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The Myths of Ordoliberalism

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The Myths of Ordoliberalism[1]

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Introduction

Ordoliberalism, Germany's allegedly distinctive and dominant economic philosophy, has been cited by a large number of influential writers – including Mark Blyth, Wolfgang Streeck and Vivien Schmidt – as a major, even determining, influence over German and European economic policy in recent years. The claim, as this paper will demonstrate, is often an exaggeration and, more importantly, misleading. Ordoliberalism has been, and is, much less influential than is often assumed to be the case. And yet the importance attributed to it is itself significant because it serves to distract attention from the real forces driving policy. In particular, to focus on European (especially German) leaders' claimed commitment to ordoliberalism suggests that they are (partially at least) prisoners of rigid belief systems, victims of forces that are almost beyond their conscious control.[2] This, as will be demonstrated, is not the case.

The example of Streeck is particularly important because his work offers an otherwise powerful and perceptive critique of the European crisis and of the authoritarian state that, in his view, the European Union (EU) has now become. His analysis of ordoliberalism begins with an evocation of the legacy of 1930s Nazi advisor Carl Schmitt. As interpreted by Streeck, Schmitt's concern was with the insulation of economic decision-making from democratic debate and contestation, for fear of politico-economic authority "falling into the hands of social forces that might use it for non-liberal, market subverting objectives."[3] If trade unions (or the working class more generally) were able to influence economic policy then social justice concerns might, Schmitt feared, trump both economic efficiency and sacrosanct property rights. Thus, Schmitt envisaged a state that would steer clear of direct economic interventions in the market but

[1] This paper started life as a workshop presentation for the Critical Political Economy research cluster in University College Dublin – my thanks to all the workshop participants, especially Marie Moran and Roland Erne, for their very helpful feedback. Roland also provided valuable comments on a later draft of the paper, as did Michael Holmes, Aidan Regan and Imre Szabo. Herman Michiel, Steffen Stierle and Klaus Drager supplied positive feedback on a version of the paper circulated to the Lexit network.

[2] To take just one example, Schmidt (2014), referring to ordoliberalism, speaks of "the hold of old ideas that can't be dislodged because they are so fundamental to actors' understanding of events – and themselves": 'Speaking to the Markets or to the People? A Discursive Institutionalist Analysis of the EU's Sovereign Debt Crisis', *The British Journal of Politics and International Relations* 16, p. 194.

[3] Streeck, W. (2016) *How Will Capitalism End? Essays on a Failing System*, Verso, p. 151.

would simultaneously shield the market from redistributionist claims – by force if necessary.

Citing the European Central Bank (ECB) president's famous 2012 claim that he would do "whatever it takes" to preserve the euro, Streeck links this to Schmitt's notion of a strong executive power responding to a state of emergency by using whatever legal or non-legal means are necessary to protect the community (or designated interests therein). In such moments, Schmitt noted, "Not kennt kein Gebot" (necessity knows no law).[4] Streeck goes on to argue that this vision, in modified form, permeated post-war ordoliberalism, which also stressed the importance of a strong (in some respects at least) state as the necessary protector of the market economy.

I argue here that this misunderstands or misrepresents ordoliberalism in at least two important respects. First, it elides the extent to which, for genuine ordoliberals, law is paramount: economic decision-making has to be guided by strict legal codes, consistently applied, and not by the Schmittian exercise of arbitrary executive power. Second, and as already mentioned, ordoliberalism, in this 'pure' sense, has been far less influential in both German and European economic policy formation than is often claimed.[5]

This paper offers a brief overview of the essential characteristics of ordoliberalism, before moving on to assessments of how much influence ordoliberalism has actually wielded over German and European economic policy. The next section demonstrates that one of the concerns often attributed almost exclusively to ordoliberalism – the insulation of economic policy making from democratic deliberation – is in fact characteristic of neoliberal economic thought and practice more broadly, and has long been at the forefront of economic reform programmes throughout the world. The conclusion reflects on the social role that is played by a claimed commitment to ordoliberal principles – even if they are not followed in practice and are not unique to the ordoliberal tradition.

The essence of ordoliberalism

Ordoliberalism only emerged as a distinct term and school of thought after the Second World War, though several of its leading thinkers had set out some of their economic (and other) ideas as early as the 1920s.[6] Indeed, the ordoliberals' distaste for democracy (shared with Schmitt, as is discussed further below) was

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[4] Cited in *Ibid*. For a detailed evaluation of Schmitt's complex (even contradictory) politico-philosophical approach, see Balakrishnan, G. (2011) 'The Geopolitics of Separation: Response to Teschke's "Decisions and Indecisions"', *New Left Review* (57).

[5] A point that Streeck himself partially acknowledges vis-à-vis Germany in a later essay: Streeck, W. (2017) 'Playing Catch Up', *London Review of Books* 39 (9).

[6] Bonefeld, W. (2017) 'Authoritarian Liberalism: From Schmitt via Ordoliberalism to the Euro', *Critical Sociology* 43 (4-5), p.757 (fn 2).

largely derived from their fustigation of the democratic elements of the Weimar Republic.[7] However, the codification of what would come to be seen as a distinctively ordoliberal approach to economic matters is a post-war phenomenon, and it is that which is the main concern of this paper.

Ordoliberalism in that post-war codification constitutes a partially distinct strand of thought within a broader neoliberal canon; in fact, Dardot and Laval describe ordoliberalism as simply "the German form of neoliberalism."[8] In line with the overall neoliberal outlook, competition within the framework of the market economy lies at the core of the ordoliberal philosophy – for two main reasons.[9] First, in practical terms, such a competitive market economy, by maximising incentives to production, is seen as the only way that the problem of the scarcity of goods can be overcome and economic output maximised. Second, and at a more basic philosophical or even moral level, such a system is seen as granting people maximum freedom to live their lives as they see fit and thus enhances human dignity.

Michel Foucault, in his seminal lectures at the College de France in 1978 and 1979, claimed that ordoliberalism "should not… be identified with laissez-faire, but rather with permanent vigilance, activity, and intervention."[10] The reason for such vigilance is that, for ordoliberals, enterprise and competition need to be fostered and protected, at the level of both the individual and the firm, they do not occur 'naturally'. Anti-competitive corporate or state practices (such as cartels or state monopolies) must be legally prohibited, while individuals must be obliged (and pushed where necessary) to take responsibility for their own economic welfare through the market.[11] The latter is what Werner Bonefeld describes as a project "to embed entrepreneurialism as a character trait into society at large."[12] Where competition is distorted or limited, the state or some

[7] *Ibid*., p. 748. See also Kiely, R. (2017) 'From Authoritarian Liberalism to Economic Technocracy: Neoliberalism, PoliticsC:\olitics and "De-Democratization"', *Critical Sociology* 43 (4-5).

[8] Dardot, P. and C. Laval (2017) *The New Way of the World: On Neoliberal Society*, Verso, p. 75; see also Woodruff, D.M. (2016) 'Governing by Panic: the Politics of the Eurozone Crisis', *Politics and Society* 44 (1), p. 94, where ordoliberalism is described as "the particular German variant of neoliberalism." The most comprehensive account in English of the historical evolution and distinctive characteristics of the ordoliberal approach is Ptak, R. (2009) 'Neoliberalism in Germany: Revisiting the Ordoliberal Foundations of the Social Market Economy', in Mirowski, P. and D. Plehwe (eds) *The Road from Mont Pelerin: The Making of the Neoliberal Thought Collective*, Harvard University Press.

[9] Dardot and Laval, *op. cit*., p. 83.

[10] Foucault, M. (2010) *The Birth of Biopolitics: Lectures at the College de France 1978-1979*, Palgrave Macmillan, p. 132; the quote describes neoliberalism but is clearly intended to refer to the ordoliberal variant thereof.

[11] Dulien, S. and U. Guerot (2012) 'The Long Shadow of Ordoliberalism: Germany's Approach to the Euro Crisis', European Council on Foreign Relations Policy Brief, available at http://www.ecfr.eu/page/-/ECFR49_GERMANY_BRIEF.pdf, p. 2.

[12] Bonefeld, W. (2012) 'Freedom and the Strong State: On German Ordoliberalism', *New Political Economy* 17 (5), p. 635. See also Read, J. (2009) 'A Genealogy of Homo-Economicus: Neoliberalism and the Production of Subjectivity', *Foucault Studies* (6). On the question of the

private interests are seen as illegitimately dominating and exploiting the individual.[13] And where individuals are insufficiently enterprising, then their dignity is seen as undermined through their dependency on the state or on others.

It is especially in matters such as vigilant state intervention and legal prohibition of barriers to competition that the distinctive character of ordoliberalism lies. The competitive order has to be built and maintained by an *Ordnungspolitik*, an active and 'ordering' form of politics.[14] By contrast, other forms of neoliberalism tend (at least in theory) to see competition as arising more or less naturally so long as the state gets out of the way.[15] Not so for one of the principal architects of ordoliberalism, Wilhelm Ropke: "A satisfactory market economy capable of maintaining itself does not arise from our energetically doing nothing. Rather it is an artistic construction and an artifice of civilisation."[16]

Ropke used the metaphor of a sporting contest which would degenerate into a riot without agreed and enforced rules of the game – the job of the state is to act as a referee, constantly intervening and imposing penalties for anti-competitive behaviour as appropriate, not to simply be a bystander watching and applauding.[17] Absent this state-imposed legal *ordo*, market forces will not, left to their own devices, operate freely.[18] Crucially, the legal order underpinning ordoliberalism has to be based on agreed rules that are consistently followed and equally consistently enforced – inconsistency in the application of the rules (such as discretionary exemptions applied to certain actors) undermines the entire construction.

Another, closely related, feature of ordoliberalism is what David Woodruff describes as the "proper assignment of liability to market actors."[19] A competitive market economy depends on entrepreneurs receiving their due rewards for their innovation and efforts, but also on those who fail the tests of the market being punished for their mistakes. In this sense, the ordoliberal outlook is

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individual becoming an "entrepreneurial self", see Peters, M.A. (2007) 'Foucault, Biopolitics and the Birth of Neoliberalism', *Critical Studies in Education* 48 (2), p. 173; and Davies, W. (2016) 'The New Neoliberalism', *New Left Review* (101), p. 127.

[13] Dardot and Laval, *op. cit*., p. 87.

[14] *Ibid*, p. 76.

[15] Mirowski, and Plehwe, *op. cit*.

[16] In Dardot and Laval, *op. cit*., p. 78. There is a striking parallel here with Karl Polanyi's observation that "There was nothing natural about laissez-faire; free markets could never have come into being merely by allowing things to take their course" – in Cha, T. (2017) 'Rereading Friedrich Hayek and Karl Polanyi in the Late-Modern Condition of Fragility', *Political Studies Review* 15 (3), p. 396; the crucial difference is that Polanyi saw the (often violent) state intervention necessary to construct (or expand the reach of) markets as damaging to civilisation.

[17] *Ibid*., p. 86.

[18] Berghahn, V. and B. Young (2013) 'Reflections on Werner Bonefeld's "Freedom and the Strong State: on German Ordoliberalism" and the Continuing Importance of Ordoliberalism to Understand Germany's (Contested) Role in Resolving the Eurozone Crisis', *New Political Economy* 18 (5), p. 775.

[19] *Op. cit*., p. 97.

underpinned not only by a legal order but also by certain moral principles.[20] That, for example, the state would make good the losses that should be borne by failed businesses is, in principle, anathema to ordoliberalism – a topic that will be returned to in the context of the current Eurozone crisis.

The centrality, for ordoliberals, of state intervention to the harmonious functioning of the market economy (by, for example, ensuring firms do not dodge the penalties they should pay for failure, and that individuals not become welfare-dependent) begs a question: what *form* of state did ordoliberals envisage as carrying out these tasks? The short answer is that it was to be a state as far as possible uncorrupted by mass democratic influence, and here there is indeed a pronounced overlap with Schmitt's worldview – forged, as noted above, in the crucible of Weimar amidst claims that that regime's overwrought democracy had paved the way for crisis by fanning the flames of, in Ropke's words, the "menacing dissatisfaction of the workers."[21]

The anti-democratic impulse arose from the fact that the mass of the population (when their dissatisfaction was so enflamed) was viewed as likely to choose unwise policies (such as welfare dependency, guaranteed employment or expropriation of entrepreneurs' wealth) if not guided and constrained by wiser council, those Ropke arrestingly described as "aristocrats of public spirit."[22] One of ordoliberalism's founding fathers (alongside Ropke), Walter Eucken, creator of the ordoliberal Freiburg School, remarked that "the masses… love the myth, not reason."[23] Policy makers should, instead, be guided by the scientific precepts of designated economic experts trained in ordoliberal thought and equipped to recognise both the unvarying 'rules of the game' and how they should be enforced. This would be the culmination of what Ropke called (favourably) a "revolt of the elite."[24]

Emphasising its hostility to democracy, Wolfgang Streeck claims that the most enduring legacy of ordoliberalism is the case it made for a "new politics carving out a space for free markets sustained and guarded by state authority while protected from egalitarian democratic infringement… the insulation of a politically instituted market economy from democratic politics."[25] However, as will be shown later in this paper, the desire to protect markets from democracy is by no means unique to ordoliberalism. The elites in most parts of the world, not

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[20] Dardot and Laval, *op. cit*., p. 77.
[21] In Bonefeld (2017), *op. cit*., p. 752.
[22] In Bonefeld (2012), *op. cit*., p. 650. Ropke would remain a committed anti-democrat all his life, supporting the 1964 military coup in Brazil and defending apartheid in South Africa (Kiely, *op. cit*., p. 738).
[23] In Biebricher, T. (2013) 'Europe and the Political Philosophy of Neoliberalism', *Contemporary Political Theory* 12 (4), p. 342.
[24] In Kiely, *op. cit*., p. 732.
[25] Streeck (2016), *op. cit*., p. 155.

just Germany and the rest of Europe, can usually be found to be revolting along these lines.

The heyday of ordoliberalism? (West) Germany after World War 2

Ludwig Erhard was the West German economics minister from 1949 to 1963, and chancellor from 1963 to 1966. He is often described as the architect of the so-called German 'economic miracle.' Both Eucken and Ropke exercised significant and direct influence over Erhard.[26] Alfred Müller-Armack was an economist who also helped translate ordoliberal theory into practice through his participation in advisory committees and, later, his work as a government official – after 1952 he was the head of Erhard's policy department.[27] Müller-Armack would go on to be one of the key German architects of the European economic governance framework (discussed further below).[28]

Bonefeld notes that "it fell to Müller-Armack to provide the ordoliberal conception of the entrepreneurial society with a catchy slogan" – the 'social market economy.'[29] He first coined the phrase in a book published in 1946. But what exactly did the formulation mean? For some fellow neoliberals, it was a potential invitation to disaster: the Austrian-born economist Friedrich Hayek denounced 'social' as a "weasel word" that could open the door to anti-competitive state intervention in the interests of so-called 'social justice', thus ultimately undermining the very basis of the market economy.[30] (Hayek's position reflects one of the fault lines within neoliberalism between, in particular, its German/ordoliberal and Austrian-American variants, the latter associated especially with Hayek).[31]

But for the ordoliberals, the idea of the social market economy was supposed to be very different to what we might now think of as a welfare state. Social progress was to be achieved through economic growth based on the free operation of competitive markets, not on income transfers from rich to poor.[32] Erhard, who derided the welfare state as a situation "where everyone has one hand in the pocket of another,"[33] would later defend the use of the word social to

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[26] Dardot and Laval, *op. cit.*, p. 81.

[27] *Ibid.*, pp. 80, 90; Berghahn and Young (*op. cit.*, p. 770) describe him as a "very close aide" of Erhard.

[28] In the 1930s he had joined the Nazi party (Kiely, *op. cit.*, p. 732), declaring (in 1933) *Mein Kampf* to be a "fine book" (in Berghahn and Young, *op. cit.*, p. 770); he was also "a fervent supporter of Italian fascism" (Ptak, *op. cit.*, p. 116). The ordoliberals' claim to be a corrective to pre-war authoritarianism is, at best, a generalisation (see Ptak, *op. cit.*, pp. 117-9).

[29] Bonefeld (2012), *op. cit.*, p. 645.

[30] *Ibid.*, pp. 645-6.

[31] Dardot and Laval, *op. cit.*, p. 50; see also Kiely, *op. cit.*, p. 733. Ptak (*op. cit.* pp. 107-8) argues that the Austrian-German difference here is of less substantive import than is sometimes claimed.

[32] Dardot and Laval, *op. cit.*, pp. 92-3; and Bonefeld (2012), *op. cit.*, p. 646.

[33] In Dardot and Laval, *op. cit.*, p. 92.

Hayek himself, insisting that it represented no deviation from core ordoliberal (or broader neoliberal) principles.[34] Rather than promoting the dependence of welfare recipients on the state, the ordoliberals' vision was of a society characterised by individuals taking responsibility for their *own* welfare through private insurance and the accumulation of private property.[35]

That might have been the vision, but what was the reality? Ordoliberalism can be argued to have had its early triumphs. In 1948, an advisory committee (including Eucken and Müller-Armack) urged economic management of the Anglo-American occupied zone of Germany to be liberalised – Erhard, then the economic administrator of that zone, agreed and state controls over economic activity were largely abolished, contrary to the *dirigiste* approaches generally in vogue elsewhere in Europe at that time.[36]

But when an economic downturn hit Germany in the early 1950s, the occupying allied powers, along with neo-corporatist Catholic influences within Germany itself, pushed the German government to boost direct state intervention in the economy (well beyond the pro-competition parameters of the ordoliberals) and, specifically, to raise aspects of social spending:

> "The outcome was a mix of ordoliberal institutions that generated stable price levels and hindered cartelization and quasi-corporatist industrial relations based on a Bismarckian insurance state. The highly successful model of Rhine capitalism was born."[37]

And it was very far from being born along solely ordoliberal lines. German economic policy was, in reality, a hybrid of ordoliberalism (influential though that may have been), Bismarckian state planning, Keynesian economic thinking, and Rhenish-Catholic corporatism allied (in part) to a resurgent (also largely corporatist) trade union movement, amongst many other elements.[38] Chancellor Adenauer ensured that checks on market forces (in the form of trade union

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[34] Ptak, *op. cit*., pp. 107-8.

[35] Foucault, *op. cit*., pp. 143-5. The argument could be made that the established (pre-ordoliberal) German emphasis on social insurance represents in some sense a *precursor* of ordoliberalism in its stress on individuals being expected (and facilitated) to provide for themselves rather than solely relying on state support – see Paster, T. (2013) 'Business and Welfare State Development: Why Did Employers Accept Social Reforms?', *World Politics* 65 (3). The fact that this private provision largely takes place through publicly regulated, not-for-profit organisations, and that employers make substantial contributions to employee funds, illustrates that this is not a simple market-based model of self-sufficiency: https://www.pri.org/stories/2009-10-09/germanys-health-care-good-model-us and https://www.theatlantic.com/health/archive/2014/04/what-american-healthcare-can-learn-from-germany/360133/

[36] Dardot and Laval, *op. cit*., pp. 80-1.

[37] Hien, J. (2013) 'The Ordoliberalism that Never Was', *Contemporary Political Theory* 12 (4), p. 355.

[38] Foucault, *op. cit*., p. 144; Streeck (2017), *op. cit*.

organisation) were always accepted as facts of life when it came to labour markets, however distasteful they might have seemed to diehard ordoliberals.[39] Most tellingly, the dominant Christian Democratic Union (CDU) party never fully bought into the ordoliberals' purist ideals of competitive markets.[40]

Brigitte Young makes a similar (and equally convincing) case: post-war German success was built on factors such as an expansionary social policy, social partnership with the trade unions, the Marshall Plan, and the London Debt Agreement of 1953 that saw 50 per cent of Germany's external debt written off, equivalent to 10 per cent of its annual GDP at the time.[41] (Greece, Ireland, Portugal and Spain were, in one of history's ironies, amongst those who signed up to the write-off).

In more recent times, the Hartz labour market reforms undoubtedly boosted German price competitiveness in the 2000s, but at the same time Germany was breaching the EU's fiscal deficit rules (see below) while simultaneously maintaining many elements of its corporatist social welfare system.[42] Again, the recipe was very far from being a simple ordoliberal one. And in any event, Bibow makes the point that the German strategy could work only if other countries behaved *differently* to Germany and ran up debt in order to purchase ever more competitive German exports, an asymmetry that would at the very least suggest an uneven application of ordoliberalism within the Eurozone.[43]

Ordoliberalism goes to Brussels?

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[39] Streeck (2017), *op. cit*.

[40] Dulien and Guerot, *op. cit*., p. 5. Hien (*op. cit*., p. 354) notes that sections of German industry had, in any event, never been fans of the ordoliberal opposition to cartels.

[41] Young, B. (2014) 'German Ordoliberalism as Agenda Setter for the Euro Crisis: Myth Trumps Reality', *Journal of Contemporary European Studies* 22 (3); see also Kaiser, J. (2013) 'One Made it out of the Debt Trap: Lessons from the London Debt Agreement of 1953 for Current Debt Crises', Friedrich Ebert Stiftung, available at http://library.fes.de/pdf-files/iez/10137.pdf

[42] Young, *op. cit*., p. 284; see also Hien, *op. cit*., p. 355.

[43] Bibow, J. (2013) 'On the Franco-German Euro Contradiction and Ultimate Euro Battleground', Levy Economics Institute of Bard College Working Paper (762). The share of exports in Germany's GDP rose from 30 per cent in the 1990s to over 50 per cent by 2012: Flassbeck, H. and C. Lapavitsas (2013) 'The Systemic Crisis of the Euro – True Causes and Effective Therapies', *STUDIEN*, published by the Rosa Luxemburg Foundation, available at www.rosalux.de, p. 14. See also Johnston, A. and A. Regan (2016) 'European Monetary Integration and the Incompatibility of National Varieties of Capitalism', *Journal of Common Market Studies* 54 (2). Fritz Scharpf has suggested that turning all of Europe into a German-style export-surplus economy, and thus overcoming this issue of asymmetry, may, in fact, be a viable project, albeit not necessarily a desirable one – 'Die Politische Ökonomie der Erzwungenen Angleichung – 1' (2017), available at https://makroskop.eu/2017/02/die-politische-oekonomie-der-erzwungenen-angleichung/

> "Even on its home turf of anti-trust legislation, ordoliberalism suffered painful setbacks in the politics of West Germany, its leading theorists shifting their attention early on to the emerging European Economic Community, whose competition law they effectively managed to monopolise."[44]

Hayek (see above) shared with the ordoliberals an interest in how European regional governance might serve to delimit (the wrong sort of) state intervention. In 1939 he pinpointed the role that inter-state or supranational federations could play in the "institutionalization of a single market free from state intervention"; in that 1939 essay – 'The Economic Conditions of Interstate Federalism' – Hayek commended the fact that "much of the interference with economic life to which we have become accustomed will be altogether impracticable under a federal organization."[45]

As mentioned earlier, Müller-Armack, a prominent ordoliberal, played a key role, as a representative of West Germany, in the shaping of what would become EU economic governance – and, whatever his other differences with Hayek, he sought to shape that governance largely in the terms envisaged by Hayek.[46] Christian Joerges credits ordoliberalism with the fact that a particular mode of economic governance would come to be granted legal-constitutional authority within the EU: by ensuring that economic freedoms were interpreted as fundamental rights which could be legally upheld, an essentially "ordoliberal economic constitution" was put in place at the European level.[47]

Certainly the legacy of ordoliberalism can be seen in the sometimes vigorous ('vigilant' to use Foucault's term) competition policy pursued by the European Commission and in the anti-labour rulings of the European Court of Justice (ECJ). These, on the face of it, represent the deployment of powerful legal tools to force markets open and to keep them open, safe from the threat of national governments' market-distorting state aids, the competition-abusing practices of large corporations, and the anti-competitive heresies of trade unions' negotiated entitlements. This last refers, most especially, to the 2007 Laval and Viking judgements of the ECJ where the right of an employer to 'freely' provide services across European borders was held to trump trade unions' collective bargaining agreements.[48] Right down to the present day, a vigilant pro-

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[44] Streeck (2017), *op. cit*.

[45] In Anderson, P. (2009) *The New Old World*, pp. 30-31.

[46] Ryner, M. and A. Cafruny (2017) *The European Union and Global Capitalism: Origins, Development, Crisis*, Palgrave Macmillan, p. 42. Dardot and Laval (*op. cit*., p. 90) describe Müller-Armack as "one of the most effective figures in asserting German conditions in the process of constructing Europe."

[47] Joerges, C. (2014) '"Brother, Can You Paradigm?"', *I-Con* 12 (3), p. 772.

[48] Nicol, D. (2010) *The Constitutional Protection of Capitalism*, Hart Publishing, pp. 101-104; Scharpf, F. (2009) 'Legitimacy in the Multilevel European Polity', *European Political Science Review* 1 (2), pp. 191-2. Which is not to say that the ECJ may not sometimes act to restrict competition on grounds of, for example, environmental concerns or other public policy

competition policy remains a hallmark of the EU – witness the €2.42 billion fine imposed on US tech giant Google in June 2017 for alleged abuse of its market-dominant position.[49]

However, the overall record is less clear-cut than it might first appear, and the features described in the previous paragraph are of relatively recent provenance. Ryner and Cafruny note that up until the 1970s at least, the EU often did not act against company mergers designed to create 'national champions' (seeking instead to facilitate the emergence of European corporations big enough to compete with those from elsewhere), and that inter-company cooperation (including cartel-like behaviour) as well as state aid to companies was often tolerated "in ways that contravened rather than conformed to market logic."[50]

As was the case within Germany, the EU's practice did not always accord with the ordoliberal theory: "the Commission repeatedly ignored breaches of EU competition law that risked being politically controversial."[51] As late as 2003 trade union mobilisation persuaded the EU Commission's Competition Directorate to accept a French state rescue package for power companies, demonstrating that "even the decisions of one of the most politically isolated, decision-making bodies of the EU can be influenced by transnational labour campaigns."[52]

This mixed EU record vis-à-vis competition policy is elaborated on in detail by Angela Wigger and Hubert Buch-Hansen, who note the Commission's initially "overtly lenient approach toward economic concentration and state aid" – for example, only 21 state aid schemes were prohibited in the 1970s, a tiny proportion of all those in operation.[53] Even cartels were mostly tolerated in

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considerations: Bubak, O. (2017) 'Gill in Brussels? Towards (Re)locating New Constitutionalism', *European Politics and Society* (on-line). The specific point at issue here is that the ECJ decisively placed very powerful limits on the extent to which competition could be restricted by trade unions' negotiated agreements: Davies, A.C.L. (2008) 'One Step Forward, Two Steps Back? The *Viking* and *Laval* Cases in the ECJ', *Industrial Law Journal* 37 (2). That the ECJ can also act in an inconsistent (even apparently illogical) manner is not in dispute – see footnote 91; as this paper makes clear, any notion of the EU being characterised by an unrelenting and consistent application of ordoliberal 'law', by the ECJ or by other actors, is a myth.

49 http://europa.eu/rapid/press-release_IP-17-1784_en.htm

50 Ryner and Cafruny, *op. cit*., p. 42.

51 Buch-Hansen, H. and A. Wigger (2010) 'Revisiting 50 years of Market-Making: The Neoliberal Transformation of European Competition Policy', *Review of International Political Economy* 17 (1), p. 31.

52 Erne, R. (2008) *European Unions: Labor's Quest for a Transnational Democracy*, Cornell University Press, p. 190.

53 Wigger, A. and H. Buch-Hansen (2013) 'Explaining (Missing) Regulatory Paradigm Shifts: EU Competition Regulation in Times of Economic Crisis', *New Political Economy* 19 (1), pp. 119, 120. The Commission did take some steps to try and encourage *pan-European* economic champions, granting especially lenient exemptions to companies based in more than one member state – Buch-Hansen and Wigger, *op. cit*., p. 30.

industries such as steel and shipbuilding.[54] This would change in the 1980s: state aid was increasingly challenged (though note that trade unions could still force exemptions in the early 2000s – see above), cartel behaviour was increasingly prosecuted and fined, and the Commission issued a stream of directives forcing the break-up and privatisation of public monopolies in the utility sector in particular.[55] The 'Rhenish model' of capitalism was now being challenged by approaches which were without doubt neoliberal, though not necessarily fully ordoliberal.[56]

An indication that ordoliberalism *per se* was not that influential here was the fact that, despite this significant shift towards a more pro-competition ethos, the Commission was still extremely tolerant of company mergers that facilitated concentration of ownership in the private sector, blocking only 0.43 per cent of mergers notified to it between 1990 and 2002.[57] Crucially (see below), this facilitated growing concentration of capital in, amongst other sectors, finance.[58]

The Maastricht Treaty of 1992 – the blueprint for European Monetary Union (EMU) – would stipulate that member states had to implement policy in "accordance with the principle of an open market economy with free competition."[59] Maastricht thus appeared to perpetuate the general pro-competition ethos of the EU (as activated and enforced from the 1980s onwards, with the important exception of mergers notwithstanding), and the 1997 Amsterdam Treaty placed limits on states' deficit spending and debt levels – through the Stability and Growth Pact (SGP) – and thus on the extent to which governments could economically intervene *other than* to promote the competitive market economy.[60] In similar vein, the mandate and structure of the European Central Bank (ECB) sought to remove the scope for discretionary

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[54] Wigger and Buch-Hansen, *op. cit.*, p. 120.
[55] *Ibid.*, p. 121. This applied, to take just two examples, in the area of public transport – see Dobbin, E. (2001) 'Rail and Transport Policy: National Paradigms and Supranational Structures', in Anderson, S.S. and K.A. Eliassen (eds) *Making Policy in Europe* (second edition), Sage; and in telecommunications – Thatcher, M. (2004) 'Varieties of Capitalism in an Internationalized World: Domestic Institutional Change in European Telecommunications', *Comparative Political Studies* 37 (7).
[56] Wigger, A. and A. Nolke (2007) 'Enhanced Roles of Private Actors in EU Business Regulation and the Erosion of Rhenish Capitalism: the Case of Antitrust Enforcement', *Journal of Common Market Studies* 45 (2).
[57] Wigger and Buch-Hansen, *op. cit.*, pp. 122-3.
[58] *Ibid.*, p. 125. See also Van Appeldoorn, B. and L. Horn (2007) 'The Marketisation of European Corporate Control: a Critical Political Economy Perspective', *New Political Economy* 12 (2).
[59] Articles 119 and 120 of the consolidated Treaty on the Functioning of the European Union: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN; see Oberndorfer, L. (2015) 'From New Constitutionalism to Authoritarian Constitutionalism: New Economic Governance and the State of European Democracy', in Jager, J. and E. Springler (eds) *Asymmetric Crisis in Europe and Possible Futures: Critical Political Economy and Post-Keynesian Perspectives*, Routledge, p. 189.
[60] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l25021

monetary policy from most national governments and even, ostensibly, from political influence of any sort.

But even in the 1990s, leading latter-day ordoliberals in Germany criticised Maastricht and the SGP on the grounds that they allowed, in practice, for political bargaining around the conduct of fiscal policy rather than constituting a strict rules-based and justiciable framework.[61] These criticisms would be borne out by subsequent flouting of the SGP rules by member states including France and Germany, neither of which was fined for its rule-breaking behaviour.[62] For genuine ordoliberals, this fiscal governance framework paved the way not for the rules-based, depoliticised economic decision-making they craved, but rather for 'rules' that could be ignored or bent according to the vagaries of political horse-trading. And the EU response to the financial crisis would see an ever more fast and loose approach adopted to the idea of binding and consistent economic 'law', as is discussed further below.

Germany responds to the downturn – ordoliberalism in name only

Can one say that Germany's domestic response to the recent economic crisis has been in any way ordoliberal? David Woodruff answers in the affirmative: yes, Germany launched its own stimulus programmes to combat the crisis – "a mixture of guarantees, subventions, and nationalizations" – but it then, he claims, reverted to ordoliberal norms by pushing for a 'debt brake' and other fiscal constraints at EU level to ensure that such discretionary interventions would not be available to itself or to others in the future.[63]

The question of those future rules is discussed further below, but, overall, Woodruff's argument is open to challenge. Schelkle notes that Germany's immediate response to the crisis was actually much more expansionary than that of the supposedly *dirigiste* French state.[64] Vail documents how the German government, responding to domestic political imperatives, adopted the largest programme of fiscal stimulus of any European country – five times greater than that of France as a share of GDP.[65] This was much closer to Keynesianism than to ordoliberalism.

An even more telling case study is that provided by Helen Thompson on the German approach to the banking crisis, an issue which bridges the divide

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[61] Joerges, *op. cit.*, pp. 773-4.
[62] http://blogs.ft.com/westminster/2011/12/who-originally-broke-the-eu-fiscal-rules-france-and-germany/?mhq5j=e1
[63] Woodruff, *op. cit.*, pp. 97-8.
[64] Schelkle, W. (2012) 'Policymaking in Hard Times: French and German Responses to the Eurozone Crisis', in Bermeo, N. and J. Pontuson (eds) *Coping with Crisis: Government Reactions to the Great Recession*, Russell Sage Foundation.
[65] Vail, M.I. (2014) 'Varieties of Liberalism: Keynesian Responses to the Great Recession in France and Germany', *Governance: an International Journal of Policy, Administration, and Institutions* 27 (1), p. 78.

between the domestic German response to crisis and the broader European (German-influenced) crisis management strategy. The German government, Thompson notes, moved decisively to protect the interests of German banks, including by supporting the 'bail outs' of the periphery countries, in reality the rescue of German financial institutions which had lent money to those countries, seizing the "opportunity… to Europeanise the problems of the German banking sector."[66] In 2009, German banks accounted for over 30 per cent of the debts owed by Greece, Ireland, Italy, Portugal and Spain.[67] And the strategy worked: German banks escaped with minimal losses (public 'bail out' money having been essentially recycled into private debt repayments), their exposure to Greece in particular substantially reduced by the time the German authorities came round to the idea of writing down some of that country's debt.[68] German policy, Thompson writes, overwhelmingly "served the interests of the German banks."[69]

That this was not widely trumpeted by German decision-makers is neither here nor there:

> "when discussion of Germany does come to the fore they [many commentators] are prone to take the domestic political narrative in Germany about the euro-zone crisis at face value. Yet empirical scrutiny of… policy action and the incentives underpinning it shows this narrative to be problematic and indeed in good part disingenuous… we are left defending the assumption that politicians and officials' own accounts of what they are doing, and the subsequent political reactions to their actions, are reliable indicators of the actual stakes of decision-making when palpably this is not necessarily the case."[70]

To argue, as Mark Blyth does, that "Germans… were the only people who truly believed what they were saying" in terms of (German or European) crisis responses is untenable.[71] Outgoing German finance minister Wolfgang Schäuble may say that he comes from Freiburg and espouse a nominally ordoliberal agenda.[72] But how does the strict rules-based regime of (ideal) ordoliberalism square with the massive bail out of European (including German) banks that the European 'austerity' (for some) regime has demanded and that he has personally

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66 Thompson, H. (2015) 'Germany and the Euro-Zone Crisis: The European Reformation of the German Banking Crisis and the Future of the Euro', *New Political Economy* 20 (6), pp. 8-9.
67 *Ibid*., pp. 6-7.
68 Joshua Rahtz (2017) credits Wolfgang Schäuble with urging haircuts for bank bondholders in 2011 – 'The Soul of the Eurozone', *New Left Review* (104), p. 129 – but, as Thompson's timeline makes clear, this was only *after* German banks were largely off the hook due to public 'bail out' funds having been channelled to Greece to be recycled as debt repayments to German and other banks.
69 Thompson*, op. cit.,* p. 15.
70 *Ibid*., pp. 2-3.
71 Blyth, M. (2013) *Austerity: The History of a Dangerous Idea*, Oxford University Press, p. 143.
72 Hien, *op. cit*., p. 356; see also Rahtz, *op. cit*.

championed?[73] Schäuble has the chutzpah to cite Eucken approvingly on the need for risk-takers to bear losses as well as to reap gains, but he has helped ensure that few such disciplines applied to German finance.[74]

Is the post-crisis EU now more of an ordoliberal construct? A la carte legalism

German responses to the crisis involved domestic expansionary policies that were more Keynesian than ordoliberal and a determined (largely successful) attempt to ensure that the debts of German banks were redeemed by public hand-outs misleadingly labelled 'bail outs' to peripheral countries. At the same time, however, the EU's economic governance regime has been extended and expanded in ways that some see as conforming to a more ordoliberal blueprint. It is thus possible to argue (albeit, in my view, unconvincingly) that, whatever short-term considerations of economic and politics may have governed Germany's immediate crisis response, the longer-term model now unfolding involves a Europe-wide restoration and institutionalisation of ordoliberal principles.

Thomas Biebricher (2013) takes up this argument: "the central tenets of the political philosophy of ordoliberalism, which amounts to an authoritarian, undemocratic and technocratic view of politics, are currently being put into practice with the various reforms of European economic governance."[75] Under the terms of new EU-level mechanisms such as the Fiscal Treaty (including seemingly stronger limits on deficits and debt than were contained in the SGP), the Macroeconomic Imbalance Procedure (MIP) and the Excessive Deficit Procedure, countries that do not abide by fiscal rules can be punished accordingly – by fines and/or by the withholding of support (including liquidity support from the ECB).

Biebricher concludes as follows:

> "it [post-crisis EU economic regime] offers everything in terms of economic governance that the ordoliberals ever dreamed of. With the MIP there is an actor/institution insulated from popular/democratic pressures that is capable of pushing through reforms even against the resistance of elected governments. In all this the Commission relies on

[73] A study by ATTAC estimates that 77 per cent of the Greek 'bail out' went to the financial sector, not to the Greek population: Giannoulis, K. (2013) 'Greek Bailout Only Supports Financial Institutions', *Neweurope*, 19 June; Trumbo Vila, S. and M. Peters (2017) The Bail Out Business: Who Profits from Bank Rescues in the EU?', report for the Transnational Institute, available at https://www.tni.org/en/publication/the-bail-out-business.
[74] In Rahtz, *op. cit*., p. 125.
[75] Biebricher, *op. cit*., p. 339.

> the advice of economic experts and thus switches to a [supposedly] depoliticized and technocratic mode of policymaking."[76]

But is this really the fulfilment of an ordoliberal dream? Oberndorfer suggests that the powers here granted to Commission may actually be in contravention of the EU treaties.[77] Those powers are, in any event, applied asymmetrically: for example, a 2013 Commission review of countries' macroeconomic imbalances typically accused Belgium and France of having excessive wage growth on the arbitrary basis that wage-suppressing Germany constituted the appropriate benchmark for comparison.[78] Likewise, the review criticized supposed labour market rigidities in France despite that fact that labour productivity was actually higher in France than in Germany.[79] There is no doubt that a key aspect of the EU's response to the crisis has been to seek to attack labour rights, especially in those debtor countries that have been obliged to restructure their economies in return for emergency balance of payments support. But this can best be described as an opportunistic (and unevenly implemented) strategy rather than a neutral, even-handed application of economic law.[80]

This scope for arbitrariness is reflected also in the deployment of the macroeconomic targets to be aimed for, especially the 'structural deficit' – a concept that defies precise specification and measurement, let alone can be subject to proper judicial enforcement.[81] In practice (and here wilful ambiguity is also at work), deficit fines were *not* automatically imposed on Spain and Portugal in 2016 despite their breach of Fiscal Treaty rules – *realpolitik* (in the probable sense on this occasion of not wishing to boost the electoral prospects of radical Left opposition parties in Iberia) can still trump the rigorous application of the supposedly set-in-stone regulations.[82] Ordoliberal misgivings about the Maastricht Treaty and the SGP laying the basis for discretionary horse-trading

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[76] *Ibid*., p. 347.
[77] *Op. cit*. pp. 195-7.
[78] Watt, A. (2013) 'EU Commission Makes a Mockery of Imbalance Procedure', *Social Europe*, available at https://www.socialeurope.eu/2013/04/eu-commission-makes-a-mockery-of-imbalance-procedure/
[79] *Ibid*.
[80] Achtsioglou, E. and M. Doherty (2014) 'There Must be Some Way Out of Here: The Crisis, Labour Rights and Member States in the Eye of the Storm', *European Law Journal* 20 (2); Barnard, C. (2012) 'The Financial Crisis and the Euro Plus Pact: a Labour Lawyer's Perspective', *Industrial Law Journal* 41 (1); Currie, D. and P. Teague (2017) 'The Eurozone Crisis, German Hegemony and Labour Market Reform in the GIPS Countries', *Industrial Relations Journal* 48 (2); Marginson, P. and C. Welz (2015) 'European Wage-Setting Mechanisms Under Pressure: Negotiated and Unilateral Change and the EU's Economic Governance Regime', *Transfer* 21 (4); Theodoropoulou, S. (2015) 'National Social and Labour Market Policy Reforms in the Shadow of EU Bail-out Conditionality: the Cases of Greece and Portugal', *Comparative European Politics* 13. My thanks to Vincenzo Maccarrone for drawing my attention to this literature.
[81] Radice, H. (2014) 'Enforcing Austerity in Europe: the Structural Deficit as a Policy Target', *Journal of Contemporary European Studies* 22 (3); and Joerges, *op. cit*., p. 778.
[82] Watkins, S. (2016) 'Casting Off?', *New Left Review* (100), p. 27.

rather than even-handed rule-imposition (see above) have hardly, therefore, been assuaged.

And this is even before one takes into account the practices of the ECB in the context of the crisis, which are clearly deeply discretionary and political rather than rules-based and (notionally) depoliticised. Streeck summarises ECB operations as follows:

> "Today the ECB can at its discretion withhold liquidity from the banking systems of states that refuse to follow its precepts as to their public finances, the size and composition of their public sectors, and even the structure of their wage setting systems. States and governments that do not 'reform' themselves in line with capitalist rectitude, and thereby fail to earn the confidence of international *haute finance*, can be punished in a broad variety of ways – while states that carry out institutional reforms as promoted by the Bank can be rewarded, even by the ECB printing fresh money for them, in violation or circumvention of EMU treaties."[83]

What Streeck here (accurately) describes is the exercise of unrestrained executive power and the more or less complete abandonment of strict, rules-based frameworks. It is Schmittian, perhaps, but not, as Streeck suggests, ordoliberal.

During the 2013 Cypriot 'bail out' negotiations, the ECB told the Cypriot government that liquidity support to banks in Cyprus would be stopped unless reform conditionalities – including many that had nothing to do with monetary policy, and therefore were well outside the legal mandate of the ECB – were accepted.[84] In 2011, ECB president Mario Draghi (again acting well outside his legal mandate) sent a secret (subsequently leaked) memorandum to the Italian government calling for: "a comprehensive, radical and credible strategy of reforms, including the full liberalisation of local public services. This should apply in particular to the supply of local services through large-scale privatisations."[85] This can only very tenuously be termed ordoliberalism – its blatant violation of legal mandates and rules runs counter to a central tenet of the ordoliberal tradition.

Some of these actions have met with opposition within Germany, including the resignation of prominent German economists from the ECB and apparent opposition from the German Bundesbank president to the ECB's decision to, essentially, supply money to compliant member states, the follow-through on the

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[83] Streeck (2016), *op. cit.*, p. 162.

[84] Flassbeck and Lapavitsas, *op. cit*., p. 37.

[85] In Zacune, J. (2013) 'Privatising Europe: Using the Crisis to Entrench Neoliberalism', Working Paper of the Transnational Institute, available at www.tni.org, p. 11; on Italy see also Sacchi, S. (2015) 'Conditionality by Other Means: EU Involvement in Italy's Structural Reforms in the Sovereign Debt Crisis', *Comparative European Politics* 31 (1).

ECB president's promise (see above) that he would do "whatever it takes" to preserve the euro.[86] A sizeable number of other German economists probably share ordoliberal fears of breaking the rules in such areas,[87] whereas Draghi's actions won praise from economists (such as post-Keynesians) who might define themselves in *opposition* to ordoliberalism.[88]

But while Alternative für Deutschland, the German political party that initially most made an issue of those ordoliberal fears, registered dramatic electoral gains in September 2017, this was mainly due to its opposition to immigration, not its early commitment to ordoliberalism.[89] Meanwhile Merkel's governments, in part under US pressure, have been prepared to go along with whatever slippery interpretation of, or disregard for, the rules is required to maintain the profitability of German (and other) banks, German hegemony within the Eurozone, or even the survival of the Eurozone itself.[90]

Perhaps most remarkably, this *a la carte* legalism (or the lack of it) has been endorsed by Germany's highest legal body, the German Constitutional Court (GCC). In 2012, the ECJ declared that Europe's economic governance was "legal per se" if it could be justified on the basis of defending "the financial stability of the euro area as a whole." In 2012 and again in 2014, the GCC endorsed this extraordinary judgement – the German government, it was deemed, could legally do *whatever it judged necessary* to safeguard the stability of the eurozone: these judgements, as Joerges puts it, do not "apply rules, but resort... to differentiated and situational managerialism."[91] In other words, they drive a coach and horses through any ordoliberal conception of neutral, objective, rules-based government.

It is not just the ECB, the ECJ, and the GCC that have adopted a flexible approach to economic 'law' in the context of the crisis. The Commission broke with its post-1980s pattern (see above) by approving state aid of €82.5 billion to sectors such as car manufacturing between 2008 and 2010, though continuing to insist that governments could not use such aid to force companies locate

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[86] Streeck (2016), *op. cit*., p. 161; Berghahn and Young, *op. cit*., p. 776; Thompson, *op. cit*., pp. 5-6.

[87] Young, *op. cit*; see also Schmidt, *op. cit*., pp.194-6.

[88] Genevose, F., G. Schneider and P. Wassmann (2016) 'The Eurotower Strikes Back: Crises, Adjustments, and Europe's Austerity Protests', *Comparative Political Studies* 49 (7).

[89] https://www.theguardian.com/commentisfree/2017/sep/24/germany-elections-afd-europe-immigration-merkel-radical-right; http://fpif.org/germany-and-the-rise-of-a-fascist-international/

[90] https://www.ft.com/content/b4e2e140-d9c3-11e3-920f-00144feabdc0 On Merkel's willingness to dilute her apparent ordoliberal principles, see also Van Esch, F.A.W.J. (2014) 'Exploring the Keynesian-Ordoliberal Divide. Flexibility and Convergence in French and German Leader's Economic Ideas During the Euro-Crisis', *Journal of Contemporary European Studies* 22 (3), pp. 293-294; and Jabko, N. (2013) 'Re-problematizing Neoliberalism', *Contemporary Political Theory* 12 (4), p. 363.

[91] Joerges (*op. cit*., pp. 780-1) from which this paragraph's discussion is drawn.

production solely within their own borders.[92] That this (limited) emergency aid might be seen as the exception that proved the general pro-competition rule could be argued on the basis of the Commission's continued vigorous prosecution of cartels and other alleged corporate abuses of dominant market positions (such as the Google example cited earlier).[93] Meanwhile, other forms of state aid – such as the Irish government's claimed conferral of special tax concessions on the Apple corporation – remain subject to strong legal challenges from the Commission.[94]

So is a version of ordoliberalism alive and well when it comes to EU competition policy? The claim would be stronger were it not for one glaring counter-example: the Commission Competition Directorate invoked, in 2008, a legal waiver based on Article 107(3b) of the treaties, allowing state aid where there was "serious disturbance in the economy of a Member State."[95] It was this waiver that greenlighted governments to launch massive rescue and subsidy packages of their *financial* sectors, amounting ultimately to €4.5 trillion, the equivalent of over a third of EU GDP.[96] Nor did this aid come with swingeing conditionalities – the financial sector, whose concentration had been facilitated by the Commission prior to the crisis (see above), has been subjected to relatively limited reform despite the largesse it has been granted by the authorities.[97] Once again, systemic stability was prized over the strict attribution of responsibility to market actors. A more cynical interpretation would be that, in contravention of ordoliberal precepts, it is a case of one law for (some) rich and another law for everyone else.

Defending the economy from democracy – all over the world

The UK saw the creation in 2010 of the Office for Budget Responsibility with the explicit intention of 'depoliticising' fiscal policy – authoritative expert opinions were to reduce the scope for democratic debate around, and influence over, tax and spending decisions.[98] In 2011, the US Budget Control Act sought to place legal limits on governments' capacities to run deficits and debt, regardless of electoral preferences now or in the future.[99] Both these developments appear to mirror an ordoliberal preference for the insulation of economic policy-making from democratic deliberation and contestation. Yet nobody makes the claim that political culture in either the UK or the US has been seriously influenced by ordoliberalism.

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[92] Wigger and Buch-Hansen, *op. cit.*, pp. 125-6.
[93] *Ibid.*, p. 126.
[94] https://ec.europa.eu/ireland/news/eu-commission-apple-report-published_en
[95] Wigger and Buch-Hansen, *op. cit.*, p. 124.
[96] *Ibid.*
[97] *Ibid.*, p. 128. For evidence that the interests of banks, in particular, still continue, for the most part, to be prioritised, see Hardie, I. and H. McCartney (2016) 'EU Ring-Fencing and the Defence of Too-Big-To-Fail Banks', *West European Politics* 39 (3).
[98] Bruff, I. (2014) 'The Rise of Authoritarian Neoliberalism', *Rethinking Marxism* 26 (1), p. 122.
[99] *Ibid.*

During the Asian financial crisis of the late 1990s, the International Monetary Fund (IMF) sought to impose structural adjustment (neoliberal economic reform) on countries including Korea. The intensity of the IMF's determination to have its way is captured by Naomi Klein:

> "the end of the IMF negotiations coincided [in Korea] with scheduled presidential elections in which two of the candidates were running on anti-IMF platforms. In an extraordinary act of interference with a sovereign nation's political process, the IMF refused to release the money until it had commitments from all four main candidates that they would stick to the new [IMF] rules if they won. With the country effectively held at ransom, the IMF was triumphant: each candidate pledged his support in writing…[Y]ou can vote, South Koreans were told, but your vote can have no bearing on the managing and organisation of the economy."[100]

Again, the (in this case very crude) desire to de-democratise economic decision-making is evident, but, no more than in the case of the UK or the US, there is no serious claim that the IMF has been particularly guided by ordoliberal thinking.

What these examples point to is that the determination on the part of certain actors to prevent the populace exerting significant influence over economic policy is by no means unique to ordoliberalism. Indeed, *all* currents of neoliberalism have tended to present an "excess of democracy" as a serious threat to the liberty and freedom of the individual.[101] This was probably most explicit in neoliberalism's Chicago and Virginia Schools, which stressed the claimed tendency for democracy to generate economically inefficient outcomes.[102]

The World Bank – in its promotion of neoliberal economic reform in Africa, Asia and Latin America from the 1980s onwards – was heavily influenced by so-called New Political Economy (NPE) associated with writers such as Robert Bates.[103] This approach pioneered "new formats of techno-managerial

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[100] Klein, N. (2007) *The Shock Doctrine: The Rise Of Disaster Capitalism*, Penguin, p. 270.
[101] Harvey, D. (2005) *A Brief History of Neoliberalism*, Oxford University Press, p. 184; see also Mitchell, B and T. Fazi (2017) 'Everything You Know About Neoliberalism Is Wrong', *Social Europe*, available at https://www.socialeurope.eu/everything-know-neoliberalism-wrong
[102] Kiely, *op. cit*., p. 736.
[103] The seminal volume is Bates, R. (1981*) Markets and States in Tropical Africa: the Political Basis of Agricultural Policies*, University of California Press; see also Bates, R. (1994) 'The Impulse to Reform in Africa', in Widner, J.A. (ed) *Economic Change and Political Liberalisation in Sub-Saharan Africa*, Johns Hopkins; Richard Sandbrook – see his 1996 article 'Democratisation and the Implementation of Economic Reform in Africa', *Journal of International Development* 8 (1) – developed similar themes. For critical assessments, see Leys, C. (1996) *The Rise and Fall of Development Theory*, James Currey, pp. 80-103; Williams, D. and T. Young (1994) 'Governance, the World Bank and Liberal Theory', *Political Studies* XLII; Mkandawire, T. (1999) 'Crisis

governance that protect[ed] their ideal market from what they perceive as unwarranted political interference."[104] Again, however, NPE bore little if any imprint of specifically ordoliberal schools of thought.[105]

Insulating the economy from democratic influence was also an explicit concern of the economist probably most associated with structural adjustment, Jeffrey Sachs. Sachs, US-trained and initially at least an admirer of the Chicago School,[106] was the main driver of the 1985 liberalisation of the Bolivian economy.[107] He claimed this was a happy "combination of democratic reform… with economic institutional change"[108] – but in fact the policies adopted were the opposite of those most Bolivians had voted for and could only be implemented with the help of extensive repression of oppositional forces.[109]

Sachs would transfer these ideas and lessons to central and Eastern Europe in the 1990s, especially to Poland and Russia.[110] Here Sachs quite explicitly opposed allowing economic policies be determined through open societal debate and democratic argument: "I doubt that the transformation would be possible at all [on that basis], at least without costly and dangerous wrong turns."[111] The point, again, is that while Sachs cannot be described as an ordoliberal,[112] his approach

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Management and the Making of "Choiceless Democracies"', in Joseph, R. (ed) *State, Conflict and Democracy in Africa*, Lynne Reiner; Gordon, D.F. (1996) 'Sustaining Economic Reform under Political Liberalisation in Africa: Issues and Implications', *World Development* 24 (9); Gibbon, P. (1995) 'Towards a Political Economy of the World Bank, 1970-90', in Mkandawire, T. and A. Olukoshi (eds) *Between Liberalisation and Oppression: the Politics of Structural Adjustment in Africa*, CODESRIA; and Storey, A. (2000) 'The World Bank, Neo-Liberalism and Power: Discourse Analysis and Implications for Campaigners' *Development in Practice* 10 (3/4).

[104] Mirowski, P. (2009) 'Postface: Defining Neoliberalism', in Mirowski, P. and D. Plehwe (eds) *The Road from Mont Pelerin: The Making of the Neoliberal Thought Collective,* Harvard University Press, p. 436; the quote does not specifically refer to NPE but captures well one of the key concerns of neoliberalism more broadly, and one to which NPE devoted considerable attention.

[105] Besley, T. (2004) 'The New Political Economy', annual Keynes lecture given at the London School of Economics, available at http://econ.lse.ac.uk/staff/tbesley/papers/keyneslecturetext.pdf; Gilpin, R. (2001) *Global Political Economy: Understanding the International Economic Order*, Princeton University Press; see also Wade, R (1996) 'Japan, the World Bank and the Art of Paradigm Maintenance: the *East Asian Miracle* in Political Perspective', *New Left Review* (217) for a discussion of the primacy of elite American (rather than German or any other) values on World Bank thought and practice.

[106] Klein, *op. cit*., p. 144.

[107] *Ibid*., pp. 142-54.

[108] In *ibid*., p. 151.

[109] *Ibid*., pp. 142-54; see also Storey, A. (2008) 'The Shock of the New? Disaster and Dystopia', *Capitalism Nature Socialism* 19 (1).

[110] Gowan, P. (1995) 'Neo-Liberal Theory and Practice for Eastern Europe', *New Left Review* 1 (213).

[111] In *ibid*., p. 5.

[112] In fact, he has condemned the German approach to the Eurozone crisis on the grounds that it is too rigid and inflexible - https://www.thenation.com/article/austerity-has-failed-an-open-letter-from-thomas-piketty-to-angela-merkel/

to democracy is similarly, reflexively hostile – to attribute such hostility to ordoliberalism alone overstates both its distinctiveness and its reach.

In similar vein, Christoph Hermann emphasises the broad continuity between neoliberal reform programmes in Latin America and Europe. While he attributes some of the differences in the respective adjustment programmes to the distinctive *institutional* character of European integration (such as the common currency), he emphasises that both sets of programmes followed common neoliberal prescriptions and, quite rightly, he makes no reference to any specifically ordoliberal characteristics in the case of Europe.[113]

In other areas of global political economy, it is equally important not to attribute undue importance to a supposedly unique European governance model, including the claim that Europe is distinguished by a reliance on legal instruments to enforce a version of economic orthodoxy. The World Trade Organisation, for example, also uses legal and quasi-legal mechanisms (especially its Dispute Settlement Procedure) to enforce market-opening and to reduce societal influence/regulation over corporate activity.[114] The Investor-State Dispute Settlement mechanisms (actual or proposed) that are characteristic of bilateral trade and investment treaties perform a similar function, including for those in which the EU is not directly involved.[115]

Summary: the overstated claims of ordoliberalism

> "By now, the myth of the ordoliberal formula for economic success and welfare has permeated most EU member states along with the institutions of the European Union."[116]

Ordoliberalism is, in reality, much less influential than is often claimed to be the case. The post-war German 'economic miracle' was not solely (or even, probably, principally) attributable to the adoption of ordoliberal policies. EU economic governance was influenced by ordoliberal precepts, especially the promotion of competition, but these were only applied to a limited extent prior to

[113] Hermann, C. (2017) 'Another "Lost Decade"? Crisis and Structural Adjustment in Europe and Latin America', *Globalizations* 14 (4); see also Sandbeck, S. and E. Schneider (2013) 'From the Sovereign Debt Crisis to Authoritarian Statism: Contradictions of the European State Project', *New Political Economy* 19 (6).
[114] Wade, R.H. (2003) 'What Strategies are Viable for Developing Countries Today? The World Trade Organisation and the Shrinking of "Development Space"', *Review of International Political Economy* 10 (4); Mortensen, J.L. (2012) 'Seeing like the WTO: Numbers, Frames and Trade Law', *New Political Economy* 17 (1).
[115] Ravenhill, J. (2016) 'The Political Economy of the Trans-Pacific Partnership: a "21st Century" Trade Agreement?', *New Political Economy* (on-line).
[116] Hien, *op. cit.*, p. 356.

the 1980s. Even when a more vigorous competition policy was adopted by the EU, it barely extended to the regulation of mergers despite the ordoliberal distrust of concentrated economic power. The Maastricht Treaty appeared to elevate competition to an overarching EU policy goal, but ordoliberals were right to predict that instruments such as the Stability and Growth Pact would become subject to political bargaining and weight-throwing rather than strictly rules-based governance.

Faced with an economic crisis in the late 2000s, Germany responded with Keynesian-style programmes to boost domestic demand, and pushed through 'bail out' programmes that largely absolved German (and other) banks from their responsibility for reckless lending to Greece and other countries, a far cry from ordoliberals' concern with the proper attribution to market actors of risk and reward. The new economic governance framework since adopted by the EU allows, in practice, for arbitrary judgements and inconsistent applications that are at odds with the ordoliberal notion of a legally adjudicated 'level playing field' for all. The ECB, meanwhile, has dealt with the crisis by grossly overreaching its legal mandate (and has been supported in so doing by the German courts), while supposed prohibitions on state aid interfering with the workings of the 'free' market have not prevented an historically unprecedented public rescue of the private financial sector across Europe, once again subverting the ordoliberal commitment to the "proper assignment of liability to market actors."[117]

Europe has certainly taken growing steps to try and insulate economic decision-making from democratic influence. For example, during the 2012 debates on the Fiscal Treaty, German chancellor Merkel proclaimed that "the debt brakes will be binding forever. Never will you be able to change them through a parliamentary majority."[118] However, this trend, while in line with the long-standing distaste for democracy of EU elites and with their preference for technocratic/expert decision-making,[119] and also with the foundation charters of ordoliberalism, is by no means confined to Europe or to ordoliberalism. Significant and ongoing attempts to preclude the population from influencing economic policy are global in nature and are characteristic of all forms of neoliberalism and of capitalist governance more generally.[120]

117 Woodruff, *op. cit.*, p. 97.

118 See Storey, A. (2014) 'Chronicle of a European Crisis Foretold: Building Neoliberalism from Above and Options for Resistance from Below', in Fioramonti, L (ed) *Civil Society and World Regions: How Citizens are Reshaping Regional Governance in Times of Crisis*, Lexington Books, p. 39.

119 McGiffen, S.P. (2001) *The European Union: a Critical Guide*, Pluto; Tsoukalis, L. (2003) *What Kind of Europe?*, Oxford University Press; Wodak, R. (2000) 'Recontextualization and the Transformation of Meanings: a Critical Discourse Analysis of Decision Making in EU Meetings about Employment Policies', in Sarangi, S. and M. Coulthard (eds) *Discourse and Social Life*, Longman.

120 Harvey, *op. cit.* and Kiely, *op. cit.* Mirowski (*op. cit.*, p. 443) refers to what neoliberalism (from Hayek's perspective) saw as "the pathologies of democracy." For a powerful case study

The influence of ordoliberalism is far less than both its adherents and some of its critics[121] suppose. That the myth of its power (for good or ill) is now widely accepted – as the opening quote to this section from Hien highlights – is nonetheless a social fact which both fulfils a particular social function and poses particular challenges to emancipatory struggles.

Conclusion: the power of myth

> "Humpty Dumpty smiled contemptuously. ... 'When I use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean – neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master – that's all.'"[122]

When the Syriza government in Greece sought to renegotiate austerity, German finance minister Schäuble said "Elections change nothing..[, t]here are rules," while European Commission President Jean-Claude Juncker stated "there can be no democratic choice against the European treaties."[123] What this paper has above all else sought to demonstrate is that such unyielding rhetoric conceals a consistent willingness on the part of powerful forces in Europe to bend the rules and defy the treaties when it is in the interests of certain actors (including themselves) for them to do so.

In a reference to the evolution of global financialisation, as driven especially by Wall Street and the US state, Peter Gowan made the important point that "while the New Wall Street System was *legitimated* by free-market, laissez-faire or neo-liberal outlooks, these do not seem to have been *operative* ideologies for its practitioners, whether in Wall Street or in Washington," who instead operated in a cartel-like manner that cut across the public-private sector divide.[124] The same contradictions (hypocrisies even) predominate in Europe – ordoliberal discipline is largely a legitimating ideology rather than an operative one.[125]

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vis-à-vis Africa see Abrahamsen, R. (2000*) Disciplining Democracy: Development Discourse and Good Governance in Africa*, Zed.

[121] For example, Blyth, *op. cit*. I have myself been guilty of overstating how rigid the EU's economic governance framework is in practice: Storey, A. (2008) 'The Ambiguity of Resistance: Opposition to Neoliberalism in Europe', *Capital and Class* 96.

[122] From Lewis Carroll's *Alice in Wonderland*: https://www.fecundity.com/pmagnus/humpty.html

[123] Quoted in Hewitt, G. (2015) 'Greece: the Dangerous Game' available at http://www.bbc.com/news/world-europe-31082656

[124] Gowan, P. (2009) 'Crisis in the Heartland: Consequences of the New Wall Street System', *New Left Review* (55), p. 20, emphasis in original.

[125] Or, to use the distinction propounded by Vivien Schmidt (*op. cit*.), it is a communicative rather a coordinative discourse.

Neoliberalism, in all its variants, has always, in reality, been more about the extension and deepening of corporate power than it has been about the liberation of markets.[126] The fig-leaf of claimed commitment to a rules-based, pro-competition approach can be a convenient cover for the objectives of preserving systemic stability, shovelling enormous sums of money to fractions of the corporate sector and/or the copper fastening of political power. Accepting *stated* motivations at face value, as Helen Thompson has forcefully reminded us (see above), is of no help here.

Structural adjustment in the Global South in the 1980s and 1990s, which was in many ways the model for the capitalist transformation of central and eastern Europe,[127] provides a more helpful model for how the crisis has played out in western and southern Europe than the often Eurocentric conceptions of (and specious claims for) ordoliberalism. And insofar as structural adjustment was a political project for the assertion of neoliberal hegemony over the 'Third World,'[128] so also can today's European economic governance regime and, in particular the response to Europe's debt crisis, be reasonably interpreted as a political project to facilitate the reinforced dominance of capital (financial capital especially) over labour and popular movements.[129]

Foucault wrote that "it's not a matter of a battle 'on behalf' of the truth, but of a battle about the status of truth and the economic and political role it plays."[130] This might constitute a useful starting point for the study of ordoliberalism in Europe today.[131] Ordoliberalism is largely an ideology (a mythology even) that is invoked to legitimise the exercise of a particular form of capitalist power – this, in Foucault's terms, is the economic and political role it plays. It is not, for the most part, a 'truth claim' or a set of instructions that the wielders of that power are themselves prepared to live by. Rather, like Humpty Dumpty, these

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[126] Bruff, I. (nd) 'Authoritarian Neoliberalism and the Myth of Free Markets', *ROAR* (4), available at https://roarmag.org/magazine/ian-bruff-authoritarian-neoliberalism/; Harvey, *op. cit*.; Cahill, D. (2014) *The End of Laissez-Faire? On the Durability of Embedded Neoliberalism*, Edward Elgar; Keaney, M. (2017) 'Questionable Interventions: The Enduring Myth of Laissez-Faire', *Political Studies Review* 15 (3).
[127] Klein, *op. cit*.
[128] Bracking, S. (1999) 'Structural Adjustment: Why It Wasn't Necessary & Why It Did Work', *Review of African Political Economy* 26 (80); Crotty, J. and K.-K. Lee (2009) 'Was IMF-Imposed Economic Regime Change in Korea Justified? The Political Economy of IMF Intervention', *Review of Radical Political Economics* 41 (2); see also Klein, *op. cit*.
[129] Zacune, *op. cit*.; Mitchell and Fazi, *op. cit*.
[130] In Gordon, C. (ed) (1980) *Power/Knowledge: Selected Interviews and Other Writings 1972-1977 by Michel Foucault*, Pantheon Books, p. 132. See also Lemke, T. (2002) 'Foucault, Governmentality and Critique', *Rethinking Marxism* 14 (3); and Barry, A., T. Osborne and N. Rose (2000) *Foucault and Political Reason: Liberalism, Neoliberalism and Rationalities of Government*, UCL Press.
[131] Chris Shore's study (2011) of European governance/governmentality provides one model for such inquiry: '"European Governance" or Governmentality? The European Commission and the Future of Democratic Government', *European Law Journal* 17 (3).

are merely words that mean whatever their users wish to make them mean for the purposes of achieving social mastery.