

Were the Federalists the first Ordoliberalists?

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Abstract

Is it possible to consider the United States a genuine economic state, given its founding principles and early constitutional framework? If so, can the U.S. Constitution be understood as a historically authentic economic constitution—one that creates public law by establishing a strong central government capable of regulating economic activity? In his lectures gathered under the title *The Birth of Biopolitics*, Michel Foucault, drawing on the Ordoliberal approach to the state-economy nexus, raises questions analogous to those concerning the early United States. The essential concern is how a state can come into being within the non-state space of economic freedom. For Foucault, contemporary Germany is a radically economic state, since its roots are precisely economic, emerging from the destruction of the war and the need to construct both state and market orders. Similarly, the U.S. Federalists in the late 18th century were building the American state and structuring its economic order through the Constitution. Post-World War II German Ordoliberalists confronted a comparable dual challenge: constructing a new state while creating mechanisms to regulate markets and economic freedom. For this reason, the American case can be understood as the first instance of an economic state in modern history, foreshadowing later forms of economic constitutionalism. By situating the American Federalists as early architects of an economic state and placing them in dialogue with German Ordoliberal thought, this study aims to compare the constitutional construction of economic order in the United States and postwar Germany.

Keywords: constitutionalism; market order; economic freedom; state; economic constitution