

POLITICAL THEOLOGY AND GERMAN ORDOLIBERALISM: ON EUROPE.

Werner Bonefeld*

Abstract: Contemporary analyses hold that a German Ideology is governing the Eurozone. This ideology is German ordoliberalism. In these analyses European public policy is said to have been caged in by ordoliberal preferences for fiscal austerity. In distinction, the identification of ordoliberalism with austerity is far too narrow to support the idea of an ordoliberal Europe. The paper focuses on the ordoliberal understanding of the relationship between state and society, and free economy and mass democracy. It introduces Carl Schmitt's political theology as theoretical context, charts the ordoliberals argument for restricting democratic government, presents the structure of European decision-making, and concludes on the possible meanings of democracy in an ordoliberal Europe.

Keywords: Political theology, ordoliberalism, democracy, Euro, liberty, equality, enemy, Carl Schmitt.

TEOLOGIA POLÍTICA E ORDOLIBERALISMO ALEMÃO: SOBRE A EUROPA.

Resumo: Análises contemporâneas sustentam que a ideologia alemã está governando a zona do Euro. A ideologia é o ordoliberalismo alemão. Nessas análises, a política pública europeia é dita presa pelas preferências ordoliberais pela austeridade fiscal. Distintamente, a identificação do ordoliberalismo com a austeridade está longe de limitar o apoio a uma ideia ordoliberal na Europa. Os papéis focados no entendimento ordoliberal estão no relacionamento entre Estado e sociedade e entre economia livre e democracia de massa. Isto introduz a teologia política de Carl Schmitt como contexto teórico, traça o argumento ordoliberal para restringir o governo democrático,

* Professor do Departamento de Política da Universidade de York, Inglaterra. Contato: werner.bonefeld@york.ac.uk.



apresenta a estrutura de decisão europeia e conclui nos significados possíveis de democracia em uma Europa ordoliberal.

Palavras-chave: Teologia política, ordoliberalismo, democracia, Euro, liberdade, igualdade, inimigo, Carl Schmitt.

Introduction

Contemporary commentary holds that a German Ideology is governing the Eurozone. This ideology is German ordoliberalism, which is generally identified with fiscal austerity.¹ However, the identification of austerity with ordoliberalism is too narrow. Ordoliberalism emerged towards the end of the Weimar Republic as an authoritarian critique of Weimar mass democracy. The founding ordoliberal thinkers inherited from Carl Schmitt a keen understanding of the crucial role of the state as the concentrated force of economic freedom.² They argue that market economy is not independent from state authority. Rather, it amounts to a practice of government, that is, a politics of order, an Ordnungspolitik, and regulation of that order by a market facilitating liberal interventionism.

In the context of Weimar, they demanded authoritarian rule under Chancellorship of von Papen to overcome the lamentable weakness of the liberal state to govern for free economy. They conceived of the state as ‘market police’ which posits the state in its pure liberal form as the organised force and concentrated power of a free labour economy, enforcing market freedom and sustaining depoliticised socio-economic relations. Depoliticisation is an eminently political practice. To Schmitt and the ordoliberals ‘the Leviathan was and had to be there first’;³ and rightly so: by its own logic, and as Adam Smith had already argued, free economy descends

¹ See, for example, Mark Blyth (2013) Austerity. The History of a Dangerous Idea. Oxford: Oxford University Press. Markus Ojalo and Timo Harjuniemi (2016) Mediating the German Ideology. *Journal of Contemporary European Studies*, in press, DOI:10.1080/14782804.2015.1135109; Magnus Rynar (2015) Europe’s ordoliberals iron cage. *Journal of European Public Policy* vol. 22, no. 2, 275-294.

² The founding ordoliberal thinkers are Eucken, Böhm, Müller-Armack, Röpke, and Rüstow. For an introduction, see Werner Bonefeld (2012) Free Economy and Strong State. *New Political Economy* vol. 17, no. 5, 633-656.

³ Wolfgang Streek (2015) Heller, Schmitt and the Euro. *European Law Journal* vol. 21, no. 3, 361-370, p. 363



into ‘bloodshed and disorder’ unless the state civilizes its conduct by means of law, police, and fabrication of the moral sentiments of the system of private poverty.⁴ The freedom to compete presupposes ‘market police with strong state authority’ to sustain it.⁵ The strength of the state as market police depends on its independence from society.

In the context of European Monetary Union, the ordoliberal argument that economic freedom is a practice of government appears not to hold. The Euro is a stateless currency. There is neither a European government nor a European state, nor is there a European sovereign who has the power of decision. The ECB is not a political institution. It is a technocratic institution. It makes monetary policy on the basis of expert judgment and economic insight, removed from democratic constituencies and party politics. Monetary union absorbs the traditional forms of mass democracy into a European ‘Ordnungspolitik’, emasculating them. However, monetary union does not weaken the member states. On the contrary, it strengthens their liberal character. Monetary union tilts the balance between the democratic and liberal elements of the member states in favour of liberal state purposes. Nevertheless, at least in the Schmittean conception, a functioning legal order requires sovereign authority to sustain it. Indeed, a functioning monetary order, too, requires state authority to sustain it. The chapter thus argues that the stability of monetary union depends on the continued solidarity between the executives of Eurozone member states to uphold the bargain that they entered into when setting up the Euro as de-democratised supranational money. It thus depends on their capacity to act in concert as ‘market police’, sustaining domestic support for, and achieving competitive adjustment to the demands of, monetary rule by a stateless currency, whatever the costs and contestations from both the populist right and left.

The paper examines the political character of European ‘Ordnungspolitik’ in three steps. Section One presents Schmitt’s political theology focusing on his critique of mass democracy and characterisation of the liberal state. Section Two introduces

⁴ Adam Smith (1976) *The Theory of Moral Sentiments*. Oxford: Oxford University Press, 340.

⁵ Alexander Rüstow (1942) *General Social Laws of the Economic Disintegration and Possibilities of Reconstruction*, Afterword to Wilhelm Röpke, *International Economic Disintegration*. London: W. Hodge, 289.



the ordoliberal notion of free economy as a moral order that is created and sustained by ‘political decision’.⁶ Section Three discusses the political character of monetary union arguing that it amounts to a federated political system in which each member state operates as an ‘executive state’ of supranational rules and requirements.⁷ The Conclusion appraises the state of European democracy.

Political Theology: On Schmitt and the Idea of Freedom

Schmitt’s political theology does not address pastoral questions. Rather, it recognises modernity as a desacralized and graceless manifestation of rationalism, egalitarianism, legal normativism or positivism, and mass democracy. Political theology entails a political metaphysics; it has to do with sovereign authority as manifestation of legitimate right (Recht). In line with the conservative critics of the Enlightenment, from Cortes and de Maistre to Constant, he asserts that the French Revolution stripped political concepts of their metaphysical quality, to the detriment of sovereign order. His political theology thus holds that ‘the central concepts of modern state theory are all secularised theological concepts’.⁸ The old concept of legitimacy, which had to do with dynasty and royalty, divine values, and acceptance of nobility, and social hierarchy, had given way to rational-legal forms of legitimation that supplant social enchantment, loyalty to King and country, and sanctity of government and property, by principles of equal rights and disenchantment of social life by processes of socio-economic rationalisation. Nothing seemed sacred anymore. In modernity politics has become mass politics, which is characterised by administration and technical regulation, and material demands and satisfaction. Political thought emasculated itself as due-process thinking, which devoid of content is entirely relative in terms of social values. The consequences for the liberal rule of law are fundamental. Legal formalism replaces a legal order founded on definite social

⁶ Franz Böhm (1973) *Die Kampfansage an Ordnungstheorie und Ordnungspolitik*. Zu einem Aufsatz im *Kyklos*. *Ordo* 24, 11-48.

⁷ Carl Schmitt (1931) *Der Hüter der Verfassung*. Berlin: Duncker & Humblot.

⁸ Carl Schmitt (1985) *Political Theology. Four Chapters on the Concept of Sovereignty*. Chicago: The University of Chicago Press, p. 36.



values of hierarchy, community, and the fellowship of Man by the idea that law is what majoritarian democracy considers it to be. Parliamentary law is thus merely formal, devoid of definite values and regulative contents. It can be the rule of socialist law or liberal law. By reducing the legal order to process-law, law becomes arbitrary, unpredictable, and profane. In mass democracy political power ceases to be understood on the model of, and accepted as, God's creation. The 'theistic and the deistic idea of God is unintelligible' within a mass democratic context.⁹

Schmitt's political theology does not intend to restore to mass democracy a theological dimension. Rather, the point of Schmitt's political theology is to recover the elements of metaphysics in opposition to a mass democratic age. He argues that unlimited mass democracy abolishes the distinction between state and society, leading to the 'socialisation' of the state and therewith the disappearance of the political as a sacred sphere of sovereign authority and power. The 'de-theologised' world is a 'de-politicised' world is a world without authority, certainty of values, acceptance of social position, etc.¹⁰ Whereas Man used to accept her 'responsibility to the state', now 'the state is responsible to man', as Marcuse put it in his account of Schmitt's stance.¹¹ In the words of Schmitt, '[t]he state as an outgrowth of society, and thus no longer objectively distinguishable from society, occupies everything societal, that is, anything that concerns the collective existence of human beings. There is no longer any sphere of society in relation to which the state must observe the principle of absolute neutrality in the sense of non-intervention'.¹² Schmitt's call for the recovery of the elements of metaphysics in the government of mass society argues for a total state of pure quality. Its establishment presupposes the separation of society and state as separate institutions. Marcuse clearly recognised the authoritarian character of the proposed independence of the political state. Its accomplishment, he argued, presupposes the 'existencialization and totalization of the political sphere',

⁹ Carl Schmitt, quoted in Renato Cristi (1998) Carl Schmitt and Authoritarian Liberalism. Cardiff: Wales University Press, p. 112.

¹⁰ Carl Schmitt (2008) Political Theology II: The Myth of the Closure of any Political Theology. Cambridge: Polity, p. 128.

¹¹ Herbert Marcuse (1988) The Struggle Against Liberalism in the Totalitarian View of the State, in Negations, 3-42, London: Free Association Books, p. 36.

¹² Schmitt, Der Hüter..., op. cit., p. 79.



politicising the state as the force of socio-economic depoliticisation. The politicised state reacts to the ‘threatened freedom and security of private property’ and acts.¹³

The political sovereign defines the exception to the (liberal) rule of law and is revealed by and in it. For Schmitt, sovereign is the one who declares a state of exception, a (commissarial) dictator, whose decision to govern by unbound authority abolishes the idea of the sovereign power of the democratically equal populace. In dictatorship, ‘reality is not admit of knowledge, only of acknowledgment’.¹⁴ The liberal validity of the rule of law depends on a definite political order and is therefore an expression of the political authority of that order. Instead of the formalism of the rule of law, the purpose of sovereign authority is to ‘produces law’ (Recht zu schaffen). It creates a definite legal order which, based on inviolable social and ethical values, founds the Rights of liberal order. Law does not make order. It expresses and regulates an order. Order manifests sovereign Rights.

In Schmitt’s argument order is a political category of disorder in the mode of being denied. Schmitt insists thus ‘all law is situational. At unpredictable times ‘the power of real life breaks through the crust of a mechanism that has become torpid by repetition’.¹⁵ A state of disorder manifests a state of exception to the rule of law. The state of exception recognises the unpredictable power of real life in the reality of the political situation, and governs for order, stability, and peace. For the sake of order, the notion of the ‘democratically equal populace’ has to be opposed by a ‘myth of a hierarchically ordered and unified people, which the exceptional act of the sovereign would instantiate’, as Strong put in his account of Schmitt’s political theology.¹⁶ The sovereign proclaims himself as the embodiment of order, asserting the supposedly eternal values of the nation, its transcendent interests, and autonomy of national being. Above all, he asserts the autonomy of the nation over the mass democratic quarrels, class interests, and social conflicts. Its assertion distinguishes

¹³ Marcuse, op. cit., p. 36.

¹⁴ Ernst Forsthoff (1933) Das Ende der humanistischen Illusion. Berlin: Furche-Verlag, p. 25. Forsthoff was a student of Schmitt’s. He held various Professorships during Nazism and was dismissed from his teaching post by order of the American military government after the liberation from Nazism. He resumed teaching at Heidelberg University in 1952. He was the leading author of the Constitution of Cyprus and was President of the Supreme Constitutional Court of Cyprus from 1960 to 1963.

¹⁵ Schmitt, Political Theology..., op. cit., pp. 13, 15.

¹⁶ Tracy Strong (1985) ‘Foreword’, Carl Schmitt: Political Theology, vii-xxxii. Chicago: The University of Chicago Press, p. xxvii.



between the ‘friends’ of private property and its ‘enemies’. As such, the politicised state of authoritarian direction and dictatorial power represents the veritable democracy of the people conceived abstractly as comprising a definite national community, a Volk, restoring not only tranquillity, order, and stability but, also certainty of values, respect for and freedom of private property.¹⁷ In distinction to the social democratic pursuit of such material objectives as economic justice and social equality, the authoritarian state demands service, loyalty and commitment to the national cause. Any doubt in the veracity of the commitment is eliminated by its criminalisation. As Forsthoff put it, ‘attempts to dispute the state’s newly gained effective right signify sabotage... Relentlessly to exterminate this sort of thought is the noblest duty of the state today’.¹⁸ Political theology, which had become unthinkable in a democratic context, re-asserts itself by means of a forceful restoration of undisputable political authority. It draws its strength from the establishment of depoliticised socio-economic relations, replacing the democratic personality by disciples. The point of political theology is for the sovereign to reassert Right (Recht) under conditions that are deemed to threaten anarchy, but not to be based on and bound by law.

In the Guardian of the Constitution Schmitt argues that the old liberal state possessed elements of an ‘executive state’ (Regierungsstaat) that governed with a commitment to substantive liberal values - the values of private property and the liberal rule of law. It governed with purpose, and authority, keeping mass society and their parties at arm’s length. It was thus ‘strong enough to stand above and beyond all social forces’.¹⁹ In Schmitt’s argument the liberal state of old comprised a dual structure that embodies two different forms of state: a parliamentary ‘legislative state’ [Gesetzgebungstaat], which became the representative body of the propertied classes and the educated classes (Besitz und Bildung), and an ‘executive state’ (Regierungsstaat), which rested on and expressed monarchical interests and was administered by aristocratic office-holders. The dualist structure comprised thus a

¹⁷ On the idea that democracy is synonymous with the autonomy of the state as the embodiment of the national interest beyond pluralist mass democracy, see Wilhelm Röpke (2009) The Social Crisis of Our Time. New Brunswick: Transaction Publishers, p. 101.

¹⁸ Ernst Forsthoff (1933) Der totale Staat. Hamburg: Hanseatische Verlags-Anstalt, p. 29.

¹⁹ Schmitt, Der Hüter..., op.cit., p. 73.



democracy of liberal friends and the forces of the ancient regime. Schmitt acknowledges that the dual structure of the liberal state was always contradictory and tension-ridden with traditional economic and political elites battling a liberal bourgeoisie demanding reforms in support of their own economic interests. Nevertheless, this conflict was between different property owners. It excluded the property-less. Schmitt argues that the dual structure of the liberal state fell apart with the German democratic revolution of 1918. With the assertion of mass democracy the legislative state supplanted the executive state. As a result liberalism lost its capacity to sustain substantive liberal values. Following Scheuerman, ‘the democratisation of parliament in conjunction with the simultaneous parliamentarization of the state means that no element of the state now “stands above and beyond the social forces”’.²⁰ For Schmitt, society had taken hold of the state and ‘if society organises itself into the state, if state and society are to be basically identical, then all social and economic problems become immediate objects of the state’.²¹ With parliament no longer able to concentrate the bourgeoisie as the class of private property, the democracy of friends dissolves into heterogeneity, fragmenting the state as a unit of liberal government. Paraphrasing Schmitt, the stranger, this figure of the enemy within, enters the liberal state and asserts his interests as an equal, that is, in mass democracy control is exercised by those who need to be controlled. With society asserting itself within the state, the state loses its quality as a liberal state. It is no longer able to distinguish between the liberal friends and the enemies of private property.

For Schmitt majoritarian law making is devoid of definite contents and substantive values. It amounts, he says, to ‘nothing more than mob rule’.²² Schmitt thus identifies the time of egalitarian mass democracy as mob rule and conceives of it as a time of exception, that is, an exception to the rule of law. The rule of law does not apply to disorder. The declaration of a state of disorder is sovereign decision. Decisionism, in which an unregulated act of power is taken, suspends the ‘legislative state’ of mass democracy and casts aside the formalism of law as the basis of

²⁰ William Scheuerman (1999) Carl Schmitt. The End of Law. Boulder CO: Rowman & Littlefield, p. 89, quoting Schmitt.

²¹ Schmitt, Der Hüter..., op.cit., pp. 78-9.

²² Schmitt, Political Theology II, op. cit., p. 119.



democratic government. Restoring order, peace and stability, ‘whatever it takes’, is not a matter of law. It is a matter of political authority and decisive government. The sovereign decision to identify, declare and prosecute an emergency manifests the assertion of (an unbound) executive state that governs with ‘authority and leadership’ to resolve the declared crisis of liberal order and restore the utility of the liberal rule of law as a rule of Right.²³

Once the decision has been taken, decisionism has reached its limits. Decisionism is not an alternative to the system of majoritarian parliamentary democracy. It asserts political authority in exceptional times and is defined by the identified exception to order and tranquility. For Schmitt, once the Nazi dictatorship was established the time for decisionism had passed. Now the focus shifted to the establishment of a concrete order as a robust ‘alternative’ to the mass democratic dethronement of Right by legal formalism.²⁴ As Müller-Armack had already put it in 1932, we need to ‘invent (erfinden) an objective order constellation (Ordnungsgefüge)’ to institutionalize free economy and embed the spirit and mentality of enterprise into society at large, beyond interference by mass democratic majorities.²⁵

Schwab explains Schmitt’s concrete order thinking as an attempt at ‘devising a constitutional order that would once and for all drain society of political forces that could challenge the state’s monopoly on politics’.²⁶ Schmitt’s concrete order is hierarchically structured based on the leadership principle. It stands for entirely depoliticised socio-economic relations, from which ‘all orderlessness’ has been completely eradicated.²⁷ It includes depoliticised social organisations and political

²³ Alexander Rüstow (1959) Diktatur innerhalb der Grenzen der Demokratie. Vierteljahreshefte für Zeitgeschichte vol. 7, 87-111, p. 100.

²⁴ Carl Schmitt (1934) Über die drei Arten des rechtswissenschaftlichen Denkens. Hamburg: Hanseatische Verlagsanstalt.

²⁵ Alfred Müller-Armack (1932) Entwicklungsgesetze des Kapitalismus. Berlin: Junker & Dünhaupt, p. 42.

²⁶ Georg Schwab (1985), Introduction. In Carl Schmitt, Political Theology, xxxvii-li. Chicago: The University of Chicago Press, pp. I-li.

²⁷ This formulation derives from Franz Böhm (1937) Ordnung und Wirtschaft. Berlin: Kohlhammer, p. 150. The state, says Müller-Armack (1981) Genealogie der Sozialen Marktwirtschaft. Stuttgart: Paul Haupt, p. 102, ‘has to be as strong as possible within its own sphere, but outside its own sphere, in the economic sphere, it has to have as little power as possible’. Depoliticisation of society and



institutions, like for example politically constructed professional bodies, including labour unions, occupational interest groups and holiday camps, which are part of the state-organised societal order and operate according to a centrally devised purpose. The organisation of a depoliticised societal order was for Schmitt an outcome of politics in the specific use of state authority. The notion of a concrete order does not recognize extra-political forms of interaction. Rather, extra-political forms of social interaction are political constructions. The ‘segregation of the state from non-state spheres...is...a political procedure’ and the ‘disengagement from politics is a specifically political act’.²⁸ Schmitt’s concrete order thinking is about the establishment of institutional complexes that discharge specific functions of social organization and oversee the conduct of its members according to regulative principles that derive their authority and legitimacy from a legally unregulated sovereign, the leader. This figure of will and charisma commands, not through the rationality of law but, rather, through the illusion of omnipotence.²⁹

Morality and Freedom

Ordoliberalism identifies free economy as a ‘universal form of life’.³⁰ That is ‘man exchanges because he is the only living being that is capable of this form of transaction without being in any way aware about the ingenious character of his behaviour’.³¹ Competition is a function of the human condition. Without the freedom to compete, ‘man [is] not a “human being”’.³² Ordoliberalism does therefore not conceive of free economy in narrow economic terms. It defines it rather as a definite

politicisation of the state belong together as interdependent requirements of liberal order. See Walter Eucken (2004) *Grundsätze der Wirtschaftspolitik*. Tübingen: Mohr Siebert.

²⁸ Carl Schmitt (1932). *Sound Economy – Strong State*, Appendix to Renato Cristi (1998) *Carl Schmitt...*, op. cit., p. 221.

²⁹ Following Scheuerman’s account (op.cit, p. 123) Schmitt endorsed ‘the Nazi labor reforms of 1934’ enthusiastically as ‘the clearest expression of concrete order thinking’. The reforms stripped workers of ‘basic workplace protection, reclassified them as ‘disciples’ (*Gefolgschaft*) and introduced ‘Leader (*Führer*) as concept of the legally unregulated leader’.

³⁰ Eucken, *Grundsätze*, op. cit., p. 321.

³¹ Franz Böhm, cited in Eucken, op. cit.

³² Walter Eucken (1948) ‘What kind of Economic and Social System?’ in Alan Peacock and Hans Willgerod (eds.) (1989) *Germany’s Social Market Economy: Origins and Evolution*, 27-45, London: Palgrave, p. 34.



moral order and identifies the freedom to compete as belonging to a moral society. As a moral value, the freedom to compete is absolute. In this claim there is a deeper meaning. If competition defines what it is to be a human being than those who set out to diminish it diminish humanity. It is dangerous to speak in the name of universal forms of human life since all those who oppose must perforce appear as speaking against humanity. The positing of an absolute value entails the absolute rejection of the other as an outlaw of humanity.

Ordoliberalism recognises this other in the figure of the proletarian. It sees the proletarian as a constant threat to free economy. Innate to the proletarian is the struggle for social equality and material security. If allowed to fester this struggle tends to politicise the social relations, which ‘reinforces the general tendency towards state slavery (*Staatsklaverei*)’ resulting in loss of freedom.³³ An even worst outcome is however the ‘decomposition of the human substance’.³⁴ Indeed, free economy does not produce social value orientation that are conducive to its stability and further progress. Instead, free economy destroys those same traditional values, habits, loyalties and belief systems upon which it depends for its tranquillity and progress, leading to the proletarianization of the social structures.³⁵ Free economy is the dynamic behind the transformation of society into a graceless, disenchanted world of ‘greedy self-seekers’ and unionised workers.³⁶ It encourages the pursuit of only ‘earthly objectives’ replacing the heroism of poverty by demands for welfare support.³⁷

The founding ordoliberal thinkers recognised the harmful effects of large-scale industry and the social factory on the working class. However for them the evil associated with capitalism cannot be ascribed to capitalism but represents the failures of those who are unable or unwilling to participate in free economy as entrepreneurs, and of a state that lets itself influenced and indeed governed by them. Instead of social enterprise, ‘the increasing exploitation of the government for the satisfaction of the

³³ Eucken, *Grundsätze...*, op. cit., p. 193.

³⁴ Ibid., citing Koestler.

³⁵ See Alfred Müller-Armack (1976). *Wirtschaftsordnung und Wirtschaftspolitik*. Stuttgart: Paul Haupt, p. 299.

³⁶ Alexander Rüstow (1963) *Rede und Antwort*. Ludwigsburg: Hoch, p. 255.

³⁷ Alfred Müller-Armack (1981) *Religion und Marktwirtschaft*. Stuttgart: Paul Haupt, p. 556.



desires of parties or groups' increases, 'which in the end leads to the management of the whole nation by these organised and powerful groups'.³⁸ The resulting 'pathological and degenerate form' of a capitalism in which the freedom to compete had been supplanted by a democratic welfare state is the consequence this struggle for social equality and material security. In this struggle, Man's universal form of life is at stake.³⁹ The entrepreneur is the embodiment of the universal form of human life and because of this, he is the paradigmatic figure of morality, propriety and property. The struggle for equality not only denies the entrepreneur. It also amounts to a radical devaluation of human existence. The figure of 'dehumanisation' is the proletarian. Fundamentally the proletarian is estranged from universal forms of human life, the freedom to compete, sacrifice discipline, and self-responsibility. The proletarian struggles so that he may be 'satiated' by the state. Since the betterment of the proletarian condition depends on the further progress of the system of liberty, as accumulation alone can increase wages, the struggle for social equality and material security is in fact held to be counterproductive to the interests of a proletarianised mass society. The freedom to compete needs thus to be harnessed for the benefit of those who bear its harmful effects. 'Constant surveillance of the total economic process' is needed to ensure the undivided and undistorted workings of the system of complete competition.⁴⁰ The democratic state works best when relieved from mass influence on the conduct of policy and law making. Democracy, says Röpke, is not a concept of social disunity and strife. It is a concept of unity – it belongs to the people, embodies the 'autonomous interests of the nation'.⁴¹ The true representative of the interests of the nation are the traditional elites. They embody the natural nobility of free economy.

Like Schmitt the ordoliberalists argue that the danger of mass democracy is that law (Gesetz) and legitimacy (Recht) collapse into a purely formal, value-free, rule of law, which is not founded on the ethical values of private property. In their view laissez-faire should not apply to the state. Indeed, they charge laissez faire liberalism with suffering from the delusion of freedom. 'The enemies profit by it, too, and are in

³⁸ Wilhelm Röpke (2002) The Moral Foundation of Civil Society. New Brunswick: Transaction, p. 92.

³⁹ Alexander Rüstow (2005) Freiheit und Herrschaft, Münster: LIT, p. 364.

⁴⁰ Alfred Müller-Armack (1981) Diagnose unserer Gegenwart. Stuttgart: Paul Haupt, p. 124.

⁴¹ Röpke, The Social Crisis..., op. cit., p. 124.



the name of freedom given every conceivable opportunity to put an end to liberal democracy'.⁴² Liberality opens the door to the worst despotism, which sees to unfold from the mass democratic demand for 'equality' that transformed the liberal executive state in a legislative state (Gesetzgebungsstaat) of mass opinion.⁴³ Mass democracy is based on the 'principle of sovereignty of the people, ascertained by majority decision and intended to realise the identity of people and government'. Liberality towards the power of the people 'gives a free hand to all trouble makers and agitators, therefore condemning itself to death with open eyes...this absolute tolerance even towards intolerance, this intransigent dogmatism of the liberals...must ultimately reduce "pure democracy" to the defenceless victim of anti-liberalism'.⁴⁴ Tyranny belongs to democracy; authority to liberalism.⁴⁵ Like Schmitt, Röpke posits that democracy works best as a democracy of friends. For the sake of freedom, the curtailment of the condemned 'mob' is vital. Most importantly, democratic influence on policy-making especially monetary policy and credit policy has to be curtailed. These policies should not 'be operated like a switchboard by a government directly dependent upon a parliamentary majority or, worse still, upon some non-parliamentary group posing as the representative of public opinion'.⁴⁶ The determination of the non-political entails the state as the concentrated power of depoliticisation. It decides on the depoliticised character of the socio-economic relations, polices the boundary between political state and depoliticised society, and on the depoliticisation of the conduct of public policy by technocratic state institutions. Depoliticisation is an eminently political act.

The freedom to compete entails the necessity of the strong state. Eucken offers a succinct account of economic freedom as recognition of necessity.⁴⁷ He identifies the freedom to compete as an intrinsic human property and argues that 'nobody is authorized to abandon his or her moral autonomy' and become a mere tool for somebody else. 'But no one must also force the others to waive his or her moral

⁴² Ibid., p. 50.

⁴³ Wilhelm Röpke (1998) A Human Economy. Wilmington Delaware: ISI Books, p. 66.

⁴⁴ Röpke, The Social Crisis..., p. 50.

⁴⁵ This neoliberal dictum is most strongly made by Friedrich Hayek (1944) The Road to Serfdom. London: Routledge.

⁴⁶ Röpke, A Human..., op.cit., p. 223.

⁴⁷ The notion of freedom as recognition of necessity belongs to Friedrich Engels (1983) Anti-Dühring. Marx Engels Werke vol. 20. Berlin: Dietz, p. 106. His Anti-Dühring became the bible of the second and third Internationals.



autonomy'. Freedom is an (authorised) moral obligation. It 'serves' (dient) Man as a 'self-responsible' being.⁴⁸ Self-responsible freedom is a function of order. 'Freedom and order are not opposites. They depend upon one another. Ordering means the ordering of freedom'.⁴⁹ For the sake of the order of freedom, therefore, "Man has to behave in a disciplined manner".⁵⁰ Discipline is possible on the conditions that 'the necessity of a willed order is affirmed in the mentality of a properly understood freedom'. Only on this basis can 'the coordination of the economic participants be achieved, which is the essence of a competitive order'. Eucken thus argues that the freedom to compete is a function of order. Freedom has therefore 'its limits, namely there where the order is threatened by it'.⁵¹ Whether freedom persists or is threatened by the mass democratic forces of disorder is a matter of sovereign decision.⁵² If therefore a decision needs to be made between freedom and order, freedom has to give for the sake of order. Order is the premise of freedom.⁵³ Further, Eucken grants that the pursuit of liberty might establish 'new forms of order. These are justified for as long as they are in conformity with the order of competition'.⁵⁴ Here, too, authoritative decisions are needed to determine the compliance of socio-economic developments with the economic constitution of free economy. Boehm thus likens free economy to a political event (Veranstaltung). Miksch makes this same point most succinctly arguing that a free labour economy does not manifest a natural propensity as in classical liberalism. Rather, 'the natural order has become a political event.'⁵⁵ Government is responsible for the depoliticised character of a competitive market order based on free labour, governs for the completeness of competition, secures the self-responsible conduct of the individuals in support of this order, curtails the excess of freedom, and takes action if need be to reassert and sustain the order of private property.

⁴⁸ Eucken, Grundsätze..., op.cit., p. 178.

⁴⁹ Ibid. p. 179, emphases in original.

⁵⁰ Ibid., p. 197, citing Miksch.

⁵¹ Ibid.

⁵² On this see Walter Eucken (1932) Staatliche Strukturwandlungen und die Krise des Kapitalismus. Weltwirtschaftliches Archiv 36, 297-321.

⁵³ 'In a conflict between freedom and order, order is the unconditional priority'. Böhm, Ordnung..., op.cit., p. 101.

⁵⁴ Eucken, Grundsätze..., p. 197.

⁵⁵ Böhm, Ordnung..., op.cit., p. 34. Leonhard Miksch (1947) Wettbewerb als Aufgabe. Grundsätze einer Wettbewerbsordnung. Godesberg: H. Kuepper, p. 9.

On the Ordnungsgefüge of the Euro

The regulative media of European Union are law, money, and market. There are regulated by European institutions that are removed from traditional democratic principles of parliamentary law making, oversight and accountability. The relevant institutions that make up the concrete order (Ordnungsgefüge) of Europe are the European Parliament, the European Commission, the European Court of Justice, the European Central Bank, and the European Council. Within this ‘concrete order’ only the European Parliament is directly elected. It is a forum for public discussions, argument and conflict of opinions, empty formality, and self-important ceremony. It represents the spectre of social democracy at its most harmless. It has no executive to control, lacks the right of legislative initiative, cannot change the constitution of Europe because none exists, a least not in traditional form. European integration is based on international treaties between sovereign states. In the European Parliament the democratic groupings do not comprise governing majorities and opposition parties since there is no European government in the traditional sense. As a mass democratic body, it is without bite and consequence. In the case of the European Parliament, the ordoliberal mantra about the dangers of ‘mass democratic interference’ with free economy is pointless. In Schmitt’s terms, it is not the primary institution of the European legislative state (Gesetzstaat). It is, I argue, a deliberative institution of a union of executive states (Regierungsstaaten).

In this system, the European Commission, too, is a most curious institution. The Commission has 27 commissioners that are proposed by national governments, one for each state. It operates akin to a technocratic cabinet government. It is the executive body of the European Union and the sole institution that has legislative initiative in the EU. It is responsible for proposing legislation, implementing decisions, upholding the EU Treaties and managing the day-to-day business of the EU. It holds collective responsibility for the EU. The European Court of Justice emerged from being the authoritative interpreter of European competition law as the legal guardian of the European market society. The Court was instrumental in the



development of this society as its judgments developed the four Union freedoms, that is, the free circulation of goods, services, capital and labour, at the expense of national systems of market regulation, etc. Its ability to support the liberalisation of the European economies was established early on in the principle of ‘supremacy and direct effect’ of European law, and that is stateless law, over national laws and regulations. In this manner European law sets a definite framework for the parliamentary law making in member states. The European Central Bank is the sovereign institution of European money. It is almost independent and depoliticized Central Bank. It is not answerable to any state or government nor to any other European institutions. It is a state-less central bank. It governs a stateless currency that according to its founding treaties is ‘Austrian, ordoliberal and neoliberal money’.⁵⁶ The characterisation of the ECB as the sovereign institution of European money has to do also with its decision making during the Euro-crisis, which violated a number of legal obligations, ostensibly to preserve them in the long run.⁵⁷ In the context of the Greek crisis in 2015, its decision to terminate financial life-lines to the Greek banks, leading to their enforced closure, was instrumental in forcing the Greek government into submission, coercing it into accepting most punishing conditions for (temporary) bail out arrangements.

The political institution of the European Union is the European Council, which comprises the Heads of member government. It is supported by the various Council of Ministers. The Council is the membership organisation of national executives. It is the European legislator and the European executive in one. It makes laws and executes those same laws within its respective jurisdictions in the member states, overseen by the Commission and the European Court of Justice. That is, a Council of European executives makes laws that have direct effect on and in the democratically constituted member states. National parliaments may oppose the ratification of a European law but their powers remains purely negative. Member state parliaments do not make European law. They deliberate, discuss, and ratify. As a body comprising a multitude of ‘pluralist mass democracies’ their powers are

⁵⁶ Streek, op. cit., p. 369. This part draws on Streek’s account.

⁵⁷ On this, see Michael Wilkinson (2015) Authoritarian Liberalism in the European Constitutional Imagination. European Law Journal, vol. 21, no. 3, 313-339.



effectively stifled. The Council operates akin to a medieval conclave of sovereign kings and queens who are united in their efforts to resolve conflicts that in the past pitted them against each other. Their efforts are supported a number of legal and technocratic organisation that act on the basis of the agreements that the Council has reached. The troublesome populace is kept out of the bargain.

The concrete order of the EU – its Ordnungsgefüge –forecloses conventional forms of parliamentary contestation and democratic government. In its stead it establishes a top-down framework for market liberalisation, individual economic rights, fiscal retrenchment, processes of competitive adjustments, which ‘impose liberty’ on the territorialised labour markets.⁵⁸ Within this framework the national member states act as executive states (Regierungsstaaten) of a European regime of liberty and they do so akin to the ordoliberal characterisation of the liberal state as a force of ‘liberal interventionism’, as ‘market police’. The state as market police ‘plans for competition’ and governs for competition.⁵⁹

In 1933, Hermann Heller had argued that the authoritarian liberal scheme of ‘free economy ad strong state’ could not be maintained in democratic form. A state ‘that is determined to secure “the free labour power of those people active in the economy” will...have to act in an authoritarian way’.⁶⁰ The concrete order of European Union suggests that it is however possible to achieve the freedom of labour within a democratic form. Its Ordnungsgefüge respects in its entirety the traditional conception of parliamentary democracy in the member states and makes the establishment of parliamentary democracy a condition of membership. Nevertheless, it places economic governance into a supranational structure and retains parliamentary democracy in the member states that operate as federated executives of Union rules. In the words of Vivien Schmidt, ‘while the EU has *policy without*

⁵⁸ Christoph Engel (2003) Imposed liberty and its limits. In Tania Einhorn (ed.) Spontaneous Order, Organization and the Law: Roads to a European Civil Society, 429-437. The Hague: Asser Press.

For a systematic argument setting this out, see Friedrich Hayek (1939) The Economic Conditions of Interstate Federalism' In Friedrich Hayek (1949) Individualism and Economic Order, 255-273, London: Routledge and Kegan Paul. For an assessment see Werner Bonefeld (2005) Europe, the Market and the Transformation of Democracy. Journal of Contemporary European Studies vol. 13 no. 1, 93-106.

⁵⁹ On liberal interventionism, see Hayek, The Road..., op. cit.; Rüstow, Die staatspolitischen Voraussetzungen..., op. cit, 252ff. On the liberal state as ‘market police’, see Rüstow, General Social Laws..., op. cit. On the state as a planner for competition, see Hayek, The Road..., p. 31.

⁶⁰ Hermann Heller (2015). Authoritarian Liberalism. European Law Journal vol. 21 no. 3, 295-301, p. 301, citing Schmitt.



politics, the member states end up with *politics without policy*'.⁶¹ The federated system of European governance does not in any way curtail the state as the independent power of society. Rather, it provides the means for this independence. In the European context, the supranational institutions curtail the legislative state of parliamentary democracy in member states. Member states have the politics of implementation, which characterises the role of member states as democratically constituted executive states of supranational money, law, and market forces.

The Euro crisis revealed that contrary to the appearances of monetary union as a technocratic institution, it is a politically constituted and sustained Union. Its existence cannot be reduced to some presumed systemic automaticity. It amounts rather to a practice of governments to sustain and maintain the Euro, especially in a context of debt and contestation. The creation of a depoliticised state-less currency was an eminently political decision. The statutory rules of the Euro are not just technical and economic. They, too, are the outcome of political decisions and as the (Greek) crisis has shown, they remain politically founded and sustained rules. During the Euro-zone crisis, the European Council asserted itself as Europe's sovereign political power. In cohorts with the ECB it acted freely to do 'whatever it takes' to preserve monetary union.⁶² Habermas' identification of the new 'Europe' as a state of exception brings the assertion executive managerialism into sharp focus. It characterises the coming to power of an 'unbound' executive.⁶³ Contrary to a whole history of liberal democracy, law and policy are made by executive decision, from fiscal retrenchment to loss of fiscal sovereignty. In the case of Greece, the Council decided that Greece had to restructure the entirety of its social contract as a condition of punitive bail out agreement. In effect, the Greek state transformed into an executive state of Council decisions.

⁶¹ Vivien Schmidt (2006) Democracy in Europe. Oxford: Oxford University Press, p. 33, emphases in original.

⁶² 'Whatever it takes' is a now famous phrase of Mario Draghi who in his role as President of the ECB offered this Schmittian phrase in answer to the question what the ECB would do to sustain the Euro. See: <www.ecb.europa.eu/press/date/2012/html.sp120726.en.html>

⁶³ Jürgen Habermas (2012) The Crisis of European Union. Cambridge: Polity.

Conclusion

The governance of the Euro appears to be technocratic in character, comprising monetary policy decisions by central bankers, administration of the European legal framework by the Commission, and adjudication of contesting claims to rights and obligations by the European Court of Justice. However, and as I have argued, what appears in this appearance is a political decision and a political practice. In the case of the Euro, the circumstance that a stateless currency amounts to a practice of government puts the concrete order of European construction into sharp focus. It also shows its fault-lines. In the federated system of the EU national executives gained independence from mass democratic parliamentary law making and established themselves as a supranational Council with rights of legislation and execution. In Schmittean phraseology, this led to the transformation of the legislative state of mass democracy into an institution of the executive state. Indeed, the heterogeneous parliaments of the member states transformed to some degree from lawmakers into debating chambers about the pros and cons of European law and policy decisions. In contrast, the Council has assumed the role of an assembly of friends - each committed to the original bargain and in heated discussion about how best to sustain European Ordnung. The Greek resistance to austerity threatened to fracture the established consensus. Instead of containing the mutinous character of the Greek opposition to austerity through the institutional Ordnungsgefüge, it gained not only entry into the Greek parliament. It also gained the seat of government in Greece and thus became a member of the Council, shattering its homogeneity of interests. Concerted action between the ECB and Council majority brought the Greek government to heel. The threat of expulsion from the Euro-club and impending bankruptcy restored order. Rather than subverting the European order, the European order institutionalized the Greek government, transforming it into an agent of austerity.

In the Eurozone, the liberal notion that a properly governed 'commonwealth' has to limit the democratic excesses of mass society manifests itself through a federated system, which comprises a supranational economic constitution, policy



making and law making by executive decision, and implementation of the rules agreed upon by the democratically constituted member states. It removes democratic influence on the conduct of monetary policy, fetters fiscal policy to the pursuit of sound money, enables the freedom of competition between territorialized labour markets, and brings the democratically constituted member states under a regime of imposed liberty. The established *Ordnungsgefüge* strengthens the liberal foundation of the democratic member states. The figure of the demos appears enfeebled as mere election fodder. Euro government entails two interrelated manifestations of democracy. The first is the liberal utility of democracy as an incomparable system for the peaceful circulation of rival teams of political managers by means of competitive elections.⁶⁴ The second belongs to the territorialized demos, which has assembled on the streets in noisy protest and refusal. The reawakened demos might well put paid to the liberal utility of democracy not because of its social-democratic power but because of its national leanings. The European system of liberal democracy not only stimulates competition between territorialized labour markets. It also tends to nationalize the protest against the supranational regime of imposed liberty. Not every Dawn is Golden.⁶⁵

For as long as the populist backlash by the nationalist right is contained in national parliaments, the basic structure of the European order will not be under threat unless, that is, it achieves representation in the European Council. The question of who is the European sovereign will then be asked again. Euro government has indeed reignited populist nationalist reactions, from Greece to Germany, Holland to Austria, and France, too, where the National Front has become a serious contender for political power. Only a state has the power to stop people running through the door. What is the state's name that has the courage and power of authoritative enforcement of the European order of liberty? Who has the ultimate power of decision?

⁶⁴See Joseph Schumpeter (1950) *Capitalism, Socialism and Democracy*. New York: Routledge

⁶⁵Golden Dawn is the name of the Greek neo-fascist party that came to prominence during the Euro-Crisis. Anti-capitalism is not a left monopoly. On this, see Werner Bonefeld (2014) *Notas sobre fetichismo, historia e incertidumbre. Isegoría. Revista de Filosofía Moral y Política*, no. 50, 319-335,



Tietmeyer's warning that 'monetary union may need perhaps more solidarity than beginning it' says more than it seemed at first.⁶⁶

Bibliography

Blyth, Mark (2013). Austerity. The History of a Dangerous Idea. Oxford: Oxford University Press.

Böhm, Franz (1937). Ordnung und Wirtschaft. Berlin: Kohlhammer.

Werner Bonefeld, Werner (2005). Europe, the Market and the Transformation of Democracy. Journal of Contemporary European Studies vol. 13 no. 1, 93-106.

Bonefeld, Werner (2012). Free Economy and Strong State. New Political Economy vol. 17, no. 5, 633-656.

Bonefeld, Werner (2014). Notas sobre fetichismo, historia e incertidumbre. Isegoría. Revista de Filosofía Moral y Política, no. 50, 319-335.

Cristi, Renato (1998). Carl Schmitt and Authoritarian Liberalism. Cardiff: Wales University Press.

Eltis, Walter (2000). British EMU Membership Would Create Instability and Destroy Employment. In Mark Baimbridge, Brian Burkitt and Peter Whyman (eds.) The Impact of the Euro, 139-159. London: Palgrave.

Engel, Christoph (2003). Imposed liberty and its limits. In Tania Einhorn (ed.) Spontaneous Order, Organization and the Law: Roads to a European Civil Society, 429-437. The Hague: Asser Press.

Engels, Friedrich (1983). Anti-Dühring. Marx Engels Werke vol. 20. Berlin: Dietz.

Eucken, Walter (1932). Staatliche Strukturwandlungen und die Krise des Kapitalismus. Weltwirtschaftliches Archiv 36, 297-321.

Eucken, Walter (1948). What kind of Economic and Social System?'. In Alan Peacock and Hans Willgerod (eds.) (1989) Germany's Social Market Economy: Origins and Evolution, 27-45. London: Palgrave.

⁶⁶ Hans Tietmeyer, former President of the German Bundesbank, cited in Walter Eltis (2000) British EMU Membership Would Create Instability and Destroy Employment. In Mark Baimbridge, Brian Burkitt and Peter Whyman (eds.) The Impact of the Euro. 139-159. London: Palgrave, p. 146.



- Eucken, Walter (2004). Grundsätze der Wirtschaftspolitik. Tübingen: Mohr Siebert.
- Forsthoff, Ernst (1933). Das Ende der humanistischen Illusion. Berlin: Furche-Verlag.
- Forsthoff, Ernst (1933). Der totale Staat. Hamburg: Hanseatische Verlags-Anstalt.
- Habermas, Jürgen (2012). The Crisis of European Union. Cambridge: Polity.
- Hayek, Friedrich (1944). The Road to Serfdom. London: Routledge.
- Heller, Hermann (2015). Authoritarian Liberalism. European Law Journal vol. 21 no. 3, 295-301, 301.
- Marcuse, Herbert (1988). The Struggle Against Liberalism in the Totalitarian View of the State. Negations, 3-42. London: Free Association Books.
- Miksch, Leonhard (1947). Wettbewerb als Aufgabe. Grundsätze einer Wettbewerbsordnung. Godesberg: H. Kuepper.
- Alfred Müller-Armack, Alfred (1932). Entwicklungsgesetze des Kapitalismus. Berlin: Junker & Dünnhaupt.
- Müller-Armack, Alfred (1976). Wirtschaftsordnung und Wirtschaftspolitik. Stuttgart: Paul Haupt.
- Müller-Armack, Alfred (1981). Diagnose unserer Gegenwart. Stuttgart: Paul Haupt.
- Müller-Armack, Alfred (1981) Religion und Marktwirtschaft. Stuttgart: Paul Haupt
- Müller-Armack, Alfred (1981). Genealogie der Sozialen Marktwirtschaft. Stuttgart: Paul Haupt.
- Ojalo, Markus and Timo Harjuniemi (2016). Mediating the German Ideology. Journal of Contemporary European Studies, in press, DOI:10.1080/14782804.2015.1135109.
- Röpke, Wilhelm (1998). A Human Economy. Wilmington Delaware: ISI Books.
- Röpke, Wilhelm (2002) The Moral Foundation of Civil Society. New Brunswick: Transaction.
- Röpke, Wilhelm (2009). The Social Crisis of Our Time. New Brunswick: Transaction Publishers.
- Rüstow, Alexander (1942). General Social Laws of the Economic Disintegration and Possibilities of Reconstruction, Afterword to Wilhelm Röpke, International Economic Disintegration. London: W. Hodge.
- Rüstow, Alexander (1959). Diktatur innerhalb der Grenzen der Demokratie. Vierteljahreshefte für Zeitgeschichte vol. 7, 87-111.



- Rüstow, Alexander (1963) Rede und Antwort. Ludwigsburg: Hoch.
- Rüstow, Alexander (2005). Freiheit und Herrschaft, Münster: LIT.
- Rynar, Margnus (2015). Europe's ordoliberal iron cage. Journal of European Public Policy vol. 22, no. 2, 275-294.
- Scheuerman, William (1999) Carl Schmitt. The End of Law. Boulder CO: Rowman & Littlefield.
- Schmidt, Vivien (2006). Democracy in Europe. Oxford: Oxford University Press.
- Schmitt, Carl (1931). Der Hüter der Verfassung. Berlin: Duncker & Humblot.
- Schmitt, Carl (1932). Sound Economy – Strong State. Appendix to Renato Cristi (1998) Carl Schmitt and Authoritarian Liberalism. Cardiff: Wales University Press.
- Schmitt, Carl (1934). Über die drei Arten des rechtswissenschaftlichen Denkens. Hamburg: Hanseatische Verlagsanstalt.
- Schmitt, Carl (1985). Political Theology. Four Chapters on the Concept of Sovereignty. Chicago: The University of Chicago Press.
- Schmitt, Carl (2008). Political Theology II: The Myth of the Closure of any Political Theology. Cambridge: Polity.
- Schumpeter, Joseph (1950). Capitalism, Socialism and Democracy. New York: Routledge.
- Schwab, Georg (1985). Introduction. In Carl Schmitt, Political Theology, xxxvii-li. Chicago: The University of Chicago Press.
- Smith Adam (1976). The Theory of Moral Sentiments. Oxford: Oxford University Press.
- Streek, Wolfgang (2015). Heller, Schmitt and the Euro. European Law Journal vol. 21, no. 3, 361-370.
- Strong, Tracy (1985) 'Foreword'. In Carl Schmitt Political Theology, vii-xxxii. Chicago: The University of Chicago Press.
- Wilkinson, Michael (2015). Authoritarian Liberalism in the European Constitutional Imagination. European Law Journal vol. 21, no. 3, 313-339.