to prevent abuses of power and particular interest groups from exerting influence.

According to Eucken (1952/2004: p. 177), companies, associations and the state pose several, *socio-economic threats to liberty*. These threat scenarios, which will be expanded upon later in this paper, must be prevented using the rule of law, the competitive order (*Wettbewerbsordnung*) and the control mechanisms invested in them. Eucken’s Fundamentals of Economic Policy and the Constituent and Regulatory Principles – fundamentals and principles form a coherent entity – serve as a means to an end; they enable competition, which, in turn, minimizes the abuse of power and facilitates the exercising of civil liberties. The *Kantian moments* relate to the *prevention of power* (i.e. socio-economic limitation of power and limitation of the state’s authority) and the *facilitation of liberty* (cf. Kant’s *Metaphysics of Morals*).

4. Walter Eucken (1891-1950): Socio-Philosophical Factors of Influence

⁴ For more information about the ordoliberal slogans *Denken in Ordnungen* and *Interdependenz der Ordnungen*, see Eucken: 1950/1965: p. 50 et seq. and p. 62; Eucken 1940 and 1952/2004: p. 13 et seq., p. 19 et seq. and p. 183.

⁵ The term ‘strong state’ was introduced into the ordoliberal debate by Rüstow in 1932 at a conference of the Verein für Socialpolitik. His lecture was entitled “Free Market - Strong State”.

In order to interpret Walter Eucken's writings in the most sophisticated and least stereotypical manner, we must not just limit ourselves to his two main (economic) works, *Die Grundlagen der Nationalökonomie (The Foundations of Economics)* and *Grundsätze der Wirtschaftspolitik (Principles of Economic Policy)*. On the contrary, we must also consider his early publications, particularly his 'Tatwelt' essays, his ORDO papers and his correspondence (letters between him and his family, Rüstow, Röpke, et al.). Furthermore, it is vital to deal with the biography and personality of Eucken. It then becomes apparent that this is extremely complex and full of inner tensions, fractures and ambivalences – not least of all linked to the historical context and the fact that Eucken lived in a transient society, with a number of caesura-like incisions (e.g. the First and Second World Wars, hyperinflation, the global economic crisis, mass unemployment, the emergence of radical and totalitarian ideologies, such as National Socialism and Communism). Eucken's path through life was not just subject to a profound change in terms of methodology and philosophy of science (i.e. gradual renunciation of the Historical School), but also in a socio-political respect.⁶ Oswald (2005, 2008) and Dathe (2009) provide helpful insights into the route Eucken took to reach democratic liberalism.

⁶ Oswald (2005: pp. 324) and Dathe (2009) point rightly to the fact that we have to distinguish between the earlier publications of Eucken and his later writings (especially after his father's death). The earlier ones are equipped with militaristic, chauvinistic, conservative-nationalistic and even revanchistic tones and connotations (cp. e.g. Eucken's lectures on the Versailles treaty in 1929/32, Eucken 1923: p. 6 and 27 (plea for a revision of the 'Dictate of Versailles'); 1925; 1930 and 1932b: pp. 312, Hüfner 1995 and for a similar attitude of Rudolf Eucken: Rudolf Eucken 1922: pp. 97). Walter Eucken changed his former nationalistic attitude towards normative liberalism, individualism and humanistic rationalism during the 1920ies and especially in the 1930ies implying a complete renunciation of militarism and nationalism and paralleling his turning away from the Historical School (cp. also the diary written by Eucken in 1941; quoted in Oswald 2005: p. 327). A similar ideology as in the early writings of Walter Eucken can be found in Rudolf Eucken's publications. As far as we know Rudolf Eucken was a patriotic, national(istic), yet not totalitarian and simultaneously an indulgent and open-minded man all his lifetime. Noteworthy is the fact that a national(istic) mentality did at that time not inevitably exclude humanistic, liberal, progressive-enlightening and cosmopolitan (i.e. idea of an universal ethical mankind) attitudes (cp. Rudolf Eucken 1918: pp. 95): instead Rudolf and the early Walter Eucken try to find a way to combine national(istic) elements with supranational (i.e. eurocentristic) demands and appeals or an international (i.e. European) range of validity; they endeavour to tie together traditionality, patriotism, national cohesion and individual freedom (in economic and especially in cultural and intellectual terms): Rudolf Eucken (1922: pp. 19, p. 36 and p. 82) for example describes his family and himself as moderate liberal, cosmopolitan and belonging to the artistic avant-garde of Germany. At the same page he characterizes themselves as good Germans with a feeling of national identity; Rudolf Eucken was even part of the war propaganda during World War I (Hüfner (1995: p. 40) speaks of "nationalistische Deutschtumsmetaphysik"). The mentioned ambivalence seems at first sight a bit paradoxical, but it appears to be a common feature of a generation⁶ living at the beginning industrial age and in a revolutionary socio-cultural transformation and ground-breaking institutional change process (i.e. the political unification movement respectively the founding of the state German Reich (Bismarck-State and Kaiserreich), an age of increasing imperialism, colonialism and nationalism leading to World War I and II, etc.)!

The main influences on Walter Eucken's writing were his parents, Rudolf and Irene Eucken, and his wife, Edith Eucken-Erdsiek. Through his father, *Rudolf Eucken*, who himself was a professor of philosophy in Jena and received the Nobel Prize for Literature in 1908, Walter Eucken came into contact with (neo)Kantian and (neo)idealistic ideas, as well as the Christian social ethics. His wife, *Edith Eucken-Erdsiek*, a publisher, philosopher, economist and guest auditor of *Husserl's* seminars, put him in touch with the founder of phenomenology. The relationship between economics and phenomenology, as well as the related field of 'noology' (*noologische Methodik*) inherited from his father feature strongly in Eucken's epistemological writings (cf. Eucken 1950/1965). In addition, we must also mention the debates between the *Historical-Ethical School* and the *Austrian School of Economics*: The field of tension linked to the (value judgment and) methodology dispute (*Werturteils- und Methodenstreit*) is also reflected in Eucken's works (the so-called Great Antinomy; see Eucken 1950/1965). Finally, the networks within and around Freiburg also had a socio-economic impact: on the one hand, his contact and friendship with the other members of the Freiburg School and *expanded ordoliberalism* (in particular, Böhm, Miksch, Röpke and Rüstow, but also von Hayek and the Mont Pèlerin Society); and on the other, the *Resistance Movement of the Freiburg Circles* (Diehl, Dietze, Lampe, Ritter and other members of the Confessional Church (Bekennende Kirche)).

5. Eucken's "Program of Liberty"

Having gained an overview of the normative foundations of the social market economy and the important characteristics of the ordoliberal Freiburg School, we would now do well to consider the teachings of Walter Eucken – particularly his understanding of liberty. Eucken's ORDO papers from 1948 and 1949 are fundamental for this: *Das ordnungspolitische Problem (The Regulatory Problem)* and *Die Wettbewerbsordnung und ihre Verwirklichung (The Competitive System and Its Realization)*. In order to evaluate the (contextual and terminological) parallels to Kant, we would be well advised to consider Kant's own political writings (cf. Kant 1977b).

At the heart of Eucken's discourse on liberty is the (Kantian) term, autonomy. The aim is to overcome the immaturity and minority of humanity (see Kant: „Beantwortung der Frage: Was ist Aufklärung?“ (“An Answer to the Question: What is

Enlightenment?”), personal enlightenment and emancipation, and the realization of an individual’s right to self-determination (cf. Böhm 1950: p. XXXV). Eucken always emphasizes individual responsibility in relation to the realization of autonomy. In this regard, Eucken opposes socio-economic and political dependency, oppression and exploitation (see Eucken 1932a; 1932b; 1948 and his biography). Liberty is, therefore, incompatible with totalitarianism and imperialistic systems. Furthermore, it cannot be reconciled with the process of social ‘massification’ and ‘stereotyping’ (*Vermassung*), whereby the individual’s personality is ‘expunged’ and a wide-scale ‘de-souling’ (*Entseelung*) and ‘de-individualization’ (*Entindividualisierung*) takes place. In the wake of such a development, the individual becomes increasingly incapable of expressing his or her right to self-determination. The topos of massification is expressed by many proponents of Ordoliberalism as part of the subject of the ‘social crisis of the present’ (*Gesellschaftskrisis der Gegenwart*⁷); according to this, the loss of religious ways of life and the suppression of religion in public has led to a sustained crisis in meaning and orientation. Its features include a widespread inner emptiness, an ethical nihilism and a distinct decline in values. It is argued that a religious-spiritual reformation and the creation of a new social way of life are necessary, which will allow the spiritual crisis to be overcome and the ethical-religious vacuum to be filled. Here, and in other places, the *meta-economic* cultural and socio-critical direction of ordoliberal arguments becomes clear (see Eucken 1926; 1932a; 1932b; Röpke 1942).

Eucken’s essay of 1938 entitled *Die Überwindung des Historismus (The Conquest of Historicism)* seizes on the topos of the social crisis and links it neatly with the Kantian understanding of liberty and rationalism. Eucken, by taking the fight to historicism and criticizing the irrationalism it represents, draws a direct parallel to the tradition of the Enlightenment. Eucken 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 the notion of truth, the relativity of knowledge and the danger that science will lose its creative and ordering function (relativism accusation). Furthermore, he criticizes skepticism and the mistrust several historicists have towards the ratio (irrationalism accusation) (see Eucken 1952/2004: p. 340 et seq.).

⁷ See also Müller-Armack 1948/1981 and Leipold 1998.

Let us now return to Eucken's actual understanding of liberty. This is not, as often claimed, merely a negative one based on defensive rights (Abwehrrechte) and which disregards central positive performance rights (Leistungsrechte); as we shall show, there are, in fact, links to positive or real liberties as well.

Liberty is – according to Eucken – a constituent of human existence: “Without liberty, without spontaneous individual action, man is not a “man”” (Eucken 1948: p. 73). Liberty is closely connected with humanity, human dignity and social justice (Eucken 1948: p. 73). In addition, liberty is not limitless or anarchic; individual liberty finds its boundary where another's sphere of liberty begins (see Kant 1977a: p. 337 et seq.). That is why, for Eucken, liberty must always be coupled with a comprehensive sense of responsibility towards oneself and towards others (i.e. individual *and* social responsibility).⁸ Finally, liberty is not just limited to economics. Liberty is also relevant in a *political* context and taken to mean basic and human rights **of economically mature citizens** (see Eucken 1952/2004: p. 48 et seq.) and is closely connected with the term human dignity – the central (ordoliberal) value. *Economic liberty* is coupled with *consumer sovereignty* and the postulate of ‘coordination’ of individual plans about markets instead of (authoritarian) ‘subordination’ (see Eucken 1952/2004: p. 244 et seq.). The economic, liberal ideals, which underlie the basis of this idea, include freedom of privileges, non-discrimination, as well as the rule of law, equal rights, and basic and human rights. **Thus, economic and political liberalism are inseparably connected.**

Often, Eucken (and other proponents of Ordoliberalism) are accused of absolutizing the economy and not fulfilling the ‘market economy's ability to serve’ **meta-economic, vital-political goals** (“*Zweck-/ Lebensdienlichkeit der Marktwirtschaft*”) (Ulrich 1997/2008). However, this is countered by the fact that Eucken distances himself explicitly from a super-elevation and absolutization of normative, economic aspects (Eucken 1938: p. 81) and that he uses competitive and market mechanisms instrumentally: ‘Competition as a tool of disempowerment’ is not an end in itself, rather it is a means to an end, seeking to prevent improper, market-dominating and monopolistic structures, abuses of power and exploitation (see Lenel/Meyer 1948: p. XI). Therefore, competition – by removing market power, diluting market concentration and minimizing imperialistic pressures – *serves* to enable the free

⁸ The individual-ethical bounds of liberty are (sacrosanct) human dignity and the common good.

development of the individual from an economic *and* socio-cultural perspective.⁹ Moreover, Eucken's Constituent and Regulatory Principles (Eucken 1952/2004: p. 254 et seq. and p. 291 et seq.) contradict the accusation of economic absolutization. For example, the principle of contractual freedom is only a relative one, since contracts restricting competition, and hence liberty, are not permissible. The principle of private property requires control mechanisms such as the principle of liability and competition. It is always embedded in the market form of complete competition. Furthermore, the owner has a social and societal obligation.¹⁰ After all, regulatory principles are a matter of moderate correction of the distributive results of the market-process (in the case of market failure), or rather their socially acceptable configuration (i.e. progressive income taxation according to the principle of performance (Leistungsfähigkeitsprinzip) and, as may be necessary, the safeguarding of existential minimums with the help of minimum wages). Competition prevents concentration of market power and the market form of complete competition channels self-interests down the lines of the common good. The Euckenite competitive system is, thus, not only a system that promotes prosperity, but one that also promotes liberty and society. Even if Eucken does discuss the role of trade unions as part of the *Spezielle Sozialpolitik* (Special Social Policy)¹¹ and the importance of co-determination, workers' rights and the social security system, his focus is still on the principle of subsidiarity; that is to say, before the state intervenes, it is down to self-initiative, self-help and the personal responsibility of an individual and the community (communal neighborly help); only then should the social security system intervene and, as a last resort, the supporting measures of the state or society.

As we have seen, it is incumbent upon Constituent and Regulating Principles as well as the Fundamentals of Economic Policy, i.e. as a means to an end, to safeguard liberty and these should work towards the *disempowerment of socio-economic interest groups* and the establishment of regulatory policy in place of process policy (Ordnungs- instead of Prozesspolitik; see Eucken 1952/2004: p. 334 et seq.). State intervention into the plays of the economic subject, which do not conform to market

⁹ (Facilitation of) liberty and (prevention of) power are two sides of the same coin for Eucken.

¹⁰ Private property has to serve the public good (cp. Eucken 1952/2004: p. 270 et seq.; cp. for the social commitment of property owners: In der Stunde Null. Die Denkschrift des Freiburger "Bonhoeffer Kreises" 1979: p. 94).

¹¹ It is noteworthy that Eucken could not finish his chapter on special social policy because of his sudden and unforeseen death in 1950. The chapter remained fragmented during his life-time and it was completed posthumously by his wife and one of his students.

mechanisms, must be avoided (criterion of market conformity). The state should limit itself to *regulatory policy*, i.e. the formation of (framework) regulation. *Process policy* is rejected on the following grounds: it is arbitrary, selective, **fragmented**, ad hoc and paternalistic. In addition, it is based on interest groups and grants (non-democratic, illegitimate) power groups too much discretion in decision-making and the opportunity to exert particular interests through influence on the legislative and executive branches. Ultimately, this only sees them function unfairly, and reduce prosperity and liberty. A 'strong' ordoliberal state is required, an independent and powerful state governed by the rule of law, which wards off particular interests and prevents the concentration of market power and market-dominating companies.¹²

In relation to this, we must also mention Eucken's criticism of state interventionism and the interventionist state, which again makes clear his anti-totalitarian stance.¹³ 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 goes against 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" (Eucken 1948: p. 74). 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

¹² Adam Smith also opposed monopolies, cartels and exclusive social privileges. He criticized the weak state, which was dominated by interest groups, and the increase of group egoism. He specifically condemned exclusion, discrimination, particularism, the abuse of hidden and semi-public powers, as well as arbitrary, ad hoc and case-by-case policy and jurisprudence, which is linked to the granting of privileges. Just as Eucken, Smith also emphasized the constitutional framework and its checks and balances, as well as the importance assigned to free, competitive markets and the rule of law in demarcating market structures. Institutional control mechanisms are decisive when trying to limit the concentration and abuse of power. The fundamental criteria, against which good governance should be measured, include impartiality, universability, and the ability to reach consensus and compliance. The main problem is, then, particularism and partiality, not the pursuit of self-interest in and of itself. The aim must be to produce clearly formulated, precise, transparent and universally applicable rules. It is important to have a judiciary and legislature that is as neutral and objective as possible, which limits the margin for discretionary decision-making by powerful groups (cf. Klump/Wörsdörfer 2010).

¹³ For a contrary point of view, see Haselbach 1991 ("Autoritärer Liberalismus" ("Authoritarian Liberalism")), and Ptak 2004 and 2007.

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 1948: p. 77). The answer, which Eucken himself gives, is, of course, the ordoliberal competition policy.

Excursus: Eucken vs. Kant

Just as Kant has done, Eucken also moves between the fields of liberty, power and law, or rather regulation. According to Eucken (1948: p. 74; 1952/2004: p. 177), there is a threefold, socio-economic threat to liberty: from the private power of producers, from the semi-public power of social collectives and from the power of the state. Using the rule of law and in connection with the competitive order (i.e. Fundamentals of Economic Policy plus Constituent and Regulatory Principles), it is possible to prevent the aforementioned threat scenarios – the continual danger of an abuse of power and “group anarchy”¹⁴ which will inevitably lead to totalitarianism (i.e. slippery slope argument) – and to secure individual liberties. The idea of liberty under the law serves, therefore, to protect the individual from the caprice of others. The *Kantian moments* relate to the *prevention of power* (i.e. socio-economic limitation of power and limitation of the state’s authority) and the *facilitation of liberty* (cf. Kant 1977a).

Furthermore, we can draw parallels between Eucken and Kant in respect of their views of humanity, their understandings of liberty and autonomy, and their definitions of freedom. For both, man is an end in himself; he is not a means to an end and, under no circumstances, may he be exploited. This refers to the Second Formulation of the Categorical Imperative, *the Formula of the End in Itself* (see Eucken 1948: p. 76 et seq.). Eucken – with considerable reference to Kant – always emphasizes the importance of maturity and autonomy, as well as Kantian rationalism, particularly in his opposition of historicism and when accusing it of irrationalism and relativizing truth (see Eucken 1938). Let us now briefly consider Eucken’s definition of liberty, which is almost identical to that of Kant. Eucken writes: “Just as for the state governed by the rule of law, the competitive order should create a framework, in which the free pursuit of the individual is limited by the sphere of liberty of another, thus creating a balanced liberty between humans. In reality, the will for competition policy is closely linked to the will for liberty.” (Eucken 1949: p. 27). Here, it is also the case that individual liberties should be protected from (abusive) private and state

¹⁴ See Eucken 1952/2004: p. 79 and 2001: p. 16

power using the rule of law, Eucken's Fundamentals of Economic Policy and his Constituent and Regulatory Principles. Eucken also writes: "This sphere of liberty has to be upheld by the law. [...] Just as man, who is part of this order, may not renounce his own liberty, so too may he not infringe another's sphere of liberty. Another's sphere of liberty limits his own. By taking account of this sphere of liberty, man practices humanity. Liberty, understood correctly, humanity and law belong together and are inextricably linked." (Eucken 1952/2004: p. 176).¹⁵ "The state is governed by law. [...] Therefore, it should recognize the liberties and rights of [...] citizens and protect these. [...] Thus, the state governed by the rule of law must protect the rights of its citizens on two fronts: against the [capricious] force of state bodies, which have [...] the tendency to impinge upon personal liberty, allegedly on the grounds of being in the public interest; and, against the threat citizens pose to each other [i.e. encroachments by others into an individual's sphere of liberty]" (Eucken 1952/2004: p. 48).

6. The Functionality and Human Worth of an Economic System

From an economic-ethical perspective, Eucken poses a particularly interesting question: how is it possible to achieve a *functioning and humane (i.e. self-reliant, fair, and just)*, socio-economic order?¹⁶ The aim is to *conquer the dilemma or conflicting goals* between the efficiency and performance of an economy, on the one hand, and social justice and equality of the socio-economic order on the other. Eucken suggests a *two-stage argument*, similar to that of Adam Smith (see TMS and WN): he supplies *efficiency and allocation arguments* as well as *ethical arguments* for his ideal competitive economic system. He strives to overcome the primacy of ethics (Ulrich's Integrative Economic Ethics/Integrative Wirtschaftsethik) and the primacy of economics (Homann's Moral Economics/Moralökonomik), by relying on a set of *dual requirements* towards a competitive market economy, which is socially bound.

¹⁵ Cf. *Kant's definition of liberty* 1977a: p. 337 et seq.: "Law is the paragon of the conditions, under which the will of one person can be reconciled with that of another according to the universal laws of liberty. [...] »Any action is permissible, whose maxim permits the coexistence of one's arbitrary will with that of another according to universal laws.« [...] Thus, the universal law: act externally in such a way that the free expression of your will can co-exist with the liberty of another ..." Id.: p. 345: "Liberty (free from coercion by another), insofar as it can co-exist with the liberty of another according to universal laws, is the only, original right that exists for every man by virtue of his humanity" (p. 345); for a similar definition of liberty, see: Smith LJ (A): p. 8 and WN: p. 324 and p. 687.

¹⁶ See Eucken 1952/2004: p. 14, p. 166 and p. 369 and Eucken 1950/1965: p. 239 et seq.

An economic system must be able to cope adequately with economic shortages, to satisfy basic needs and to supply the population with essential economic goods. The criterion of functionality provides the foundation for a “humane” (Eucken) and “vital-political” (Rüstow 1955: p. 53 et seq.) life which “serves humanity” (i.e. Lebensdienlichkeit (Ulrich)). In other words, it creates the material conditions for an autonomous, independent life with freedom and the (immaterial) development of intellectual personalities (see Eucken 1952/2004: p. 48, p. 125 and p. 130 et seq.). This points at Eucken’s *external, but not meta-economic criterion* of a humane social order.

Eucken is well aware, however, of the interdependency and reciprocity of both criteria¹⁷: Eucken does not prioritize the criteria; or rather, there is only a limited primacy for him. There is indeed a repercussion from social cohesion and stability resulting from a just order in terms of Tausch- and Verteilungsgerechtigkeit, affecting the functionality of the economic system. We should add that the economic categories of competition on the merits and competitive order should be seen solely as a means to an end. They serve as an instrument to realize individual liberties and achieve human dignity for the individual. Competition is construed, therefore, in the Freiburg School as a tool of disempowerment and control. All this argues against a unilateral absolutization of the economic sphere, and argues, instead, in favor of the “market economy’s ability to serve humanity” (Zweck-/Lebensdienlichkeit), as Ulrich (1997/2008) stipulates.

In addition, Eucken’s dual criteria can be taken as a positive idea of liberty; in contrast to formal¹⁸ or negative liberties (defensive rights), the realization of real or positive liberty (performance rights) requires certain material conditions. These are referred to by Eucken when he calls for a functioning economic order. Furthermore, competition policy respectively the Monopolies and Mergers Commission and the antitrust office are of primary importance in this respect (see Eucken 1952/2004: p. 291 et seq. and Eucken 2001): for, only with the help of a competitive order and its diverse institutional control mechanisms, can the ideal of power freedom be

¹⁷ See Eucken 1952/2004: p. 370 et seq.: “Es ist aber nur die eine Seite der Wettbewerbsordnung, daß sie auf die Durchsetzung der ökonomischen Sachgesetzlichkeit dringt. Ihre andere Seite besteht darin, daß hier gleichzeitig ein soziales und ethisches Ordnungswollen verwirklicht werden soll. Und in dieser Verbindung liegt ihre besondere Stärke. Denn ein sozial-ethisches Wollen ohne Verbindung mit der ökonomischen Sachlogik ist ebenso ohnmächtig, wie andererseits die wirtschaftliche Sachlogik nicht zur Auswirkung kommt, wenn nicht ein soziales Ordnungswollen die Gestaltung der Formen beeinflusst”

¹⁸ Cp. Eucken 1952/2004: p. 50, where he admits that a formal understanding of liberty is by no means sufficient; what is required is a de facto realization of freedom rights.

approximated and, thus, (positive) liberties be achieved. **Last not least, the combination of negative (i.e. freedom from state interference and absence of coercion; freedom to act) and positive (or Kantian) liberty elements (i.e. freedom to achieve: scope for development and self-fulfilment; (rational) self-determination, self-mastery and autonomy of individuals (cp. Berlin 1995/2006: pp. 201)) becomes clear when we take Eucken's reference to the Kantian notion of autonomy and liberty into account.**

7. Compatibility of Self-Interests and the Common Good

The question of compatibility of self-interests and the common good is one of the most commonly debated issues in economics and ethics. Eucken also discusses this issue in his book *Grundsätze der Wirtschaftspolitik* (Principles of Economic Policy) (p. 350 et seq.), amongst other places. The focus is on the (formal) *institutional-ethics level*. Eucken writes that (only) a (competitive) economic system can ensure a harmonious relationship between individual and common interests (p. 368) and that (only) competition has the power to subdue egoism (p. 365). His trust in what Smith has called the invisible hand to solve potential conflicts between self-interest and the common good is somewhat limited: "The "invisible hand" cannot create forms on its own, which reconcile individual and common interests. [...] The task of economic policy is to direct the forces, which result from self-interest, along such lines that they promote the common good, so individual interests are coordinated sensibly" (Eucken 1952/2004: p. 360). He goes further: "In [Kant's] opinion, the state's role is to find a form, in which [...] there is both co-existence and the greatest possible leeway for an individual to develop their own powers. Absolute liberty in its natural state should be limited by laws, which protect the individual from the caprice of another. However, on the other hand, the free pursuits of the many, which are competing with one another, should promote society" (Eucken 1952/2004: p. 360).

If we consider other Euckenite writings, however, particularly his socio-religious (1932a) and his crisis works (1926 and 1932b), it becomes clear that Eucken does not rely *solely* on institutional ethics and ordoliberal frameworks; instead, he believes that ethics at the institutional level must be complemented by ethics at the individual

level (*i.e. individual or virtue ethics*).¹⁹ The following quote illustrates this: “*The overall order should be designed such that it enables man to follow a life guided by ethical principles*” (Eucken 1952/2004: p. 199; cf. Eucken 1952/2004: p. 370 et seq.). This individual-ethics level has, up to now, been widely overlooked in academia (the focus has clearly been on Euckenite institutional ethics). Therefore, it seems wise to deal with this level in more detail and to draw parallels between the remaining ordoliberal thinkers, e.g. Rüstow, Röpke (and Müller-Armack).

The individual-ethics level within Eucken’s work can be detected in two forms: firstly, in a *Kantian form* (*i.e. the individual as the origin according to the Kantian understanding of freedom and autonomy, and his image of humanity*²⁰) and, secondly, a *socio-religious form of individual-ethical self-commitment*.²¹ Since the Kantian understanding of liberty and autonomy has already been dealt with in our fifth chapter, we shall only briefly mention the socio-religious form of self-commitment. This is closely related to Eucken’s understanding of religion. As a member of the Confessional Church, Eucken always emphasizes Christian values, in particular solidarity and love for thy neighbor. He also emphasizes the need for an ethical-religious reformation (Eucken 1926). Religion in general, and in particular, the Christian churches, have a prominent role with regard to social cooperation and cohesion. In his *Grundsätze der Wirtschaftspolitik (Principles of Economic Policy)*, Eucken discusses *religion and the Christian churches as potential regulatory or ordering powers – besides (economic) science and the state* (p. 347 et seq.). In the *Volkswirtschaftsfibel (Economic Handbook)*, which Eucken has written together with von Dietze and Lampe, it is clear that Eucken does not just strive for an ordoliberal post-war economic and social system, but also a Christian-based ordoliberal one. His understanding of religion, which has partial individualistic and rational traits (cf. *Religion - Wirtschaft - Staat (Religion - Economy - State)*), is complemented by his autobiographical remarks (“I could neither exist nor work, if I did not know of God’s

¹⁹ Interestingly, Kant makes a similar distinction between institutional and individual ethics, differentiating between Rechts- and Tugendpflichten, or rather between Legalität and Moralität (see Kant 1977a: p. 318 et seq.).

²⁰ Here, this concerns (sacrosanct) humanity and the common good as an individual-ethical boundary to liberty.

²¹ We are unable to give an answer here as to whether Eucken’s understanding of liberty is linked to obligatory and binding religious standards. It would be worthwhile to investigate the tense relationship within Euckenite individual ethics, *i.e. the ambivalence between religion and individualistic, rational liberty.*

existence”²²) and Rudolf Eucken’s understanding of religion, as well as Husserl’s phenomenology, with whom Eucken has had close personal contacts.

Noteworthy are the distinct *parallels to Adam Smith*²³, since Smith also strives to establish both *formal*, i.e. *institutional-ethical* and *regulatory controls and sanctions*, as well as *informal*, i.e. *individual-ethical*, ones (see Recktenwald 1985: p. 112 et seq. and p. 380 et seq.). For Smith, formal control mechanisms include formalized competitive measures (contracts, market exchange, etc.) and state legislation; informal controls incorporate the individual’s capabilities to empathize (i.e. Smith’s notion of sympathy), the figure of the impartial spectator and informal social norms (i.e. public pressure). Furthermore, both Eucken and Smith make a distinction between *self-interest* and *egoism*²⁴: Smith differentiates between egoism and self-love, whilst Eucken speaks of egoism and the economic principle (i.e. adequate dealings with socio-economic shortages) (see Eucken 1952/2004: p. 350 et seq. and Eckstein 1985: p. 124). Both reject unrestrained egoism. Other ordoliberal thinkers also warn against the “unleashing” of the economy (see Röpke 1937/1946: p. 287). Just as Smith, for whom the pursuit of self-interest always has to be justified in the eyes of the independent observer, so too do Rüstow, Röpke and Müller-Armack demand a *normative, meta-ethical embeddedness of Ordoliberalism, or rather the social market economy*. Not least of all, this is a clear link to Eucken’s interdependency of orders, i.e. the integration of the economic system within a meta-economic society.

It is more than obvious that the plays of the game within the rules of the game are not amoral (‘*moralfrei*’), as Homann et al. assumed (see Homann/Blome-Drees 1992: p. 35); and, remaining with the terminology of Homann’s Moral Economics, the systematic location of morality is not exclusively the regulatory framework (cf.

²² Cited in: Lenel (1991): Walter Euckens Briefe an Alexander Rüstow in: Ordo 42, pp. 11-14.

²³ There are further *parallels* between Eucken and Smith in relation to the *Kantian understanding of autonomy and liberty* (i.e. emancipation and enlightenment of the population, conquering of minority; liberty understood as autonomy requiring the constitutional rule of law, the market economy and education policy) and the *understanding of justice* (i.e. focus on commutative justice (contractual and exchange justice (Vertrags- and Tauschgerechtigkeit), as well as Regel- and Verfahrensgerechtigkeit instead of Ergebnis- or Endzustandsgerechtigkeit (final state justice), emphasis on the principles of impartiality, reciprocity and equal treatment/non-discrimination; however, only limited consideration of distributive justice). Finally, both Eucken and Smith stressed consumer sovereignty, competition on the merits and intervention for poorer social classes, or rather the solution to social questions.

The *differences* include the Smithian underestimation of the importance of the institutional-ethics level and the neglect of *systematic and consciously formed regulation*. Whilst Smith tends to accentuate the individual- and virtue-ethical levels, Eucken is (more) aware of the necessity of a (complementary) institutional ethics. For this reason, Eucken underlines the importance of constitutional methods of restriction and the ordoliberal level of an ordering economic policy (cf. Klump/Wörsdörfer 2010).

²⁴ See also Roser 1998: p. 243 et seq. for information about Böhm’s critique of egoism.

Homann/Lütge 2004/2005: p. 87), rather individual ethics as well **or to put it differently: the regulatory framework is the systematic location of moral implementation; the systematic location of moral justification and reasoning (i.e. moral as a justification narrative) is individual ethics (cp. Ulrich 1997/2008: p. 363)!**

Finally, the current financial crisis has shown that the institutional-ethics level alone cannot provide protection from individual and institutional misconduct. It must be expanded to include a self-commitment at the individual- and corporate-ethical level. Due to the high innovative capacity of financial market intermediaries, but also because of the high complexity (and intransparency) of financial products, as well as a lack of expertise, regulatory bodies are only able to (re-)act ex post, not ex ante, and they cannot anticipate particular trends (problem of time-lag). The question, therefore, comes up: to what extent can individual-ethical self-commitments be realized, such as with investor behavior and on the corporate-ethical level, in the form of codes of conduct, for example? The ethos of the honorable banker or businessman can be taken as a first approach, which suggests both individual- and corporate-ethical implications.

8. Concluding Remarks

The topicality of ordoliberalism is not just limited to the methodological debate surrounding the 'Neuen Methodenstreit der Ökonomik', but it is also highly relevant in the wake of the financial crisis. Even from an economic-ethical perspective, Euckenite Ordoliberalism has innovative (timeless) elements to offer. In particular, these include the dual criteria, which an economic and social system must fulfill: functionality and human worth. The overarching aim is always to establish and implement an ethical-normative order, which is committed to the basic principles of humanity and justice. We should also mention efforts to achieve compatibility between self-interest and the common good using institutional *and* individual ethics (i.e. channeling of self-interest via individual and institutional ethics). Furthermore, ordoliberalism also provides an impetus for the modern, German-speaking debate surrounding economic ethics – not least of all in terms of the connection of Walter Eucken to Moral Economics, but also to Integrated Economic Ethics. Eucken's work

is able to soften the field of tension, in which the German economic ethics finds itself, and he, therefore, can act as a mediation authority between Homann and Ulrich.

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