

An Ordoliberal Interpretation of Immanuel Kant and Adam Smith

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Origins of German Social Market Economy

- *Freiburg School of Economics* (nucleus of Ordoliberalism)
main representatives: Böhm, Eucken, Großmann-Doerth
- *Rüstow, Röpke, Hayek(?)* → ‘extended’ Ordoliberalism
- Cologne School of Economics (*Müller-Armack*)
→ Social Market Economy as an „Irenic Formula“
- *Erhard* → monetary reform, „German economic miracle“
- Christian Social Teaching → Subsidiarity and Solidarity

Factors of Influence and Inspiration

- Rudolf (and Irene) Eucken: (Neo-)Kantianism, (Neo-)Idealism + religious influences: Christian social ethics
- Edith Eucken-Erdsiek
- Friendship to Husserl: Phenomenology vs. Economy
Cp. Klump/Wörsdörfer 2009: „On the Affiliation of Phenomenology and Ordoliberalism: Links between E. Husserl, Rudolf and Walter Eucken” (EJHET, forthcoming)
- Historical-Ethical vs. Austrian School of Economics: Methoden-/ Werturteilsstreit
- Members of Ordoliberalism (esp. Böhm, Miksch, Röpke, Rüstow) + Hayek/Mont Pelerin Society
- Resistance movement: Freiburg Circles (Diehl, Dietze, Lampe, Ritter + Confessional Church)

Eucken's "Program of Liberty" I

- Field of tension: liberty vs. power vs. law and order
- Autonomy (i.e. self-legislation)
- Consumer sovereignty
- Humanity, human dignity and social justice
- Idea of liberty under the law
- Liberty constitutive for humanity
- (Threefold) threat to liberty: private powers of producers, semi-public powers of societal collectives and the power of the state
- *Kantian elements*: prevention of power (i.e. socio-economic power restrictions + limits of state powers) and enabling of freedom

Eucken's "Program of Liberty" II

- „Der Staat soll unter dem Recht stehen. [...] Deshalb soll er die Freiheits- und Rechtssphären der [...] Bürger anerkennen und schützen. [...] **Dabei hat der Rechtsstaat das Recht seiner Bürger gegen zwei Seiten hin zu sichern: gegen die [willkürliche] Zwangsgewalt staatlicher Verwaltungsorgane**, die in aller Geschichte [...] die Tendenz haben, in angeblich öffentlichem Interesse die persönliche Freiheit zu verletzen; **zugleich aber gegen die Bedrohung der Bürger gegeneinander [d.i. Übergriffe anderer Privater in die individuelle Freiheitssphäre].**“ (Eucken 1952/2004: S. 48)
- „Diese Freiheitssphäre hat das Recht zu sichern. [...] Sowenig der Mensch, der in dieser Ordnung steht, seine eigene Freiheit selbst aufheben darf, sowenig darf er die Freiheitssphäre der anderen mißachten. **Hier an der Freiheitssphäre der anderen findet seine Person ihre Grenzen.** Indem er diese Freiheitssphäre achtet, übt er Humanität. **Freiheit – richtig verstanden – und Humanität und Recht gehören zusammen, sind untrennbar miteinander verbunden.**“ (S. 176)
- „Übermacht des [alles durchdringenden] Wirtschaftsstaates“ → „Der einzelne Mensch wird zur Sache und verliert den Charakter als Person. Der Apparat ist Zweck, der Mensch Mittel.“ (Eucken 1949: S. 74)
- „Welche Ordnungsformen gewähren Freiheit? Welche begrenzen zugleich den Mißbrauch der Freiheitsrechte? [...] Ist eine Wirtschaftsordnung möglich, in der die Menschen nicht nur Mittel zum Zweck, nicht also nur Teilchen des Apparats sind?“ (S. 77)

Kant vs. Eucken

- *Freedom* (as autonomy), *equality* (before the law + equality of rights) and *independence* as inalienable attributes of citizens
- Categorical Imperative + overcoming of tutelage/immaturity
- Interrelatedness of freedom and property rights
- State tasks: protection of liberty and property rights, principle of equal opportunities (institutionally implemented)
- Focus on commutative justice: social vs. welfare state

Smith vs. Eucken I

- *Law-determined freedom + law-governed state*
 - *individualrechtliches + ordnungspolitisches* safeguarding of liberty
 - Kantian notion of autonomy (i.e. emancipation/enlightenment, overcoming of immaturity/tutelage)
 - *Liberty as autonomy*: constitutional state, market-based economy and (ethical-intellectual) education as preconditions
- Focus on *commutative justice*: justice of contracts and exchange (i.e. Vertrags-/Tauschgerechtigkeit)
 - justice of rules and procedures (Regel-/Verfahrensgerechtigkeit instead of Ergebnismerechtigkeit)
 - criteria of impartiality, reciprocity, equality of treatment
 - institutional ethics
 - limited scope of distributive justice

Smith vs. Eucken II

- Combat exclusive social privileges (i.e. monopolies, cartels, et al.)
→ opposition to a weak, party- and pressure group-dominated state
- Otherwise: rise of special interest groups, group egoism/anarchy
→ exclusion, discrimination, partiality, abuses of *hidden, semi-public* powers; *arbitrary, ad hoc, case-by-case* jurisprudence and politics
- Institutional setting: free, competitive markets + rule of law limiting power structures, minimizing political/socio-economic inequalities and enhancing social mobility
- Smith: *individual* and *institutional ethic* control mechanisms
→ compatibility: self-interest vs. public interest

Smith vs. Eucken III

- Modality of governance: power-concentration/-abuse restricting mechanisms → avoidance of oppression + restraining arbitrary decision making processes
- Criteria: impartiality, generality, and universality → main problem: particularism and partiality, not pursuit of self-interest per se
- Implementation of precise, clear, transparent and general rules (of law) → limit state's competences
- Required: impartial administration of justice + elimination of discretionary powers
- Overall aim: consumer's sovereignty + personal liberty
- Remarkable: *normative egalitarianism, two-stage argumentation* (efficiency vs. ethical arguments), competition in efficiency and on the merits (*Leistungs- instead of Behinderungswettbewerb*)

Concluding Remarks I

Analogies:

- Republican liberalism
- Primacy of law; rule of law/liberal constitutional state + limits of freedom and power
- Life, liberty and property (fundamental, innate and inalienable rights)
→ safeguarding of fundamental rights
- Equality of opportunity/rules vs. equality of results
- Competition on the merits as instruments to protect liberty and human dignity
- Multi-dimensional concept of justice → mainly propagating commutative/procedural justice + negative freedom
- Combination of efficiency/allocation and distributive arguments;
→ functioning *and* humane social order!

Concluding Remarks II

- Rejection of monopolistic structures and cartel dominated economy
- Clear preference for market and price mechanisms, competition as an “instrument of disempowerment” (Böhm), and liberty
- Disapproval of re-feudalization (Vermachtung), exclusive privileges, rent seeking and special interest groups
- Formal/informal + individual/institutional ethic control variables
- Limits of state’s competences: framing, regulating and ‘ordering policy’ yes, but no ‘process policy’ (i.e. case-by-case and ad hoc interventionism)
- (Slightly) favouritism of Ordnungs- instead of Prozesspolitik + privilege-free Wettbewerbsordnung

Concluding Remarks III

Divergences:

- Neglect of the ordering function of the state: competitive markets demand institutions of governance and a 'strong state' focusing on the rules of the game (i.e. *order of rules*)
- Competition, self-regulating liberty, and market mechanisms alone are insufficient to sustain a just and peaceful society
- Economic policies that institutionally frame instead of influencing or intervening into market processes and the play itself (i.e. *order of actions*), are required in order to establish *Leistungswettbewerb*
- Smith: individual/virtue ethic level vs. Eucken: meso/macro level
- Kant/Smith: *partially* underestimating/neglecting the institutional-ethic level + lacks *systematic, consciously designed* Ordnungspolitik
- Eucken emphasizes constitutional level of restrictions: i.e. ordoliberal level of *Wirtschaftsordnungspolitik*
→ *systematic* and *deliberate* market based regulatory policy