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Section IV

The Moral and Normative Dimension of ‘the Economic’ and the Ordoliberal Tradition



Ordoliberalism, Polanyi, and the Theodicy of Markets

DAVID M. WOODRUFF

ABSTRACT

Though they are seldom paired, there are important points of contact between the thought of ordoliberals like Eucken and Böhm and that of the idiosyncratic social democratic theorist Karl Polanyi. Like Polanyi, the ordoliberals recognised the crucial historical and contemporary role of the state in creating and sustaining market economies, and the consequent emptiness of the laissez-faire slogan. Some of Polanyi's inter-war analyses of the political use of state power to create monopolies show significant parallels with ordoliberal diagnoses. There were points of contact in moral perspectives as well: both Polanyi and the ordoliberals emphasised that inter-war markets were producing manifestly unjust outcomes, incompatible with any notion of desert. Their reactions, of course, were very different. To put it in Polanyi's terms, ordoliberals accepted that laissez-faire was planned, and argued it needed to be re-planned: more consistently, with the state mobilised to structure markets in ways that ensured market earnings reflected desert. Polanyi, for his part, felt that the state structures underpinning any market order made the very idea of individual desert unintelligible and a barrier to clear thought about how society ought to be organised. This chapter will analyse these parallels and distinctions, and discuss the ways in which Polanyi offers significant resources for analysing ordoliberal positions.

I. INTRODUCTION

STARTING IN THE interwar period, ordoliberals sought both to diagnose the failings of classical market liberalism and draw conclusions about what should follow. At the same time, very similar issues preoccupied the idiosyncratic social democratic theorist Karl Polanyi. Both Polanyi and the ordoliberals recognised the crucial historical and contemporary role of the state in creating and sustaining market economies, and the consequent emptiness of the *laissez-faire* slogan. Their analyses of the political and economic origins of interwar upheavals likewise prove to have significant parallels. In moral perspectives, too, there were points of

contact: both Polanyi and the ordoliberals emphasised that interwar markets were producing manifestly unjust outcomes. They agreed, in particular, that these outcomes were incompatible with any notion of desert (understood here and throughout as what people deserve as a matter of morality).

Their reactions to this morally unacceptable circumstance, however, were very different. Ordoliberals shared the ideas encapsulated in Polanyi's famous assertion that '[*l*]aissez-faire was planned'. Indeed, the burden of their programme was that *laissez-faire* needed to be re-planned: more consistently, with the state mobilised (and constrained) to structure markets in ways that ensured market earnings reflected desert. This sort of *morally* appropriate market order, I argue below, was the central aim of the reforms in society, economy, and polity that ordoliberals proposed. Polanyi, by contrast, rejected the notion of desert as a barrier to clear thought about how societies and economies ought to be organised. He argued that because state structures underpin any market order, the very idea of individually deserved distributional outcomes under such an order is unintelligible.

This chapter seeks to use the contrast between the two projects to bring into sharp relief both the enduring moralism of ordoliberalism, and the function of this moralism in the ordoliberal project of replanning *laissez-faire*. (The reader will already have noted that I permit myself to speak of 'ordoliberalism' as a coherent whole. I believe that there was enough overlap and consistency in ordoliberal thought in the period that I discuss, running from the 1930s to the 1950s, that such a collective reference is justified. In what follows, I draw particularly on Walter Eucken but also refer to Alexander Rüstow, Franz Böhm, and Wilhelm Röpke). The chapter is divided into two sections. In the first, I discuss how Polanyi and the ordoliberals analysed the rise and fall of *laissez-faire*. The second focuses on the ordoliberals' efforts to replan *laissez-faire* and how a 'theodicy of markets'—an account of how the outcomes of properly structured market competition have moral significance—became crucial to this effort.

II. STATE AND MARKET: TWO ACCOUNTS OF THE 'DOUBLE MOVEMENT'

The degree to which Polanyi and the ordoliberals can be seen as in implicit dialogue with one another is perhaps unsurprising. After all, Polanyi emphasises that his account of the rise and fall of what he terms the 'self-regulating market' differs from that of liberal writers more in interpretation than in historical content.¹ Polanyi defines the self-regulating market as one in which 'order in the production and distribution of goods is ensured by prices alone', which marked a radical departure from prior ways of organising the economy.² This price-governed market was not the

¹ Among liberals, he mentions, inter alia, Ludwig von Mises, whom Walter Eucken also cites in a similar context. Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*, (Boston MA: Beacon Press, [1944] 2001), p 148; Walter Eucken, *Grundsätze der Wirtschaftspolitik*, (Tübingen: J.C.B. Mohr, 2004), p 28 n 1.

² Polanyi, n 1 above, p 147 and 71.

end-point of an evolutionary process of de-centralised exchange, Polanyi contends, but rather the product of a conscious design: an effort to mould an economy operating with the same sort of de-centralised, spontaneous mechanisms that balance populations of predators and prey. Polanyi sees Joseph Townsend's (1786) *Dissertation on the Poor Laws* as the crucial programmatic document of this transformation. Townsend's deployment of blood-drenched naturalistic metaphors to claim the prestige of science enabled indifference to the massive suffering involved in the move to a self-regulating market.³

The origins of this suffering lay in the irreversible damage that market price fluctuations could do to the 'human and natural components of the social fabric', comprising labourers and productive organisations on the human side and land on the natural one. The predictable result was 'an urge on the part of a great variety of people to press for some sort of protection' from the indiscriminate destruction wreaked by markets.⁴ These protective efforts, he argued, arose spontaneously, in multiple contexts and under multiple political banners, prompted by the manifest arbitrariness with which the market economy gouged at the social fabric. Polanyi draws on liberal writers for his descriptions of the wave of restrictions on the operation of the price mechanism dating from the latter third of the nineteenth century. But whereas liberals, he suggests, saw these measures as deriving from the 'sinister interests of agrarians, manufacturers, and trade unionists', or a 'collectivist conspiracy', Polanyi insisted that they instead represented the 'realistic self-protection of society'.⁵ By repurposing von Hayek's absurdly polemical equation of all efforts to shape or tame markets with 'planning', Polanyi is able to sum up his distinctive interpretation in epigrammatic form: '*laissez-faire* was planned; planning was not'.⁶

Liberals' analytical failures, in Polanyi's view, were not limited to misunderstanding the motives underpinning the 'protective countermovement'.⁷ Polanyi also zeroes in on what he sees as liberal hypocrisy regarding the role of the state. As a blueprint for constructing a new form of society, one comprehensively subordinated to the price mechanism, *laissez-faire* implied not 'legislative quietism', but state activity along a broad front.⁸ A paradigm of such state activity was the 1834 Poor Law Amendment Act, which did not simply abolish the Speenhamland system of locally administered wage support, but created a new system of workhouses under 'dictatorial central supervision'.⁹ Moreover, state activism in the era of the 'self-regulating market' did not cease with its inception. Polanyi suggests that 'the introduction of free markets, far from doing away with the need for control, regulation, and intervention, enormously increased their range. Administrators had to be constantly on the watch to ensure the free working of the system'.¹⁰ To deny that this watchful

³ *ibid.*, pp 117–118 and 132.

⁴ *ibid.*, p 156 and 136–137.

⁵ *ibid.*, p 148 and 158.

⁶ *ibid.*, p 147.

⁷ *ibid.*, p 148 and 151.

⁸ *ibid.*, p 126 and 146–147.

⁹ *ibid.*, p 106 and 146.

¹⁰ *ibid.*, pp 146–147.

and active state was engaged in ‘intervention’ was nothing more than sloganeering. For instance, rather than interpreting ‘*laissez faire*’ as implying that workers be left undisturbed to organise unions, and businesses to arrange cartels, liberals advocated forbidding both. ‘The only principle economic liberals can maintain without inconsistency is that of the self-regulating market, whether it involves them in interventions or not’.¹¹

Here was a conclusion with which ordoliberals could have fervently agreed. Indeed, their programme could almost be summarised as discovering and defending the precise state interventions required to maintain the self-regulating market.¹² Their reading of the rise and fall of *laissez-faire* served as both justification for this project and its evidentiary base. On the key turning-points and empirical developments, they were in broad agreement with Polanyi. Thus, even at the outset, according to Eucken, *laissez-faire* did not in the least involve a ‘stateless economy’. Instead, it was ‘in precisely this [*laissez-faire*] period [that] the state created strict laws governing property, contracts, corporations, and so on’.¹³ They likewise see the latter part of the nineteenth century as dominated by a wave of policies that pushed back against the hegemony of the price mechanism.¹⁴ Finally, the ordoliberals shared with Polanyi the view that features of classical market liberalism itself prompted the policies that undermined it. Imagining *laissez-faire* as a ‘lost paradise’ would hinder efforts to learn from it. The spiritual successors of classical liberals must seek to understand why ‘the implementation of the principle of *laissez-faire* unleashes tendencies to its revocation [*Aufhebung*]’.¹⁵

Despite these parallels, the ordoliberals’ analysis of precisely why *laissez-faire* contained the seeds of its own destruction naturally diverges sharply from Polanyi’s. The divergence starts with their distinct readings of the key doctrinal origins of *laissez-faire*. Polanyi, as noted above, highlights the importance of Townsend, and dismisses the role of Adam Smith; Smith’s ‘broad optimism’ that ‘the laws governing the economic part of the universe are as consonant with man’s destiny as are those that govern the rest’, was not of the sort that could have justified the indifference to human suffering necessary to launch the self-regulating market.¹⁶ For ordoliberals

¹¹ *ibid*, pp 155–156.

¹² Foucault, in fact, offers a summary of the ordoliberals’ central principle very nearly in these terms: Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, (Basingstoke: Palgrave Macmillan, 2008), p 116. Compare Walter Eucken, ‘A Policy for Establishing a System of Free Enterprise (1952),’ in: Horst Frierich Wünsche (ed), *Standard Texts on the Social Market Economy: Two Centuries of Discussion*, trans. Derek Rutter, (Stuttgart-New York: Gustav Fischer, 1982), p 116: ‘the inception of a viable system of unrestricted competition [should be] the essential criterion of every economic measure’.

¹³ Eucken, n 1 above, p 27. Making similar points would have strengthened Polanyi’s arguments, since beyond the Poor Law and the regularisation of the gold standard he is rather vague on the precise ways in which the functions of the state were expanded with the rise of *laissez-faire*.

¹⁴ *ibid*, p 28 and 55; Alexander Rüstow, *Das Versagen Des Wirtschaftsliberalismus Als Religions-geschichtliches Problem*, (Istanbul-Zürich-New York: Europaverlag, 1945), pp 68–69; Walter Eucken, ‘Staatliche Strukturwandlungen und Die Krisis Des Kapitalismus’, (1932) 36 *Weltwirtschaftliches Archiv*, pp 297–321.

¹⁵ Eucken, n 1 above, p 28 and 55. While the Eucken makes the latter claim in a somewhat narrower context, I believe it to be a fair summary of the broader project in which he is engaged.

¹⁶ Polanyi, n 1 above, p 117 and 131.

such as Eucken and Rüstow, however, Smith's influence was decisive—and that his theory was 'pronouncedly optimistic' was, in fact, a key weakness of classical market liberalism.¹⁷ Smith's belief that the market was implicit in divinely ordained human nature meant that little thought needed to be devoted to the market's institutional pre-conditions and prevented him from giving a systematic account of these.¹⁸

The idea of freedom under the rule of law, which ordoliberals identified as a second ideological cornerstone of *laissez-faire*, likewise could not serve as a fighting creed when the self-regulating market was challenged.¹⁹ The characteristic stance of classical liberalism was to assume that, having created the legal framework for a market economy, no further state action was necessary.

Thus, the ordoliberals held, when challenges to the price mechanism emerged, a legalistic and theologically inflected classical liberalism did not offer an ideological apparatus capable of justifying and organising a vigorous defence against them. As Rüstow put it:

The social and political catastrophe of economic liberalism was, in essence, a result of the absolutism with which it implemented its maxim of '*laissez faire, laissez passer*', in which it had placed so much stock.²⁰

Such passivism was insufficient, in particular, to deal with the efforts of interest groups to subvert market competition. These could happen either through taking advantage of the opportunities offered by liberal law—for instance, the use of freedom of contract to uphold cartels—or through pushes for anti-competitive legislation, which a democratic state could do little to resist.²¹ Ordoliberals spared no passion in excoriating such attempts to escape the strictures of the market economy. Here is a representative example from Franz Böhm:

What confronts us here is ... a general rebellion of the broadest sections of those engaged in the economy, whether they are supporters, or critics, or opponents of the market system, who, at least when it comes to their own personal interests, are prepared to demand that the market system can go to hell so that special rules of the game, and a special slice of the cake, shall be cooked up for them, contrary to market principles. The agents in this process of anarchic disintegration are countless: workers against entrepreneurs, consumers, and the owners of land and capital; entrepreneurs against workers, consumers, and those not remunerated through markets; bureaucrats for their own vested interests against all other vested interests; one sector against all others; agriculture against the rest of the economy; one trade against every other possible interest.²²

¹⁷ Eucken, n 1 above, pp 27–28; Rüstow, n 14 above, pp 15–28. For the quote, taken here out of context but hopefully not unfairly so, see *ibid.*, 40. See Alexander Rüstow, 'Appendix', in: Wilhelm Röpke (ed), *International Economic Disintegration*, (London: William Hodge and Company, 1942), p 271.

¹⁸ Rüstow, n 14 above, p 54 and 62–67; Rüstow, 'Appendix', n 17 above, p 268.

¹⁹ Eucken, n 1 above, pp 49–50.

²⁰ Rüstow, n 14 above, p 1.

²¹ Eucken, n 12 above, p 125; Ralf Ptak, 'Neoliberalism in Germany: Revisiting the Ordoliberal Foundations of the Social Market Economy', in: Philip Mirowski and Dieter Plehwe (eds), *The Road From Mont Pèlerin: The Making of the Neoliberal Thought Collective*, (Cambridge MA: Harvard University Press, 2009), p 1443.

²² Franz Böhm, 'Left-wing and Right-wing Approaches to the Market Economy (1953)', in: Wünsche (ed), n 12 above, p 364.

Such rhetoric might seem little different from the invocations of the ‘sinister interests of agrarians, manufacturers, and trade unionists’ that Polanyi had ascribed to the broader liberal school. Yet, the ordoliberals were not entirely blind to the issues that prompted Polanyi to speak instead of the ‘realistic self-protection of society’.²³ In a passage with deliberate echoes of Karl Marx, Walter Eucken writes:

There were free contracts of employment, freedom of movement and guarantees for private property. But whereas people’s freedom and equality of status appeared secure in political and legal terms, industrial workmen were not in fact free either economically or socially. In their dependence and search for an easily identifiable target, workers saw themselves as being at the mercy of the “omnipotence of capital”.²⁴

Workers’ lack of practical freedom arose from a situation of monopsony on labour markets.²⁵ Anti-capitalist attitudes, then, stemmed in part not from capitalism itself, but from the congenital inability of *laissez-faire* doctrines to protect the kind of competitive circumstances whose consequences they extolled. Indeed, Polanyi himself could have served as an excellent example for this argument. In the 1920s, his justification for his advocacy of replacing capitalism with guild socialism included the complaint that, under capitalism, ‘income from work does not necessarily correspond to the effort and burden of labor, nor to services and utility. Instead, work incomes are often determined by monopolies enjoyed by traditional social groups [*Stände*] or individuals, or those created by transient economic circumstances’.²⁶

Whatever discontent workers, or, for that matter, businesses felt over their fortunes in the market economy, this could only be translated into political action if some ideas legitimated this action. This brings us to a final element of the ordoliberals’ analysis of the downfall of *laissez-faire*. If it was an inconsistently implemented market economy that left workers disadvantaged, why would they not champion the restoration of market competition rather than state action curtailing it? Eucken claimed that, given that even the imperfect market of the late nineteenth century had improved workers’ material situation, the roots of anti-capitalist sentiment needed to be sought elsewhere.²⁷ In fact, these roots lay in shifting moral and religious attitudes. In an argument with some distant echoes of Max Weber’s ‘Protestant Ethic’ thesis, Eucken suggested religion’s waning capacity ‘to provide a meaningful context for life and thus economic action too’ gave rise to ‘faith ... in a total, all-controlling state’ as a ‘substitute for religion’. Where once ‘man had accepted economic misfortune as fate’, ‘today the farmer, like the employee and the worker, is inclined to make the contemporary state responsible for [this misfortune] and to demand help from

²³ Polanyi, n 1 above, p 148 and 158.

²⁴ Walter Eucken, ‘The Social Question (1948)’, in: Wünsche (ed), n 12 above, p 267, a translation of Eucken, n 1 above, p 185.

²⁵ *ibid.*

²⁶ Karl Polanyi, ‘Socialist Accounting’, (2016) 45 *Theory and Society*, pp 398–427.

²⁷ Eucken, n 14 above, p 305.

it as a self-evident right'.²⁸ Rüstow highlighted the role of the doctrinal failings of *laissez-faire* in such a context:

Instead of being frank about the fact that the extraordinary chances of gain which the game of the market economy offers for the good players are accompanied by chances of loss for those who are less capable or less fortunate, and that all those who want to participate in this game are obliged to take their chance, the [classical liberal] propaganda promised prosperity and happiness to all without exception. ... The result in this case was that a type of player was bred, particularly in countries where the hardening tradition of Calvinism was non-existent, who enjoys playing a game only as long as he wins, but who, the moment he begins to lose, runs off in a huff and refuses to continue playing. This behaviour of the bad loser could be observed in the attitude of many entrepreneurs who went begging to the government to protect them against even the smallest losses.²⁹

What *laissez-faire* lacked, in this light, was some sort of functional substitute for Calvinism's 'hardening tradition'.

To recapitulate: the two crucial differences between Polanyi's and the ordoliberals' accounts of the rise and fall of the automatic price mechanism concerned, on the one hand, its doctrinal roots, and, on the other, the motivations of those who demanded its limitation. These distinctions were linked. For Polanyi, *laissez-faire* was an effort to institutionalise disregard for human suffering by aping Nature's vast indifference: an 'act of vivisection performed on the body of society by such steeled to their task by an assurance which only science can provide'.³⁰ Society's self-defence was only to be expected, and contribution to the repair of the social fabric was a crucial driver of the success of classes in political struggle.³¹ For the ordoliberals, *laissez-faire* was an effort to implement Smith's vision of 'natural liberty' under the rule of law, but one which, because of its reliance on a divine dispensation, did not 'steel' its advocates to its defence. The emergence of self-interested enemies of market competition indicated not the essential viciousnesses of the doctrine, but challenges with which *laissez-faire* had failed to grapple.

III. REPLANNING LAISSEZ-FAIRE: THE THEODICY OF MARKETS

In sum, surveying the history of *laissez-faire*, the ordoliberals concluded that it had not been planned thoroughly enough: it needed to be planned again, this time focusing on the problem of how best to defend market competition and the price mechanism from the forces that could undermine them. The spirit of this endeavour emerges very clearly in the 1937 essay entitled 'Our tasks', a vigorous technocratic manifesto calling on lawyers and economists to take on the task of promoting free

²⁸ *ibid*, 306.

²⁹ Rüstow, 'Appendix', n 17 above, p 271.

³⁰ Polanyi, n 1 above, p 132.

³¹ *ibid*, pp 158–170.

competition.³² In this section of this chapter, I wish to defend the thesis that the ordoliberalists' solution to the challenges that they set themselves relied crucially on notions of desert. What they sought to construct was a market economy in which commercial success would reflect praiseworthy qualities, so that those who flourished in the market would have deserved to do so. This idea of a morally satisfying market order—a market order of which it would be possible to give a theodicy in the Weberian sense, which I shall describe below—served to unify and motivate different parts of the ordoliberal agenda.

Polanyi, in fact, can offer us a powerful insight into why the ordoliberalists' ambitions to design a heavily-armored version of Smithian liberalism drew them to ideas of desert. In the final chapter of *The Great Transformation*, he suggested that:

Liberal economy gave a false direction to our ideals. It seemed to approximate the fulfillment of intrinsically utopian expectations. No society is possible in which power and compulsion are absent, nor a world in which force has no function. ... Yet this was the result of a market view of society which equated economics with contractual relationships, and contractual relations with freedom. ... Vision was limited by the market which “fragmentated” life into the producers' sector that ended when his product reached the market, and the sector of the consumer for whom all goods sprang from the market. The one derived his income “freely” from the market, the other spent it “freely” there. Society as a whole remained invisible. The power of the state was of no account, since the less its power, the smoother the market mechanism would function. Neither voters, nor owners, neither producers, nor consumers could be held responsible for such brutal restrictions of freedom as were involved in the occurrence of unemployment and destitution. Any decent individual could imagine himself free from all responsibility for acts of compulsion on the part of a state which he, personally, rejected; or for economic suffering in society from which he, personally, had not benefited. He was “paying his way”, was in “nobody's debt”, and was unentangled in the evil of power and economic value. His lack of responsibility for them seemed so evident that he denied their reality in the name of his freedom.³³

Polanyi here proposes a relationship of mutual definition between the notion of morally praiseworthy market flourishing—the ideal of the individual ‘paying his way’ and being ‘in nobody's debt’—and that of ‘free’ action on a market. Only if consumers and producers are free to choose their actions can they be held responsible for their consequences. American legal realists and institutional economists, on whom Polanyi certainly drew here, resoundingly demonstrated that contractual relationships can *not* be equated with a kind of freedom implying the absence of compulsion.³⁴ The crux of the legal realist/institutional economist argument is easy to illustrate: contracts involve the exchange of property rights, and property itself rests on the threat of state compulsion to protect assets from those who do not

³² Franz Böhm, Walter Eucken and Hans Großmann-Doerth, ‘Unsere Aufgabe’, in: Jürgen Schneider and Wolfgang Harbrecht (eds), *Wirtschaftsordnung und Wirtschaftspolitik in Deutschland (1933 Bis 1993)*, (Stuttgart: Steiner im Kommission, 1996), pp 207–218.

³³ Polanyi, n 1 above, p 266.

³⁴ The syllabus for a university course that he taught while working on *The Great Transformation* includes John R. Commons' 1924 classic *The Legal Foundations of Capitalism*, (Madison WI: University of Wisconsin Press, 1957). The syllabus is available at: <http://hdl.handle.net/10694/589>.

own them.³⁵ Polanyi concluded, in effect, that in the light of the emptiness of the liberal ideal of freedom, both it and the associated notion of desert needed to be abandoned.

Ordoliberals, by contrast, placed the idea of economic freedom as non-compulsion at the very heart of the market liberal order that they hoped to construct, and found themselves mobilising notions of desert as a key buttress of this order.³⁶ Certainly, desert was not the sole defensive emplacement. To protect economic freedom from the processes that had undermined it in the nineteenth century, ordoliberals focused on both constraining the ability of the state to *supply* policies that would empower monopolists or otherwise undermine competition, and on reducing the inclination of businesses and individuals to *demand* them. The key ‘supply’ constraints were contained in the well-known notions of the ‘economic constitution’ and ‘ordering policy’ [*Ordnungspolitik*] which were intended to limit the state to establishing the legal framework for a competitive economy while preventing interference with its outcomes. The purpose of this approach was to insulate the state from the demands of both the masses and what Böhm had termed the ‘exploiting gangs’ seeking to force consumers to pay higher prices.³⁷ Polanyi had suggested that the ‘crudest version’ of the liberal interpretation of the double movement was ‘an attack on political democracy, as the alleged mainspring of interventionism’, and he might well have analysed the ordoliberal demand for a ‘strong’ state empowered to ignore calls to interfere with the price mechanism in this vein.³⁸ As for the ‘demand’ side, one tactic, ably discussed by Michel Foucault, was an effort to devise ways to diffuse the capacity for competition through society.³⁹

Both the supply-side measures insulating the state and demand-side measures diffusing competitive capacities represented instances of the ordoliberals’ determination to transcend the confusions and hypocrisies of the term ‘interventionism’ that Polanyi diagnosed by making the preservation of competitive markets, rather than *laissez-faire*, the principle from which state structure and policy were to be derived. As Eucken recognised, this focus on competition detached the ordoliberal legitimation of markets from ‘natural law or the higher plane of dogmatic axioms’.⁴⁰ But if natural law or other moral postulates were to be set aside in favour of the competitive market as the ultimate yardstick of political morality, this forcefully posed the question of what guaranteed the legitimacy of such a market. Note that the question is not merely one of economic efficiency. The ordoliberals do not, for instance, make the common claim that, because competitive markets generate the most social wealth, they can be used to fund any distributive outcomes that society wishes to

³⁵ An outstanding survey can be found in Barbara Fried, *The Progressive Assault on Laissez Faire: Robert Hale and the First Law and Economics Movement*, (Cambridge MA: Harvard University Press, 1998).

³⁶ Eucken, n 1 above, pp 169–179.

³⁷ Böhm, n 22 above, p 364.

³⁸ Polanyi, n 1 above, p 151. On the anti-democratic thrust of Ordoliberalism, exemplified especially in Eucken, n 14 above, see, eg, Ptak, n 21 above.

³⁹ Foucault, n 12 above, p 160.

⁴⁰ Eucken, n 12 above, p 130.

achieve—an argument that explicitly views markets as a means to an end. Similarly, although ordoliberals do provide arguments for the efficiency of competitive markets compared to planned economies, these offer no grounds for affirming competitive markets' status as a moral axiom from which constitutional conclusions could be drawn.

To understand how the ordoliberals resolved the issue of the market's moral standing—which they probably grasped more intuitively than explicitly, but definitely grasped nonetheless—it is helpful to turn briefly to Max Weber. As noted above, the ordoliberal analysis of the degeneration of *laissez-faire* implicitly asserted a descendent of Weber's 'Protestant Ethic' thesis: with a state constitutionally incapable of defending the competitive market from the self-interested acts of those who would undermine it, the survival of competition depended on the willingness of competition's losers to accept this outcome as 'fate'. To the extent that a belief in predestination could facilitate such acquiescence to market outcomes, its waning would not only heighten 'demand side' pressures for a turn against self-regulating markets, but also deny the outcomes produced by such a market ~~regarding~~ any particular moral standing. In his later work, Weber situated the 'Protestant Ethic' analysis in the broader context of a 'very general [psychological] need' to regard one's fortune as justified. He argued:

The fortunate is seldom satisfied with the fact of being fortunate. Beyond this, he needs to know that he has a *right* to his good fortune. He wants to be convinced that he "deserves" it, and above all, that he deserves it in comparison with others. He wishes to be allowed the belief that the less fortunate also merely experience[s] his due. Good fortune thus wants to be "legitimate" fortune.⁴¹

More recent psychological research has supported Weber's claim. There is a widespread 'belief in a just world', summarised by Roland Bénabou and Jean Tirole as 'the nearly universal human tendency to want to believe that people generally get what they deserve'.⁴²

For Weber, this desire to experience oneself as morally worthy is an example (indeed, the prime example) of an 'ideal interest'. To address this ideal interest, one needs what Weber terms an 'ethical interpretation of the "meaning" of the distribution of fortunes among men',⁴³ or, more compactly, a 'theodicy'.⁴⁴ He argues that this need imparts a powerful impulse to the development of religious doctrine, and that these doctrines in turn have important effects on action. 'Not ideas, but

⁴¹ Max Weber, 'The Social Psychology of the World Religions', in: H.H. Gerth and C. Wright Mills (eds), *From Max Weber: Essays in Sociology*, (New York: Oxford University Press, 1946), p 271.

⁴² Roland Bénabou and Jean Tirole, 'Belief in a Just World and Redistributive Politics', (2006) 121 *The Quarterly Journal of Economics*, pp 699–746. For more background on this literature, see John J.T. Jost and Aaron A.C. Kay, 'Social Justice: History, Theory, and Research', in: Susan T. Fiske, Daniel T. Gilbert and Gardner Lindzey (eds), *Handbook of Social Psychology*, volume 2, (Hoboken NJ: John Wiley & Sons, Inc., 2010), pp 1122–1165.

⁴³ Weber, n 41 above, p 275.

⁴⁴ In theological thought, theodicy refers to the problem of reconciling the existence of evil with the presence of an omnipotent and benevolent god. A good introduction can be found in James Wood, 'Holiday in Hellmouth', *New Yorker* 84, no 17 (2008), p 116. Weber uses the term somewhat more generally.

material and ideal interests, directly govern men's conduct. Yet very frequently the "world images" that have been created by "ideas" have, like switchmen, determined the tracks along which action has been pushed by the dynamic of [material and ideal] interest'.⁴⁵ The 'Protestant Ethic' thesis is an example of this dynamic. Calvinists' ideal interest in belief in their moral worth became, in their religious context, the need to achieve certainty of salvation, which set them on the track to vigorous worldly actions that they could interpret as evidence that they were among the elect.

Calvinism, then, offered in Weber's rendering a kind of 'theodicy of markets', a means of reconciling market outcomes with morality in an emotionally resonant way. For the ordoliberals, a successful theodicy of markets would offer two benefits. First, it might serve as a substitute for Calvinism's 'hardening tradition', blunting critiques of the outcomes of market competition and defending the price mechanism. Second, and more significantly, defending the moral standing of market competition would justify its elevation to the sort of principle around which one might legitimately structure a polity.

In this light, it is perhaps not surprising to find the ordoliberals repeatedly asserting that a competitive market economy would allocate rewards in line with moral desert. Some telling examples of this implicit legitimation strategy can be found in Eucken's discussion of macroeconomic issues, where moral claims serve to buttress tenuous assertions about the relationship between the microeconomic and macroeconomic levels of analysis. For instance, discussing inflation, Eucken seeks to establish that 'all efforts to translate a system for regulating competition into reality are fruitless until a certain stability in the value of money has been ensured'.⁴⁶ This is so, he argues, because inflation reduces liabilities while increasing sales, which 'results in profits from inflation instead of from *the skilful [zutreffenden] direction of the economic process* [emphasis added]'.⁴⁷ A parallel problem occurs with deflation. With stable prices, then, it is skill that drives profit, and without this there is no true competition. This should be regarded as an implicitly moralised definition of what competition is—its absence is recognised by *undeserved* profits. Note, in particular, that this argument relies on the moral standing of liabilities—without this implicit claim, one could equally make the argument that funding a business via debts subsequently made lighter by inflation could be regarded as a display of far-sighted business virtuosity.

A second area in which the ordoliberals' moralisation of the market is apparent is in their treatment of liability. Eucken asserts:

Those who are accountable for the plans and measures adopted by businesses, factories and private families must be accountable in law (the liability principle).⁴⁸

Certainly, some of the reasoning mobilised to defend this principle is detached from any direct moral considerations. Eucken argues that liability ensures that markets

⁴⁵ Weber, n 41 above, p 280.

⁴⁶ Eucken, n 12 above, p 116.

⁴⁷ *ibid*, p 117, translating Eucken, n 1 above, p 256.

⁴⁸ Eucken, n 12 above, p 127.

can promote ‘natural selection of enterprises and of managers’, in so far as it eliminates those who cannot compete. He also sees limited liability as a temptation to economic concentration, because it makes available larger profits without the corresponding risk. But his is not solely an ethically neutral, incentive-based argument. Consider, for instance, the following:

As *Röpke* has pointed out, the competitive system presupposes “that the attainment of profitability will only be possible by means of an equivalent economic achievement [*Leistung*], while at the same time it must be ensured that a blunder [*Fehlleistung*] will find its inexorable atonement [*Sühne*] in losses and finally in exclusion via bankruptcy from the ranks of those responsible for production. Steps must be taken to prevent both the devious enjoyment of income without a corresponding achievement and the non-atonement for blunders by passing on the losses to others”.⁴⁹

Again, we have the link of profitability to achievement, and now the need to ‘atone’ for errors. Others should not suffer for mistakes not their own. The supposed functional pre-requisites of market competition are conveyed in a language saturated with moral overtones. A properly regulated market is thus figured as a *morally* meaningful universe, in which good fortune is legitimate good fortune.

The desire to see profits reflect praiseworthy behaviour can also be found in the ordoliberal analysis of the dangers of restricting competition, developed especially by Böhm. Non-competitive orders face a ‘moral danger’ because ‘entrepreneurs are enabled to determine the size of their income and profit by means of price-setting’.⁵⁰ By contrast, ‘competition forms the moral backbone of a free profit-based economy’.⁵¹ The line between immoral and moral earnings is traced by the famous distinction between ‘*Leistungswettbewerb*, “achievement” or “performance competition” ... as opposed to *Behinderungswettbewerb*, “prevention competition”, ie competition by means that are directed at preventing competition from other producers rather than improving one’s own performance’.⁵²

IV. CONCLUSION

A compact way of conveying the parallels and distinctions in the way Polanyi and the ordoliberals reacted to the rise and fall of the self-regulating market is to consider their analyses of Britain’s abandonment of the gold standard in 1931. Eucken suggested that this occurred ‘not due to an internal failure of the well-known classical gold-standard mechanism, but rather because the state-society setting [*Umgebung*] the gold-standard mechanism required had been destroyed’.⁵³ Polanyi would not

⁴⁹ Eucken, n 1 above, p 281. Translation modified from Eucken, n 12 above, p 127.

⁵⁰ Franz Böhm, ‘The Non-state (“natural”) Laws Inherent in a Competitive Economy (1933)’, in: Wünsche (ed), n 12 above, p 108.

⁵¹ *ibid*, p 110.

⁵² Viktor J. Vanberg, *The Constitution of Markets: Essays in Political Economy*, (London-New York: Routledge, 2001), p 46.

⁵³ Eucken, n 14 above, p 315.

have disagreed in the least: both saw that democracy, re-inforcing workers' ability to defend their wages despite international trade deficits, meant that the gold-standard adjustment mechanism could not function.⁵⁴ The distinction lay in the lessons to be drawn. Eucken and the ordoliberals saw this as a failing of the 'state-society setting', which they proposed to re-construct to protect the market from political interference, limiting democracy while fostering a kind of society capable of sustaining competition. Polanyi, by contrast, saw the self-regulating market as a utopian and destructive ideal, and state and society's reaction to the market's 'disembedding' as inevitable.

This chapter has endeavoured to show that the comparison between Polanyi and the ordoliberals reveals how an effort to give market outcomes a moral standing was a crucial prop for the ordoliberal position. The present author finds Polanyi's rejection of the logical coherence of this project convincing. But it is worth considering the extent to which the ordoliberals' readiness to provide a theodicy of markets contributed to their long-term political success. Polanyi believed that it was simply the misconceptions of the classical liberals that gave 'a false direction to our ideals'.⁵⁵ But if Weber's view of the emotional power of the ideal interest in viewing one's economic fortunes as legitimate is correct, the roots of the dilemma go far deeper.

⁵⁴ For a discussion of Polanyi's reaction to this episode, see David M. Woodruff, 'Governing by Panic: The Politics of the Eurozone Crisis', (2016) 44 *Politics & Society*, pp 81–116.

⁵⁵ Polanyi, n 1 above, p 266.

