

L'ORDOLIBERALISMO E IL LIBERALISMO AUSTRIACO DI FRONTE AL PENSIERO GIURIDICO MODERNO. UN CONTRIBUTO GIUSFILOSOFICO

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Abstract: German ordoliberalism and Austrian liberalism represent two different poles of the 20th century neoliberal movement. Scholars as Böhm, Eucken and Rüstow, on the one side, and Mises e Hayek on the other, proposed two different patterns for a rethinking of the liberal tradition. The patterns implies two different concepts of market-order, which refer to different concepts of the law. The article is concerned with the ordoliberal and austrian (in particular, mengerian-hayekian) concepts of the law from the perspective of legal philosophy. While the hayekian legal evolutionism entails the overcoming of the modern (voluntaristic and constructivistic) legal philosophy, ordoliberals claim to a rationalistic approach to the political and legal construction of market-order. Therefore, the analysis focuses on two main arguments, which allow for a better understanding of this assumption, in particular: 1) the austrian acceptance and the ordoliberal criticism of the methodology of the German Historical School of Law of Friedrich W. von Savigny; 2) the different evaluation of Adam Smith's theory of the "invisible hand".

Keywords: Ordoliberalism, Eucken, Böhm, Rüstow, Austrian liberalism, Menger, Mises, Hayek, Savigny, Smith, Methodenstreit, German Historical School of Economic, German Historical School of Law, invisible hand, legal evolutionism, legal positivism, Kelsen, modern legal thought, spontaneous order.

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