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Ordoliberalism

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For several decades, what has been called the “liberal cosmopolitan-minded urban elites” set the political agenda of Western democracies (Dold and Krieger 2019a). They aimed at personal freedom and upward social mobility by means of a meritocratic system that was safeguarded by a combination of a competitive market economy, a liberal and open democracy, and the rule of law (Fuest 2018). These elites welcomed the opening of the Iron Curtain as the “end point of mankind’s ideological evolution and the universalization of Western liberal democracy” (Fukuyama 1989, 4). However, political realities have challenged this perspective severely in recent years (Dold and Krieger 2019a). Around the globe, but especially in the liberal Western market democracies – i.e., societies in which “markets and democracy have coexisted quite healthily” in the post-World War II era (Chua 2000, 289) – populist movements have gained prominence in public discourse and in some cases even won elections (e.g., in Hungary, the Netherlands, Italy, Poland, or Sweden).¹

There is ongoing debate over the causes of the rise of populist movements in the early 21st century (Gidron and Hall 2017; Guiso et al. 2017; Inglehart and Norris 2017; Mudde and Kaltwasser 2017). While important, our chapter will touch upon this debate only in passing, though, and instead focus on the consequences of populism’s rise; in particular, we will ask how to deal with the populist challenge to the liberal order. We do so in three steps, thereby referring to one specific liberal conception, ordoliberalism.² Considering ordoliberalism is instructive because, on the one hand, it strives for a “functioning and *humane* order of the economy, society, law, and the state” (Eucken 1990 [1952], 373; our italics), which is a much broader idea of liberalism than pure economic liberalism. On the other hand, critics argue that ordoliberalism has failed on following up on its own agenda (Dold and Krieger 2019b and 2023). They believe that ordoliberalism is the culprit of various misguided developments since the Eurozone crisis of 2009, which then provided a breeding ground for populism (Algan et al. 2017; Dold and Krieger 2019a). In their view, this is also related to ordoliberalism’s – alleged – preference of the rule of law and economic freedom over democratic decision-making.³

Along these lines, we structure our argument as follows. First, we sketch a fundamental asymmetry in the liberal (economic) order of market democracies, which leads to a challenge to this very order, both economically and politically. Second, we argue that a contemporary version of ordoliberalism, which we consider a solution rather than a catalyst of the populism crisis, ought to invite the implementation of policies that enable all individuals’ (competent) participation in market transactions. Third, we further extend this view by requesting from contemporary ordoliberals to also explore ways and means to foster competent representation of legitimate citizens’ interests in

¹ In this chapter, we use a relatively broad concept of populism, which defines itself in opposition to political and economic liberalism. Some typical characteristics of populist movements include an anti-establishment orientation, an opposition to supranational institutions and open economies, and an appetite for authoritarian governance (Rodrik 2018).

² Ordoliberalism traces its roots to a prolific group of economists and legal scholars at the University of Freiburg’s Faculty of Law and Economics in the early 1930s (Dold and Krieger 2021; Krieger and Nientiedt 2022). In its early days, it was part of the neoliberal network of the interwar period (Kolev 2019; Köhler and Kolev 2013). Later it proved singularly influential in shaping the social market economy of post-war Germany (Dold and Krieger 2023).

³ Among others, Nientiedt and Köhler (2016) as well as Köhler and Nientiedt (2023) show convincingly that this critique of ordoliberalism’s founding fathers is not warranted (even less so of later generations of ordoliberals; see, e.g., Krieger and Nientiedt 2023).

the political discourse, which many citizens seem to believe being not sufficiently taken into account in representative democracy. We argue that (rules-based) public deliberation could help to shift the populist discourse towards a discourse based on a realistic appreciation and rational evaluation of facts as well as reduce alienation from the political system and growing democratic dissonance.

Moreover, and quite importantly, the idea of rules-based public deliberation is also a natural, although not trivial extension of recent ordoliberal scholarship (e.g., Vanberg 1997 and 2005). This scholarship emphasizes how democratic processes lead to setting up rules aiming at protecting civic rights and ensuring citizen sovereignty being on par with consumer sovereignty. Against this backdrop, we will explore in this chapter the prerequisites for a societal order that benefits from – well-designed and rules-based – elements of public deliberation without sacrificing the liberty-preserving constitutional order of fundamental and non-negotiable civic rights.

However, a few caveats are in order: We do not propose any actual deliberative procedures and formats in this chapter, as they will have to develop in real-world societal and institutional contexts, thereby showing their resistance to drawbacks or unexpected collateral effects (Gersbach 2022). Furthermore, we do not suggest that deliberative channels be substitutes for conventional forms of representative democracy that involve professional politicians and experts. In doing so, we do not argue that public deliberation is equally warranted for all political issues. While others have argued that public deliberation is particularly apt for questions of constitutional reform (Trantidis 2022), we think the recent example of the Chilean constitutional convention shows how difficult it is to address societal issues with complex externalities by means of public deliberation and participation. Instead, we argue in this chapter that deliberative channels can be regarded as particularly apt for policy challenges that address highly private matters and, in this context, function as sources of information that contribute to established avenues of law-making. And finally, we argue that public deliberation should not be implemented in a discretionary manner but should be rules-based. By this, we mean that it should follow the principals of subsidiarity and polycentricity that can be enshrined in rules laid out in the constitutional-democratic order.

1 Market Democracy and the Populist Challenge to the Liberal Order

In recent years, the question has been asked whether the liberal economic order in itself is – at least partly – guilty of its own decline (Economist 2018). According to Rodrik (2018), individual economic anxiety and distributional struggles among social groups are crucial elements of most explanations of the rise of populist movements. Arguably, these elements are built into the current liberal order because of a fundamental asymmetry: the immediate economic, political, and social benefits of the order are distributed unevenly among groups of citizens (Dold and Krieger 2019a). Those citizens who consider themselves losers of the liberal order (regardless of whether objective data supports this view or not) may resort to populist protest. A purely economic answer to this asymmetry, e.g., more money being transferred from the rich to the poor, will – as we will argue in detail below – likely be insufficient to reduce thriving populism if not accompanied by citizens' extensive political participation.

While not undisputed among scholars (Gidron and Hall 2017; Guiso et al. 2017; Inglehart and Norris 2017; Mudde and Kaltwasser 2017), one main explanation for the rise of populism are structural-economic changes resulting in individual economic anxiety and distributional struggles among social groups (Rodrik 2018). These changes include ongoing processes such as globalization, immigration and digitization. All of these have typically been welcomed by liberal

elites because they could expect to – directly or indirectly – benefit from them and are believed to benefit (or trickle down to) other parts of population as well. However, several scholars have argued that oftentimes just the opposite has happened to the disadvantaged (or was believed by the latter to have happened to them); e.g., globalization has increased the urban-rural divide, with the rural population faring worse and the urban population benefitting (Collier 2018; Venables 2018). Therefore, it does not come as a surprise that populists define themselves in opposition to the politically and economically liberal establishment – the elites – seemingly responsible for the new societal divide. However, explanations that refer only to structural-economic challenges to society may be too narrow because (at least) globalization and immigration frequently result in cultural-political changes or struggles as well. These may in fact accompany, trump or supersede the structural-economic ones.

Arguably, market democracy is the main practical occurrence of the liberal (economic) order (Chua 2000). Ultimately, the question what citizens actually seek in a democratic market economy and whether it can be achieved is at the heart of our argument. A mainly *economic* liberalism, as a worldview, is in our view too narrow a conception to satisfy citizens’ aspirations of how society should work and look like (i.e., to allow all citizens to live a good or meaningful life). This may be seen when considering two important cornerstones of liberal economic policy: exit – in Hirschman’s (1970) terminology – and meritocracy.

Exit has been argued to be an important means to strengthen competition. People who are dissatisfied with the quality of a specific good or service are assumed to change their supplier or, if they do not agree with a political platform, switch to another political party. In economic science, Tiebout (1956) has shown that this “voting by feet” can indeed maximize aggregate welfare under certain conditions. However, if broad parts of population permanently and without voicing dissent (Hirschman’s “voice”) – exited the political discourse because of their dissatisfaction with not being able to live what they subjectively consider a good and meaningful life, competition is weakened and politics becomes narrow over time because of the liberal elites staying amongst themselves (Pettit 1997; Taylor 2017). In a similar vein, meritocracy, as a principle of allocating economic goods and/or political power based on ability and talent (rather than wealth or social class), turns problematic and leads to very similar consequences if ability and talent can only unfold successfully through an education system that systematically favors elites (Sandel 2020; Wooldridge 2021).

All too often, current supporters of market liberalism seem to ignore the full dimension of the challenge that arises from exit and meritocracy working in favor of only parts of the population. Proponents of both trickle-down economics and an extensive welfare state provide – to a smaller or larger degree – solutions that simply strive for more welfare. By itself, however, this does neither provide meaning nor is a guarantee for social cohesion, even if everyone is better off and aggregate inequality is – by and large – reduced. A subjectively perceived lack of “being heard” in parts of the population provides fertile ground for populists to challenge the prevailing political agenda set by the liberal elites and attract citizens who abstained from the political process. Whether true or not, they thereby claim to represent the “silent majority” who supposedly prefer their own lives to be uninfluenced by the prevailing liberal mainstream or who simply strive for autonomy, not so much economically but culturally-politically.⁴ In other words, the economic dimension of this challenge plays a much less important role than market democrats believe. Rather, populist parties and leaders find it easy to fill meaning vacuums in more nuanced ways than the often over-simplistic arguments of current supporters of market liberalism. Then, populism may indeed be

⁴ Normally, the concept of autonomy is intimately linked to liberalism (see, e.g., Coburn 2010), but liberalism does not seem to provide sufficient autonomy currently.

the backlash by those who exited this system years or decades ago and now return as an opposition led by populists to today's system.

Empirically, studies of voting behavior indeed show a shift away from the traditional economic left-right dimension to the socio-cultural dimension. For instance, Dassonneville et al. (2023) estimate how voters and parties position themselves along the economic left-right dimension and the so-called GAL-TAN dimension, where GAL means “green, alternative, libertarianism” and TAN “traditionalism, authoritarianism and nationalism”. The economic left-right dimension refers to the role of government in the economy, redistribution, and taxation, i.e., it deals with traditional “class cleavages” in a broader sense. The authors provide evidence of (i) a substantial shift in voter assessment from party competition structured along the economic left-right dimension toward competition structured along the GAL-TAN dimension, and (ii) a great separation of TAN parties from other parties. In other words, mainly political (and not economic) polarization increases, which increases the danger that traditional policy prescriptions may backfire. To give just one example, current demographic strain on the economy could be substantially alleviated by large-scale immigration into Western democracies (Krieger 2005); however, immigration has a strong socio-cultural component with potentially substantial consequences in the GAL-TAN dimension.

Against this backdrop, we will argue below that the third step in our argument, fostering competent representation of legitimate citizens' interests in the political discourse, needs to be interpreted in a very broad sense. By providing options for participatory governance, people are enabled to achieve meaning and ultimately human flourishing within their communities, which the market alone might not be able to deliver (or even undermines). Otherwise, citizens may feel alienated from the policy-making process and resort to populism regardless of their economic position. Before exploring these thoughts in more detail, let us turn to ordoliberalism as the ideational framework within which we believe rules-based public deliberation may deliver particularly promising outcomes. To be sure, the contemporary ordoliberalism that we envision is no panacea for market democracies facing the populist challenge. Yet, like all research programs that seek to remain relevant and competitive in the market of ideas, it has to offer its own answers.

2 From Early to Contemporary Ordoliberalism

Ordoliberalism provides a promising variant of liberalism to investigate liberal responses to the populist challenge. Indeed, like other liberal conceptions, ordoliberalism – not so much as a scientific concept, but more as a convenient narrative or tradition (Dyson 2019) – provides an ideational platform with a specific lens that helps to investigate institutional means that foster personal and economic freedom as well as a meritocratic model for social mobility in society (Dold and Krieger 2019a). At the same time, it has also a strong normative appeal by demanding a humane social order and embraces the idea that citizen sovereignty ought to be on a par with consumer sovereignty (Vanberg 1997 and 2005). In fact, it is ordoliberalism's advantage over other politico-economic research programs that it combines positive (“functioning” order) and normative (“humane” order) elements (Eucken 1990 [1952], 373), while explicitly having a broad scope beyond economics (it stresses the “interdependence of orders”, assuming society to consist of a set of distinct but interdependent suborders, including the economic, legal and religious orders). However, its normative and political dimensions have unfortunately been neglected in ordoliberal scholarship for too long (Dold and Krieger 2023). In addition, thinking in orders was reduced all too often to thinking about the economic order only. Let us now explore which prerequisites are

needed for a contemporary ordoliberalism to bring back these dimensions and hopefully provide an answer to the populist challenge in market democracies.

Early ordoliberalism endorsed the idea that a stable legislative – or constitutional – framework is needed to protect both entrepreneurial competition and economic freedom for all private market actors (Dold and Krieger 2019b). While ordoliberals of that time were interested in politics to some degree as well, they did not systematically work out a robust idea of how to marry market capitalism with a liberal democratic framework. In fact, they wrote little about the political decision-making process and if they did, they were understandably skeptical given the experience of the Weimar Republic. Their main concern was that through the democratic process interest groups could be enabled to influence (economic) policy. Only in recent years, ordoliberal scholars have begun to make democratic decision-making processes and political legitimization – but not (yet) public deliberation – more explicit in their arguments, thereby overcoming the ordoliberal founding fathers’ skepticism of mass democracy, which indeed had led to a complicated relationship of ordoliberalism with democracy (Nientiedt and Köhler 2016).⁵

The early ordoliberals’ narrow focus provoked critics to question the legitimacy of ordoliberal principles of a competitive order. Kirchgässner (1988, 65), e.g., criticized early ordoliberalism’s policy recommendations for lacking a democratic implementation strategy, stating that “traditional Ordnungspolitik is an ‘elitist’ doctrine of economic policy where an elite – in this case the group of economic theorists – knows what is beneficial to the community and where the task of government is to enforce it politically.”⁶ Fiercer critics went even further and claimed Walter Eucken and other leading figures of early German ordoliberalism to be proponents of authoritarian liberalism in the spirit of Carl Schmitt, the German jurist, political theorist, and prominent member of the Nazi Party. Schmitt proposed a “*strong state* [that] is authoritarian in the sense that it is not democratic” (Köhler and Nientiedt 2023, 364; our italics). If the ordoliberals were proponents of authoritarian liberalism and a strong state, as it is claimed, they would have favored the rule of law and economic freedoms but rejected democratic decision-making. However, this critique confuses descriptions of the politico-economic situation during the Weimar Republic and the solutions proposed by Eucken and the ordoliberals, on the one hand, and Schmitt, on the other hand. Schmitt proposed to solve the limitations of democratic rule in 1920s and early 1930s Germany by a strong, corporatist, totalitarian state unconstrained by the rule of law (Köhler and Nientiedt 2023). In contrast, Eucken suggested strengthening the free market system: his ordoliberal state is a constitutionally limited state that protects individual freedom (Nientiedt and Köhler 2016; Köhler and Nientiedt 2023).

Recent ordoliberal scholarship is no longer concerned with problems of mass democracy, although it is still worried that there may be unhealthy concentrations of political power (which might in fact result from economic power; see, e.g., Krieger and Meierrieks 2016). One part of today’s ordoliberals’ argument, reminiscent of Buchanan’s constitutional political economy (Kolev 2018),

⁵ Given many countries’ unfortunate experiences with democracy during the interwar period, the ordoliberals were, however, not alone their skepticism. Friedrich Hayek, for instance, warned of an “unlimited democracy” threatening individual freedom (Nientiedt and Köhler 2016).

⁶ Kirchgässner uses the German term “Ordnungspolitik” here, while we stick to the internationally more common term “ordoliberalism” throughout this chapter. Horn (2022, 548) highlights the subtle differences as follows: “There are in fact three distinct aspects to the ordoliberal tradition: (a) the normative standpoint; (b) the practical policy advice focusing on the rules of the game (‘Ordnungspolitik’ in German); and (c) the academic research program, which develops around the question what a good societal and economic order looks like, how it can be implemented, and what types of institutions and rules work better than others (‘Ordnungsökonomik’ in German, best translated as – and compared to – constitutional economics, sharing many features with New Institutional Economics, public choice, property rights theory, law and economics).”

is that the citizens' constitutional choices define constraints that effectively limit how market participants can pursue their own goals or, more generally, how markets function (Vanberg 2017). This implies that "[i]t is incumbent on the state to set up and maintain the institutional framework of the free economic order, but it should not intervene in the mechanisms of the competitive economic process" (Sally 1996, 8). The other part of the argument refers to acknowledging that the concept of citizen sovereignty ought to be on a par with consumer sovereignty (Vanberg 1997 and 2005), combining the ideas of an efficient and democratically legitimized economic and social order.

Let us now sketch some ways in which a contemporary ordoliberalism, as initially developed in Dold and Krieger (2019a; 2019b; 2023), attempts to achieve this goal. At the heart of contemporary ordoliberalism is the idea that actual policies ought to address institutional deficits at the bottom and the top of the income and power distribution, as this will increase citizen sovereignty and instantiate a broader distribution of prosperity (Dold and Krieger 2019a). Hence, contemporary ordoliberalism will work from both ends of the income and power distribution. That is, citizens who are positioned at the bottom of the income distribution ought to be enabled to competently participate in both market transactions and the political discourse, whereby the distributive struggle between the winners and losers of an open society, in particular, needs to be acknowledged.

At the top of the income distribution, legislative procedures need to be implemented that restrain political capitalism in which an influential economic elite can effectively wield political influence through collaboration with politicians and other decision-makers, serving their mutual interests (Krieger and Meierrieks 2016). Strengthening the competitive order, the (constitutional) rule of law and subsidiarity are typical means to ensure the functioning of markets (Dold and Krieger 2019b). They ought to be complemented by measures that sustain a level playing field so as to help poorer and less educated citizens to participate in market activities without being disadvantaged (Dold and Krieger 2019a; 2019b); arguably, there is also scope for redistributive measures if inequality hampers competent participation. Developing these ideas in detail here is beyond the scope of this chapter. Let us instead proceed to the challenge of improving competent participation in the political discourse for all citizens, as this will be an important, but so far mostly neglected part of any (ordoliberal) strategy to counter the populist challenge.

3 Contemporary Ordoliberalism and Rules-Based Public Deliberation

There are several causes for the recent rise of populism in Western liberal societies. Chief among them is the feeling of parts of the population of not only being left behind economically but also experiencing a loss of autonomy, understood as the ability to live a self-determined life in a political system where they see themselves represented (Fabian et al. 2020). Instead, they often experience a growing alienation from their system and a form of democratic dissonance (Landemore 2020; Mounk 2018). Many citizens, sensing that their autonomy and social connections are diminishing, have shifted away from liberalism and turned toward populist authoritarian leaders. These leaders pledge to address perceived threats and reintroduce a sense of purpose and authority (Womick et al. 2021). Psychologically speaking, these trends can be understood as compensatory dynamics related to fundamental psychological needs. When individuals perceive their autonomy and social bonds as under threat, they may identify with a group or leader as a means to regain a sense of control and affiliation (Ryan and DeHaan 2023).

Political conditions can make a positive contribution to individuals' autonomy in two broad dimensions: one related to the content of policies and laws that directly support their psychological

needs by enhancing their economic conditions, and the second concerning the process through which the government establishes its policies and laws, thus indirectly nurturing people's sense of autonomy (Ryan and DeHaan 2023).⁷ In this section, we concentrate our discussion on the second procedural dimension since, as argued above, we deem it underemphasized in the ordoliberal literature. Ensuring that the rules and processes are guaranteeing the representation of the citizens' interests is a paramount ordoliberal concern; it follows from the principle of citizen sovereignty (Vanberg 1997; 2005).

In most liberal Western democracies, the process by which government establishes its policies and laws primarily relies on a representative system. Citizens vote for representatives who, in turn, make decisions on laws and policy initiatives. This system has demonstrated remarkable stability and successes since World War II, particularly during the golden age of liberalism between 1950 and 1970 (Landemore 2020, 29). Its stability can be explained by constitutional rules having successfully protected the democratic process against non-democratic tendencies. For decades, ordoliberals have therefore embraced constitutional (representative) democracy as the legitimate (although maybe not perfect) political order.

However, despite the presence of formal channels of representation such as periodic parliamentary elections, many people in recent decades no longer feel that their interests are adequately represented within the representative process. Empirical evidence suggests that this sentiment is not merely a subjective perception but reflects fundamental democratic deficits in existing representative democracies. Research by Gilens and Page (2014) indicates that in the US, representative democracy more closely resembles rule by economic elites rather than rule by the people ("economic-elite domination"). Gilens and Page find that average citizens have little or no independent influence on U.S. government policy (2014): when accounting for the preferences of the wealthiest 10 percent, there is no correlation between majority preferences and policy outcomes.

Many ordoliberal scholars in recent decades have chosen a public choice perspective on the political process in which voters, legislators, bureaucrats and other individuals or groups with specific private interests shape the outcome of the democratic process (Feld and Köhler 2023). This powerful but mostly descriptive analytical tool allows identifying shortcomings of the institutional framework of the political process. However, its policy recommendations often remain insufficient to deal with recent challenges to democracy such as populism. For instance, tackling the principal-agent problem between voters and politicians by improving transparency and introducing binding (constitutional) rules, as the theory of public choice suggests, will make the political process smoother – but it will rarely provide meaning and autonomy. If one acknowledges the fundamental role of political representation for people to develop a sense of belonging and autonomy, contemporary ordoliberalism needs to go beyond a mere public choice analysis.

Considering the centrality of citizen sovereignty, ordoliberals should inquire about institutional changes that can enhance representation and address the psychological need for autonomy. A concept gaining significant traction in this regard is the enhancement of representative democracy

⁷ In terms of the direct approach, autonomy can be promoted through educational opportunities, such as ensuring that the right to education is accessible to all citizens, with a specific focus on underprivileged students who may not have the means for market-based solutions. Furthermore, policies aimed at enhancing social relatedness can be implemented. These policies might include improving freedom of movement, such as through better public transportation or expanded vocational choices, as well as granting rights in caregiving, such as paid caregiver leave and child-care support, which can facilitate the formation of social bonds in the individuals' private lives (Ryan and DeHaan 2023; see also the related idea of "resourced exit" in Taylor 2017).

through the integration of deliberative and participatory channels. According to a recent OECD (2020) report, there has been a notable surge in deliberative experiments in recent years. For instance, in Finland in 2012, a citizens' initiative led to the enactment of a law supporting marriage equality. Similarly, in South Korea in 2017, a citizens' assembly provided recommendations on energy policies that were adopted although they differed from the government's preferred choice. Furthermore, in Ireland in 2018, a popular referendum validated the proposals of a specially convened citizens' assembly composed of 99 randomly selected citizens, ultimately leading to the decriminalization of abortion.

Public deliberation and participation can take various forms. They may occur at different levels within various organizational settings (e.g., citizen assemblies, citizen juries, deliberative polling, participatory budgeting, town hall meetings, etc.) and can happen at different institutional levels (communal, state, federal). A core idea of such deliberative citizen forums (DCF's) is that a sample of the larger population, often selected randomly, constitutes a statistically representative mini-public.

Taking a specifically ordoliberal perspective, DCF's should not be implemented ad hoc and in a discretionary manner but following rules laid out in the constitutional-democratic order. They need to extend the existing representative democracy in meaningful ways and must be unambiguous with respect to their role relative to decision-making processes within representative democracy, i.e., within the legislative prerogative of parliament in particular and – even more so – within the constitutional order itself. One possibility of adhering to these requirements would be to consider ways in which DCF's could be implemented polycentrically, thereby reinforcing the idea of subsidiarity, i.e., the organizational principle that economic, social and political issues should be dealt with at the most immediate level that is conducive to their efficient resolution.

While usually applied vertically to the governance of multi-level organizations and jurisdictions, the subsidiarity principle can also be interpreted horizontally. In either case, political decisions ought to be made as closely to citizens' preferences as possible, accounting for possible preference interactions within groups and between citizens. In the vertical dimension, subsidiarity implies local affairs to be decided upon at the local, not the federal governance level. Analogously, in the horizontal dimension, subsidiarity implies that policy issues concerning highly private decisions with marginal external effects (e.g., abortion or euthanasia) could be decided upon in deliberative rather than representative formats. In contrast, once there is a strong interpersonal or social component to policy issues, such as when individual decisions cause significant externalities, representative decision-making that aggregates interests and thereby considers external effects might be preferable. Parliamentary decision-making might also be preferable when decisions require a high level of specialization and expertise that is available only to fulltime career politicians (e.g., the regulation of technologies such as artificial intelligence, AI). Considering recent examples of successful deliberative and participatory political decision-making, we observe that they often involve deeply private aspects of life such as abortion (e.g., in Ireland) and euthanasia (e.g., in France). In contrast, when they involve large-scale societal issues with complex externalities (e.g., in the context of the constitutional reform in Chile), deliberative and participatory political decision-making often lead to political gridlock.

There are many open questions, particularly regarding the problem of designing and implementing DCF's. This is why we do not advocate for a specific institutional form of DCF's in this chapter but aim to emphasize the broader point that countries, which have avoided the lure of antidemocratic populism or authoritarianism over the last decade, have often deepened democracy through deliberative and participatory channels (Landemore 2020). One reason for this observation may

precisely be that supplementing representative democracy with deliberative and participatory channels enhances people's sense of autonomy in various ways, thereby positively influencing their identification with the liberal democratic process and its outcomes. The rules-based ordoliberal approach to public deliberation we are sketching here highlights the importance of the principle of subsidiarity and polycentric implementation to prevent or reduce the risk of one dominant discourse. Exposure to multiple discourses and evaluative standards can be beneficial in countering groupthink and conformity, allowing deliberative processes to better align with and nurture individual processes of preference learning (Delmotte and Dold 2022).

In this sense, DCFs can enhance the sense of autonomy because “people feel that there has been fairness in representation and that they have had their due voice in governmental processes” (Ryan and DeHaan 2023, 1162). The experience of being an active and vocal member of a community fosters a sense of belonging, even when one disagrees with the ultimately chosen policies. Public deliberation enhances the sense of relatedness when individuals realize, through public forums, how much they actually agree with others, particularly regarding the nature and legitimacy of relevant issues, even if they do not agree on specific policy outcomes or the accuracy of various claims (Niemeyer 2011). This meta-consensus on discourse rules and the political issues at hand foster empathy and the shared experience of having a common purpose in decision-making. This is quite the opposite to a populist's aim of gaining political support through sharp ideological confrontation, oversimplified arguments, and increasing polarization in a society.⁸

The empirical evidence regarding DCFs offers promising insights into the potential for enhanced autonomy and its positive implications for the support of liberal democratic institutions. Participation in DCFs tends to generate high levels of satisfaction among involved citizens (Suiter et al. 2016), leading to a bolstering of their trust in democratic processes (Boulianne 2019). A growing body of research suggests that DCFs can also yield positive effects on non-participating citizens. By providing information and recommendations, DCFs enable these individuals to make more informed political choices (Már and Gastil 2020). Furthermore, DCFs have the capacity to positively influence disaffected citizens, a diverse group comprising various subgroups (Goldberg and Bächtiger 2023). Among them are “populist citizens”, who think that current representative democracy bypasses ordinary citizens' interests and stress the unfiltered will of the people, and “stealth citizens”, who favor effective and efficient decision making but think that the current system is corrupt. Goldberg and Bächtiger (2023) find that both groups are more positive towards DCFs than non-stealth citizens and non-populists. This is encouraging because DCFs can reengage disaffected citizens who are turned off by standard partisan and interest group politics and, in doing so, strengthen the identification with liberal democratic institutions.

4 Three Points of Criticism

In this section, we aim to address three prominent points of criticism leveled against the idea of enhancing deliberative channels within representative democracy as a viable approach to combat populism: the critique that deliberative democracy is unrealistic, the critique that it exacerbates psychological biases in politics, and the critique that it overlooks the central role of expert knowledge in formulating effective laws and policies. We respond to these points of criticism from

⁸ In fact, this does also explain why social media platforms (like Twitter/X) cannot serve well as deliberative citizen forums.

an ordoliberal standpoint and show how a careful design of rules of deliberative democracy matters for its successful implementation.

One of the fundamental criticisms levied against deliberative democracy, frequently articulated by economists, centers on its perceived impracticality, stemming from the argument that rational, self-interested citizens would deem participation in deliberative processes excessively costly. However, we contend that the characterization of deliberative democracy as intrinsically unrealistic is an oversimplification. This assertion might originate in the prevailing convention within economics that depicts individuals engaged in public discourse facing a prisoner's dilemma.⁹ However, such a depiction implies that citizens passively accept their circumstances, without accounting for the potential for creative responses or the development of rules for successful conflict resolution (Ostrom 2005, 17–8).

Yet, people are not helplessly trapped in prisoner's dilemmas but possess the capability to act creatively and engage in rule-making endeavors aimed at a transformation of their situations. A reason for this creative agency is that individuals are typically constituted by a complex set of motivations (Ostrom 2010). Their motivations extend beyond considerations of mere material self-interest, encompassing a broader spectrum that includes concerns for the well-being of others and adherence to social norms. This is captured by behavioral economics in the concept of social preferences. Social preferences exhibit context-dependent attributes (Ostrom 2000 and 2005; Hargreaves Heap 2020): the willingness of individuals to participate in rule-making efforts and to engage in public deliberation can be either encouraged or discouraged, depending on the prevailing institutional conditions. When individuals perceive institutions as exerting control, particularly when externally imposed, their sense of autonomy diminishes, resulting in the suppression of social preferences (Ostrom 2000 and 2005). In fact, as argued in contemporary ordoliberalism, this would also undermine citizens' liberty of determining, in a constitutional-democratic process, the rules of the game of the society they want to live in. In contrast, if the political process affords individuals a genuine voice, this cultivates their perception of autonomy, thereby nurturing and amplifying pro-social motivation (Ostrom 2005, 113). This observation aligns with an older insight offered by Tocqueville (2002 [1840], 589), according to which civic-mindedness emerges through active engagement in a diverse array of civic practices with political participation as its central component (Dold and Petersen 2023; Hargreaves Heap 2020), thereby providing meaning to citizens.

A second point of criticism revolves around the observation that citizens' perspectives on many political matters are biased (Caplan 2007). Consequently, granting them greater influence in policy- and law-making will potentially expose the political process to significant biases.¹⁰ Fortunately, however, empirical evidence related to citizen participation in public forums is rather encouraging. Jurisdictions that actively engage citizens in the democratic decision-making process through DCFs often enhance citizens' competence. This is exemplified by an increased understanding of political topics and the correction of preference distortions caused by either active manipulation or a passive overemphasis on symbolically potent issues (Niemeyer 2011). The idea that public deliberation and political participation can help to build competences follows from the insight that "humans are [...] poor monadic reasoners but *not* poor group reasoners" (Chambers 2018, 37).¹¹ Group

⁹ Taking this perspective, economists also have repeatedly engaged with the paradox of voting (see, e.g., Mueller 2003, chapter 14), which asks why rational individuals vote if their vote's influence on an election outcome is close to zero, especially given that there is an opportunity cost from visiting a polling station.

¹⁰ Note the irony that this argument resembles the critique of early ordoliberals for being elitist and not trusting mass democracy.

¹¹ One possible explanation stems from the notion that human reasoning evolved within groups and primarily served as a means of communication. If this hypothesis holds true, the subpar performance observed in conventional

reasoning in DCFs displays better results than individual reasoning on many issues, including bias detection, information search, and depolarization (Mercier and Sperber 2011; Grönlund et al. 2015). By exposing citizens to facts about policies and different evaluative standards in public discourse, people become aware of some of the unquestioned situational and socio-cultural context effects (Niemeyer 2011). Moreover, while people might start off with opposing standpoints, their preferences and beliefs are endogenous to deliberative decision-making processes and can be transformed in a converging way by communicative interaction in DCFs (Trantidis 2022; Habermas 1996).

However, it is important to note that deliberation does not automatically result in increased contentment for all individuals, and it may not necessarily make them less vulnerable to populism. Instead, it could open a Pandora's box of grievances, anger, and frustrations. In particular, participation in unstructured public deliberation may introduce new psychological challenges, including phenomena such as groupthink and conformity (Habermas 1996).¹² From an ordoliberal standpoint, it is intriguing to note that the quality of deliberation can be enhanced through careful design (Niemeyer et al. 2023): specifically, the introduction of balanced information, expert testimony, and facilitator oversight contributes to improved reasoning within DCFs. Additionally, efforts aimed at fostering group cohesion serve to further improve the quality of reasoning. Groups that establish their own norms and decision-making protocols exhibit greater information sharing, reduced polarization, and increased efficiency in addressing complex issues.

A third point of criticism revolves around the potential trade-off between enhancing people's autonomy via deliberative democracy and the essential role of expert knowledge in shaping effective legislation and policies in representative democracy (see also the previous section). In this context, it is crucial to clarify deliberative channels are not substitutes for conventional forms of representative democracy that involve professional politicians and expert witnesses in the legislative processes. Instead, citizens' deliberations within various DCFs can be regarded as sources of information that contribute to the established avenues of law-making. Especially in intricate matters characterized by value conflicts or trade-offs (e.g., when a policy choice could prioritize either economic growth or environmental sustainability, but not both simultaneously), citizens' direct involvement might become particularly valuable. In such situations, carefully designed rules can help to manage the interplay between deliberative and representative channels of the legislative process.

Admittedly, it is worth distinguishing between policy domains, as deliberation may prove more effective in certain issues compared to others, particularly those of a more technical nature. At the same time, it is crucial to realize that the traditional model of expert law-making also comes at a cost that is often neglected. The model relies on the premise that "group competence is a function of individual competence" (Landemore 2020, 40). When implemented, this often results in a group of lawmakers that is sociologically and economically homogeneous, composed of talented individuals exhibiting a high degree of homogeneity in their thought processes. Like many other parliaments, the German Bundestag is not representative of the German population (see, e.g., Höhne and Kintz 2017): civil servants are significantly overrepresented, whereas workers are underrepresented. Furthermore, the share of members holding a tertiary degree is about three times

reasoning tasks, as highlighted in behavioral economic experiments, could be attributed to the absence of an argumentative context (Mercier and Sperber 2011).

¹² Habermas (1996: 307) acknowledges the limitations of an "anarchic structure" in public deliberation; while having the "advantage of a medium of unrestricted communication," such a structure renders "the general public sphere [. . .] more vulnerable to the repressive and exclusionary effects of unequally distributed social power, structural violence, and systematically distorted communication than are the institutionalized public spheres of parliamentary bodies."

as high as in the general population. Yet, for many political issues, cognitive diversity is a critical factor influencing a group's problem-solving capabilities, often surpassing the significance of the average competence of its individual members. This is encapsulated in the "diversity trumps ability theorem" (Hong and Page 2004; Page 2007). Assuming that citizens possess a level of competence sufficient to address most political issues, a sound strategy involves (truly) random sampling from the broader population to create statistically representative DCFs that ensure cognitive diversity (Landemore 2013).

5 Conclusion

In recent years, the surge of populism has contributed to the erosion of truth as the central currency in political discourse, fostering political polarization. This shift has increased the prominence of emotions, sentiments, and motivated reasoning in politics (Hargreaves Heap 2020). In times of societal challenges such as these, ordoliberalism has often focused on issues of a functioning economic constitution, neglecting discussions about innovations for the political constitution. We argue that a contemporary version of ordoliberalism should aim to close this gap by engaging more directly in the current debate on deliberative and participatory democracy. The appeal of deliberative and participatory democracy lies in its serious treatment of citizen sovereignty, which is, besides consumer sovereignty, one of the two key normative principles of contemporary ordoliberalism (Dold and Krieger 2019a; 2019b; 2023). Deliberative and participatory channels can enhance citizen sovereignty by capturing a more comprehensive array of voices and lived experiences, and by generating policy recommendations that better align with the preferences of the larger population. In doing so, deliberative and participatory channels can help people to regain a sense of autonomy and social relatedness that are crucial for their ongoing support of and identification with liberal-democratic institutions (Ryan and DeHaan 2023).

The deliberative route we suggest as a remedy for the democratic deficit of representative democracy does not imply the need to eliminate representation; instead, it calls for a reevaluation of the concept. Taking citizen sovereignty seriously, we believe, can help to incorporate deliberative elements that enable ordinary citizens to influence regular politics through innovative forms of democratic representation in deliberative citizen forums (DCF), such as citizen assemblies, citizen juries, deliberative polling, participatory budgeting, town hall meetings, and more. Referring to recent empirical insights, we have argued that the rules governing deliberation within DCFs significantly influence their effectiveness. A series of random, unstructured discussions involving groups of varying sizes and compositions, lacking a deliberate focus on specific policy issues, is undeniably insufficient for adequately informing the formal representative processes within liberal democracies.

However, if implemented rules-based and with care, DCFs hold substantial appeal for several reasons (Niemeyer et al. 2023). They facilitate the development of laws and policies rooted in public reasons and justifications, rather than relying solely on elite preferences or expert knowledge. DCFs offer citizens more opportunities to actively participate in the democratic process, ensuring that their voices are heard and their autonomy is respected. Public deliberation also generates positive secondary outcomes, including citizen education, the cultivation of a sense of community, and the promotion of civic engagement. Furthermore, DCFs have the potential to generalize interests – as emphasized by, among others, Habermas (1996) – allowing for the consideration of broader societal concerns. Finally, public deliberation enhances the likelihood of a group effectively addressing collective action problems by crowding in social preferences (Dold and Petersen 2023).

This chapter provides only a general outline of such a program. We leave it to citizens and political decision-makers to address and elicit the locally best ways of designing and implementing DCFs. From an ordoliberal perspective, we posit, however, that DCFs ought to be polycentrically implemented, thereby reinforcing the idea of subsidiarity and fostering exposure to multiple discourses and evaluative standards to counter groupthink and conformity. Moreover, the principle of subsidiarity could be a guide for the selection of topics that are suitable for DCFs. Topics that address primarily value conflicts and private issues might be particularly suitable for DCFs, since they go straight to the heart of citizens' identity and self-understanding. In contrast, topics with sizable external effects that require expert knowledge might be more suitable for traditional channels of representative democracy.

Summing up, we believe that an essential part of an effective response to the recent waves of populism lies in (ordo)liberals thinking creatively about how to modernize democratic and not just economic institutions to fill the void of meaning and restore people's sense of control and identification with the political process. This aligns with the plea made in a recent op-ed in the *Financial Times*: "Institutions struggling with polarization must innovate. To stay true to their democratic justification, they should adapt by better exercising reasoned disagreement, never by silencing it."¹³ Future work on DCFs could delve deeper into the connections and possible conflicts between ordoliberalism and a rules-based deliberative democracy. This includes investigating potential tensions between deliberation, on the one hand, and the fundamental rights and principles enshrined in a liberal constitutional order, on the other.

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¹³ Statement by the editorial board of the *Financial Times*, entitled "Deliberative democracy is just what politics needs," August 11, 2019.

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