

Irresponsible Ordoliberalism and the Imperialistic Fantasy That We All Might Become Good Germans One Day

A Response to Dold and Krieger, Hien, Heath-Kelly, Guittet, Dos Reis and Kamis

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Germany's policy of expansionary fiscal consolidation by means of binding fiscal rules is setting a positive example for other eurozone countries, but that alone won't suffice. All the eurozone governments need to demonstrate convincingly their own commitment to fiscal consolidation so as to restore the confidence of markets, not to speak of their own citizens.... Germany's course of growth-friendly deficit reduction in conjunction with its suggestions for a strengthening of Europe's fiscal framework could serve as a blueprint for European economic governance.

Wolfgang Schäuble (2010).¹

Overview

What follows is a reply to the critical responses of Malte Dold and Tim Krieger, Josef Hien, Charlotte Heath-Kelly, Emmanuel Pierre Guittet, Filipe dos Reis and Ben Kamis to my 2016 *New Perspectives* intervention 'When One Religious Extremism Unmasks Another: Reflections on Europe's States of Emergency as a Legacy of Ordo-liberal Dehermeneuticisation' (hereafter ODH – for "Ordoliberal Dehermeneuticisation"²). My reply will be divided into two main parts. The first part will focus on what I will call 'a disciplinary instruction not to think.' The second will focus on what I will call 'constructive invitations to think further.' The first part focuses on Dold and Krieger's arguments. The second focuses predominantly on those of the rest of the interlocutors listed above. What ultimately emerges out of this second section is a reflection on the need to consider both order and disorder as constitutive elements of human freedom, and to sustain the tension between them. Of concern, here, I argue, is a freedom that refuses to be subjected conclusively to any "order of liberty" that a liberal government in general and an ordoliberal government in particular may wish to establish.

¹ See Lechevalier (2015: 77, footnote 15).

² I will resort to the more elegant term "dehermeneuticisation" (instead of de-hermeneuticisation) from now on. I am indebted to Chris Engert for suggesting this improvement.

It will very soon become clear to the reader that I consider Dold and Krieger's response to my ODH intervention an example of particularly poor scholarship, so I may as well say it here. I have spent much time in what follows responding carefully to a good number of their contentions. Many of these contentions may well be considered not to merit all the attention I have given to them. I have nevertheless engaged with them meticulously for two reasons that I consider important. Firstly, I wish to state clearly that I generally consider the work of ordoliberal scholars interesting and important. Were I to just brush off Dold and Krieger's response without further ado as a sad case of scholarly irresponsibility, I would surely close down the possibility of more constructive academic exchanges with them and/or other ordoliberals in the future. In other words, by responding carefully and meticulously to Dold and Krieger, I hope to have kept alive the possibility of future academic exchanges with ordoliberals who may be more willing to engage in a proper scholarly debate.

The second reason for engaging extensively with Dold and Krieger's response concerns the way in which their response not only dismisses my ODH intervention as devoid of valuable scholarly insight, but also misrepresents its central thesis as a vastly oversimplified causal argument. The meticulous response to this dismissal and misrepresentation that follows seeks to offer the readers of Dold and Krieger's response an efficient opportunity to assess both carefully and quickly whether the lack of scholarly insight and oversimplified causal reasoning that Dold and Krieger (D&K, from now on) impute to ODH, is a product of their imagination, or a fair evaluation of my text. If I did not provide their readers this opportunity, D&K might well succeed in having an easy last word, and a pernicious one at that. In the accelerated world in which we live today, few readers of D&K's response are likely to take the time to go back to my text to determine carefully whether their contentions are sound and fair.

I have good reason to say this. D&K have obtained advice and comments from respected scholars such as Brigitte Young and Volker Berghahn before sending their response off for publication. I find it surprising that these scholars did not advise D&K to reconsider a number of conspicuous weaknesses that should have become evident from a reading of D&K's text alone. But these scholars would have had many more reasons for advising D&K to reconsider almost all of their contentions had they gone to the trouble of comparing D&K's text carefully with mine. Now, if even friendly mentors or colleagues did

not have the time, energy or scholarly inclination to compare D&K's response carefully with my ODH intervention, how many other readers can one expect to go to this trouble? This is why I consider it necessary to respond almost line for line to D&K's response in what follows. I cite them extensively in each case so that the reader can see quickly, clearly and accurately what is at stake.

It is with regret that I end up dedicating much less time and space in what follows to the responses of Hien, Heath-Kelly, Guittet, Dos Reis and Kamis than these responses deserve. I have gained much insight from these responses and wish to thank the authors for the time they took to respond intelligently and constructively to my ODH intervention. I trust they will consider my limited responses to them as plausible beginnings of further debates which we may have in the future. Space constraints prevented me from taking things further than I have done here, but I trust there will soon be opportunities to revisit the compelling issues they raise.

A Disciplinary Instruction Not to Think [Subtitle Level 1]

D&K commence their response to my ODH intervention with a brief perfunctory remark about my "excellent" scholarship in the field of legal theory, but do so only to continue with the suggestion that I should better constrain my scholarly inquiries to the field of legal theory, because, as they say, "juxtaposing one's own expertise upon disjointed fragments of less well understood research from other fields does not necessarily lend itself to convincing scholarship." They continue with this suggestion as follows:

VDW's argument in [ODH] rests crucially upon assumptions about the current economic crisis, ordoliberalism and the genesis of terrorism; however, the author fails to demonstrate valuable academic expertise in these topics. We strongly doubt that the simple mechanics of VDW's argument support the assertion that – with or without a process of de-hermeneuticisation – Protestant ethics led to ordoliberalism, which resulted in an imposed austerity in France and ultimately jihadist terrorism. This causal chain is not only highly questionable, but also its underlying assumptions are, in fact, inaccurate.

Having shot off this opening salvo about my failure to demonstrate valuable academic expertise regarding the "economic crisis, ordoliberalism and the genesis of terrorism," they proceed to instruct me on the proper conceptual distinction between

“economic scarcity” and “redistribution.” I will presently look more closely at their contentions regarding this distinction. Before doing so, however, I also wish to draw attention to another remark regarding my expertise that they make a little later in their *reaction* to my NP intervention. D&K write:

Unfortunately, most writings by ordoliberal scholars were never translated from German into English. If VDW had read these original texts or at least the contributions of scholars with a deep understanding of German ordoliberalism (such as Viktor Vanberg), he would probably have started questioning his own assumptions about the ordoliberal program.

Now, one cannot help wondering a bit about the intellectual climate that encourages a statement like this to spill so innocently into an academic argument. Let me nevertheless say no more than the very least that requires being said in response here. D&K suggest that I would not have made my incorrect assumptions about ordoliberalism had I been able to read the original German texts of this German tradition of economic thinking, or the works of German scholars with a deep understanding of the tradition. The problem cannot lie here, however, for my German is not so shabby as they seem to assume. I will surely not call myself an expert on or connoisseur of ordoliberal thinking, but I have read a reasonable selection of primary ordoliberal texts without having to rely on translations and have supplemented these readings with a good number of secondary texts, several of them also in German and written by German scholars whom it would be difficult to accuse so brazenly of not having a “deep [enough] understanding of German ordoliberalism.”

So, considering that I have done quite a bit of solid homework, my failure to arrive at a “deep understanding of German ordoliberalism” is likely to be attributable to some other failure or failures on my part. The first may well concern an inability to comprehend the reduction of social politics to the ordering of an economic system of free competition that many scholars attribute to the ordoliberal school of economic thinking. I shall presently return to address this point more squarely. A second failure may be attributable to nothing less than a psychological resistance to “a deep understanding” of any concern with order – economic order included – that refuses to sustain a due regard for the *limits of order* and the constitutive role that *disorder* plays in the sustenance of a stable order. I come back to this second ‘failure’ towards the end of all the responses to my interlocutors that follow. Suffice it therefore to just observe for now that my failure to arrive at a “deep [enough] understanding” of German ordoliberalism may well relate to my distrust of all theoretical

endeavours that reduce social-theoretical inquiry to instrumental concerns with the sustenance of *order*. Such endeavours, I suspect (and cannot help suspecting), take a first step towards a technocratic reduction of government to the pursuit of preselected social goals that tolerates no further questioning of, and resistance to, this preselection. I believe the betrayal of *liberal* democracy and the road to authoritarianism invariably start here.

The other reason for my failure to understand German ordoliberalism deeply enough, may of course relate to the inadequate understanding of economic theory, as such, that D&K attribute to me in the first passage quoted above. I must of course concede here that I have no formal training in economics and that this may well be a significant hindrance to arriving at a “deep understanding of German ordoliberalism,” or an adequately advanced understanding that might be worthy of entering into a discussion with the hallowed circles of Freiburg economic thinking. I would nevertheless like to at least explain in what follows why I am left somewhat puzzled by several aspects of D&K’s response to my arguments, and especially by the Economics 101 class to which they have treated me.

Allow me to begin with the economics class. I fail to grasp what exactly D&K sought to teach me with their distinction between economic scarcity and economic redistribution and, more importantly, why they are not themselves somewhat worried by the way they draw this distinction. Their invocation of the distinction, firstly, does not seem to make any point apart from telling me that I am out of my depth in the field of scientific economic inquiry. Secondly, it reveals an understanding of the science of economics that is remarkably out of touch with contemporary thinking about the status of social science. Thirdly, it would appear to hinge on a conception of scientific inquiry that renders it blind to its own disciplinary presuppositions and for this reason dooms it to a self-imposed thoughtlessness. And fourthly, it does all of the above only to end up endorsing and strengthening the argument regarding economic scarcity and economic redistribution that I put forward in ODH. Under the first three sub-headings that follow, I unpack the second and third point separately and the first and fourth together. Thereafter I turn to a number of the other puzzling contentions that D&K make in response to ODH.

The Science of Economics and the Linguistic Turn [Subtitle Level 2]

So here are D&K instructing the legal theorist with a disciplined and disciplinary definition of economic scarcity:

In economic theory, the scarcity problem results from the fact that while resources are limited in amount, people nevertheless desire them in an infinite amount.

Their definition derives from Lionel Robbins' (1932) definition of economics as "the science which studies human behaviour as a relationship between ends and scarce means which have alternative uses."³ D&K attribute the endorsement of this definition to "most economists." They also attribute to this majority of economists the belief that "scarcity, in the first place, is not a mental or normative construct." And with this invocation of the dominant definition of economic scarcity in economic theory, they move on to dismissing my argument regarding economic scarcity as a social and mental construction that is subject to, and conditioned by, interpretation and reinterpretation. In other words, my whole ODH argument falls flat, they seem to say, because its key point that "economic scarcity" is conditioned by interpretation and hermeneutics is simply spurious. This, of course, relieves me of the burden of adding anything to the dehermeneuticisation argument that I put forward in ODH, for they concede and confirm the point in the clearest of terms. They only take issue, it seems, with the fact that I deem it important to put forward an argument that they consider a self-evident point of departure of all their theoretical endeavours. Relieving me of the burdens of my arguments by taking them on their own shoulders – shooting themselves in the foot, in short – ultimately becomes a main feature of their endeavours, as we shall see below.

Let me nevertheless retrace the dehermeneuticisation to which D&K admit so blithely. According to them, "most economists" consider economic scarcity a transcendent reality that receives an immaculate birth into human language. Its transcendence shatters all traces of linguistic immanence ('linguistic immanence' referring to the linguistic recognition that no language escapes itself, no language escapes its own linguistic status, and no component of language makes sense outside conventional relations with other language components). In accordance with this dismissal of the notion of linguistic immanence, the science of economics considers itself left with no choice as to how this 'reality' of economic scarcity that enters it from beyond is to be accommodated and communicated further.

³ I have taken this reference directly from Dold and Krieger and have not yet consulted the source.

This faith in transcendence is truly remarkable in a time such as ours that is so pervasively burdened by the recognition of the conventional constraints that language imposes on cultural and social understanding. It is especially remarkable given that many and perhaps even “most” social scientists who reflect meta-theoretically on their own disciplinary inquiries would probably find it difficult today to argue their way around the irreducible linguisticity of their scientific endeavours.⁴ The social scientific ‘realists’ or ‘positivists’ of old have surely not disappeared from the face of the earth, but they no longer command the scene and most likely no longer constitute a ‘majority’ of any kind. This, of course, does not make the realists wrong and the linguistic brigade right. But it does mean that social science is exposed to a meta-theoretical or meta-disciplinary indeterminacy that it cannot wish away. And, with this indeterminacy comes the call for social science to constantly think reflectively about its constitutive boundaries and, therefore, *to think*. The linguistic turn in the social sciences surely cannot claim the victory of having launched scientific inquiry on a better way to truth without making a mockery of its own insights. But it can claim the merit of having woken up scientific inquiry to the imperative of constantly reconsidering and *rethinking* its foundational concepts and principles. It is with this background in mind that I wish to engage with D&K’s invocation of “most economists” as regards this faith in transcendent “economic scarcity.”

Thoughtless Economic Science [Subtitle Level 2]

D&K’s use of the word “most” would seem to allow for the possibility that there are some economists who do not share this faith, but they are evidently not bothered by these others. To put this in terms that Thomas Kuhn made salient: there may be some economists who are engaging in *abnormal scientific inquiries* and for whom economic thinking begins with a regard for the way in which the notion of ‘infinite desire’ does not constitute a self-evident point of departure for economic thinking, but D&K are not interested in them (Kuhn, 1970). These other economists may well have a historical regard for the way the notion of “infinite desire” is conditioned by a constellation of modern conceptions of human

⁴ The main developments in meta-theoretical reflection on social science and the humanities that make denials of the linguisticity of social theory difficult today are related to the impact of hermeneutics (Gadamer, Ricoeur), pragmatist and post-analytical theory of language (Rorty, Davidson) and post-structuralists (Derrida, Foucault, Lyotard) on late twentieth century social theory. This linguistic turn appears to have entered economic thinking under the banner of ‘critical realism.’ See the essays collected in Paul Lewis (2004).

individuality that was unthinkable in a premodern age when a range of Aristotelian and/or Thomist beliefs conditioned the essential terms of social cooperation, none of which catered to notions of “infinite desire.” They may also have a regard for the way in which the demise of these Aristotelian and Thomist world views was a socio-cultural precondition for the rise of modern conceptions of individuality as an agent or source of “infinite desire.” Further to this, they may also have a regard for the way this demise itself was conditioned and exacted by the technological transformation of methods of production and commercial exchange. I am most certainly not staging a moral argument here for a return to Aristotelian and Thomist views of community and society. I am only making the point that an invocation of a transcendent ‘economic scarcity’ that is unconditioned by contingent conventional frameworks of social construction becomes rather far-fetched when these historical developments are taken into consideration.

I am not the economist in this discussion and I will not attempt to provide a bibliography here of economists who are currently challenging the notion of ‘transcendent scarcity.’ However, I am quite confident that one would not search long to come up with a significant list and that the scholarship around the work of Karl Polanyi may well provide productive leads for identifying such ‘abnormal’ economic inquiries.⁵ Let me again stress that I am not in the least proposing this minority or ‘abnormal’ view among economists as the conclusively ‘correct’ or ‘better’ point of departure for economic theory. I am only suggesting that a failure to bear it in mind as a constitutive boundary or limit within the field of economic inquiry reduces the study of economics to a disciplinary and conceptual closure within the confines of which the task of rethinking fundamental assumptions and propositions becomes impossible. This is how scientific and theoretical enterprises become thoughtless. Thinking begins with the regard for the irreducible indeterminacy of fundamental theoretical assumptions. Again, this in no way implies a rejection of these fundamental assumptions. But it requires an open intellectuality that seeks and welcomes pertinent challenges, and it is this open intellectuality that is entirely missing from D&K’s dismissal of my arguments regarding “economic scarcity.”

⁵ The reason why I believe a search for a concept of economic scarcity that relates scarcity to concrete social conceptions of need and thus offers a significant alternative to an abstractly conceived notion of ‘infinite desire’ that reflects no social embeddedness, relates exactly to Polanyi’s (1975) reflections on embedded economies.

Shooting Themselves in the Foot ...

I have already asserted above that I do not see the point of D&K's lesson in basic economic terminology. It does not take their own arguments forward and ultimately comes across as a rhetorical ploy aimed at showing the legal theorist that he is out of his depth in this discussion. I will now substantiate this assertion by showing that the only real achievement of the whole ploy is to offer an easier way of making the point that I endeavoured to make in my ODH intervention. In this regard, they can be considered to have shot themselves pointlessly and thoughtlessly in the foot.

I raised an argument regarding redistribution deficits in Europe and considered it important to corroborate it with an argument regarding the absence of any paralysing or fatally debilitating condition of 'economic scarcity' that would preclude better redistribution in Europe. What D&K are telling me is that I should not have raised the corroborative argument regarding "economic scarcity," considering that "economic scarcity" is a conceptual a-priori of scientific economic thinking that must be presupposed in all questions of social distribution. However, by proposing the acceptance of "economic scarcity" as an a-priori that necessarily informs all questions of redistribution, they effectively reduce it to an empty term (an empty signifier, if you wish) with no determined significance for any specific question of economic redistribution. If "economic scarcity" is always around as a result of a presupposed constellation of infinite desire and limited resources, those who are seriously concerned with specific redistribution questions may as well reply with a shrug of a shoulder: All right, we know that already, but please just allow us now to get on with looking at the specifics of relative abundance and pressing need in order to see how one might alleviate the hardship and frustration that invariably spawn patterns of serious social malaise (such as religious radicalisation).

To rephrase this somewhat: my argument regarding the constructed status of all notions of "economic scarcity" was an endeavour to get it out of the way so as to free up the question of economic redistribution. But it would appear that I should thank D&K for doing this much more effectively than I imagined possible at the time. It seems it was all along me who took the question of economic scarcity much too seriously by seeking to deconstruct it. It is D&K who really render the term irrelevant by turning the assertion of its prevalence into an invariably valid proposition and therefore into a non-proposition. So,

now that we have the non-issue of economic scarcity well and truly out of our way, let us move on to the economic redistribution question and the ordoliberal response to it.

Ordoliberalism and Social Security Politics

Let me begin this section by returning to the rest of the passage from D&K's reaction which was already partly quoted above:

If VDW had read these original texts or at least the contributions of scholars with a deep understanding of German ordoliberalism (such as Viktor Vanberg), he would probably have started questioning his own assumptions about the ordoliberal program. The ordoliberals, especially members of the Freiburg School, were very conscious of the need to include a strong social welfare element in their program. After all, there were millions of war widows, orphans, refugees, expellees and people who had been bombed out who could not be neglected or exposed to the harsh winds of a competitive market economy. In his *Grundsätze der Wirtschaftspolitik* (1952), Walter Eucken, the most prominent proponent of the Freiburg School, acknowledges explicitly the state's role in implementing social policies. He subsumes them under the expression "special social policy" (*Spezielle Sozialpolitik*), which is intended to attenuate social misfortune and economic tragedies that cannot be balanced through private insurance or individual assets.

To proceed, allow me to underline that ODH clearly acknowledges and commends the hermeneutic transformation of ordoliberal thinking in the post-war years that allowed it to embrace social political policies that were not part of its original conceptual scheme. It only laments the way these post-war ordoliberals subsequently appeared to have lost this hermeneutic capacity to respond to new historical circumstances. Please consider again the following passages:

The functional synthesis of Protestant ordo-liberal concerns with fair and virtuous competition, on the one hand, and Catholic social welfare concerns, on the other, that gave rise to a highly efficient social market economy (*soziale Marktwirtschaft*) in post-war Germany, never took root in these southern European countries (van der Walt, 2016: 88).

In this respect, German post-war ordo-liberalism had certainly not completely lost its hermeneutic capacity for understanding itself differently in the course of time (a core hermeneutic capacity according to Gadamer, for whom human understanding always consists in understanding differently). The filtered or default ordo-liberalism that emerged from the politics of European market integration has evidently lost this capacity for renewed contextual self-understanding; hence, for instance, its blind exportation of austerity demands to countries for which these demands are ill-suited (*ibid.*: 92).

I shall return to the last three lines of the second passage quoted here when I shift the focus to the question of ordoliberalism and Europe below. Suffice it for now to note

again the well-known compromise between a Protestant concern with virtuous competition and individual freedom, on the one hand, and a Catholic concern with social security, on the other. This compromise spawned the unique concept of *soziale Marktwirtschaft* in post-war Germany. It is especially well discussed in publications of Christian Joerges (e.g. 2010), to which my understanding of this history is much indebted. Several scholars nevertheless note, however, that social security policies, even to the extent that they were integrated into ordoliberal thinking in the post-war years, remained a *Fremdkörper* (foreign body) in ordoliberal economic theory. Most or at least many theorists associated with the tradition continued to view expansive social security concerns with suspicion (Lechevalier, 2015: 58).

I do not think Eucken's work can be completely exempted in this regard. His *Grundsätze der Wirtschaftspolitik (Foundations of Political Economy)* repeatedly attributes problems of social security to monopoly formation and the distortion of free competition by powerful private actors, and pays little attention to the need for a more expansive social politics (Eucken, 2004: 13, 124-126, 314-318); hence also his very poignant observations regarding the need for an economic constitution that would secure the free competition without which the fundamental rights protections guaranteed by political constitutions – that is, liberal democratic constitutions – would often remain little more than formal guarantees that hardly offer substantive protection (*ibid.*: 48-53). There is indeed much to be said for and learned from his observations in this regard, especially from the point of view of constitutional theorists who have come to recognise the horizontal effect of fundamental rights – the constitutional regulation of the private sphere – as *the* key concern of contemporary constitutional law (see, e.g., van der Walt, 2014).

Again, Eucken's acute concern with private power as the main threat to liberal democracy is truly instructive. However, by and large his translation of social security concerns into a concern with adequate anti-trust or competition law is not likely to convince theorists of social democracy (or social democrats more generally) that he was sufficiently sensitive to the persistence of destructive levels of social inequality in contemporary capitalistic societies. His recognition of the need for a special or exceptional social politics (*Spezielle Sozialpolitik*) that D&K invoke, only underlines this. Perhaps one should be relieved to know that leading ordoliberal theorists acknowledge the need for social security measures in the wake of exceptional "economic tragedies," as D&K put it. However, the conviction among committed social democrats that social inequality is, at best, only partially

addressed by adequate competition law, will always render them deeply sceptical of Eucken and the ordoliberal approach outlined here. Only if one is prepared to take a rather blunt Marxist hard line that considers capitalism itself as such an 'economic tragedy' – a hard line with which few social democrats would be comfortable – might Eucken's "exceptional social politics" begin to measure up to the vast dimensions of social insecurity that a mere resort to fair competition law cannot hope to address.

From a regular social democratic perspective, however, the resort to rigorous competition law for purposes of addressing all questions of social malaise pivots on a flagrant underestimation of the issues at hand. This social democratic point of view would demand a much more incisive understanding of the notion of an 'adequate liberty to compete' if this notion were to be taken as the key to all economic redistribution questions. It would also demand a much broader conception of competition law than that which is current in ordoliberal legal and economic theory. One should dismiss the idea that anti-social monopolies are the exclusive domain of excessively powerful companies. One should begin to think of the monopolising tendencies entrenched in the very organisation of civil society in the broadest sense of the word. Monopolising tendencies begin with distributions of education, recreation and housing facilities. It is the distribution of all these facilities that excludes masses of people at birth from competing freely with those who happened to be born on the right side of the railway line. Were ordoliberals to extend the focus of their *Ordnungspolitik* to these systemic origins of economic monopolisation, they would begin to realise that *Sozialpolitik* is not *spezielle Politik*, but an ongoing and fundamental concern with the sustenance of adequate levels of social equality in every walk of life.

Ordoliberalism and Europe

D&K write:

The sovereign French government (that would certainly oppose VDW's implicit claim of being influenced by an ordoliberal agenda set by the Germans) decided prior to the financial crisis not to support the [banlieues] sufficiently. Instead, it chose, for example, not to tax the rich (which is in line with VDW) as well as to spend resources preferably on a large, Bismarckian-style welfare state known to perpetuate social stratification, with the inhabitants of the cités certainly being on very low strata.

When one reads this passage, one has reason to wonder with some dismay whether D&K have been taking any notice of the pressing political problems that plagued France in

recent years. Had they done so, they would perhaps not have talked so glibly about a “sovereign French government ... that would certainly oppose VDW’s claim of being influenced by an ordoliberal agenda set by Germans.” No one in his or her right mind would think of the current French government as “influenced by an ordoliberal agenda set by Germans,” and I surely have not suggested anything of the kind. What everyone who knows a little about current French politics understands well, however, is that successive French governments have been struggling to escape from an EU-imposed austerity politics that neither convinced nor “influenced” them.⁶ This is one of the main reasons why anti-EU politics is so prominent in France, both on the far right and on the far left. This is the reason why the workers’ unions in France are so Euro-sceptic. This is also the main narrative behind the dismal failure of François Hollande’s centre-left government in recent years. A main pillar of Hollande’s election campaign was to negotiate the relaxation of EU austerity measures with the leaders of EU Member States such as Germany and the Netherlands, who were insisting on these measures. He failed and his government foundered ever since.⁷

D&K’s observation regarding France’s “large, Bismarckian-style welfare state known to perpetuate social stratification,” quoted above, certainly merits further reflection. There is a broad perception current in France that France’s heavily centralised social and political structures are in need of reform. The astounding election of Emmanuel Macron as the eighth President of the Fifth Republic is in large part due to his announced willingness to bring about these reforms. One can leave aside the question whether one now has a case at hand of a possible future French leader who is “influenced by an ordoliberal agenda set by Germans.” I will ask a different one instead: Suppose France would want to persist in the years to come with old governmental traditions – call them *Colbertism*, call them *dirigisme*, one can even call them *Bismarckian* were one to forget that these traditions were around in France long before Bismarck⁸ – that for many reasons do not comply with ordoliberal principles of government. What would happen then?

⁶ The so-called Merkozy years could be an exception in this regard (e.g. Lechevalier, 2015: 74).

⁷ Those who have not been following these developments in recent years will find a sobering summary in Serge Halimi (2017: 1, 16, 17).

⁸ The suggestion here is not that Bismarckian modes of centralised social welfare government, Colbertism and dirigisme are the same in all respects, but they are certainly comparable with regard to the centralised statism common to them all.

For these state-centred traditions of government to become remotely as successful as they were in the “thirty glorious years” after 1945, future French governments would have to be unshackled from the especially German-driven austerity demands that the EU is currently imposing on France.⁹ The same would be the case if France wanted to reform these traditions in a way that would not imply a wholesale forfeiture of its own governmental traditions. Is there any chance that a politically and culturally more heterogeneous and hospitable EU may one day come to accept and accommodate this “*other France*” or this “*different France*” (not to mention a possible *other and different Greece*, etc.)? Or are the options Europe is facing reduced to either France becoming another Germany and the French good Germans, on the one hand, or the EU falling apart, on the other? Is the underlying message here really that this German way is the only way? Must Europe really become an enlarged Germany? Judging by the first signs sent out by the determined young Macron, Europe may well need to plot a different course in the years to come.¹⁰

Austerity not an Ordoliberal thought?

D&K may wish to respond to all this talk of EU-imposed ordoliberal austerity demands on France as fundamentally miscued, considering that the roots of the austerity thinking that have taken the world economy hostage towards the end of the twentieth century do not have ordoliberal origins. This is clearly their suggestion when they write:

The ideas concerning austerity actually originated in the 1980s in Thatcher’s Britain and Reagan’s America, where the concept of a minimal state, propagated by libertarian economists like Friedrich August von Hayek, Milton Friedman and Murray Rothbard, received much attention. From there, their ideas slowly spilled over into the states of the European continent. In other words, the recipes that are being applied in Europe (including Catholic Poland), but also in the US today are not ordoliberal, but libertarian or neoliberal. The distinction between these liberal schools of thought is much more complex than thinking of ordoliberalism as ‘neoliberalism with rules.’ At the heart of the distinction lies the role of the state. It seems that VDW interestingly chose not to dig deeper into these crucial differences, as his selection of references indicates (see endnote 15).

The “endnote 15” to which they refer concerns my references to a considerable list of scholars who have made the mistake of not having dug deeper into the crucial

⁹ See Macron (2016: 79) for a clear affirmation of the need for state investment in the economy. His main economic advisor, Jean Pisani-Ferry, is not an ordoliberal, but a moderate Keynesian (see Schubert, 2017).

¹⁰ Macron is indeed sending out strong signals that he intends to honour these traditions (2016: 48).

differences between ordoliberalism, neoliberalism and libertarianism. Had all these scholars dug deeper into these differences, D&K suggest, they would not have attributed austerity politics to ordoliberalism, but to the real culprits, namely, neoliberalism and libertarianism. And of course, then I would also not have been led astray regarding these crucial differences.

Now, considering this predicament of so many scholars out there being so ill informed about the crucial differences between ordoliberalism, neoliberalism and libertarianism and about the real origins of austerity economics, it would seem to me that there may well be a real incentive for ordoliberals themselves to really clear up this confusion, especially if they feel uncomfortable with being associated with the austerity politics that the EU is imposing on its Member States. Why don't those "scholars with a deep understanding of German ordoliberalism (such as Viktor Vanberg)" publish an unambiguous statement that ordoliberalism should not be associated with the austerity economics that neoliberalism and libertarianism have been imposing on the world in recent years. Considering their deep understanding of the movement and their intimate familiarity with its key texts – and considering that they will undoubtedly be recognised as authoritative spokesmen for the tradition – they are clearly in the best position to clear up this pervasive misunderstanding that is shared, one should note, by Jürgen Habermas.¹¹ Such a categorical clarification will also give them the opportunity to dissociate themselves from the Schäubles of this world, who must also have gotten their austerity ideas – see the epigraph above – from neoliberals and libertarians and not from them. And one can also strongly recommend that they make use of the same opportunity to denounce the unforgiving attitudes of the German government and the German media in the ongoing Greek crisis. Were prominent ordoliberal scholars who can speak authoritatively on behalf of the Freiburg School to do this, they might well be surprised how ready the scholars mentioned in my endnote 15 will be to revise their positions. Until this happens, however, they must expect that those of us who are supposedly unable to discern the subtle differences and distinctions to which D&K allude, will continue to associate ordoliberalism with austerity for reasons that look adequately plausible to us.

¹¹ See Habermas (2016): "Und da sich die Bundesregierung seit 2010 über den Europäischen Rat mit den ordoliberalen Vorstellungen ihrer Sparpolitik gegen Frankreich und die Südeuropäer durchsetzt [...]"

The reason that this association looks adequately plausible to me concerns the very role of the state to which D&K allude. One is well aware that one can distinguish ordoliberalism from classical liberalism on the basis of the former's conviction regarding the active role the state must play in sustaining a truly liberal market and preventing it from cartel formations that distort free competition. Classical liberalism is clearly different in this regard, considering its much closer adherence to *laissez-faire* principles. Taking one's key from an expression of Alexander Rüstow, one may well distinguish the *deism* of classical liberalism, and the *deontology* of the ordoliberals (Van der Walt, 2014: 246-252). And to the extent that neoliberalism and libertarianism are both closer to the *deism* of classical liberalism, they surely do not fit well into the *deontological* approach of the ordoliberals. But this is where the important difference between them ends, as far as I understand the matter. For the rest, the ordoliberals would seem to be as apprehensive of governmental practices that threaten price stability and undistorted competition as any other branch of "minimal state" liberalism may be. The infusion of money into an economy through the procurement of either state or private debt that is not warranted by equivalent levels of savings, would appear to be key among these objectionable practices according to them. This is how I and, I believe, many other scholars understand the matter. And if we are just wrong in this regard, I am sure we would all just be very grateful to be corrected by scholars with a "deep[er] understanding" of the ordoliberal tradition.¹²

Ordoliberalism and Protestantism

Assuming that austerity politics reflects a predominantly Protestant approach to monetary stability, is the underlying message of the ordoliberals really that this Protestant way is the only way? D&K will surely object vociferously to this way of putting the question. They object to my association of ordoliberalism with Protestantism. However, they themselves

¹² One may be hard pressed to find express references to notions of 'austerity' in ordoliberal texts, I assume, but the principles of monetary politics that Eucken elaborates in *Grundsätze der Wirtschaftspolitik* (the safeguarding of the price mechanism as the foundational principle of economic government [2004: 255]; the resulting need to avoid monetary instability as far as possible, irrespective of questions regarding the justice of the system [*ibid.*: 257]; the explanation of monetary instability with reference to the creation of money by banks [through credit provision that is not corroborated by savings], and the need to avoid this [*ibid.*: 258]; the need to sustain monetary stability with a currency constitution [*Währungsverfassung*] that operates automatically without interference from central banks or government authorities [*ibid.*: 257]; and the dismissal of Keynesian [*ibid.*: 286] or other forms of *Konjunkturpolitik* [*ibid.*: 308 – 312]) would nevertheless seem to lay down the blueprint for a monetary politics that can for all practical purposes be considered 'austere' (or at the very least have the potential to deliver consistently austere outcomes).

unabashedly associate the core ideas of early ordoliberal thinking with a Protestantism that only later became “enriched” (!) with a “Catholic social perspective.” They write:

Regarding the connection between ordoliberalism and Protestantism, VDW’s argument remains dubious as well ... [W]hile many early scholars from Freiburg were undoubtedly influenced by Protestantism, they are only one fraction within German ordoliberalism. Especially after Ludwig Erhard and Alfred Müller-Armack enriched the ideas from Freiburg with a Catholic social perspective to form the social market economy, the supposed dominance of Protestant thinking in ordoliberalism that continues until today is doubtful.

This observation that Ludwig Erhard and Alfred Müller-Armack – both Protestants, one should note¹³ – enriched the ideas from Freiburg with a “Catholic social perspective” evidently makes two interesting concessions: 1) The essential Freiburg thinking was Protestant in its orientation. 2) In the post-war years, this essentially Protestant thinking of the Freiburg School was enriched by a social perspective that was essentially of Catholic origin. Now, one really wonders what exactly D&K find so dubious about the link between ordoliberalism and Protestantism that I invoke in my NP intervention if they are prepared to basically concede the point themselves, as they do here. One also marvels at how prepared they are to concede in the same breath that the social perspective that went into the social market economy cannot be attributed to the core ideas around which the thinking of the Freiburg School developed, but had to be imported later from Catholic backgrounds. Little more need to be added in response here, apart from underlining a number of points to clear up the confusion that D&K are creating with these concessions.

Firstly, the Catholic influence on the ordoliberals during the post-war years is well known and surely not denied or ignored in my ODH intervention (2016: 88). Secondly, anyone who would like to challenge my view regarding the nonetheless close or even essential link between Protestantism and ordoliberalism firmly, should perhaps also consider the sources on which I rely and be ready to challenge these sources as well. In this respect, I would sincerely like to hear whether D&K would like to challenge Philip Manow’s arguments regarding *die protestantische Tiefengrammatik des Ordoliberalismus*, and if so, on what grounds they would do so. The lack of counter-argument that D&K display here

¹³ For Müller-Armack, see Josef Hien’s reference in this issue to Dieter Haselbach’s observation that Müller-Armack’s “Protestant confession was not without impact on his scientific work.” As for Erhard, he had a Catholic father and a Protestant mother, but Erhard and his siblings were all baptised as Protestants. See Ludwig Erhard Zentrum (2017).

becomes glaringly conspicuous when one considers the meticulous way in which Manow unpacks both the historical and dogmatic links between ordoliberalism and Protestantism.

Be it as it may, none of the above observations inately suggest that there never were Protestants with strong social sensibilities or Catholics with strong individualistic and competition-oriented sensibilities, both in Germany and in France (as well as elsewhere). Surely, admirers and followers of Walter Eucken, whose theories incorporated so much from Max Weber's concern with *Idealtypen*, could have been expected to respond a little more discerningly to this part of my ODH intervention.

“A Huntington-Type Clash” of Civilisations?

D&K conclude their response to my ODH intervention with this passage:

We conclude with some remarks on VDW's vision of jihadist terrorism resulting from a Huntington-type clash of (de-hermeneuticised) religions or quasi-religions. While we mainly accuse the author of a superficial (de-hermeneutic!) reading of ordoliberalism and the Freiburg School of economics, we observe the same problem with the idea of de-hermeneuticised Islam. VDW's position is somewhat reminiscent of Gilles Kepel in his debate with Olivier Roy on whether the current threats posed by terrorism result from a *radicalisation of Islam* or from an *Islamicisation of radicalism* (e.g. New York Times, 2016).¹⁴ Combined with de-hermeneuticisation, this would entail Islam – somewhat mechanically – becoming “more fundamentalist (...) and less interpretive” (p. 80); the argument over the radicalisation of Islam therefore becomes oversimplified, as the *process* of radicalisation is not explained. Roy, on the other hand, argues more psychologically and places greater emphasis on individual behaviour. Following his line of reasoning, a specific combination of individual traits and environmental influences causes radicalisation. This is not simple mechanics, but can be traced back to concrete causes. In addition, Roy considers the terrorists' religious beliefs in the context of a jihadism that is strictly marginal to Islam.

The same question that I have posed above with reference to Manow must again be posed here. Do D&K really wish to take issue with Navid Kermani's intimate knowledge of the modern development of the Islam religion on which I rely in ODH? If so, what are their arguments? Their sparse reference to the Kepel–Roy debate does not seem to offer any clear line of contention that significantly challenges the views I took from Kermani. It is noteworthy that Charlotte Heath-Kelly, in her response to ODH, to which I turn later below, relies on Kepel and Bernard Lewis for an express confirmation of the modernisation thesis

¹⁴ For a popular account of the debate, see New York Times (2016). For introductions to the works of each scholar, see Roy (2004) and Kepel (2006).

that I gleaned from Kermani's writings. D&K, with little argumentation to back them up, simply suggest Roy's views should be given preference here.

If Roy is right, and there are indeed good reasons to honour his arguments, VDW's clash of religions story is indeed inaccurate from both ends.

One should note that this is D&K's closing paragraph and sentence. They simply leave the scene of the argument with this cavalier final statement. What may be their considered reasons for doing so? What are the good reasons for assuming Roy, and Roy alone, is right here, and Kermani and Kepel (and Lewis, and all others who disagree with Roy) are simply wrong? On what expertise or immersed reading are D&K relying for their astoundingly authoritative assessment of the relative merits of these authors and the state of the debate between them? Would anyone who is really immersed in this debate come to such a quick and facile conclusion? But many more questions abound here: Why do they impute a "clash of religions" story to ODH when there is not the slightest evidence of any focused intention to put forward such a story in it? Why is it that D&K cannot see that the thesis regarding the modern radicalisation of Islam plays almost no role in my ODH arguments apart from furnishing it with the concept with which I proceed to analyse Western or European frames of mind?¹⁵ Why can't they see that the whole line of argument in ODH (regarding the socio-economic distress and frustration that contribute to religious radicalisation) resonates in many respects as much with the psychological "Islamicisation of Radicalism" argument that they attribute to Roy as it does with the broader semantic "radicalisation of Islam" argument attributable to Kepel (and others)?

Frankly, I cannot see why one should subscribe exclusively to either of these lines of arguments, and suspect (as a non-expert in this specific debate, no doubt, but as a social science scholar with many years of experience of this kind of debate) that many experts in the field would probably want to consider both arguments worthy of consideration for purposes of understanding a complex development with multiple elements and facets. But again, it is simply astounding how D&K, who do not count as experts in the field, as far as I can discern, simply begin to promote one of these competing arguments for purposes of

¹⁵ After having dedicating roughly two paragraphs (out of twenty-five pages) to introducing the concept, I wrote: "It is, however, not with the de-hermeneuticisation of Islamic cultures that I wish to take issue in what follows. I would like to look, instead, at the vast and increasing dehermeneuticisation that has taken root in European societies."

ending their response with a loud parting shot.¹⁶ It is best to say as little as possible about this kind of scholarship. But one should note – perhaps for the benefit of students and future scholars – the sad lack of scholarly curiosity and responsibility that allows them so easily to forego careful engagement and argumentation. I leave it to the readers to consider this well and judge it for themselves, but D&K surely do not leave me with the impression that they have engaged with the Roy-Kepel debate for the sake of getting to the bottom of it and articulating a carefully considered opinion about it. The impression with which they leave me is that they simply dragged in the debate by its coat tails for the sake of ending their piece with some sort of rhetorical crescendo. They surely do not leave me with the impression that they are still guided by scholarly curiosity and the wish to offer a careful and responsible point of view.

When I look back at all the aspects of their response to my ODH intervention with which I took issue above, it strikes me that a lack of a real concern with curious, careful and responsible scholarship burdens almost every line of what they have written in reaction to my ODH intervention. I use the word “reaction” here in order to avoid the word “response” now. I am left with the impression that they have not argued with me or *responded* to me. My sense is that they have sent me a reaction devoid of both a response and the responsibility that conditions a response. And this leads me to the final point that I wish to make with regard to D&K’s reaction to my ODH intervention. They end up portraying ordoliberal thinking as devoid of responsibility. I may not have the “deep understanding” of ordoliberal thinking that D&K expect from their interlocutors, but I have read enough of Eucken’s work and enough about it to know that he was a formidably courageous and responsible person and scholar. One may want to differ with him on many points, but his work cannot be considered “irresponsible.” And this is sadly exactly what D&K end up doing in their reaction to my ODH intervention. They portray the ordoliberal tradition as a school of thought with no sense of historical responsibility, as I will show in what follows.

Ordoliberalism Is Not Responsible ...

¹⁶ If D&K took recourse to the conditional mode of the phrase “If Roy is right” to suggest they are not taking sides here, as I contend, they would surely be stripping this whole concluding paragraph of the only bit of contrived substance – Roy’s argument and “the good reasons for honouring it” – on which it hangs.

“Ordoliberalism Is Not Responsible for Jihadist Terrorism in Europe,” reads the title of D&K’s reply to my ODH intervention. The explanation for this title would seem to rest on the denial of a chain of causal links between jihad terrorism and ordoliberalism that they attribute to my ODH intervention. The following passages put forward their essential contentions in this regard:

We strongly doubt that the simple mechanics of VDW’s argument support the assertion that – with or without a process of de-hermeneuticisation – Protestant ethics led to ordoliberalism, which resulted in an imposed austerity in France and ultimately jihadist terrorism. This causal chain is not only highly questionable, but also its underlying assumptions are, in fact, inaccurate.

VDW asserts that a lack of resources (or at least the prevailing belief in “economic scarcity”) has substantially contributed to the social unrest in Molenbeek, Belgium, or the cités around Paris. The resulting socioeconomic grievances allegedly spawned terrorism. While this claim may possibly have some merit, though the mono-causality of it is at least questionable, VDW falsely accuses ordoliberal economic theory of a de-politicisation (or, how he puts it, de-hermeneuticisation) of the notion of resource scarcity.

Any honest attempt to come to grips with these passages would surely want to ask whether their authors consider their reading of my ODH intervention an expression of good faith and a sincere intention to engage with the essential thoughts that the intervention puts forward. Have D&K asked themselves for a moment whether anyone with a reasonably developed sense of what counts as a good social theoretical line of argument would come up with the syllogistic sequence “Protestant ethics *led* to ordoliberalism; ordoliberalism *resulted* in imposed austerity; austerity resulted in jihadism; Protestant ethics and ordoliberalism thus caused jihadism”?

Or, to put the question differently, do D&K really consider it good scholarly practice to reduce an argument to a simplistic caricature for purposes of considering themselves unchallenged by it, and simply not addressed by it? To rephrase the question one more time so as to bring into play the essential point that I wish to make here: Is it a sign of either scholarly or social responsibility – of owning up to one’s responsibility – when one reduces the question of responsibility to a narrow consideration of whether one can be identified as an exclusive and direct cause in a mechanistic “mono-causal” sequence of consequences? Or is the inclination to consider responsibility in these terms not indeed the sign of the wish to absolve oneself from responsibility as far as possible, that is, from all but the most direct forms of causal involvement. If this is what is going on in D&K’s reaction to my ODH

intervention, does the retort “Ordoliberalism is not responsible...” not indeed amount to a confirmation of irresponsibility? Would the sign of social responsibility in a time of crisis – the crisis of religious radicalisation among young people that leads to barbarous acts of jihadism included – not much rather be reflected in the willingness to consider the many ways in which existing modes of thinking and doing, including one’s own, may be contributing to the crisis in ways that are not unambiguously evident?

I shall leave it to the reader to decide whether D&K’s portrayal of my arguments is fair and accurate. For my part, I cannot see why anyone with a sound mind would want to argue that Protestantism *led* to ordoliberalism, ordoliberalism *resulted* in austerity, and austerity *caused* jihadism. What I can imagine someone arguing, however, and what I believe I argued or at least endeavoured to argue, is something to the following effect: Ordoliberalism’s consideration of a system of fair and virtuous competition as the most crucial concern of state politics can be traced to the Protestant ethics of hard work and frugality that Max Weber already identified as key to the rise of modern capitalism. To the extent that the tradition of ordoliberal thinking by and large considers its social responsibility restricted to the sustenance of fair and virtuous competition, it surely does not address or offer a meaningful response to questions regarding extensive economic redistribution that might facilitate the incisive and deep social reconstruction needed for improving the conditions of social malaise that evidently prompt radical anti-social conduct such as religious extremism and religiously inspired terrorism. So far, there is no mention in this line of argument of, or any allusion to, a causal connection – let alone the “mono-causal” connection that D&K impute to me¹⁷ – between ordoliberalism and the social conditions that are conducive to anti-social behaviour. At stake is merely an observation regarding ordoliberalism’s failure to offer a meaningful response to these conditions (and indeed then an observation regarding a failure to respond and a failure to take responsibility).

Only then – having observed this ordoliberal failure to respond – does my argument tighten its screws for purposes of invoking an ordoliberal “legacy.” The legacy invoked here, one should note clearly, is nevertheless not jihad terrorism, but “Europe’s states of

¹⁷ D&K write: “The resulting socioeconomic grievances allegedly spawned terrorism. While this claim may possibly have some merit, though the mono-causality of it is at least questionable...”

emergency.” And the gist of this part of the argument is this: If one actively and effectively promotes – or at least passively but conspicuously condones, thereby contributing effectively to the entrenching of – an austerity politics that inhibits incisive, timely and ongoing ameliorative responses to serious conditions of social malaise, one certainly also contributes very effectively to the need for urgent or emergency responses when the situation gets out of hand. Under these circumstances, it becomes accurate and apt to consider an ensuing state of emergency a “legacy.” Again, I wish to leave it to the reader to judge, but I personally and honestly do not think there is anything in this argument that suggests ordoliberalism is the cause, let alone the “mono-cause,” of jihad terrorism. I trust a brief recollection of the following passage from ODH can serve as a helpful starting point for the reassessment that I consider necessary here:

The perspective elaborated in this article certainly requires a willingness from readers and interlocutors to reconsider dominant views of looking at the problem or crisis that one is facing here. The suggestion that *one of the roots* of the current wave of jihad terror in Europe can be traced to a European fundamentalism that is as extreme as the Islamic fundamentalism behind the terrorism, may well come across as counter-intuitive and even scandalous to some readers.... This perspective is nevertheless put forward here for the sake of opening up other ways of thinking about the crisis Europe is facing today. It should also be stressed that the endeavour to open up a different perspective here is not at all accompanied by the claim that it offers a comprehensive or conclusive solution to the crisis at hand. It is just a first step towards thinking differently about this crisis.¹⁸

Against the background of this passage, but also in view of the way in which I structured my arguments in ODH, I sincerely believe the imputation of a monocausal argument to my ODH intervention rests on a construction of someone who prefers not to take responsibility under circumstances in which all responsible persons and parties involved would do so, and can do so, without having to admit blame, let alone exclusive blame. If this is indeed the preference of ordoliberals, ordoliberals are indeed “not responsible,” as D&K suggest. And this leaves one to ponder the worrying possibility that European politics may be deeply influenced by a way of thinking that is quite evidently unconcerned by its own irresponsibility, a way of thinking, moreover, that would evidently no longer be worthy of Walter Eucken’s formidable legacy.

Constructive Invitations to Think Further

¹⁸ The emphasis on “one of the roots” is added here.

The observations regarding an ordoliberal lack of responsibility with which Section I ends above can all be traced to the disciplinary refusal to think that I invoke earlier in the section. When I turn now to what I deem the constructive invitations to think further sent to me by Josef Hien, Charlotte Heath-Kelly, Emmanuel-Pierre Guittet, Filipe dos Reis and Ben Kamis, I would likewise like to link these invitations to think further to a willingness to take responsibility and to alert European politics to some of its most worrying features. I will address each of these invitations individually in this section.

Hien, Resurgent German Ordoliberalism & Europe's Ideational Monocultures

I thank Josef Hien for substantiating the key arguments regarding ordoliberalism in Europe advanced in my ODH intervention and for doing so with reference to a rich background of knowledge and reading that I can only admire and from which I stand to learn much still. I wish to pause here to reflect only on the three elements of his response from which I have already learned much and which I also deem worthy of much further thought and reflection than that which is immediately possible in what follows. The first point concerns my failure to note the specific context of the resurgence of ordoliberalism in Germany since the 1980s, and the impression I create that ordoliberalism has continuously dominated German economic and political thinking in the wake of World War II. The second concerns the as yet unconfirmed status of the hypothesis that ordoliberalism spread from Germany to Europe through the European Union Treaties. And the third pertains to my failure to note the other fundamentalisms and ideational monocultures spawned by the resurgence of ordoliberalism in Germany and Europe since the 1980s.

My ODH intervention has indeed not been attentive to the fact that ordoliberalism has not just always been around in Germany, but also enjoyed a very specific resurgence since the 1980s. The first response to Hien's observations in this regard should be to just admit to a lack of adequate knowledge of these specifics of the history of ordoliberal thinking in post-war Germany. I assumed that the prominence of ordoliberal thinking in the development of Germany's social market economy during the years after the war also amounted to a relatively dominant position for it in German political thinking throughout this period and am grateful for Hien's correction in this regard. I also find the developments that he explores and puts forward as possible reasons for the resurgence of ordoliberal

thinking since the 1980s and especially in the 1990s – the economic problems in the wake of Germany’s re-unification, the changes that the re-unification caused in the electoral landscape, and the massive privatization of state-owned companies, land and housing stock – cogent. They all also offer significant food for thought. One of the first prompts for further reflection on this history that comes to mind in this regard, surely concerns the question whether the future of Europe and European integration should be held hostage by the unique exigencies of the German re-unification.

This of course already leads one to the question of the unconfirmed status of any contention that ordoliberalism infiltrated the rest of Europe, or at least the EU, through its incorporation in the Treaties of the EU, notably the Maastricht Treaty, as well as through the Stability and Growth Pact of 1998/9 and the Fiscal Compact of 2012. I am happy to accept, as Hien suggests, that the controversy around the Maastricht Treaty is still unresolved as a result of the embargo on crucial archive material. I am also happy to accept, as he suggests further, that the influential ideas and lines of thought that led to a broad acceptance of the governmental principles incorporated in the Stability and Growth Pact and the Fiscal Compact among EU Member States may well have included neoliberal convictions that took root in these Member States independently of any German or ordoliberal influence. I nevertheless wish to offer in response here an Arendtian regard for the way perceptions and appearances count in politics (van der Walt, 2012). The perception that ordoliberal principles and a German hard line on austerity economics are entrenched in the EU treaties and other EU instruments, and via this entrenchment imposed on the rest of the EU, has become so pervasive – a quick look at the relevant literature and journalism confirms this very readily¹⁹ – that it has become a political reality that can no longer be dismissed as a myth. This political reality is further corroborated by the strident way in which German political leaders advocate their austerity visions for the rest of Europe (see again the epigraph above).

Against this background, the rise of other ideational monocultures in Europe – such as those reflected in the notion of a *contre-attaque de l’Empire latin* contemplated by Agamben and the anti-Protestant statements voiced by Greek politicians to which Hien refers – should surprise no one. The idea of a *contre-attaque latin* is largely a myth with very

¹⁹ See again the publications cited in footnote 15 of my ODH intervention.

little political purchase, as the lack of support for Greece and empathy with its plight from the side of other Southern European countries makes all too clear. However, the fact that one of Europe's leading philosophers discerns potential in this myth for some emancipatory release here, should give us pause for careful reflection on the real state of European politics. How long will the leaders of Europe, who have the power to bring about an imaginative and significant *hermeneutic* change of fundamental political perceptions in Europe, allow the already significant distrust between the North and the South to deepen? How long will they risk the possible development of new geopolitical alliances that will send the ideal of the ever-closer union of the peoples of Europe to the rubbish heap of half-baked ideological experiments? These questions are especially pertinent in a time when the most powerful nation on earth apparently no longer sees any reason for supporting the further integration of Europe, as it did in the past. I believe it is the merit of Hien's response to my ODH intervention to open up these lines of thought, instead of closing them down, and he deserves not only my appreciation, but the appreciation of everyone who ascribes to the ideal of a truly political integration of Europe and therefore resists the reality of an imposed market integration that is grafted on rules favoured by the strongest players in this market.

Heath-Kelly and the Militarised Fundamentalism of Foreign Intervention

Charlotte Heath-Kelly writes:

Van Der Walt's piece could be strengthened by an engagement with a different feature of Eurocentric fundamentalism: the persistent military interventionism, borne of the historical colonial figurations of many Western European states, which directly contributes to the formation of militant groups and structures their counter-hegemonic ideology. While Van Der Walt highlights the economic fundamentalism of neoliberalism, the militarised fundamentalism of foreign intervention is an equally, if not more, prominent contributing factor to political violence.

Heath-Kelly unpacks the key contention put forward here with ample evidence of the directly parallel relation between Western military interventionism and the counter-hegemonic ideologies of militant groups that eventually translate into acts of terrorism. And it is in this regard that she points out "an unintentional reproduction of certain aspects of the European fundamentalist discourse – especially the silencing of the self-explanation of militancy by its perpetrators, and the role of militarised foreign policy in causing terrorism" - in my ODH intervention. The point she makes here emanates from a fine and close reading

of my text and it is worthwhile quoting in full what I consider the sharp end of her contention in this regard:

But I criticize the unintentional reproduction of certain aspects of the European fundamentalist discourse – especially the silencing of the self-explanation of militancy by its perpetrators, and the role of militarised foreign policy in causing terrorism [- in van der Walt’s text]. This reproduction of discursive silences is especially evident in the article’s discussion of airstrikes and the Syria conflict. VdW is technically correct when he outlines the ‘increased bombing’ of Syria which followed the Paris attacks; however, this allusion-by-default to previous French bombings is not enough if we want to understand the reciprocal violent fundamentalisms of Europe and militant struggle. The French airstrikes began in Syria on September 27th, 2015 (two months before ISIS attacked Paris) as part of a dominant French foreign policy towards the Middle East – reinforcing and developing “[France’s] self-perception as a great power” (Ramani, 2015). Two months later, ISIS gunmen were reported to shout “This is for Syria!” to the assembled audience in the Bataclan theatre before opening fire (ITV News, 2015). Given this explanation by the perpetrators, and the social scientific research which connects interventionism with a militant response, we should explore this link between the militarist fundamentalism of Europe and the United States and the wave of terrorist bombings. But for all the notable analysis of European neoliberal and cultural fundamentalism within van der Walt’s discussion of terrorism and counter-terrorism, his article silences the voice of the Paris perpetrators - and of ISIS and Al Qaeda’s political justifications more broadly – in regard to the Western military interventionism and neo-colonialism which drives their militant response.

Let me begin by just conceding the point. I fully agree that my text does reproduce the discursive silence that Heath-Kelly discerns here. I am grateful to her for pointing this out, but also for graciously allowing the qualifying “unintentional” into her observation of this reproduction, for I also need to concede that there is nothing in my text that expressly warrants this gracious qualification. I nevertheless wish to confirm that my reproduction of this discursive silence was indeed unintentional. And perhaps Heath-Kelly will also graciously allow me to cut myself a little more slack here by adding the qualification “inevitable,” considering that the link between Europe’s economic fundamentalism and its states of emergency is already quite a big fish to fry for one critical intervention. Having said this, however, let me again stress that Heath-Kelly’s point is well taken, but perhaps only with one small, but, to my mind, significant exception: I struggle to come to terms with the contention that my “article silences the voice of the Paris perpetrators.” Frankly, I sense no need and experience no wish to give the Bataclan perpetrators themselves any kind of voice. One simply stares too directly into a mind-numbing failure of basic humanity here to want to give a hearing to the voice of the perpetrators themselves (in the same way that I do not experience the remotest wish to give a direct voice to anyone who issues or executes

an order to drop a bomb on civilian settlements). For the rest, however, I fully comprehend the need to pay attention to the discursive silence Heath-Kelly points out and to duly select it as a guiding principle of critical inquiry, as she does in her response to my NP intervention.

Further to this, one should also pursue further the possibility of significant links between Europe's economic fundamentalism and its fundamentalist military interventionism. There may well be much more at stake here that warrants careful attention, but I shall only point out one line of questioning that seems important to pursue further in this regard, namely, the link between – what one might call – a domestic sovereignty deficit, on the one hand, and foreign sovereignty excesses, on the other. One should, for instance, question in this regard *all* the reasons for France's commencement of airstrikes in Syria in September 2015 and pay specific attention to the question whether Hollande's decision to act forcefully abroad was not at least partly motivated by an attempt to compensate for the pervasive perception of the domestic political paralysis into which his government descended in the wake of his failure to make good on his electoral promise to renegotiate the debilitating austerity measures of the Stability and Growth Pact.

This is of course only a line of questioning and not of contention, and it is doubtful whether it will produce enough evidence soon enough to support a firm contestation in the near future. It nevertheless remains a question that critical inquiry must keep open and alive (Ramani, 2015),²⁰ considering the frequency with which the fundamentalisms – the human rights and liberty fundamentalisms! – that informed Western military interventionism in the past, came across as all too mixed up with cynical compensatory and/or distraction strategies.

Guittet, Agamben's Pessimism and the Time of Hermeneutics

Emmanuel-Pierre Guittet's response to my NP intervention offers a poignant and perceptive description of the "risk-soaked security imaginary" with which contemporary modes of political sovereignty present themselves as an inevitable system of "precautionary governmental processes" for which no alternative exists. He describes the sheer anthropological pessimism that informs this reduction of politics to precaution and risk-

²⁰ Samuel Ramani (2015), to whom Heath-Kelly refers, is surely also doing this. He observes the following: "As President Francois [Hollande remains deeply unpopular](#), an aggressive foreign policy towards Syria could rally nationalist sentiment and underscore Hollande's [leadership credentials](#) ahead of the 2017 presidential elections."

management accurately and forcefully, and I can fully endorse from my side the resonances that he discerns between his critical engagement with this securitisation of politics and the technocratic reduction of politics that I describe as a process of dehermeneutisation.²¹

However, Guittet also cautions against any critical engagement with this securitisation of the political that corroborates its underlying pessimism, instead of challenging it, and finds signs of this corroboration in my reliance on Agamben's work. Guittet writes:

Nonetheless, encapsulating these issues in an anxious reading of politics under the authority of Agamben's *Homo Sacer* series of work as Van der Walt does in his piece (2016), where political hope is hopeless, and inscribing them in a pessimistic and impoverished understanding of societal practice, is itself dangerous (Guittet, 2008). Politics is a doomed enterprise from the start. It is a blessing and a curse at the same time (Agamben, 1990). Strangely enough, Van der Walt's previous article (2015) is less guided by the gloomy picture of the present state of things one can find in Agamben, and perhaps more attuned to the Italian thinker's classicism as his work fraught with riddles for his Latinist and medievalist peers.

I will not address here the question whether Agamben's *Homo Sacer* series of work is indeed informed by "a pessimistic and impoverished understanding of societal practice." That will take us too far away from the question that is more immediately at stake here, namely, whether my reliance on Agamben's work reproduces the "pessimistic and impoverished understanding of societal practice" that Guittet attributes to his "*Homo Sacer* series of work." I would like to address this question by commencing with this observation: Even if one were to conclude that the *Homo Sacer* series of work is "inscrib[ed] ... in a pessimistic and impoverished understanding of societal practice," it would still be very possible to find in this series of work significant insights that may help one to transcend whatever pessimism or impoverished understanding may be at work here. It should be noted that not only my "Literary Exception" contribution to *New Perspectives* (van der Walt, 2015), but also my ODH intervention turns much more on a reading of Agamben's later work *The Time That Remains*. However, in both cases I find the key for my reading of *The Time That Remains* in an important passage from *Homo Sacer* on the Aristotelian distinction between actuality and potentiality. It is on the basis of this passage that I discern a further development of Agamben's thought in *Homo Sacer*, or even a response to it, in *The Time That Remains*. And it is this further development or response that becomes central to my arguments in both the "Literary Exception" article and my ODH intervention.

²¹ See again footnote 2 above.

Now, this reliance on *The Time That Remains* may not get me off the hook as regards the “pessimistic and impoverished understanding of societal practice” that bothers Guittet for he seems to attribute pessimism also to the “optimistic” reading of Agamben’s later work by Sergei Prozorov. Guittet writes:

While retrieving the questions of potentiality, redemption and salvation, Prozorov re-assigns Agamben to a rather pessimistic understanding of time – a Judeo-Christian understanding of linear time, one could say – where hopes, but mostly fears, are associated with predictions of the end of the world: the worse things get, the better the potential results.

I cannot engage with Prozorov’s reading of Agamben here. Suffice it to say that my reading of *The Time That Remains* pivots on a key thought that can be extracted from St. Paul’s *hos me* instruction to the early Christian communities. At issue in this thought is not a concern with the end of the world, but an indefinite postponement of this concern which largely renders it irrelevant as far as terrestrial political engagement is concerned. It is the indefinite postponement of the end of time that allows for “the time that remains,” that is, the time with which we can and must concern ourselves *without* invoking the perfect justice that is the exclusive prerogative of God’s final reckoning at the end of time. It is this Pauline postponement of God’s justice that allows for time to go on, *for time to remain*, and thus for a time in which mortal beings can engage in a modest secular politics that befits their partial and limited wisdom. *This is the time of hermeneutics*, for hermeneutics will only end when God’s final message leaves his finger or forehead with a digital perfection and immediacy that will neither require nor tolerate any interpretation or translation; similarly biblical hermeneutics also only gained importance when Jesus had been away long enough to warrant the assumption that he would not be returning all that soon.²²

The contemplation of a time that will be allowed to remain and endure as long as no gnostically-deluded mortal engages too apocalyptically with disastrous conceptions of perfect justice and holy truth, evidently warrants little reason for much optimism. However, it does allow for a creative politics that refuses to give up on the idea of futures that can be significantly different from the present, while also refusing to entertain the idea that any one of these futures will come to realise the good society for good. These two parameters,

²² This is a somewhat free inference from the fact that hermeneutics played no significant role in the early Christian communities, given their concern with a direct (extra-textual) experience of Jesus (see Sherrat, 2006: 42).

taken from Marcel Gauchet (2002: 9-14),²³ demarcate the space and opportunity for a politics in which human intelligence, courage and resourcefulness may still play enough of a role to endow future existence on earth with adequate levels of dignity.

Dos Reis and the Technocratic Transformation of the Exception into a Zone of Extra-Legal Expertise

Fear that the avoidance of apocalypse may well still translate into an infinite eschaton that renders the absence of the good society all too clear, while erasing all hope for different futures (that may, at least from time to time, change the décor of desperation), is nevertheless hardly surprising in the times we live. This fear is evidently already speaking its mind on the last pages of my ODH intervention, but it really begins to haunt the heart when one reads Filipe dos Reis' sophisticated account of the ways in which contemporary modes of governance close down hermeneutic space by erasing the difference between states of exception and regular rule of law. Dos Reis' description of this process is indeed nothing less than an exacting account of how the avoidance of apocalypse translates into an eschaton in a time of technocratic juridification.

Dos Reis' analysis of this process of technocratic juridification takes its cue from Fleur Johns' conception of a *non-legality* that does not constitute an *illegality*, but a certain *extra-legality*. Dos Reis writes:

For Johns, states of exception do not create spaces of illegality, but rather of "extra-legality". Extra-legality is not "necessarily identified with the transgression of law" as it rather gives "shape to a domain, situation or set of forces outside the law, whether temporarily or permanently. Extra-legal domains are, nonetheless, jurisdictions. That is, they are spaces from which the authority of the law gets spoken or performed."

It is well-known that the concept of the state of exception has been contemplated before in terms of a complex of *continuity and discontinuity* between the legal and the extra-legal or the constituent and the constituted power. The Schmitt-Kelsen debate is a standard point of reference in this regard, from the perspective of which Schmitt is mostly associated with the concern with an (at least partly) extra-legal constituent power, while Kelsen is mostly considered the champion of a completely intra-legal constituted power.

²³ I am indebted to a recent academic exchange with Panu Minkinen, Emiliios Christodoulidis and Chris Doude van Troostwijk for bringing this important book to my attention.

The picture is much more complex than this elementary delineation suggests.²⁴ Suffice it nevertheless to just observe here the key concern of theorists whose scholarly endeavours remain inspired by the possibility of an extra-legal constituent power. For them, the concern with constituent power is a concern with a future that is not entirely pre-determined by the past. In other words, the scholarly concern with constituent power entails an intellectual resistance to an end of time that promises no significant future.

Whether this resistance to eschaton and eschatology requires a simple endorsement of Schmitt's and a dismissal of Kelsen's thinking is doubtful. Suffice it nevertheless to observe that the adamant insistence that constituent power should not be reduced to constituted power contemplates a rupture between law and politics – and between the legal and the extra-legal – that not only demands, but also conditions the possibility of a creative hermeneutic intervention without which the chance of significantly different futures is no longer thinkable. It is this possibility of a truly constituent political rupture that the technocratic juridification of politics seeks to close down completely in our time. Dos Reis describes this juridification with reference to collaborations between security and legal experts (and human rights experts to boot!) that aim to design a security law that not only governs future cases, but also its own future development. Here is one of the key descriptions that he offers of this process:

Here, a depoliticising effect runs in two directions. First, although there has been significant human rights advocacy in the context of counter-terrorist measures (e.g. with regard to detention and practices of 'terror lists'), struggles over the 'rightfulness' of these measures were often carried on outside the realm of a broader public and within highly complex legal vocabularies between legal experts working for human rights advocacy, on the one hand, and those working for national security agencies on the other. Second, the latter group of experts attempts to transform discussions about rights and the punishment of past terrorist acts into a discussion about pre-emptive counter-terrorist measures. In this regard, they appear to be trying to give the fight against terrorism a 'carte blanche' to establish various exceptional measures. This signifies not only a shift in the temporality of law, i.e. towards a future-oriented law, but also institutionalises a related bureaucracy and thus perpetuates states of emergency as it creates a demand for technocratic risk expertise.

One can hardly hope for a more accurate description of how the avoidance of apocalypse turns into an asphyxiating embrace of eschaton than the one offered in this

²⁴ For more nuanced views of Kelsen's position, see Van Ooyen (2008: XIX), Chiassoni (2013: 137), and Navarro (2013: 88).

passage. Dos Reis commends my NP intervention for contributing to the understanding of this process. The resonance between what he has in mind and what I was getting at in my intervention is evident, but it is really I who must thank him for offering a more precise vocabulary – which I certainly did not command at the time of articulating the NP intervention – and for thinking through some of the most disconcerting issues that are at stake here.

Kamis, Epistemology and the Personal

Ben Kamis begins his response to my NP intervention with a description of the many ways in which his and my research interests and focuses overlap and I certainly also notice this common ground from my side. I nevertheless wish to highlight one passage of his response that situates my ODH intervention in a framework of thinking in which it does not fit as comfortably as he thinks. Kamis writes:

The argument progresses through all the waypoints one would expect: Agamben, Calvin (via Weber), Gadamer. And the basic intuition that the state is better understood as the thuggish enforcer of the market rather than an arena of complex interests and subjective motivations that are negotiated in more or less democratic or bureaucratic procedures strongly recalls an established tradition in leftist political economy that runs from Lenin to Jessop. In short, those unfamiliar with such critiques of state-market linkages and Europe's engagement with Islam will learn much. Those of us in the choir, however, have heard this sermon before.

The last line of this passage can perhaps be considered the most stinging in an otherwise very friendly response. I can only say that I certainly endeavoured to do a little better than repeating a well-known sermon, but accept that many readers might not be convinced in this regard. I accordingly also accept that Kamis may have well-considered reasons for counting himself among them. I am therefore especially grateful to him for valiantly moving on to identify my personal touch to the sermon as at least one reason for taking notice of it. In what follows, I shall rely on his generous effort in this regard for purposes of briefly putting forward again a line of thinking that I have developed in a number of previous articles, including "The Literary Exception". I wish to do so for purposes of taking the responses that I have developed above – especially those to Dos Reis and Guittet – one step further. Before I do so, however, I would also like to point out that I do not quite share the basic intuition "that the state is better understood as the thuggish enforcer of the market rather than an arena of complex interests and subjective motivations," etc. that may be attributable to a long line of leftist thinking. I certainly

welcome being associated with leftist thinking, but would prefer to be associated with an equally long line of leftist thinking that attaches much importance to the emancipatory potential of the modern state in an age – our age – of rampant civil society abductions of public interest.

Let me nevertheless return now to Kamis' generous engagement with the personal touch that, at least according to him, saves my ODH intervention from redundancy. I discern in this endeavour a thought that I consider profound - much too profound, in fact, to be bestowed on the personal reflections on the freshly declared state of emergency in France on the morning of 14 November that I slipped into the opening paragraphs of my ODH intervention. Kamis invokes in this regard the curious tension between the meta-theoretical or methodological recognition of personal experience as a "common source of inspiration [of] great work," on the one hand, and the refusal – especially evident in Germany today – to allow such personal experiences into scholarly dissertations and writing. In other words, the mixed message of current social scientific methodology is this: By all means rely on personal experiences – it often leads to great work, but "[just] don't talk about that sort of thing in your writing." The reasons for this methodological exclusion of personal experience from scholarly writing are threefold: 1) no one cares about what we think, as the scholarly community is only interested in what we can demonstrate; 2) passionate or personal engagement with one's subject matter interferes with scholarly analysis; and 3) reflections of personal experiences in scholarship are ploys to deflect criticism, considering that they render all criticism personal or ad hominem.

I am not all that sure that my ODH intervention defies these potential points of criticism, as Kamis generously suggests. Many readers may indeed feel that I exposed the intervention to exactly these points of criticism by inserting my personal reflections on 14 November into the opening paragraph in the way I did. A throwaway statement in D&K's reaction to my intervention – "Clearly, the recent terrorist attacks in France and Belgium made a strong impression upon his research endeavours" – may well have a touch of this criticism in it. Be that as it may, the really interesting point that Kamis raises here concerns the contradiction or paradox that informs the kind of academic critique he outlines in the passage above. On the one hand, the critique reflects an awareness that a personal experience or inclination may well constitute an important impetus for social scientific research. On the other hand, it insists that such an experience or inclinations should not be

articulated as part of the research undertaken, given that such an articulation exposes the researcher to one or more of the three lines of criticism that Kamis points out: a lack of objectivity, weak analysis, and obstruction of due criticism.

Now, I largely actually endorse the social scientific demand that personal considerations and experience should not become too conspicuously or prominently part of social scientific predication, for all three of the reasons Kamis points out, and perhaps even for some others. However, the paradox that Kamis highlights remains intriguing. Why is it so that social scientific research must return to the dimension of personal experience for inspiration only to take leave of it as quickly as possible? It would appear that social scientific research has two intrinsic directions or trajectories: a harking back to the personal, on the one hand, and a taking leave of it, on the other. Its self-understanding is further largely informed by the insistence that one trajectory should erase or suppress the other trajectory, notwithstanding its irreducible dependence on it and the concomitant need to revisit it without acknowledging it. But again, why is this so? Why is the personal so indispensable for and yet so intolerable to social scientific inquiry?

One way to make sense of this paradox of two opposing trajectories, of which one must be suppressed for the sake of the other, but nevertheless not entirely eliminated for reasons of also depending on that which must be suppressed, is to cast the paradox in terms of the relation between disorder, on the one hand, and the creation of order, on the other. Casting the problematic at stake here in these terms allows one to relate the problematic relation between social science and the personal directly to the ordoliberal concern with creating an order of liberty. The aim of the discussion that follows now is indeed to lead this engagement with Kamis back to my suspicion – voiced at the beginning of my response to D&K – that an exclusive concern with establishing an order of liberty is bound to turn out to be an authoritarian and illiberal concern with order.

Ordoliberalism, Liberal Democracy and Authoritarian Liberalism

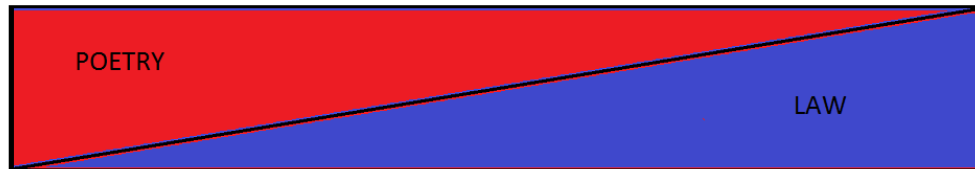
Creating order is simply not possible at all unless there is some disorder that can be put into order. Creating order is, nevertheless, by its very design and purpose, an endeavour to retreat from disorder. Endeavours to establish order are, for this reason, never likely to linger too long with the disorder from which the order seeks to distance itself. An element of suppression thus seems inevitable here. Not only must disorder be subjected to designs

of order, but it must also be largely suppressed by these designs if they are to be effective, or so it seems. Perhaps this indeed explains the paradoxical relation between social science and personality well, considering that social science may be deemed a way of ordering personal life, as Michel Foucault's reflections on social science suggest (Foucault, 1984: 3-4, 83-85).

However, the inclination to suppress disorder, in addition to subjecting it to designs of order, only makes sense from the perspective of a *normative privileging* of order over disorder. Only when one considers order intrinsically good and disorder intrinsically bad does it become imperative not only to subject disorder to order, but also to suppress and eradicate disorder as far as feasible. In the absence of such normative privileging, it would be quite possible to consider order and disorder as mutually co-constitutive. From the perspective of such mutual co-constitutionality, any practical need to subject disorder to order would not have to be accompanied by a supplementary endeavour to suppress and deny disorder. One may, for good reasons, want to tidy up a toddler's room from time to time, even as frequently as possible, but one need not deprive the child of the spontaneity and liberty to make a good mess of things again, unless one considers this mess intrinsically abominable.

When one foregoes the normative privileging of order over disorder, one may well arrive at an understanding of societal organisation that is quite similar to managing but not suppressing the eternal potential for chaos in a toddler's room. It is this approach to the organisation of social space that informs a series of arguments regarding the relation between law and literature that I put forward in "The Literary Exception" and a number of other recent publications. The arguments developed in these publications pivot on a construction of the relation between law and poetry in terms of two opposite trajectories of language, with law being the trajectory of language that seeks to distance itself from the chaos that ensues from a disruptive event, and poetry being the trajectory of language that harks back to a disruptive event and even solicits it, notwithstanding – and perhaps for the sake of – the chaos that erupts with it. Law and poetry may thus be considered linguistic fora for society's respective needs for both order and disorder. In another recent piece, I offered this graphic depiction of this inverse relation between law and poetry that depicts the inverse parallel relation between them – the more legal the language, the less poetic it

is – in terms of the two triangles that result from a diagonal division of a rectangular spectrum (van der Walt, 2016: 134).



The diagnosis of religious radicalisation offered in “The Literary Exception” concerns the suggestion that the excessive focus on legal and economic integration at the expense of other modes of societal integration in the EU, deprives especially young people in Europe of poetic relief from dominant patterns of social order; hence the recourse to bizarre forms of religious radicalisation not only among economically disadvantaged, but also among relatively affluent individuals. One need not go into the merits of this argument here, but it warrants mentioning in passing that it surely defies any allegation that my OHD intervention entertains a “mono-causal” understanding of religious radicalisation that attributes it exclusively to socio-economic deprivation.²⁵

Be it as it may, the existential yearning for a relief from the established social order may be argued to find its purest or most sublime expression in poetic – and indeed highly ‘personal’ – challenges to established patterns of linguistic meaning, but poetry, in the strict sense of the word, is surely not its only expression. Well-functioning *liberal democratic* institutions – under the auspices of which *democracy is truly free* – allow for political transition procedures and crisis resolution practices that tolerate considerable challenges to existing orders. Of concern, here, are not only relatively open election procedures that allow for considerable challenges to established social orders (challenges that early modern democracies still tried to suppress by linking the right to vote to ownership of property), but also allowances for other disruptive social practices such as the right to strike. Alain Supiot evidently contemplates precisely such an understanding of the right to strike when he writes about the pathological mutation of democratic energies that predictably results from

²⁵ See endnote 2 above.

the suppression of collective action and the right to strike (Supiot, 2010: 73). Strike action is not just an instrument in the pursuit of workers' interests, Supiot suggests, but it is also a form of energetic democratic expression that is likely to seek more destructive forms of release if it were to be suppressed and banished from social life.

At stake here is a recognition of the poetic inclination that informs a truly *liberal* democratic spirit. One should recognise the living poetry that erupts when committed collective action bursts into song and the existential ritual of rhythmic refusal. Allowance for this living poetry – and for *personal* grief and frustration to thus become a significant *public* concern – is ultimately what distinguishes liberal democracy from authoritarian institutionalisations of liberty. It is from the perspective of this distinction that I now wish to conclude all my observations here with a reference to the ordoliberal concern with order with which my response to D&K commenced above.

The poetic liberal democratic spirit invoked here, and the concomitant tolerance of a *primordial resistance to order as a constitutive element of order*, are largely absent from the social landscape of the EU today. The suppression of the right to strike by the Court of Justice of the European Union (CJEU) in two epochal judgments in 2007 may for this reason be considered a symbolic expression of the EU's excessive or predominant concern with an *economic order of undistorted competition* as the sole or predominant mode of European integration.²⁶ There are many social and legal theorists that consider this EU landscape a victory of ordoliberal thinking. Several of them also point out an old proximity between the ordoliberal thinkers of Weimar and the conservative revolution afoot at the time, noting especially Hermann Heller's observation regarding the "authoritarian liberalism" of some of his contemporaries (Manow, 2001; Wilkinson, 2015).

Should today's ordoliberals wish to dismiss this old link as a myth, or should they at least wish to sever it today, or show that they have already severed it in recent years/decades, they would appear to have quite a bit of persuading to do, considering the considerable number of scholars out there who evidently do not share the "deep

²⁶ The two CJEU rulings (earlier referred to as ECJ rulings) at stake here are *Laval* and *Viking*. See EU Case C-341/05 [2007] (*Laval*) and EU Case C-438/05 [2007] (*Viking*). In both these judgments, the CJEU recognised the right to strike, but subordinated it to the freedom of movement of goods and services in the EU. For a more extensive discussion of these cases, see Van der Walt (2014: 334-360). For the dominance of the political economy of market integration in the EU and a critique of the CJEU's (or the ECJ's) role in this one-sided push for market integration, see Fritz Scharpf (2009; 2010).

understanding” of ordoliberal thinking that allegedly goes around in Freiburg. What a refreshing and liberating disorder would not ensue in scholarly circles if dyed in the wool ordoliberals came out to wrong-foot so many of us by denouncing austerity, Germany’s treatment of Greece, and the CJEU’s subordination of the right to strike to the free movement of goods and services; if, in other words, they came out to show us the way to a different Europe, a creative and poetic Europe that can embrace disorder as part and parcel of vibrant liberal democracies; a Europe that has an adequate regard for the ways in which established order brutally disqualifies so many from participating in “undistorted” competition; a Europe that can put two and two together to arrive at the simple realisation that this disqualification has always been the major source of distorted competition both in Europe and in the rest of the world. Just a couple of prominent articles by the Vanbergs of this world (or of Freiburg) would surely do the trick. Until such a time as this comes to pass, however, many of us would have to be forgiven for searching for links between the increasingly authoritarian signature of contemporary Europe’s market order and the authoritarian liberalism of old Europe. And those of us who do so will also have to be forgiven for beginning this search with contemporary schools of economic thinking that still march unflinchingly under the banner of Weimar ordoliberalism, especially when this confident march begins to show signs of a disconcerting irresponsibility.

Bibliography

- Chiassoni, Pierluigi (2013), ‘Wiener Realism’, in Luís Duarte d’Almeida *et al.* (eds.) *Kelsen Revisited*, Oxford/Portland, Oregon: Hart Publishing.
- Eucken, Walter (2004), *Grundsätze der Wirtschaftspolitik*, Tübingen: Mohr Siebeck.
- Foucault, Michel (1994), ‘Truth and Juridical Forms’, in *Essential Works of Foucault, 1954 to 1984*, London: Penguin Books.
- Gauchet, Marcel (2002) *La démocratie contre elle-même*, Paris: Gallimard.
- Habermas, Jürgen (2016), ‘Die Spieler treten ab’, *Die Zeit*, 09/07/2016.
- Halimi, Serge (2017), ‘Et cette fois encore le piège du vote utile,’ *Le Monde Diplomatique*, April 2017.
- Joerges, Christian (2010), ‘Europa nach dem Ordoliberalismus: Eine Philippika’, *Postneoliberale Rechtsordnung? Suchprozesse in der Krise*, 43(4): 394-406.
- Kuhn, Thomas (1970), *The Structure of Scientific Revolutions*, Chicago: University of Chicago Press.
- Lechevalier, Arnaud (2015), ‘Eucken under the Pillow: The Ordoliberal Imprint on Social Europe’, in Arnaud Lechevalier & Jan Wielogh (eds.) *Social Europe - A Dead End: What the Eurozone Crisis Is Doing to Europe’s Social Dimension*, Copenhagen: DJØF.
- Lewis, Paul (ed.) (2004), *Transforming Economics. Perspectives on the Critical Realist Project*, London: Routledge.

- Ludwig Erhard Zentrum (2017), 'Vita-Privat', Ludwig Erhard Zentrum. Available at - <http://www.ludwig-erhard-zentrum.de/en/ludwig-erhard/vita.html> - Accessed 26/07/2017.
- Macron, Emmanuel (2016), *Révolution*, Paris: XO Editions.
- Manow, Philip (2001) 'Ordoliberalismus als ökonomische Ordnungstheologie', *Leviathan*, 29(2): 179–183.
- Navarro, Pablo (2013), 'The Efficacy of Constitutional Norms', in Luís Duarte d'Almeida *et al.* (eds.) *Kelsen Revisited*, Oxford/Portland, Oregon: Hart Publishing.
- Polanyi, Karl (1975), *The Great Transformation*, New York: Rinehart and Company.
- Ramani, Samuel (2015), 'Why France Is So Deeply Entangled in Syria', *The Washington Post*, 19/11/2015. Available at <https://www.washingtonpost.com/news/monkey-cage/wp/2015/11/19/why-france-is-so-deeply-entangled-in-syria/> - Accessed 05/05/2017.
- Robbins, Lionel (1932), *An Essay on the Nature and Significance of Economic Science*, London: Macmillan.
- Scharpf, Fritz (2008), 'The Only Solution Is to Refuse to Comply with ECJ Rulings', *Social Europe: The Journal of the European Left*, 4(1): 16-21.
- Scharpf, Fritz (2010), 'The Asymmetry of European Integration, or Why the EU Cannot Be a "Social Market Economy"', *Socio-Economic Review*, 8(2): 211–250.
- Schäuble, Wolfgang (2010), 'A Plan to Tackle Europe's Debt Mountain', *Europe's World*, 01/10/2010. Available at <http://europesworld.org/2010/10/01/a-plan-to-tackle-europes-debt-mountain/#.WXiap8Z7Gds> - Accessed 26/07/2017.
- Schubert, Christian (2017), 'Der Mann hinter Macron', *Frankfurter Allgemeine Zeitung*, 24/07/2017.
- Sherrat, Yvonne (2006), *Continental Philosophy of Social Science*, Cambridge: Cambridge University Press.
- Supiot, Alain (2010), *L'Esprit de Philadelphie*, Paris: Seuil.
- Van der Walt, Johan (2012), 'Law and the Space of Appearance in Arendt's Thought', in Marco Goldoni and Christopher McCorkindale (eds.) *Hannah Arendt and the Law*, Oxford: Hart Publishing.
- Van der Walt, Johan (2014), *The Horizontal Effect Revolution and the Question of Sovereignty*, Berlin/Boston: De Gruyter.
- Van der Walt, Johan (2016), 'Le Droit, ce qui est gagné à la traduction', in Pascal Ancel and Luc Heuschling (eds.) *La Transnationalisation de l'Enseignement du Droit*, Brussels: Larcier.
- Van der Walt, Johan (2016), 'When One Religious Extremism Unmasks Another: Reflections on Europe's States of Emergency as a Legacy of Ordo-Liberal De-hermeneuticisation', *New Perspectives: Interdisciplinary Journal of Central and Eastern European Politics and International Relations*, 24(1): 79-101.
- Van Ooyen, Robert Chr. (2008), 'Die Funktion der Verfassungsgerichtsbarkeit in der pluralistischen Demokratie und die Kontroverse um den "Hüter der Verfassung"', in Hans Kelsen, *Wer soll der Hüter der Verfassung sein*, Tübingen: Mohr Siebeck.
- Wilkinson, Michael (2015), 'Authoritarian Liberalism in the European Constitutional Imagination: Second Time as Farce?', *European Law Journal*, 21(3): 313-339.