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**A Wider Lens: Neo-Brandeis and Ordoliberalism as Alternative
Narratives that Liberate a
Antitrust Thinking in the Developing World**

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A Wider Lens: Neo-Brandeis and Ordoliberalism as alternative narratives that liberate antitrust thinking in the developing world

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Thesis

At its origins, competition law was against power and for an environment safeguarding opportunity and nurturing ingenuity. In US, Justice Brandeis was a symbol. In Germany, Ordoliberalism stood for a market process order to control power and safeguard democracy.

To some extent modern competition systems have been captured by a conservative perspective of reluctance to enforce in the name of efficiency. This orthodoxy has been sold as “international standards.”

Developing countries are not always served by the big-business-efficiency narrative. The world’s new regard for the values of Brandeis and Ordoliberalism liberates them to find their most fitting path.

Outline

1. Neo-Brandeis and Ordoliberalism (“NeoB&O”) – two different schools
 - The influence of each on competition law/policy and narratives
2. What developing countries need and how NeoB&O map on
 - Within market analysis
 - Outside of market analysis
3. Implications of the mainstreaming of NeoB&O narratives for the design and enforcement of competition law/policy in the developing world
 - Support for rethinking: efficiency, fairness, Kaldor Hicks
4. Lessons from developing countries for the developed world

1. NeoB&O: two schools

Ordoliberal

The loose category of "neoliberalism" between 1950 and 1980: the preponderance of the German ordoliberals.



Key:

- █ : German intellectuals and leaders
- █ : French intellectuals and leaders
- █ : Austrian intellectuals and leaders
- █ : British intellectuals and leaders
- █ : American intellectuals and leaders
- █ : Intellectuals and leaders of other nationalities

The size of the names is proportional to the number of times each name was mentioned as being linked to neoliberalism.

**To fight crises of Weimar Republic and Nazi Germany:
Institutional and self-executing,
against power
For a democratic and free society
For markets with rules
[Also for equitable distribution]**

Influence on competition law and policy of Germany, EU; ECJ, DMA

“Democracy rests upon two pillars: one, the principle that all men are equally entitled to life, liberty and the pursuit of happiness; and the other, the conviction that such equal opportunity will most advance civilization.”

Louis D. Brandeis

For: small business, workers, democracy, freedom

**Against: the moneyed elites, privilege,
great wealth in the hands of the few.**

Curse of Bigness and Other People’s Money



Influence on competition law/policy – US: formation of FTC, Supreme Court; current rhetoric and debate

Developing country needs? The example of Africa



- Deep poverty
- Elites
- Past exclusions
- Colonized markets
- Weak institutions
- Need food, medicines, education, jobs,
the fair chance to participate

2. What developing countries need; How NeoB & Ordoliberalism Map on

- Characteristics
- Analysis within the market: how well the market works for their people
 - Inclusiveness, opportunity
 - Exploitation by creation of buyer power, including workers
 - Squeezing so much in value chain that contributors of value (farmers) cannot survive
 - Relation to trade and regulatory barriers and restraints: vested interests get protection
 - Relation to fairness, equality, sustainability, fair deal for workers, SMEs
- Values outside of market analysis
 - fairness, equality, sustainability, fair deal for workers, SMEs: counting trade-off

3. Implications of mainstreaming Neo B & O narratives

- Suspicion of excessive economic concentration
 - This is helpful in *traditional* analysis, for developed and developing countries
 - having emerged from a period that tolerated too much power, lack of resiliency, broken markets, prices, scarcity
 - Mergers, cartels, monopolies – this is corrective
- Support for rethinking: What is efficiency that helps markets and people?
- Developing countries' needs for fairer distribution:
 - **NeoB** supports considerations of justice and fairness, push back on systemic inequality and growing gap; winners and losers –not to stop at Kaldor Hicks
 - The limits to non-market values? Helping SMEs? Workers? Redistributing? Sustainability?

4. Lessons for developed countries?

- The limits of “consumer welfare”
- The value for markets: suspicion of excessive concentration
- Opportunity for more efficiency by more “open markets”
- A payoff in greater resiliency and democracy? -- bringing competition law closer to the people

CONCLUSION

- **NeoB and Ordoliberalism are pro-market policies**
 - They are against socialism and totalitarianism
 - Justice and equity are a subset, for legitimacy
 - Both originated when there was less appreciation for pro-market aspects of size
Current applications need to take account
- Valuable in widening the lens, understanding the whole market picture
- The new mainstreaming: supportive of developing countries; sympathetic
 - But need to be conscious of tradeoffs