

Capitalistic Competition as a Communicative Community

why politics is less “deliberative” than markets

Michael Wohlgemuth, Walter Eucken Institut, Freiburg im Breisgau
wohlgemuth@eucken.de

1. Introduction: The Habermasian challenge
2. Deliberative democracy as a political ideal
3. The market process as “domination-free discourse”
 - a. regulated exchange of information, critical testing of proposals: markets as argumentative networks
 - b. entry, sovereignty, persuasion: the unforced force of market persuasion
 - c. “delinguistified” communication: prices as signals and incentives for opinion formation
 - d. mutual adjustment without centralisation: the domination-free market coordination
 - e. the extent of the market is limited by the pretensions of politics
 - f. the justification of non-justificatory discourse: markets and the private autonomy of judgement
 - g. division of labour and of knowledge: the utopian ideal of equally effective participation
4. Deliberative trouble: predicaments of real-type organised discourse
 - a. opportunity costs: “Rational” ignorance, shortage of attention, decision costs.
 - b. asymmetric incompetence and the interventionist bias of political deliberation
 - c. cheap talk: preference falsification, opinion cascades, enclave deliberation.
5. Policy conclusions
 - a. privatisation
 - b. decentralisation
 - c. constitutionalisation
6. Summary and outlook: The use of knowledge in society

1. Introduction: the Habermasian challenge

“Politics steps in to fill the functional gaps opened when other mechanisms of social integration are overburdened ...In filling in for social processes whose problem-solving capacities are overtaxed, the political process solves the *same kind* of problems as the process it replaces” (Habermas 1996: 318).

“We are only beginning to understand on how subtle a communication system the functioning of an advanced industrial society is based - a communications system which we call the market and which turns out to be a more efficient mechanism for digesting dispersed information than any that man has deliberately designed” (Hayek 1974/78: 34).

„Ideal speech situations“, “domination-free discourse” or “deliberative communities” describe political ideals proudly cherished by many, mostly left-wing, sociologists. The sometimes explicit, sometimes implicit, motivation is to mobilise political discourse as an instrument to tame or transform the capitalistic “system” according to alleged needs of “society”.¹ Most economists and defenders of capitalistic competition, in return, don’t care about communicative communities. The individual market actor is assumed or demanded to be free to choose among given alternatives satisfying given preferences subject to given constraints. Why, then, should homo oeconomicus argue (van Aaken 2003)? There is no “communicative action” among the individuals that populate economic textbooks, there is only “commutative action”. Only a few, mostly “Austrian”, economists realised that the exchange of goods and services in the spontaneous order of “catallaxy” involves an exchange of knowledge, ideas, opinions, expectations, and arguments – that markets are indeed communicative networks (e.g. Hayek 1946/48; Lavoie, ed. 1991; Horwitz 1992). In fact, and this will be my major claim, market competition is more “deliberative” than politics in the sense that more information about available social problem solutions and their comparative performance, about people’s preferences, ideas and expectations is spontaneously created, disseminated and tested.

This very idea is anathema for followers of Habermasian discourse ethics. The intellectual thrust and political clout of their vindication of deliberative politics critically seems to depend on a mostly tacit assumption that markets fail to address social needs and regulate social

¹ Habermas (e.g. 1985) develops a bifurcated model of society composed of “system” (the market economy and the apparatus of state administration) on the one side and “lifeworld” (personal life and the public sphere) on the other. The task of political deliberation is to protect “lifeworld” and mobilise it against the “colonialising” encroachments emanating from the “system” with its authoritarian means of “money” and “power” that offer nothing but “rewards” and “punishments”.

conflicts. Political discourse therefore “steps in to fill the functional gaps when other mechanisms of social integration are overburdened” (Habermas 1996: 318). I will claim that the argument should be very much the other way around: politics and public deliberations are overburdened mechanisms – unable to deal with an increasingly complex and dynamic society. Moreover, the requisites of ideal speech communities are so enormous that functional gaps are inevitable. Partly, these gaps can be closed if market competition steps in. Partly, reorganisations of the political system are needed. Hence, I am not arguing that Habermas is wrong by stressing the need for open discourse in order to reach informed agreement among citizens who seek to realise mutual gains from joint commitment by contributing to common (public) goods and submitting to common rules of conduct (s.a. Vanberg 2003). I am challenging his neglect of capitalistic competition as a communicative device and his disdain for the classical liberal conception of bounded democracy that respects individual property rights (e.g. Habermas 1975; 1998).

I will proceed as follows: In the following **part 2**, I present some of the most prevalent ideal types of deliberative democracy or ideal speech situations. The procedural postulates of ideal type political communication will serve as a foil for bringing out, in **part 3**, functional characteristics of market exchange and competition that to a remarkable degree live up to discursive demands. Discourse theoretical ideal-types also serve to highlight limits and predicaments of real-type political discourse in **part 4**. In **part 5**, I draw some policy conclusions with the intention to allow political systems to better cope with and perchance partly overcome the discussed limits of political discourse. Comparative strengths and weaknesses and preferable application areas of political and economic “discourse” are summarised in **part 6**.

2. Deliberative democracy as a political ideal

Reading Habermas is not exactly thrilling.² Occasionally, however, it can be challenging and even stimulating for someone who learned most of his political economy from reading Hayek and similar-minded scholars (s.a. Pennington 2003 for a very similar Hayekian approach to Habermasian issues). Especially “Between Facts and Norms”, Habermas’ (1996) late endorsement of the rule of law often activates interpretative frames that have formed over

² If such an aesthetic judgement is allowed. I find support for this verdict in Popper’s (1994: 94) remarks on Habermas’ playing “the dreadful game of making the simple appear complex and the trivial seem difficult”.

years of reading classical liberal texts. The only “economist” that Habermas seems to know and take seriously, however, is Marx. Hence his old-fashioned, but popular, misapprehension of capitalistic competition. Hence, perhaps, his insistence to strictly separate his romantic ideal of a spontaneously self-organised “public” from a coercive “system” of colonising market forces. And hence my impression that Habermas’ *ideal* of a deliberating public has more in common with *real* market processes than meets Habermas’ eyes. Let me just mention two examples relevant for the present task:

According to Habermas (1996: 360) the public sphere cannot be conceived as an organisation; it “is not even a framework of norms and competences and roles, membership regulations, and so on ... The public sphere can best be described as a network for communicating information and points of view (i.e. opinions expressing affirmative or negative attitudes)”. As I intend to show in part 3, the same is true for the market process. Similarities not only appear on the level of co-ordination and communication, but also on the level of rules of conduct that shape this “spontaneous order”. Discourse-theory is a procedural theory that lays the stress on general rules that ought to allow for an open-ended discourse and the legitimacy of binding decisions that result from it. The general attributes of the rules of a fair “discourse”-game are similar to those of a fair market game of “catallaxy” (Hayek 1976: 115ff): abstract rules of conduct that apply equally to every citizen and prescribe no material contents but only negatively proscribe certain modes of behaviour like coercion, manipulation, threats, harassment. Consequently, every opinion can be brought to the „marketplace of ideas“; but one has to accept that dissenting opinions have the same right to enter the competition for the better argument (Weissberg 1996). Somewhat more concrete (and much more idealistic) concepts of the deliberating public are presented with labels such as „ideal speech situations“ or „ideal communication communities“. These ideals are well captured by Cohen’s (1989: 22ff) postulates of a deliberative procedure which Habermas (1996: 305f) endorses and summarises as follows:

„(a) Processes of deliberation take place in argumentative form, that is, through the regulated exchange of information and reasons among parties who introduce and critically test proposals. (b) Deliberations are inclusive and public. No one may be excluded in principle; all of those who are possibly affected by the decisions have equal chances to enter and take part. (c) Deliberations are free of any external coercion. The participants are sovereign insofar as they are bound only by the presuppositions of communication and rules of argumentation. (d) Deliberations are free of any internal coercion that could detract from the equality of the participants. Each has an equal opportunity to be heard, to introduce topics, to make contributions, to suggest and criticize proposals. The taking of yes/no positions is motivated solely by the unforced force of the better argument.”

Such ideal conditions of open communication, as I will argue below, are more naturally met under real competitive market conditions than with real democratic decision procedures. The case is more ambivalent with the last three conditions which, according to Habermas (1996: 306) “specify the procedure in view of the *political character* of deliberate processes”:

(e) Deliberations aim in general at rationally motivated agreement and can in principle be indefinitely continued or resumed at any time. Political deliberations, however, must be concluded by majority decision in view of pressures to decide ... majority rule justifies the presumption that the fallible majority opinion may be considered a reasonable basis for a common practice until further notice, namely, until the minority convinces the majority that their (the minority's) views are correct. (f) Political deliberations extend to any matter that can be regulated in the equal interest of all ... In particular, those questions are publicly relevant that concern the unequal distribution of resources on which the actual exercise of rights of communication and participation depends. (g) Political deliberations also include the interpretation of needs and wants and the change of prepolitical attitudes and preferences.“

Other idealising assumptions of a communication community or concepts of an “ideal speech community” are more or less strict than this one.³ Ideal types, political programmes or normative ambitions can not be “falsified” by stating that they fall short of reality. They have to, otherwise they would not be ideal types in the sense of normative demands. Still, one has to realise just how endemic and strong the predicaments of realisable political speech situations are, as I intend to show in part 4. In the following section I want to argue that the ordinary market process and thus the “colonisation subsystem” that according to Habermas (1975) is responsible for a “legitimation crisis” of a “late capitalism” that political discourse ought to tame and re-regulate, in many respects is closer to the Cohen-Habermasian ideal of a deliberative procedure than politics could ever be. At least for an “Austrian” economist most principles in Cohen-Habermas’ list of very demanding *prescriptions* of an *ideal*-type democracy can rather easily be translated into *descriptions* of *real*-type market processes. I will now go through the Cohen-Habermas list step by step.

3. The market processes as “domination-free” discourse

³ See, e.g. Dewey (1927/54: 143ff); Mills (1956), 303ff); Alexy (1989); Sunstein (1993: 133ff) or Dahl (1998: 37ff) – all of whom are much more demanding or “idealistic” in their definitions of democracy than Public Choice scholars following Schumpeter (1942/87: 269ff) or Downs (1957: 22ff). Habermas is not content with empirical (or normatively less demanding) definitions of democracy. He blames, e.g., Bobbio (1987: 40ff) for using only a “procedural minimum” based on less demanding elements such as guarantees of basic liberties (participation and communication rights), competing parties, periodic elections with universal suffrage, and collective decisions that are usually preceded by public debates between different factions. This minimalist concept is, as Habermas (1996: 303f) disapprovingly remarks, close to a description of the status quo in Western democracies and lacks normative zeal.

(a) regulated exchange of information, critical testing of proposals: markets as argumentative networks

As an unintended, but highly valuable, consequence of seeking mutual gains from trade, voluntary exchange on competitive markets implies a ‘regulated exchange of information among parties who introduce and critically test proposals’ (postulate a). Obviously, single market transactions involve varying intensities of communication, from anonymous, simple supermarket shopping to complex face-to-face negotiations over employment contracts or investment projects. The same is true for political “exchange” that also involves more or less “delinguistified media of communication”: from anonymous, simple voting at general elections to complex face-to-face negotiations over international relations or political programmes⁴. As I will argue in section 4, decision costs, opportunity costs and free-rider incentives are particularly restrictive for collective modes of deliberation. The more effective and intensive political communication intends to become, the more it will have to be limited to forms of élite discourse with the general public remaining a rather apathetic and bored audience unable and unwilling to understand the performance or to even participate and communicate its own desires.

But does deliberation via markets take ‘argumentative form’ at all? Viewed in isolation (or microeconomic textbooks), single acts of buying or selling a given good certainly involve choices without much communication, whereas more complex market transactions often involve demanding “speech acts” before mutual agreement and commitment are achieved. Moreover on a more general systems’ level *all* expressions of market competition can be interpreted as continuous “argumentation”. In Habermas’ (1996: 228) own words argumentation “is characterized by the intention of winning the assent of a universal audience to a problematic proposition in a noncoercive but regulated contest for the better arguments based on the best information and reasons”. Entrepreneurial behaviour on competitive markets is characterised by the same intention (winning the broadest possible assent of consumers to a proposed problem solution, a good or service) in a noncoercive but regulated contest called competition. And it is the buying or non-buying public that decides who provides the better argument and reasons.⁵

⁴ See Habermas (1985: 356) who only characterises “money” and “power”, the “media” of the economic and the administrative “system”, as “delinguistified”. But also voting, the ultimate “currency” for the allocation of power in a democracy, does, as such, not “tell” much (Wohlgemuth 2002).

⁵ See already Smith (1896/1978: 352): “The offering of a schilling ... is in reality offering an argument to persuade one to do so and so as it is for his interest.”

In other words: the successful entrepreneur incorporates consent conditions of other actors into the formulation, articulation, and enactment of his own projects (Davis 1998: 26). These other actors do the same, projecting possible buyers' or sellers' consent conditions and other sellers' or buyers' rivalling offers. An important part of these consent conditions is reflected in price offers being made with respect to other price offers to be found on the market. As a consequence, "each agent who engages in these communicative acts unintentionally dissipates knowledge and preferences that reflect the consent conditions of agents who he-she has rarely or never directly encountered" (ibid.: 27). And each agent has continuously to adjust his projects according to projects of an unknown number of potential partners to trade.

(b) Entry, sovereignty, persuasion: the unforced force of market persuasion

In this market arena of interpersonal exchange, 'no one is excluded in principle' (postulate b); as long as no legal barriers to entry exist, all of those who feel that they have something valuable to contribute, especially new, more attractive problem solutions that may be valuable for others, have chances to take part. Voluntary agreement is based on contracts among legally equal citizens who remain 'free of coercion' and are 'sovereign insofar as they are bound only by the presuppositions' of the abstract rules of just conduct (postulate c). Each entrepreneur has 'equal opportunities' to introduce alternatives, to 'suggest and criticize proposals'. What ultimately counts is the 'unforced force of the better argument' (postulate d), it is the more persuasive offer as judged by the "public" by ways of 'taking yes/no positions' (i.e. buying or not buying).

Habermas and his followers typically look down on (mass) consumption, advertisement or other forms of "commercialisation" as supposedly coercive forces that, by "generating" wants, undermine individual sovereignty and self-fulfilment. It is unclear what kind of economic "system" Habermasians would prefer, when they allude to concepts such as "socially" (democratically) controlled production for the satisfaction of *given* (or discursively determined) "social" needs and wants. At any rate, such a view of market processes, which can also be found among eminent economists,⁶ utterly ignores the working properties and

⁶ See e.g. Arrow (1951:2) who reduces *both* economic and political competition to pure aggregation mechanisms, each being a "procedure for passing from a set of known individual tastes to a pattern of social decision making." In Wohlgenuth (2002), I offer a critique of Arrowian Social Choice and Downsian Public

discursive role of market competition.’ There is no “given” or collectively determined demand; preferences and economic problem solutions are not *data* – they are results of a discovery process involving trial and error tested by competition (Hayek 1968/78). The market is ultimately a “forum for *persuasion*” (Palmer 1991: 304); producers of new goods or fashions use the “force” of persuasion which is the force of the better argument tested by ways of voluntary adoption by agents who prefer these new options to potential alternatives including the status quo.⁷ In order to vitalise this ‘unforced force of the better argument’ (Cohen, op.cit.), advertising is indispensable. In a world where alternatives are many and attention is scarce, it is not enough to make new problem solutions available; potential users must be made aware of their availability (Kirzner 1979: 10). And they must be *persuaded* that they might find useful or enjoyable something that they never (knew they) wanted before.

c) “Delinguistified” communication: prices as signals and incentives for opinion formation

Although market co-ordination in a world where neither wants nor potential problem solutions are given is in fact driven by persuasion, much of its communication is expressed non-verbally through direct human *action*: making offers and making choices. Many responses of consumers to efforts of persuasion of competing firms are simple “choice acts” that come without verbal expressions of underlying reasons. Hirschman’s (1970: 16) paradigm case of “exit”: the “private, ‘secret’ vote in the anonymity of a supermarket” adds up to a signal of business success or failure (profit and loss) but gives no direct information about *reasons and motivations* of consumer (dis)satisfaction. Market deliberation, indeed, continuously uses a “delinguistified medium”: prices. Prices inform the process of market deliberation and continuously report the current state of the “debate”; they reflect participants’ changing subjective preferences and expectations and the changing real world capabilities to provide the participants with alternative problem-solutions. At the same time they offer incentives to respond to and anticipate the needs and wants of unknown others.

Choice approaches that assess political and economic exchange processes according to their ability to simply transform given and known preferences into a collective “will” or social welfare function.

⁷ See Palmer (1991: 304f): “There was no ‘given’ demand for portable computers, digital laser-guided music systems, video games, pet rocks, or genetic engineering ... before they were developed by inventor-entrepreneurs who ‘created’ (i.e. persuaded) the demand for them ... the process of civilization is, to a very large extent, precisely one of learning to ‘demand’ new things for which previous generations had no demand.”

Changes in relative prices constantly and in a most parsimonious fashion communicate among market participants information on the consent conditions or “social” acceptability of their respective economic activities. Changes in relative prices reflect changing needs as expressed in current or anticipated human *action* (and not just words). The market process thus allows individuals to bring to bear the local knowledge that is available only to them and could never be communicated to a central planning agency. Beyond serving in such a fashion as a device for utilising dispersed knowledge, the market serves also as an arena for the continuous competitive exploration of new and potentially better solutions to meet human desires and reduce scarcity, thus inducing the discovery and creation of new knowledge (O’Driscoll/Rizzo 1985, ch.6).

Therefore, one can argue with Hayek (1946/48: 106) that “Competition is essentially a process of the formation of opinion: by spreading information, it creates that unity and coherence of the economic system which we presuppose when we think of it as one market. It creates the views people have about what is best and cheapest, and it is because of it that people know at least as much about possibilities and opportunities as they in fact do”. In this “Austrian” interpretation prices are not merely constraints that the homo oeconomicus takes as a given for solitary utility maximisation; they are a means to communicate expectations, wants and capabilities of actors who seek reciprocal actions of known or unknown others in an arena of voluntary exchange.

Concerning general attributes of communication I argued so far that capitalistic competition quite “naturally” (in terms of its innate working properties and not inadequate idealisations) matches elementary prerequisites of an “ideal” communicative community. One would expect more fundamental differences to become obvious with conditions (e) to (g) of the Cohen-Habermas list which emphasise the *political* task of deliberation. This is only partly the case.

d) Mutual adjustment without centralisation: the domination-free market co-ordination

Postulate (e) first demands a process much more akin to market communication than to collective decision making, namely that deliberations ‘aim in general at rationally motivated agreement and can in principle be indefinitely continued or resumed at any time.’ Politics, in order to serve its function of enforcing binding decisions concerning common rules and activities, has to bring deliberations on a matter to a (preliminary) conclusion by letting a

majority of power-holders have it their way. Price-driven market processes in principle know of no determinate conclusion and no need for minorities to wait for their “turn” to have their views respected on condition of majoritarian support. Only price-driven communication involves millions of different decisions that can be carried out and changed at any time.

The crucial difference is that markets “help to utilize the knowledge of many people without the need of first collecting it in a single body, and thereby make possible that combination of decentralization of decisions and mutual adjustment of these decisions which we find in a competitive system“ (Hayek 1952/79: 177). In other words: systems of collective choice at the end have to „reduce the manifold wills of millions, tens or even hundreds of millions, of scattered people to a single authority " (Sartori 1987: 15). In contrast, there is no *single* authority that needs to be informed by market discourse; there is no *common* good that market discourse has to help determine before action can start.

Market communication co-ordinates and controls the manifold plans of scattered people without ever having to condense it in *one* public authority or decision. Only markets provide opportunities and incentives to continuously create and select competing problem solutions that can be individually used and parallelly tested. On competitive markets, alternatives do not have to melt into one "homogenous good" or one collective decision, which one would hope to be beneficial or at least acceptable for all.⁸ Politics, in contrast, is the art of compromise in the process of producing goods that also have to be „consumed“ (and financed) by those who never demanded them and who never would have chosen them (see also section 4a).

e) The extent of the market is limited by the pretensions of politics

Postulate (f) lends itself to similar distinctions. In a way, it is the most demanding because neither market co-ordination nor political deliberation can, in fact, ‘extend to any matter that can be regulated in the equal interest of all.’ I will discuss the “equality” condition below and argue that equal participation and effectiveness represents not, under real conditions, the comparative advantage of political deliberation as Habermasian discourse propagandists

⁸ The “homogenous good” assumption only makes sense in a neoclassical static context where “perfect” competition demands suppliers to be passive “price-takers”. In a “discursive” and evolutionary interpretation of market processes, it makes no sense, as Hayek (1946/48: 104) noted very early: “because of the ever changing character of our needs and our knowledge, or the infinite variety of human skills and capacities, the ideal state cannot be one requiring an identical character of large numbers of products and services.”

imply it to be. Let me here just note that neither markets nor politics can claim complete mastery over matters of common interest. Even most classical liberals grant the existence of public goods and services the consumption of which is in the common interest of all but the production of which is not rewarding entrepreneurs because of free-rider incentives. There are good reasons to have a protective state that regulates the enforcement of property rights and provides public security, and there are good reasons to have a productive state that collects coercive contributions to finance some further public services (Buchanan 1975).

The “limits of liberty” and the limits of market co-ordination, however, are not in fact determined by experts in the theory of public finance. They are determined by experts in using the state apparatus for their own purpose. Politics (discursive or not) ultimately defines its own agenda. It thus also defines, by default, what matters remain to be regulated through voluntary market “discourse.” The extent of the market (in the sense of permitted content) is determined by political licence. At the same time, however, the political system is obviously overburdened when it tries to ‘extend to any matter that can be regulated in the interest of all’ (or in the interest of those who press for regulation and privileges). The difficult task, to be discussed in part 5, is now to mobilise forces and identify procedures that could provide reasonable limits to the extent of political governance. It is easy to call for the state in order to rectify (true or alleged) “market failure”; but who other than political actors can be called to rectify “policy failures”?

f) the justification of non-justificatory discourse: markets and private autonomy of judgement

Additional qualifications apply to postulate (g). Market prices do reflect entrepreneurs’ ‘interpretations of needs and wants’ of their potential partners to transaction. However, the market discourse is about the anticipation, discovery and satisfaction of needs and wants; it is not about their *justification*. Transactions are “justified” because both parties consent to proposed terms of trade (absent legally relevant externalities). The underlying ‘needs and wants’, ‘attitudes and preferences’ as well as the individual choices themselves need neither to be explained nor justified to anyone. No one has to subject one’s underlying reasons of a voluntary exchange to public scrutiny. In the course of market interaction “one does not have to defend one’s judgements, show that they are based on reason that applies more generally or endorsable as a general matter. One simply has a veto over the choices and judgements of others ... And this is what ... makes it different from the deliberative ideal ... Markets allow

for the maximum amount of cooperative interaction among individuals without first requiring a deep agreement among them ... That is their chief virtue” (Coleman 2001). Again, the market exchange of goods is about the mutual increase of expected benefits among individuals; the political exchange of arguments is about the legitimisation and justification of binding norms for a group of individuals.⁹ In this respect Habermas (1996: 313) rightly states that “private rights safeguard a sphere in which private persons are absolved of the obligation to account publicly for everything they do.” This is exactly what Habermas wants to rectify by “opening up an unrestricted spectrum of public issues” (ibid.), also allowing the “thematization” of initially private matters or “visions of the good life” in both the unregulated public sphere and in the legislative process producing binding decisions.

I will argue below why “privatisation” will be one way to cope with most compelling predicaments of politicised discourse. In this context, let me just emphasise the old classical-liberal position that private property is an indispensable safeguard of individual autonomy, including autonomy of judgement: property grants independence from domination by coercive élites, and it protects the diversity of opinion and of voluntarily expressed forms of life (Shearmur 1988: 46; Hayek 1960: ch. 3). Private property is not only the backbone of a capitalistic market “system”; it is also the basic resource needed for the uncoerced competition of ideas, forms of life, and communities that ought to characterise “domination-free discourse” in a free society.

g) division of labour and of knowledge: the utopian ideal of equally effective participation

Finally, let me address the “inequality” issue that is highlighted in the last two postulates of an “ideal discourse”. Equally effective opportunities of citizens to take part in deliberation are amongst the proudest and most demanding postulates of “domination-free discourse” and “ideal speech”. Discourse theorists have a point when they argue that co-ordination and communication on markets is not subject to equally distributed and equally effective participatory power. However, they have no reason to claim that this is substantially different in real political discourse. Dahl (1998: 37ff) presents five criteria for a democratic process, all of which relate to equality and effectiveness of citizens’ political influence:

⁹ In addition, the legal exchange of arguments in courts is about the rightness of legal decisions which according to Habermas (1996:230) is also “ultimately measured by how well the decision process satisfies the communicative conditions of argumentation that make impartial judgement possible.”

“Effective participation ... all the members must have equal and effective opportunities for making their view known to the other members as to what the policy should be. Voting equality ... every member must have an equal and effective opportunity to vote, and all votes must be counted equal. Enlightened understanding. Within reasonable limits to time, each member must have equal and effective opportunities for learning about the relevant alternative policies and their likely consequences. Control of the agenda. The members must have the exclusive opportunity to decide how and, if they choose, what matters are to be placed on the agenda ... Inclusion of adults. All, or at any rate most residents have the full rights of citizens that are implied by the first four criteria.”

Most modern western democracies come close to satisfy the second and the fifth criterion (although some voting rules and foreign-resident regulations may be debatable). These two criteria (one citizen – one vote; equality before the law) can relatively easily and clearly be warranted and enforced by (constitutional) law. The realisation of the other three conditions depends on incentives, opportunity costs, and the “natural” distribution of communicative talents. Quite analogous categories influence the unequal distribution of power within market communication. Monetary incomes, the unplanned distribution of which reflect unequal effort, luck and talent employed in persuading others during the game of catallaxy (Hayek 1976: 115ff), necessarily involve unequal effectiveness in communicating and satisfying one’s wants. But if the success of both “commutative action” and “communicative action” depends on unequally distributed effort, luck and talent, effective participation in political discourse should be plagued by the same shortcoming (s.a. Pennington 2003).

As Habermas (1996: 325) himself concedes, his idealisations of pure communication abstract from the “unequal distribution of attention, competences, and knowledge within a public.” This simple trait of life also qualifies the ideal of citizens’ equally effective opportunities to acquire “enlightened understanding” of political alternatives and consequences and to have their share in controlling the agenda. Markets are not much different in terms of an unequal distribution of individual effectiveness or power within the process, although the rights to participate and enter the economic market of ideas are just as equal. In some respects, markets are even more intrinsically “egalitarian” than political deliberation. As I shall argue in more detail below, real political deliberation aimed at binding decisions almost necessarily takes on the form of élite discourse within a small group of more or less representative agents who make *their* view known, use *their* “enlightened” understanding and follow *their* agenda. The political arena within large jurisdictions has to reserve the stage to a chosen few professionals; the public enters and leaves the auditorium, watching some shows while disregarding others and occasionally giving applause (mostly based on what professional critics have published before).

The more complex the political issues to be decided and the larger the polity, the more unavoidable such a division of labour and of knowledge becomes, which, however, greatly impairs equal and effective opportunities for deliberation. Market communication, in this regard, is more open and inclusive. Complexity and size of the market does not reduce the opportunity of consumers to satisfy their wants – to the contrary, it increases the pool of alternative problem solutions that can freely be chosen. In addition, competitive markets provide not only *opportunities* to participate, learn, and place proposals on the agenda; they also deliver the respective *incentives*. More active and better informed market participants can expect rewards in terms of higher incomes or more satisfying income spending. In contrast, the policy-consuming citizen as member of a wider public who faces ordinary opportunity costs of activities such as participating in political discourse, following political agendas or controlling political agents is “rationally” apathetic (absent and ignorant). These and additional organisation and incentive problems immanent in even the most modest concepts of political deliberation will now be discussed somewhat more systematically.

4. Deliberative trouble: predicaments of real-type organised discourse

I cannot compare here all the issues mentioned in the Cohen-Habermas list of „ideal deliberation“ with intrinsic functional properties of realistically “possible deliberation.” Some fundamental aspects will now be discussed in order to show the most critical presuppositions of idealist versions of the political „marketplace of ideas“: problems of achieving participation, “enlightenment” and representation of those affected by political decisions, problems of critically assessing, testing and selecting political opinions and problems of reaching „non-opinionated“ political decisions.

a) opportunity costs: the rationality of abstention, ignorance, and delegation.

It takes time and resources to communicate. The “inclusion of the other” (Habermas 1989) into political deliberation sounds not only reasonable, but also respectful, altruistic and charitable. But it need not be. What if “the other” does not want to be included in collective decision making because either he does like to be subject to political rule or he has better things to do than deliberating in public? As Norberto Bobbio (1987: 56) argued: “parallel to the need for self-rule there is the desire not to be ruled at all and to be left in peace.” The technicalities of our public finance definitions of “public goods” (non-excludability and non-

rivalry) are useful for identifying reasons for the “invisible hand’s” comparative disadvantage to provide certain goods and services. But it can be seriously misleading to imply that (a) no one would ever *want* to be excluded from the consumption of a “public” good or service that (b) is, in fact, obviously “*good*” for everyone ... and the more (of the) good, the better. Even the paradigm case of a public good: public defence, illustrates this point. The pacifist cannot exclude *himself* from consuming what is to him a public “bad”; he cannot even exclude himself from paying for it with parts of his income (taxes) or perhaps even with his (soldiers’) life.

Just as public good provision involves opportunity costs and externalities, so does political deliberation. Even if Dahl’s (op.cit.) very demanding condition of equal *opportunities* for effective participation in political deliberations was realised, opportunity *costs* would still differ and thus also the incentive and willingness to participate. It is no coincidence if one finds public servants or teachers highly over-represented amongst writers of letters to the publisher, attendants to public discussion events, party members and parliamentarians. Others, who do not have the same job security and leisure (self-employed entrepreneurs, manual workers) have higher opportunity costs. In fact, “the man on the street” who does not expect to receive “expressive utility” (Brennan/Lomasky 1993) from political activity, should be “rationally apathetic.” An important prerequisite for mass participation is to keep opportunity costs and intellectual demands extremely low. This is what general elections do: putting a piece of paper in a box is cheap and easy. Otherwise one could hardly bring millions of people to participate although the probability of affecting the outcome is miniscule.

The collective good problem characterised by obviously low incentives to make costly contributions and high incentives to free-ride on contributions of others in the absence of private (“selective”) rewards (Olson 1965), also applies to more demanding expressions of political discourse. Individual investments in participation, in the development of “enlightened understanding” of political alternatives and in the control of political agents’ behaviour, find little support by high-powered incentives as long as the group size is large and the individual contribution makes little difference in terms of different outcomes. This is the tragedy of collective choice in mass democracies: voter and non-voter, zealous discussant and political illiterate in the end have to live with the very same political outcomes that their single (non-)contribution could not affect. The fact that particular parts of the population do invest in political information and do engage in “networks of noninstitutionalized public

communication” (Habermas 1996: 358) has to do with other kinds of incentives – such as self-respect and respect of others or some sort of entertainment value (Hirschman 1989). But, as I will argue below, “reputational” utility as a major motivation for engagement in public discourse carries the great danger that public opinion is plagued by indoctrination and self-enforced false beliefs. Obviously, by the nature of individual choice and accountability, market discourse offers much stronger incentives to participate and invest in information about existing and potential needs of unknown potential partners to transaction. It is in the entrepreneurs’ self-interest to enlighten himself about what might be useful for others and to communicate convincing reasons for buying his product; and it is in the consumers’ self-interest to critically compare alternative offers and the reasons offered in order to make informed effective choices.

The capitalist “system” not only differs from the political public sphere in terms of opportunity costs of searching and communicating information. It also differs in terms of barriers to entry, decision-making or transaction costs. Just as goods (the objects of interactive price-formation) are not given in a market process, political issues (the objects of interactive opinion-formation) are not given in the political process. Issues have to be discovered or created and then pushed on the agenda. This activity entails costs and affords skills since the public’s attention is fundamentally scarce and ephemeral; it cannot deal with many issues at a time.¹⁰ On the competitive marketplace everybody who has a personal interest in the matter is free to supply and demand goods and services. The „issues“ and the parties involved in the market exchange are results of voluntary human action and not of human design. Because of the above-mentioned scarcity of political attention, the organisation of *decisive* discourses on a political „marketplace“ (i.e. debates aiming at final political decisions) cannot rely on equal spontaneity. Political discourse cannot address many issues at the same time; the political system has to „dispatch“ its issues on the agenda in order to clear some space for new issues. This often has to be accomplished in a time-span too short for appropriate and inclusive discourses – certainly within an arena of freely deliberating citizens, but also within regulated arenas such as parliaments. The more directly political discourse aims at political decisions, the more urgent becomes the problem of political decision costs, which makes it unavoidable to reduce the number of issues and/or the number of discussants.

¹⁰ In Wohlgemuth (2003) I discuss opinion-formation under conditions of the public’s scarcity of attention in more detail, stressing also the political entrepreneur’s indispensable function, which is to push issues on the agenda and keep it there until it reaches the final stages of legislation.

In principle, the process of political opinion-formation is open for contributions of all affected or interested citizens. There is also the possibility of bringing specific political alternatives to be directly decided upon by the interested public via referenda and initiatives. In a larger body politic, however, the vast majority of political decisions is not and cannot be organised as „continual voting discourses“ which would include the general public. At best, the public can watch more or less representative agents engaged in an élite discourse among themselves. Even Habermas (1996: 307) makes this crucial distinction between „decision-oriented deliberations, which are regulated by democratic procedures, and the informal processes of opinion-formation in the public sphere“. In the first, the official, arena will-formation is structured „with a view to the cooperative solution of practical questions, including the negotiation of fair compromises“. The parliamentary discourse and its procedural rules are concerned with „justifying the selection of a problem and the choice among competing proposals for solving it.“ This provides the „context of justification“ (ibid.) because only recognisable decision makers can be held accountable in front of voters and judges.

At the same time, however, the official arena should be responsive to a „context of discovery“ (ibid.) which is provided by „a procedurally unregulated public sphere that is borne by the general public of citizens.“ This second type of discourse remains „uncoupled from decisions“ (ibid.); here problems are supposed to be discovered and new ways of looking at things developed „more or less spontaneously“ (ibid.). This spontaneous order is supposed to consist of an open network of communication inside and among more or less overlapping publics with „fluid temporal, social, and substantive boundaries“, it is a „‘wild’ complex that resists organization as a whole.“ However (and here even the deliberative ideal differs from market-based discovery procedures), purposefully „arranged publics“ are indispensable for the organisation of public choices in a democracy under the rule of law. The necessity of representative bodies is not only a concession to decision costs. Organised discourse among elected agents also reduces principals’ costs of control and, by increasing the visibility of authors of communicative action and decision making, it increases political accountability. This is also acknowledged by Habermas (1996: 486) when he states that at the end of the day, free-floating public discourses „must take shape in the decisions of democratic institutions of opinion- and will-formation, inasmuch as the responsibility for momentous decisions demands clear institutional accountability.“

If continual political discourses and informed decisions afford the delegation of final responsibility to specialised groups of representatives, severe problems of identifying the „affectedness“ of social groups and of formalising the representativity of differently affected interests necessarily emerge. The notorious differences among groups’ ability to organise and the differences among organised groups to deploy power resources in the bargaining process can, at this decisive stage, turn the political discourse into a „bargaining democracy“ in the sense of Hayek (1979: 99) which is not guided by common values or generalisable views of public opinion but in which government becomes the „playball of group interests.“ The continuous realisation of mutual gains from vote-trading makes it necessary that the same players (interest groups) can engage in a sequence of bargaining games over time. Entry to this game is open only to well-organised pressure groups; as a consequence discourse (especially if orchestrated by governments) degenerates into élite deliberation in which inequalities of opportunities to effectively promote particular interests are unavoidable. All the circumstances mentioned so far already indicate that political deliberation under real world conditions may have an inherently interventionist, collectivist and, (however irrational the proceedings may be), rationalist bias. I will now provide further reasons for this suspicion.

b) asymmetric incompetence and the interventionist bias of political deliberation

The primary task of political deliberation in more less inclusive arenas is to assemble people in order to define what they regard to be a common will. The very idea that “institutions which serve the common welfare and are extremely significant for its development come into being without a common will directed towards establishing them” (Menger 1883/1985: 146) should be mostly inconceivable to activists engaged in organised political discourse. Instead, the attitude of “rationalistic constructivism” in the sense of Hayek (1970/78) almost naturally emerges from the self-understanding of a deliberating public as soon as it becomes aware of its “communicative power” over coercive means of politics. The closer representatives of a deliberating public come to defining collective goals (and the less they are directly accountable for sobering results), the more these kinds of deliberation will attract zealots who have ambitious plans for society in mind. And the closer representatives are being watched by a public audience that expects bold ideas and visionary projects (instead of calls for humility or political self-restraint), the more likely the deliberating players are to overbid themselves with calls for collective planning and action. This could re-enforce a natural tendency to adhere to the “doctrine ... that we should only accept as binding what we could recognise as a

rational design for a recognisable purpose” ... a purpose defined by deliberating bodies that claim to represent a society which almost necessarily will be treated as a “deliberate construction of men for an intended purpose” (Hayek 1970/78:5f).

The interventionist bias of political discourse can also be inferred from only two assumptions: [1] (rational) public ignorance of adequate means for effective policies and of unintended consequences and [2] the focus of Habermasian deliberation on legitimising collective ends. Everyone can be assumed to have some understanding of one’s preferences, interests and values and, if only on an abstract level, most people can infer from that (or from prevailing norms or demands of political correctness, see below) an idea of “legitimate ends” such as “the right to work”. In fact, from the perspective of normative individualism, there is no a priori ground for attributing different weights to different individual preferences and values. But not everyone has a priori equivalent technical knowledge about the effectiveness of political alternatives in the pursuit of what is regarded as a social value.

Empirical evidence of voter incompetence (e.g. Popkin 1991; Delli Carpini/Keeter 1996) shows that average citizens lack even most rudimentary knowledge of “which policies will promote their preferences and how candidates stand in relation to them” (Somin 1998: 440). As Hoffman (2001: 88) observed: “By sidestepping the question of public ignorance of means (effective policies) in favor of the question of the legitimacy of ends towards which they should be directed, Habermas overlooks the issue of whether his ideal is realizable in a world of imperfectly informed individuals.” The additional consequence is that, the more this Habermasian discourse is in fact realised in terms of “let us define legitimate ends and beautiful visions of a solidary society, but let us leave to the ‘system‘ of state administration to ‘rationalise‘ our visions by finding adequate means, and leave it to the market ‘system‘ to cope with unintended consequences”, the more irresponsible the whole deliberation project becomes. In the following section, I present even more evidence for “cheap talk” and insincere deliberation from a “microeconomic” logic of opinion exchange.

c) Cheap talk: preference-falsification, opinion cascades, enclave deliberation

On markets for goods and services (not protected from rival entry by government privileges), no entrepreneur can afford for long to act on systematically biased beliefs, to ignore simple facts (such as scarcity and human nature), or to disregard competing alternatives or dissenting

expectations. While such behaviour would be costly and risky on the economic marketplace, on the marketplace of ideas it is often “cheap” or even rewarding. Here, to ignore realities and dissenting views often entails no significant material costs for the stubborn. It is even rewarding since it reduces „psychological“ costs of cognitive dissonance (Weissberg 1996: 113) and may increase comfort in communicative communities of like-minded partisans.

The self-serving selective perception and storage of information based on established perception-filters in a (conscious and unconscious) attempt to verify one’s preconceptions is a general pattern of behavior constantly identified by psychological research.¹¹ Such self-justificatory attitudes and verificationistic perceptions are ubiquitous factors of the “all-too-human” condition. In the political arena, however, they are also “all-too-cheap” as long as deliberating citizen-voters but also, only too a lesser degree, professional opinion-leaders such as interest group representatives and parliamentarians, bear no or little personal responsibility for collective decisions and their effects. Self-assuring delusions are further supported by the selective use of media and communication partners (Huckfeldt/Sprague 1995; Akerlof 1989). As a consequence, one has to expect rather closed, at best partly overlapping, publics instead of one wide-open forum for (self-) critical debate. “Enclave deliberation” (Sunstein 2001, ch.1) has three uncomfortable consequences: preference falsification, cascade effects and polarisation.

In Kuran’s (1995) theory of preference falsification public opinion is not about the aggregation of private preferences, but the „distribution of public preferences“ (ibid.: 17), that is, of publicly articulated views that can differ significantly from what they would be in the absence of social pressures. Individuals appraise their own opinion articulation by reference to their estimate of opinions held by those with whom they presently communicate. Driven by a yearning for approval or “reputational utility”, we opportunistically „falsify“ our beliefs carrying our true views as an inner secret. The „fear of isolation“ urges individuals to constantly check which opinions and modes of behavior are approved and which are disapproved of in their environment (Noelle-Neumann 1993: 37ff; Kuran 1995: 27). This, in turn, leads into self-reinforcing „frequency-dependency-effects“ as major propagation-mechanisms of public opinion (Witt 1996). The problem is the likely production of snowball or cascade effects, “as small or even large groups end up believing something – even if that something is false –

¹¹ E.g. Zaller (1992); Akerlof (1989) Kuran (1995); Huckfeldt/Sprague (1995).

simply because other people seem to believe that it is true”¹². In addition, since people prefer to deliberate with like-minded others, since people with more radical views are more likely to be active in political deliberations, and since they influence less radical like-minded others with additional arguments that are less tractable and more confidently held, enclave deliberation predictably leads to more radical views created within communicative communities.¹³

To be sure, fads, fashions and snowball effects also emerge on the market place (stock market “bubbles” being perhaps the most eminent case). But there are good reasons why here irrational cascade effects and a radicalisation of views are less likely to occur and less likely to harm uninvolved others. Deliberative political talk is “instrumentally cheap” in the sense that one’s individual voice is not responsible for the collective outcome; it can only become “reputationally costly” to dissent from “politically correct” public opinion. Following an economic “fashion” (such as buying stocks because others buy stocks) can be very rewarding or very costly, but reputational aspects and social pressures to adopt given attitudes are usually less relevant than instrumental aspects. The individual success (profit or loss) depends on one’s own personal decision (buy or sell); this provides high-powered incentives to consider risks and opportunities and consult various sources of information. Compared to political talk, these incentive aspects of economic action may only mark differences in degree. The substantial difference is, again, that communicative action in market processes never results in collective decisions that *coerce* dissenting minorities to “consume” goods (laws and regulations as the political products of deliberation) that they dislike and to pay for them (taxes). Exactly because of its somewhat “delinguistified”, anonymous and non-verbal, mode of communication and the absence of any need to give “reasons” for one’s consumer or investor choices, market communication is more candid and less susceptible to unforced forces to disguise one’s true beliefs and interests and “support a certain course of action simply because others (appear to) do so” (Sunstein 2001: 21).

¹² See Sunstein (2001: 20) who refers to various sources of experimental evidence, but also to real world phenomena such as “smoking, participating in protests, voting for third-party candidates, striking, recycling, using birth control, rioting, buying stocks, choosing what to put on television, even leaving bad dinner parties.”

¹³ There is strong experimental evidence for this process of “group polarization” meaning “that members of a deliberating group predictably move toward a more extreme point in the direction indicated by the members’ predeliberation tendencies” (Sunstein 2001: 15). It works with feminist groups, pro- and anti abortion groups, even courts and juries, perhaps even libertarian scholars’ meetings.

Considering all the predicaments of political discourse presented in this section, a radical question suggests itself:

“If people are shifting their position in order to maintain their reputation and self-conception, within groups that may or may not be representative of the public as a whole, is there any reason to think that deliberation is making things better than worse? ... the product of deliberative judgements may be far worse than the product of simply taking the median of predeliberation judgements.” (ibid.: 42)

To deal with “deliberative trouble” (ibid.: ch.1) by “simply taking the median of predeliberation judgements”, however, would be to replace the Nirvana of “ideal speech” with the Nirvana of “given preferences” that come from nowhere (an economists’ heaven) and parade themselves on a “given issue space” that has the same divine origin. As I argued to some length elsewhere (Wohlgemuth 1995, 2000, 2002), mainstream public choice and social choice theories are unable to address the most valuable virtue of democracy as a process of forming opinion and as a procedure for the discovery of such issues, alternatives, preferences and problem solutions as otherwise (absent an omniscient benevolent dictator) would not be known to anyone, or at least would not be used (paraphrasing Hayek 1968/78: 179). I have argued that market competition should serve this knowledge creation and communication function much better than political discourse. But as long as there is a need for political action, the task is not to dispense with public deliberation and leave it to paternalistic élites to decide behind the backs of an unsuspecting citizenry. The task is to focus public discourse on realms where it can perform its necessary function of finding and legitimising solutions to problems that markets can not (by themselves) solve.

5. Policy conclusions

If my misgivings are valid so far, deliberative politics under conditions of modern welfare states is intrinsically overburdened (and bound to endogenously increase the burden through its own interventionist logic). Even Habermas (1996: 320) acknowledges as “evidence” that “discursive opinion- and will-formation governed by democratic procedures lacks the complexity to take in and digest the *operatively necessary* knowledge. The required steering knowledge no longer seems capable of penetrating the capillaries of a communication network whose structures are predominantly horizontal, osmotically permeable, and egalitarian.” Habermas’ conclusions, unfortunately, remain very cloudy. Sometimes he seems to argue that empirical evidence does not affect his normative intentions; sometimes he refers to the “institutionalized political process” with professional brokers of opinion and expertise;

sometimes he relies on law that ought to reduce complexity to a degree that makes it “disgestable” for a two-stage process of unorganised “lifeworld” discourse feeding public opinion into organised democratic and legal deliberation (Habermas 1996: 320ff). There is great merit in the idea of a political division of labour and the idea to engage the “legal community” (Habermas 1996: 326) with the task of making the complex world more reliable and more respective of generalisable interests and values. This important insight notwithstanding, I want to stress somewhat different policy conclusions. All three have one idea in common: simplification. If deliberative politics is overburdened, the obvious remedy is to relieve the burden by reducing the complexity and scope of politics (instead of reducing scope and complexity of the private sphere including the market). The recommendations are: privatisation (depolitisation), decentralisation and constitutionalisation.

a) Privatisation

The basic rationale of privatisation is simple: reduce “the number of issues to be decided by government to a level voters would find more manageable” (Somin 1998: 433). If the attention of deliberating publics is necessarily ephemeral and scarce, and if the legitimacy of political action depends on the general public’s ability to at least possibly know what is at stake, depolitisation should be among discourse theorists’ most urgent demands. Especially for largely “socialised” welfare states, privatisation would be an adequate means to increase the efficiency of the economic “system”, unburdening it from taxes, bureaucratic waste and paternalism. More important in the present context, privatisation is also an adequate means to increase the workability of political discourse, unburdening it from an overtaxation of scarce cognitive resources and allowing it to concentrate on issues of general interest in the production of services that markets cannot provide. In addition, “capitalism” (i.e. innovative entrepreneurship) itself produces, in the form of new technologies, good reasons for privatisation. Many goods and services that for technical reasons could formerly only (or at least better) be provided by the state because of non-excludability and free-rider incentives, can now easily be brought under market regimes (see Foldvary/Klein, eds. 2003) with the price-mechanism controlling the allocation of their use and internalisable profits encouraging the production of competing market solutions.

Habermasians, sometimes, also feel uneasy about the manageability of their claims on public deliberation and acknowledge that “discourses ... can develop their problem-solving force

only insofar as the problems at hand are sensitively perceived, adequately described, and productively answered” (Habermas 1996: 324). However, they feel more uneasy about market capitalism’s “colonializing” effect on society – a post-Marxist claim that, as I tried to argue, is no necessary conclusion of a generalised theory of communicative action that would also acknowledge the market as a subtle and efficient communications system for digesting dispersed information and discovering social problem solutions.

The problem is that professional politicians, the representatives of Habermas’ “administrative system” derive power and discretion not from privatisation and de-politisation, but from politisation, from “colonialising” the private “lifeworlds” and the private market societies. And by orchestrating public discourse and exploiting the interventionist bias inherent in the asymmetric competence of political discourse (see section 4b), political entrepreneurs are able to mobilise communicative power in their favour if needed. At the same time, however, Leviathan’s self-serving communicative power has limits, especially if citizens are in a position to compare and choose among different Leviathans. In decentralised, federal political bodies with overlapping communicative communities (or at least: some information about the comparative performance of comparable political units), deliberating citizens are less likely to talk in terms of interventionist “categorical imperatives” and more likely to argue in terms of a sober empirical “categorical comparative”. In other words: they will more likely be ready to discuss alternative effective means (such as privatisation) instead of “legitimising” utopian ends.¹⁴ This leads to the second policy conclusion.

b) Decentralisation

Habermas and his followers typically refrain from determining or even discussing the scope of the relevant group, i.e. the size of the “public” they have in mind when demanding open public discourse. The general impression one gets, e.g. from his discussions on globalisation and European constitutionalism (Habermas 2001a, 2001b) is: the more encompassing the deliberating public and the political union, the better – if only in order to engage global capitalism’s “colonialising” impact on the same level. As for many “globalisation critics” it

¹⁴ See e.g. Weingast (1993) stating that political competition among lower level jurisdictions in the presence of factor mobility and self-enforcing limits on majority rule at the highest level of government typically ensures “market preserving federalism”. Empirical evidence from Switzerland with its very strong decentral organisation with mostly self-reliant Cantons also supports this hypothesis (see Kirchgässner 2001 for a survey).

must be extremely frustrating for Habermasians to realise that political communicative communities can never reach the scope of capitalistic communication. Exactly because market competition relies on a “delinguistified” medium, prices, it transcends language barriers. And because the “propensity to truck, barter and exchange one thing for another ... is common to all men” (Smith 1776/1981: 25) also cultural barriers are much less relevant for the reaching of agreement on global markets.

Market competition as the most decentralised mode of interaction and communication is also the most inclusive. Competitive capitalism knows no pre-defined borders; there is no need and no point in defining a “relevant market”. For capitalist communication, the “relevant public” and the “issue space” are spontaneous “results of human action, but not of human design” (Hayek 1967). If human action in terms of offering and choosing among alternative proposals for solving specific needs is limited to special locality, so be it: the “communicative community” for persuading consumers to have a hair-cut is more or less limited to a town. If competition takes place world-wide, the capitalistic communicative community spans the globe.

For political deliberation aiming to find and legitimise binding decisions, it is indispensable to define who is entitled to propose binding commitments for whom *before* deliberation can meaningfully start. Failing to define the “relevant market” in terms of who is to be “included” with a right to participate and a duty to abide by a collective decision, discourse theorists easily disregard the simple but fundamental insights of Buchanan/Tullock (1962) that with expanding group size, the decision making costs (the costs of achieving tolerable consensus) increase together with the external costs (the probability that one has to endure a collective decision which is not in one’s interest). The larger the group, the more fictitious the ideal of inclusive and equally effective participation and consensual agreement becomes in the face of decision costs. This by itself increases the likelihood of individuals being coerced to live with binding decisions they object to. Larger groups or more centralised deliberation and decision-making also naturally lead to more unified public good provision based on “one-size-fits-all” policies that cannot reflect variety and changes of individual or sub-group preferences and beliefs.

Although public decisions are thus more likely to affect them negatively, one should expect citizens in larger communicative communities and jurisdictions to be more apathetic than

citizens of small communities. The opportunity costs of participation and information (section 4a) mainly rise with the unlikelihood of having one's voice heard. And the larger or more inclusive the deliberating group, the "cheaper" the talk because of its distance from accountable decisions and their individually produced consequences. Even systematically biased, "irrational", beliefs are held with great conviction if these beliefs have no practical impact on consequences of deliberation and political decision making (Caplan 2001). Growing group size increases the number of "men on the street" for whom it personally does not matter if their political beliefs are irrationally biased; in the aggregate, however, the combined effect of biased voters can have a devastating effect on political results.

Decentralisation and the possibility of "exit" between jurisdictions that compete for mobile factors not only decreases the "external costs" of those who can leave a more oppressive community in favour of one closer to their political preferences (s. Tiebout 1956; Mueller 2001). It may also help to switch the attitudes in political deliberations from non-consequentialistic utopian "Gesinnungsethik" to more responsible and realistic expressions "Verantwortungsethik".¹⁵ As indicated above, overlapping inter-group deliberations (or at least inter-group observations of comparative performance) may encourage statements based on "comparative institutional analysis" to enter the "argumentation pool" of political deliberation and thus "rationalise" the debate and bring it closer to a choice of rules that have proven their workability and effectiveness in practice. The reason is this: in one jurisdiction with its "natural" monopoly of government there is only one set of political problem solutions being tested at a time; political discourse is basically limited to learning from consecutive trials and errors. Real competitive market processes, in contrast, allow for an ongoing, spontaneous, and parallel testing of the adequacy of many effectively competing trials at a time (Vanberg 1993: 15f). Interjurisdictional competition combines the two modes of discovery procedures: economic and political. It sends out signals based on the communicative power of market transactions that, mostly as a by-product, involve an "individual choice of rules" among different suppliers of institutional infrastructure (e.g. shifting tax-base; direct investment). For a political discourse that aims at discovering new problem solutions, these signals about comparative economic and political performance may be more valuable than isolated "cheap" talk about a "legitimation crisis" of "late-capitalism".

¹⁵ See Weber (1921/78: 576ff.) on the distinction between an "ethic of ultimate ends (Gesinnungsethik)" and an ethic of responsibility ("Verantwortungsethik").

Given the heterogeneous character of individual preferences, beliefs and value systems (of “lifeworlds”, if you like) together with different capabilities to provide adequate problem solutions, decentralisation and the “unforced force” of individual choices among alternatives (competition) suggests itself as an adequate reflection of that very fact of life. Also in the face of diversity, Shearmur (1988: 47) argues that it should be “the most plausible path for an approach like that of Habermas ... to endorse a view in which limited dialogue about general principles and minimal conditions of well-being is supplemented by the freedom of individuals to engage in experiments in living (subject, perhaps, to a requirement to face criticisms and objections to their chose form of life). In this way, ... one generates not socialism or an expansive conception of democracy, but a conception of the proper scope of democracy as limited to issues of general principle.” This argument already points at the virtue of constitutionalism and the rule of law as ways to unburden and at the same time focus political deliberation.

c) Constitutionalisation

As I have argued at quite some length until now, the cognitive and organisational capacity of political discourse has its limits. Thus, at least organised political decision making ought to respect these limits; it should be focused on general procedural rules of just behaviour, an area where the discursive creation of consent is most likely and necessary (s.a. Hayek 1979). In order to make these limitations of the political “issue space” or of political parameters in the field of devising binding decisions themselves binding, the players of the political deliberation game will have to submit to common rules of the game. This is what is commonly meant by “constitutionalisation”.

Classical liberal constitutions accomplish several tasks that are relevant here: Obviously, constitutional guarantees of freedom of speech, assembly, and the press, equal voting rights etc. are acknowledged by Habermasians and classical liberals alike as preconditions of a free society and of domination-free discourse.¹⁶ At the same time, a constitution of liberty has

¹⁶ Habermas(ians) should have no problem endorsing the following claim of Hayek (1978: 148): „The central belief from which all liberal postulates may be said to spring is that more successful solutions of the problems of society are to be expected if we do not rely on the application of anyone’s given knowledge, but encourage the interpersonal process of the exchange of opinion from which better knowledge can be expected to emerge ... Freedom for individual opinion was demanded precisely because every individual was regarded as fallible, and the discovery of the best knowledge was expected only from that continuous testing of all beliefs which free discussion allowed“.

other virtues that are not as easily recognised by post-Marxist discourse ethicists: The rule of law reduces complexity by removing (more or less) authoritatively possible political actions from the agenda of political decision making and, as a consequence, in most cases from the agenda of political deliberation. Thus, the rule of law guarantees a protected domain in which personal liberty and the “experiments in living” that it may engender are possible without affording any justification to politicians, judges, media, or deliberating publics. It also unburdens the political process from unreasonable demands of public opinion that may become “fashionable” at a given time but tend to overtax the abilities of political means.

The Rule of Law that is basically founded on *proscriptions* negatively defining certain kinds of action that the state is not allowed to perform (in contrast to welfare-state *prescriptions* requesting uncertain kinds of actions in the name of unspecified ends of state activity) also unburdens the legal discourse going on in (supreme) courts. As a former German supreme court judge explained: „Unterlassen ist nicht knapp" (Grimm 1987/91: 47) – omission or the compliance with *proscriptions*, is not subject to the availability of scarce resources. This statement not only refers to fiscal resources on the availability of which welfare state provisions or social rights critically depend. It also refers to scarce social resources such as attention of the public sphere and the capacity to reach consent. Especially in large jurisdictions and open societies that comprise groups and individuals that have many different political preferences and cherish many different values and traditions, it should be easier to agree on general, abstract rules that proscribe certain harmful modes of state conduct than to agree on the active pursuit of specific purposes.

Compared to programmatic prescriptive welfare state provisions, proscriptive norms that forbid certain kinds of state action are also somewhat easier to enforce. By defining the limits of the state, classical liberal constitutions thus form a salutary check on government behaviour. Citizens’ expectations are stabilised since the rules of state conduct, if adhered to, inform about acts that governments may not choose or that independent courts are likely to repeal.¹⁷ At the same time, proscriptive rules have the advantage that by *not* prescribing and imposing on society particular purposes they “assist in the pursuit of a great many different,

¹⁷ See also Berggren/Karlson (2003) who argue that the division of power promotes the quality of public decisions in several respects. The necessity for several decision-making units to agree provides incentives to collect knowledge and provide good reasons; the division of labour and knowledge may yield epistemological benefits from specialisation and judicial review may urge governments to care more about general principles and individual rights.

divergent and even conflicting purposes” (Hayek 1966/67: 163) of groups and individuals within society. Thus proscriptive universalisable rules of just conduct leave the door open for desirable experimentation with various modes of conduct, including innovation in the realm of individual as well as collective action.¹⁸

To be sure, both from a Habermasian and a classical liberal perspective, it is difficult to justify “taboos” at least for potential deliberations taking place in the procedurally unregulated public sphere, involving the general public of citizens, the media, the communicative communities of science etc. It would have to be the *organised political decision-oriented* deliberation, the political “system” that would have to be convinced that de-politisation and self-binding commitments are in the interest of its own manageability.¹⁹ Unlimited politisation of society by means of unrestricted powers of political decision-making is bound to overburden the cognitive and organisational capacities of the public and undermine the capacities of economic “discourse” taking place on open markets. As Pete Boettke (1997: 91) concludes: the “political economy task is one of finding a constitutional structure that empowers, yet disciplines, public discourse”.

6. Summary: The use of knowledge in society

Political and economic decision making procedures both face the fundamental problem of how to make best use of knowledge in society. The character of the problem is, in both cases, determined by “the fact that the knowledge of the circumstances of which we must make use never exists in concentrated or integrated form but solely as the dispersed bits of incomplete and frequently contradictory knowledge which all the separate individuals possess” (Hayek 1945/48: 77). In other words: once a social (economic or political) order of interactions goes beyond a certain threshold level of increasing complexity, it transcends the ability of any single mind or collective group to collect, integrate and evaluate the knowledge on the use of which the success of social co-ordination critically depends.

As I have tried to show in this paper, the market order with its price system working as a spontaneous communication mechanism is able to cope with this knowledge problem in way

¹⁸ These virtues of universalisable rules are explained in greater detail and with an application to international governance in Sideras/Wohlgemuth (2004).

¹⁹ See Elster (1979) for the classical treatment of the virtues of self-binding commitments.

that should provoke utter admiration or at least envy of all who seek to achieve domination-free discourse and persuasion, regulated and critical exchange of information, mutual adjustments of expectations and unrestricted effective participation. But instead of acknowledging the epistemological performance of capitalistic competition, most left-wing Habermasians aim to “domesticate” markets by re-asserting active control over social life through collective action. This presumption of knowledge but also the dubious claim of political communication’s higher moral ground present an important challenge to the values and institutions of a free society.

References

Aaken, Anne van (2003): *Deliberation and Constitutional Theory: Deliberative institutional economics, or does Homo Oeconomicus argue?*, in: Anne van Aaken, Christian List and Christoph Luetge (eds.), *Deliberation and Decision. Economics, Constitutional Theory and Deliberative Democracy*, Aldershot: Ashgate 2003 (forthcoming).

Akerlof, George A. (1989): *The Economic of Illusion*, *Economics and Politics*, 1, 1-15.

Alexy, Robert (1989), *A Theory of Legal Argumentation*, Clarendon Press.

Arrow, Kenneth J. (1951): *Social Choice and Individual Values*, New York: Wiley & Sons.

Berggren, Niclas / Nils Karlson (2003): *Constitutionalism, division of power and transaction costs*, forthcoming in *Public Choice*.

Bobbio, Norberto (1987): *The Future of Democracy*, Cambridge, Mass.: Cambridge University Press.

Boettke, Peter J. (1997): *Book Review of Timor Kuran: Private Truths, Public Lies: The Social Consequences of Preference Falsification*, *Constitutional Political Economy*, 8, 89-91.

Brennan, Geoffrey / James M. Buchanan (1980) : *The Power to Tax. Analytical Foundations of a Fiscal Constitution*, Cambridge: Cambridge University Press.

Brennan, Geoffrey / Loren E. Lomasky (1993): *Democracy and Decision. The Pure Theory of Electoral Preference*, Cambridge: Cambridge University Press.

Buchanan, James M. (1975): *The Limits of Liberty*, Chicago: University of Chicago Press.

Caplan, Brian (2001): *Rational Ignorance Versus Rational Irrationality*, *KYKLOS* 54: 3-26

Cohen, Joshua (1989): *Deliberation and Democratic Legitimacy*, in: Alan Hamlin and Philip Pettit (eds.), *The Good Polity*, Oxford: Blackwell, 17-34.

Coleman, Jules (2001): *Ideal Speech Communities and Constitutional Economics: Preliminary Reflections*, mimeo.

- Dahl, Robert A. (1998): *On Democracy*, New Haven & London: Yale University Press.
- Delli Carpini, Michael X. and Keeter, Scott (1996) *What Americans Know about Politics and Why it Matters*. New Haven: Yale University Press.
- Dewey, John (1927/54): *The public and its problems*, Athens, Ohio: Ohio University Press.
- Davis, Erik (1998): Three Forms of Spontaneous Order and Their Place within Civil Society, *Journal for Institutional Innovation, Development, and Transition*, 2, 19-34.
- Downs, Anthony (1957): *An Economic Theory of Democracy*, New York: Harper & Row.
- Ebeling, Richard M. (1991): What is a price? Explanation and understanding, in: Don Lavoie (ed.), *Economics and Hermeneutics*, London: Routledge, 177-194.
- Elster, Jon (1979): *Ulysses and the Sirens*. Cambridge: Cambridge University Press.
- Grimm, Dieter (1987/91): Entstehungs- und Wirkungsbedingungen des modernen Konstitutionalismus, in his *Die Zukunft der Verfassung*, Frankfurt a.M. 1991: Suhrkamp, 31-66.
- Foldvary, Fred E. / Daniel B. Klein (2003, eds.): *The Half-Life of Policy Rationales: How New Technology Affects Old Policy Issues*, New York: New York University Press.
- Habermas, Jürgen (1975): *Legitimation Crisis*, Boston: Beacon Press.
- Habermas, Jürgen (1985): *The Theory of Communicative Action, Vol. 2: Lifeworld and System*, Boston: Beacon Press.
- Habermas, Jürgen (1996): *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*, Cambridge, Mass.; MIT Press.
- Habermas, Jürgen (1998): Three Normative Models of Democracy, in his: *The Inclusion of the Other. Studies in Political Theory*. Cambridge, Mass.: MIT Press, 239-252.
- Habermas, Jürgen (2001a): Why Europe needs a Constitution, *New Left Review*, 11, 5-26.
- Habermas, Jürgen (2001b): *The Postnational Constellation*, Cambridge: MIT Press.
- Hayek, Friedrich A. (1945/80): The Use of Knowledge in Society: F.A. Hayek, *Individualism and Economic Order*, Chicago: University of Chicago Press 1980, 77-91.
- Hayek, Friedrich A. (1946/48): The Meaning of Competition, in: F.A. Hayek, *Individualism and Economic Order*, Chicago: University of Chicago Press 1980, 92-106.
- Hayek, Friedrich A. (1952/79): *The Counter-Revolution of Science. Studies on the Abuse of Reason*, 2nd ed. Indianapolis 1979: Liberty Press.
- Hayek, Friedrich A. (1960): *The Constitution of Liberty*, Chicago: University of Chicago Press.

- Hayek, Friedrich A. (1966/67): The Principles of a Liberal Social Order, in his: *Studies in Philosophy, Politics, and Economics*, London: Routledge, 160-177.
- Hayek, Friedrich A. (1967): The Results of Human Action, but not of Human Design, in his: *Studies in Philosophy, Politics, and Economics*, London: Routledge, 96-105.
- Hayek, Friedrich A. (1968/78): Competition as a Discovery Procedure, in his: *New Studies on Philosophy, Politics, Economics and the History of Ideas*, London 1978: Routledge, 179-190.
- Hayek, Friedrich A. (1970/78): The Errors of Constructivism, in his: *New Studies on Philosophy, Politics, Economics and the History of Ideas*, London 1978: Routledge, 3-22.
- Hayek, Friedrich A. (1974/78): The Pretence of Knowledge, in his *New Studies on Philosophy, Politics, Economics and the History of Ideas*, London 1978: Routledge, 23-34.
- Hayek, Friedrich A. (1976): *Law, Legislation and Liberty. Vol.2: The Mirage of Social Justice*, Chicago: University of Chicago Press.
- Hayek, Friedrich A. (1979): *Law, Legislation and Liberty. Vol.3: The Political Order of a Free People*, Chicago: University of Chicago Press.
- Hirschman, Albert O. (1970): *Exit, Voice, and Loyalty. Responses to Decline in Firms, Organizations, and States*, Cambridge, Mass.: Harvard University Press.
- Hirschman, Albert O. (1989): Having Opinions – One of the Elements of Well-Being?, *American Economic Review Papers and Proceedings*, 79, 75-79.
- Hoffman, Reihan (2001): Habermas vs. Weber on Democracy, *Critical Review*, 15, 74-108.
- Horwitz, Steve (1992): Monetary Exchange as an Extra-Linguistic Communications Medium, *Review of Social Economy*, 50, 193-214.
- Huckfeldt, Robert / John Sprague (1995): *Citizens, Politics, and Social Communication – Information and Influence in an Election Campaign*, Cambridge: Cambridge University Press.
- Kirchgässner, Gebhard (2001). *The Effects of Fiscal Institutions on Public Finance: A Survey of the Empirical Evidence*. CESifo Working Paper No. 617, 2001.
- Kirzner, Israel (1979); Equilibrium versus market process, in his: *Perception, Opportunity and Profit*, Chicago: University of Chicago Press.
- Kuran, Timor (1995): *Private Truths, Public Lies. The Social Consequences of Preference Falsification*, Cambridge, Mass.: Harvard University Press.
- Lavoie, Don (1991, ed.), *Economics and Hermeneutics*, London: Routledge.
- Lavoie, Don (2000): A brief history of conversation, unpublished manuscript, mimeo.
- Menger, Carl (1883/1985): *Investigations into the Method of the Social Sciences with Special Reference to Economics*, New York: New York University Press.

- Mills, C. Wright (1956): *The Power Elite*, New York: Harper.
- Morgan, Glyn (2003): Hayek, Habermas, and European Integration, forthcoming in *Critical Review*.
- Mueller, Dennis C. (2001): Centralism, Federalism, and the Nature of Individual Preferences, *Constitutional Political Economy*, 12, 161-172.
- Noelle-Neumann, Elisabeth (1993): *The Spiral of Silence: Public Opinion – Our Social Skin*, Chicago: University of Chicago Press.
- O’Driscoll, Gerald / Mario Rizzo (1985): *The Economics of Time and Ignorance*, London: Routledge.
- Olson, Mancur (1965): *The Logic of Collective Action – Public Goods and the Theory of Groups*, Cambridge, Mass: Harvard University Press.
- Palmer, Tom G. (1991): The hermeneutical view of freedom. Implications of Gadamerian understanding for economic policy, in: Don Lavoie (ed.), *Economics and Hermeneutics*, London: Routledge, 299-318.
- Pennington, Mark (2003): Hayekian Political Economy and the Limits of Deliberative Democracy, forthcoming in *Political Studies*, 51(4).
- Popkin, Samuel L. (1991) : *The Reasoning Voter: Communication and Persuasion in Presidential Campaigns*. Chicago: University of Chicago Press.
- Popper, Sir Karl (1994): *In Search for a Better World. Lectures and Essays from Thirty Years*, London: Routledge.
- Prychitko, David L. (1995, ed.): *Individuals, Institutions, Interpretation: Hermeneutics applied to economics*, Avebury
- Sartori, Giovanni (1987): *The Theory of Democracy Revisited. Part One: The Contemporary Debate*, Chatham: Chatham House.
- Sideras, Jörn and Michael Wohlgemuth (2004): *Globalisability of Universalisability? How to apply the generality principle and constitutionalism internationally*, forthcoming.
- Schumpeter, Joseph A. (1942/87): *Capitalism, Socialism, and Democracy*, London 1987: Unwin.
- Shearmur, Jeremy (1988): Habermas: A Critical Approach, *Critical Review*, 2 (1), 39-50.
- Smith, Adam (1776/1981): *An Inquiry into the Nature and Causes of the Wealth of Nations*, Volume 1, Indianapolis 1981: Liberty Press.
- Smith, Adam (1896/1978): *Lectures on Jurisprudence*, Oxford 1978: Oxford University Press.

- Somin, Ilya (1998): Voter Ignorance and the Democratic Ideal, *Critical Review*, 12(4), 413-458.
- Sunstein, Cass R. (2001): *Designing Democracy. What Constitutions Do*, Oxford: Oxford University Press.
- Sunstein, Cass R. (1993): *The Partial Constitution*, Cambridge: Harvard University Press.
- Tiebout, Charles M. (1956) : A Pure Theory of Local Expenditures, *Journal of Political Economy*, 64, 416-424.
- Vanberg, Viktor J. (1993): Constitutionally Constrained and Safeguarded Competition in Markets and Politics with Reference to a European Constitution. *Journal des Economistes et des Etudes Humaines* 4: 3-27
- Vanberg, Viktor J. (2003): Democracy, Discourse and Constitutional Economics: Comment on John S. Dryzek, in: Anne van Aaken, Christian List and Christoph Luetge (eds.), *Deliberation and Decision. Economics, Constitutional Theory and Deliberative Democracy*, Aldershot: Ashgate 2003 (forthcoming).
- Weber, Max (1921/78): *Economy and Society. An Outline of Interpretative Sociology*, edited by Guenther Roth and Claus Wittich, Berkeley: University of California Press.
- Weingast, Barry R. (1995): The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development, *The Journal of Law, Economics and Organization*, 7, 1-31.
- Weissberg, Robert (1996): The Real Marketplace of Ideas, *Critical Review*, 10, 107-121.
- Witt, Ulrich (1996): The Political Economy of Mass Media Societies, Max-Planck-Institute for Research into Economic Systems, Papers on Economics and Evolution #9601.
- Wohlgemuth, Michael (2002): Democracy and Opinion Falsification: Towards a New Austrian Political Economy, *Constitutional Political Economy*, 13 (3), 223-246.
- Wohlgemuth, Michael (2002): Schumpeterian Political Economy and Downsian Public Choice: Alternative Economic Theories of Democracy, *Freiburg Discussion Papers on Constitutional Economics (Walter Eucken Institut)*, # 02/7
- Wohlgemuth, Michael (2003): Deliberative Institutional Economics. Comment one Anne van Aaken, in: Anne van Aaken, Christian List and Christoph Luetge (eds.), *Deliberation and Decision. Economics, Constitutional Theory and Deliberative Democracy*, Aldershot: Ashgate 2003 (forthcoming).
- Zaller, John R. (1992): *The Nature and Origin of Mass Opinion*, Cambridge: Cambridge University Press.