

Towards Institutional Gridlock? The Limitations of Germany's Consensus Democracy

Christian Schweiger

Durham University

Department of Politics (United Kingdom)

Abstract

The September 2005 general election forced Germany's two largest political parties, CDU/CSU and SPD, to form the second grand coalition government in the country's post-war history. The election result was widely regarded as an expression of the view amongst the electorate that neither of the two main political camps could offer adequate solutions to the urgent political, social and economic challenges which the larger Germany has been facing since reunification in 1990.

This article argues that the failure of the grand coalition to implement substantial changes of the policy and institutional status quo reveals the intrinsic structural weaknesses of Germany's "semisovereign" political system, which favors continuity over change. The democratic process in the unified Germany continues to operate on the basis of the "semisovereign" polity of the West German Federal Republic, which is characterized by a culture of consensual decision-making and a complex policy-making process which provides a high level of institutionalized veto points on multiple levels. The ability of minimum winning federal government coalitions to implement a decisive policy-agenda and to achieve rapid policy change in response to a new complexity of internal and external challenges is therefore severely restricted by an institutional culture in which regional interests and short-term electoral prospects dominate.

This institutional misfit has led to the establishment of an informal grand coalition state, where policy gridlock can usually only be avoided if the two larger parties achieve consensus halfway between their own policy positions. The limited level of fundamental policy change under the 2005-09 formal grand coalition and the resulting electoral dissatisfaction with its problem-solving capacity has increased the support for the smaller parties at the 2009 federal election. The resulting further fragmentation of the party system, which could in the future restrict coalition options to the alternative between a grand coalition and the formation of smaller coalitions of three or more parties, makes it even more unlikely that decisive policy change and

institutional reform can be achieved in the current setting of the German consensus democracy.

1 Introduction: The unified Germany—a prisoner of the consensus democracy

This article examines the weaknesses of Germany's domestic polity on the basis of the domestic political developments following the 2005 general election. It argues that the formation of the second grand coalition government in Germany's post-war history has revealed the weaknesses of the internal mechanisms of Germany's multi-level *consensus* democracy.

This is predominantly the result of the failure to undertake a substantial reform of the German polity at the time of reunification in 1990. The unified Germany is consequently governed on the basis of a "semisovereign" political system with a dispersion of power amongst multiple levels and weak agenda-setting powers of the federal executive. The inherent tendency of the German political system to force the two main parties CDU/CSU and SPD to cooperate, even if they are not in a formal coalition on the federal level, is hence in danger of being reinforced. The "grand coalition state" (Schmidt 2008: 64) has now reached the point where minimum winning coalitions led by either of the major parties are practically unable to initiate substantial policy change because they are almost constantly faced with a regional chamber, the *Bundesrat*, which is dominated by the opposition parties. This either forces them into a grand coalition government on the federal level or demands at least informal cooperation in the regional chamber in order to avoid complete policy gridlock in crucial areas under a small minimum-winning coalition of either of the two larger parties with one or more of the smaller parties.

Moreover, the experience with the second grand coalition led by chancellor Merkel between 2005 and 2009 showed that even substantial majorities in the *Bundestag* and the *Bundesrat* are not sufficient to guarantee substantial progress in major policy areas, as both parties are adamant to maintain their own electoral pro-

file. The dissatisfaction of the electorate with the governing record of the two main parties was reflected in the result of the 2009 general election. The election confirmed a trend which benefits smaller parties, particularly the party of the left (Die Linke) at the expense of the catch-all status of the CDU/CSU and the SPD.

The resulting new diversity in the German party system has increased the unpredictability of legislative outcomes in the complex interaction between the federal government and the regional governments in the *Bundesrat*. While the unified Germany is confronted with a challenging set of the internal and external challenges, fundamental policy reform in crucial areas such as economic policy, employment, welfare reform and education has hence become even harder to achieve. The German political system consequently risks becoming trapped in a vicious circle in which the decline in electoral support for the larger parties produces ever more complex bargaining processes between a new diversity of party coalitions on the federal and the regional level and subsequently prevents the introduction of a clear policy agenda. This development contradicts Lijphart's thesis who argued that "consensus democracies do clearly outperform the majoritarian democracies with regard to the quality of democracy and democratic representation" (Lijphart 1999: 301). This article takes issue with Lijphart's preference for the consensus model of democracy as the superior model in terms of democratic quality. The German case clearly illustrates that the essential characteristics of a consensus democracy, the decentralization of executive power in a federal system and a proportional electoral system, can lead to profound shortcomings in terms of the problem-solving capacity of the political system.

2 Institutional misfit: The legacy of the Bonn republic

In contrast to the current situation, the West German Federal Republic with its political centre in Bonn used to be a role model for effective consensual governance. The Bonn republic's reputation as a stable consensus democracy was based on the determi-

nation in the German basic law (*Grundgesetz*) that power has to be shared between a multiplicity of actors on the federal, regional and local level. The basic law sets out the principle of parliamentary sovereignty on the basis that the electorate as the principal sovereign determines the composition of parliament (Article 20 paragraph 2 GG). The emphasis on the devolution of power under the federal principle (Article 20, paragraph 1 GG) gives the *Länder* state character on the condition that their organization is in line with the basic principles of the *Grundgesetz* (Article 28 paragraph 3 GG). It therefore clearly distinguishes them from the purely regional administrative districts in other countries, such as the “shire districts” in the United Kingdom and the “provinces” in France (Maunz and Zippelius 1998: 62). This illustrates the inherent principle of “semisovereignty” which Peter Katzenstein famously assigned to the West German state in 1987. Katzenstein emphasized that the “semisovereign” character of the German state structure manifested itself in the fact that all of the central state actors and institutions (federal government, parliament, *Bundesrat*, president, constitutional court) are very strongly interdependent and limit each other’s sovereign powers. This even applies to the federal parliament, the *Bundestag*, which constitutionally is considered to be the core sovereign decision-maker but in practice is noticeably constrained by the need to compromise with the *Bundesrat*, the body that represents the interests of the *Länder* governments (Katzenstein, 1987).

The focus on “semisovereignty” and decentralization, with a maximum of checks and balances on all levels emerged as a result of the experience with the lack of efficient constraints on the abuse of executive power, which had occurred during the Weimar Republic and had paved the way for the Nazi dictatorship. The obvious response to this was the establishment of a pluralistic polity which secures the recognition of a diverse range of interests and where policies generally can be reversed relatively easily, provided that they do not affect the constitutional setting. The emerging consensus democracy seemed to be the perfect setting for a country which had to rebuild its domestic economy from post-war ruins and was at the same time adamant to prove to the world that it had learnt its lessons on the abuse of power

under the National Socialists. The consensus democracy provided the political stability that was essential for the evolvement of the West German Rhineland economy as the economic powerhouse of Europe. Peaceful industrial relations, based on autonomous collective bargaining between employers and trade unions, combined with relative political continuity offered a stable framework in which West German industry could prosper and focus on the development of high quality manufacturing products.

West Germany hence became the leading exporter in Europe and its strong economic performance stood in stark contrast to many other European countries, such as Britain and France, where strikes and radical economic policy changes had become a regular occurrence. The emphasis on “high continuity and smooth incremental change, in industry as well as in politics” (Kitschelt and Streek 2004: 3) had therefore clearly paid off. Throughout the 1970s and 80s, West Germany was able to acquire the status of the economic role model of Europe. In spite of its incremental tendency to produce intense policy debate, slow processes of decision-making and a high number of veto points on all levels, the political system of the Federal Republic was widely considered to ensure a high level of democratic participation and transparency. If West Germans ever dared to mention the notion of national pride in the post-war context, they would usually refer to the political and economic achievements of their political system. The political elites had repeatedly tried to encourage the notion of a *Verfassungspatriotismus*, which referred to a sense of national pride with regard to the principles of the German basic law. Although this sentiment never really took hold amongst the West German public (and seemed to be even less acceptable to the “new” citizens in the Eastern part of the unified Germany after 1990), a certain sense of pride of the political stability and the economic success the basic law had provided to a country that had emerged from the ruins of the Second World War, was clearly noticeable in the Bonn republic. This was most openly expressed by President Richard von Weizsäcker in 1985, who in an otherwise somber speech to the Bundestag on the occasion of the 40th anniversary of the end of WW2 hig-

highlighted the political success of West Germany's post-war political setting:

The Federal Republic of Germany has become a globally respected country. It belongs to the group of the most highly developed countries in the world (...) We have been living in peace and liberty for 40 years (...) The civil liberties of citizens have never before been better protected than today. A dense social security net, which does not need to fear comparison with other societies, secures people's basic standard of living (Von Weizsäcker 1985).

In spite of a generally positive feeling about the post-war political and economic development amongst West Germans, by the early 1980s the first crisis symptoms had started to emerge. The decision of the FDP to withdraw its support for the coalition with the SPD under chancellor Helmut Schmidt and to subsequently elect CDU leader Helmut Kohl as chancellor in October 1982 emerged from an increasing feeling of crisis in the West German political system and economy (Steingart 2004: 54). Rising unemployment and a growing public deficit led to a situation in which the political outcomes of the post-war West German consensus democracy had come under scrutiny. Although the new chancellor Kohl had promised to initiate a political turning point in West German politics by introducing a "spiritual and moral transformation", he failed to embark on fundamental political or economic reforms. Kohl's government essentially pursued a political strategy which was aimed at maintaining consensus between the major sectional interests in the country. Kohl's political motto was summed up in the CDU 1987 election campaign slogan, which called on West Germans to carry on as before ("Weiter so, Deutschland").

The public mood in West Germany had however in the meantime increasingly shifted towards pessimism and growing skepticism with regard to the ability of the political system to provide solutions for structural problems, such as rising unemployment, demographic change and the scarcity of public resources. Besides, the political ideology of the consensus democracy tended to result in a political gridlock, where the central actors involved in the political bargaining processes blocked each other and subsequently looked towards the federal constitutional court as the

final referee (Strohmeier 2006: 240). The term *Politikverdrossenheit* hence became a popular term to describe the phenomena of the growing disillusionment of citizens with the political process in the Federal Republic in the late 1980s. At the same time, the growing economic problems led to a new debate on the competitiveness of the West German model of Rhineland capitalism (*Standortdebatte*) (Sinn 2004).

The collapse of the communist regime in East Germany in 1989 had offered the Kohl government the opportunity to use the reunification process for a profound overhaul of the structures of the German political system as part of a constitutional debate. Instead it decided to transfer the unreformed polity, including the corporatist industrial relations system and the costly welfare funds of the Federal Republic to the five new *Länder* in East Germany. The latter consequently joined West Germany on the basis of the old article 23 of the West German basic law. The alternative of establishing a new constitution under the option of article 146 was considered as too time-consuming and unpredictable in the prevailing public climate of unification euphoria (Anderson 1999: 30). Unification on the basis of the *Einigungsvertrag* in 1990, which led to the full institutional transfer from the West, hence came with Kohl's promise that the five new East German *Länder* would turn into "blooming landscapes" within a few years. This helped to stifle any demands for a broader reform debate on the future constitutional setting of the larger Germany.

Many amongst the political left in West Germany criticized this approach and warned of the negative consequences if the high expectations that had been raised regarding the impact of the institutional transfer on the economic and social development in the Eastern *Länder* were not met. The most prominent critic was the then SPD leader Oskar Lafontaine, who challenged Kohl for the chancellorship in the first all-German general election in December 1990 (Lafontaine 1999: 18-19). Kohl's SPD predecessor Helmut Schmidt had also issued a warning in March 1990 that the West German political elite would have to ensure that "the Germans in the GDR have the certainty that they will not be overrun by a dictate from Bonn" (Schmidt 2005: 44). Hildegard Hamm-Brücher, one of the most prominent former FDP politi-

cians, who subsequently became a candidate for the office of German president in 1994, repeatedly bemoaned the West German “arrogance” during the handling of the domestic aspects of unification. She warned that this was increasingly driving a wedge between East and West Germans:

Disillusionment and disappointment have literally spread “on the other side”: impatience, arrogance and self-righteousness on “our” side. A Western mentality of taking possession and trying to convert exists, which does not allow any independent political, economic, administrative or social decisions which do not correspond with the will and the ideas of the guardians in the west (Hamm-Brücher 1992: 12).

It is now widely accepted that the swift moves towards unification under Kohl, in particular the decision to introduce the D-Mark on the basis of a 1:1 exchange in 1990, had indeed profoundly negative implications for the economic development of the unified Germany (Münter and Sturm 2002: 187; Grosser 1999: 805; Padgett 2003: 139; Sinn 2004; Anderson 1999: 51; Dyson 2005: 124). Less discussed are the ongoing political implications of the GDR’s accession to West German territory, which continue to have profound serious repercussions, even though almost 20 years have passed since reunification. Only a few years after reunification it became obvious that the political, economic and social capacity of the West German state system had been exhausted. The growing crisis symptoms were an indication that the semisovereign political setting established under the basic law is only to a limited extent capable of efficiently supervising the economic and social development of a country which now encompasses more than 82 million people. The political failure to undertake a rational analysis of the weaknesses of the West German semisovereign polity and the choice to set the unified and much more diverse Germany on the same path-dependent course is therefore highly problematic.

The political decision-making mechanisms of the West German consensus democracy were designed for a state which was semisovereign with regard to its external affairs and developed its prime economic position in Europe in the relatively stable international environment of the Cold War. West Germany could consequently afford to have a semisovereign political system,

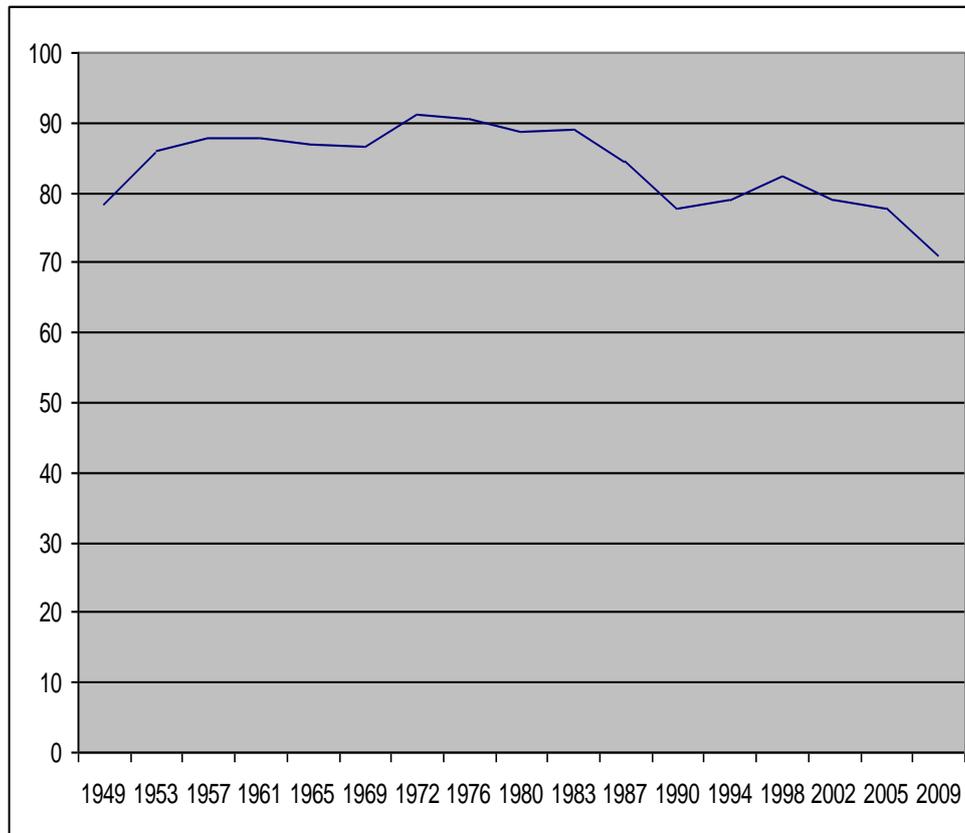
where decision-making processes are slow and complex as a result of the dispersal of powers amongst a multiplicity of actors and institutions on various levels. The German political elite, which included the newcomers in the East of the country, assumed that the larger Germany would be able to afford the same luxury. Political lessons have been learnt in the area of foreign policy, where a gradual new political consensus emerged between all parties (with the exception of the communist successor to the PDS, the Linkspartei) in the wake of the genocide in Kosovo in 1998/99 and the terrorist attacks of 9/11. It was based on the realization that the fully sovereign Germany would no longer be able to restrain itself to a policy of semi-engagement and had to accept the necessity of full military burden-sharing with its European and transatlantic partners. This normalization process with regard to the foreign policy of the unified Germany boiled down to the full engagement in military combat, first exercised through the participation of the German air force in the air strikes against Serbia in 1999 and since 2001 in the deployment of ground troops in Afghanistan (Hyde-Price 2003: 203; Schweiger 2007: 74-80).

In contrast, the adaptation of the domestic polity to the altered circumstances following reunification has been strangely neglected. The assumption here was that the political institutional setting and process that had evolved in the Bonn republic would somehow adapt itself to the new situation. Peter Katzenstein emphasizes this in his review of the original 'semisovereignty' thesis: "The German state regained full sovereignty in international affairs. Yet in domestic politics, Germany continued to be marked by incremental change as the defining feature of semisovereignty" (Katzenstein 2005: 289-90). The German constitutional setting shows an insufficient ability to swiftly adapt policies to the rapidly changing external pressures of the new globalized environment, because it allows each institutional actor to maintain profound veto powers. Radical reforms hence tend to depend on the existence of a political consensus between the main parties and the variety of veto players on the federal and regional level. Even if these conditions are present, Germany's semisovereign polity tends to produce slow incremental policy

change which more than often is not swift and profound enough to address the gravity of the challenges facing the country (Green and Paterson 2008: 182). As a result, the unified Germany fails to maximize its potential, which has become most obvious in the economic area, but increasingly is also visible in the political sphere. The fact that the larger, fully sovereign Germany is still governed on the basis of the institutional setting and the decision-making processes of the semisovereign Bonn republic amounts to what Kitschelt and Streek have called the “high equilibrium trap” (Kitschelt and Streeck 2004: 1). It refers to an incremental ideology of stability and consensus in the German semi-sovereign polity, which fails to allow swift policy adjustments to internal and external challenges on the basis of resolute agenda-setting by political decision-makers. This affects all sub-national levels, but is especially noticeable in the form of limited scope of action for the federal government.

Germany therefore remains the classic case of a “consensus” model of democracy as it was defined in Lijphart’s *Patterns of Democracy*. Lijphart argues that central features of the consensus model (proportional representation, decentralization and the sharing of executive power between multiple actors, a federal state structure and a high level of judicial review) are best suited for what he calls “plural societies”. Lijphart considers such a society to be characterized by noticeable divisions “into virtually separate sub-societies with their own political parties, interest groups and media of communication” (Lijphart 1999: 32). From his point of view diverse societies can only function efficiently on the basis of a political system which favors power-sharing and consensus because “minorities that are continually denied access to power will feel excluded and discriminated against and may lose their allegiance to the regime” (Ibid). Lijphart’s thesis is hence that a society with strong regional and cultural differences like in the case of the unified Germany would risk alienation from the political process if it adopted elements of a majoritarian democracy like the one in the United Kingdom. In contrast to Lijphart’s assumptions, almost two decades after reunification, the majority of Germans are in favor of reforming the constitutional setting of their country. A recent survey on the acceptance

of the Basic Law (Grundgesetz) amongst the German public, conducted by Vorländer and Schaal in February 2009, found that 83 per cent of all Germans are in favor of a “‘fundamental’ or at least ‘partial’ revision of the Basic Law” (Vorländer 2009: 16). Another indicator which Lijphart considers to be of crucial importance when measuring “democratic quality” is turnout during elections (Lijphart 1999: 284). Here he sees a correlation between proportional representation and higher levels of turnout in consensus democracies (Ibid: 286). If this was indeed the case then one would expect that the West German consensus model would prove to be a perfect fit for the substantially more diverse society of the unified Germany, resulting in increasing or at least consistently high levels of electoral turnout. In reality turnout in federal elections has substantially declined since 1990 (Figure 1). While turnout in federal elections in West Germany used to stand consistently above 80 per cent since 1953 (even above 90 per cent in 1972 and 1976), it has only once exceeded 80 per cent since reunification. This was during the historic election of 1998 when voters denied Helmut Kohl’s CDU/CSU-FDP coalition another term in office after a period of 16 years in government and instead gave a majority to a red-green coalition under Gerhard Schröder. At the last general election in September 2009 only 70.8 of Germans turned out to cast their vote at the ballot box, which is the lowest turnout since 1990. In the East the decline in turnout is particularly noticeably, where only between 63 and 67 per cent of all those eligible to vote turned out at the 2009 election (Bundeswahlleiter 2009).

Figure 1: Voter turnout in federal elections in Germany 1949-2009

Source: Bundeswahlleiter.

3 The September 2005 general election—a tipping point for the incremental crisis of the consensus democracy

A number of scholars have analyzed the weaknesses of the German political system on the basis of Tsebelis' veto player theory (Saalfeld 2006; Strohmeier 2005; König 2006). It has been noted that in spite of the existence of a high number of both direct (or institutional) and indirect (or partisan) veto players, the German system still manages to achieve policy change, albeit at a slower rate than in other political systems. However, in central policy-areas which fall under the co-decision procedure between the federal parliament *Bundestag* and the representative body of the regions, the *Bundesrat*, the precondition for successful policy implementation is the development of a broad policy consensus between the government and opposition parties (Strohmeier

2006: 234; Saalfeld 2006: 250). According to Tsebelis' veto player theory, the large number of veto players in the German political system hence leads to a high level of political stability, but on the other hand keeps the level of policy change and government stability low (Tsebelis 1995: 321-22). Policy change becomes especially difficult if the political priorities of veto players differ substantially (Ibid: 317).

Tsebelis' concept of government instability is crucial for the German political system in the aftermath of unification, because it highlights the core problem of the intrinsic lack of efficient governance. He associates the instability of executive government within a parliamentary political system with "multiple veto players, with a lack of ideological congruence between them and with ideological cohesion of each one of them" (Ibid: 321). Since reunification, the ideological diversity of both institutional and partisan veto players in the German political system has increased substantially. Both main legislative bodies, the Bundestag and the Bundesrat have not only increased in size, they have also become much more diverse than they were during the Bonn republic.

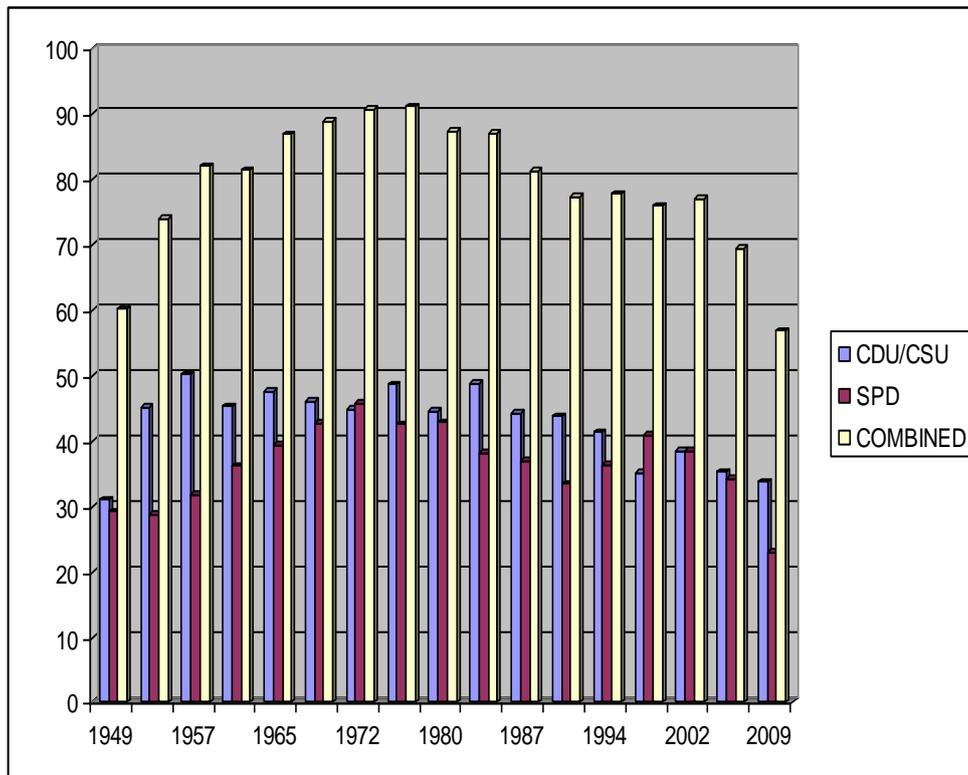
In the case of the Bundestag this is related to the changes of the traditional party system in the Bonn republic. The latter was initially characterized by a three party system with the FDP as a potential small coalition partner for either of the two catch-all parties. Since the appearance of the Greens in 1980 it offered voters the potential choice between a centre-right (CDU/CSU and FDP) and a center-left (SPD and Green party) government coalition. Since reunification the party system has developed into a multidimensional system, which has become more diverse as a result of a regional party system in the East, where the PDS has taken on the role of regional catch-all party (Volkspartei) alongside the CDU and the SPD, with the marginalization of smaller parties (Rudzio 2003: 153-56). The PDS, which has recently merged with the West German anti-reform movement WASG and has been renamed into the Die Linke (Party of the Left) currently only governs with the SPD on the regional level in Berlin and Brandenburg. Die Linke, which was until recently lead by the former SPD leader Oskar Lafontaine, has recently managed

to gain ground in the West and gained seats in the regional parliaments of Hessen, Hamburg, Lower Saxony, Bremen and the Saarland. At the 2009 federal election Die Linke managed to push the SPD into third place in the East, when it gained 29.1 per cent of all votes in the East against 20 per cent for the SPD. Die Linke has consequently established itself as the fifth nationwide party. In the long run it is likely to become a coalition partner for the SPD, not just on the regional but also on the federal level.

The new complexity of the party system, which is a reflection of the enhanced diversity of interests in the larger Germany, has had a profound impact on the traditional role of the CDU/CSU and SPD as catch-all parties (Volksparteien). The traditional ability of the Volksparteien CDU/CSU and SPD to aggregate the large variety amongst the broad sectional societal interests in the Western and Eastern part of the country and therefore to be able to count on a broad basis of support in elections, is weakening considerably (Sloam 2008: 135). This phenomenon is most noticeable in the Eastern Länder, but can also be clearly seen in the Western part of the Republic (Saalfeld 2005: 74-75; Dalton 2003: p. 62). The consequence is a much lower level of support for the CDU/CSU and SPD in regional and national general elections. In the last three general elections since 1998, both the CDU/CSU and the SPD have struggled to reach the 40 per cent mark of electoral support. In 1994 the CDU/CSU still managed to gain 41.4 per cent of all votes cast (SPD at 36.4 per cent) and in 1998 the SPD benefited from a public desire for change and gained 40.9 per cent (CDU/CSU at 35.1 per cent). At the 2002 and 2005 general elections both parties failed to reach the 40 per cent mark (2002: 38.5 per cent for both; 2005: CDU/CSU at 35.2 and the SPD at 34.2 per cent), while the share for the smaller parties increased noticeably (FDP: 9.8, B90/Grüne: 9.1; PDS: 8.7). This trend worsened at the 2009 general election, which took place after five years of a CDU/CSU-SPD grand coalition government. In September 2009 the CDU share of the votes shrank further by 0.5 per cent to 33.8 per cent (minus 1.4), while the SPD received the worst result since 1949 with only 23 per cent of the votes (minus 11.2).

As Figure 2 illustrates, from the late 1950s onwards, the catch-all party status of the CDU/CSU and SPD was based on their ability to gain more than 80 per cent of the total share of votes in general elections. Since 1990 this share has consistently remained below 80 per cent. In the 2009 general election it fell to the lowest level since 1949, when CDU/CSU and SPD only managed to obtain a combined share of votes of 56.8 per cent.

Figure 2: Total percentage share of votes for the CDU/CSU and SPD in general elections since 1949

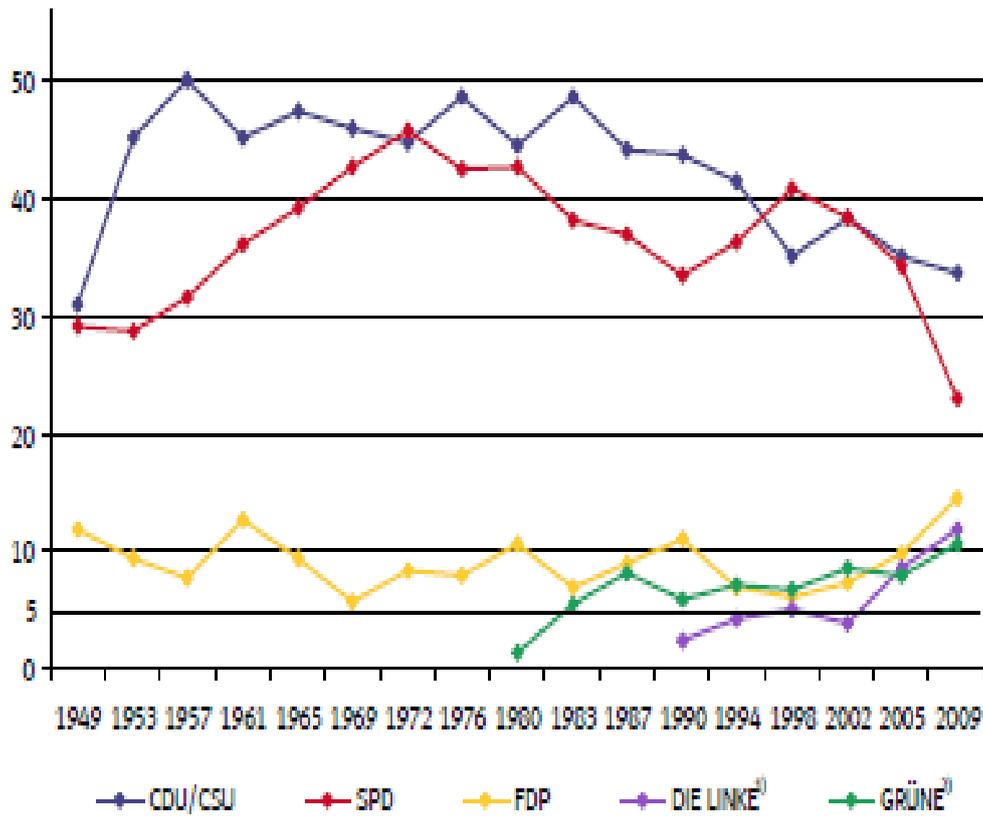


Source: *Bundeswahlleiter*.

Part of this trend is an increase in the share of the votes for the smaller parties that had all been in opposition during the 2005-2009 parliament. FDP, Bündnis90/Grüne and Die Linke managed to get a total combined share of 37.2 of all votes cast at the 2009 election. All three parties achieved double digit percentages above 10 per cent of the vote. Particularly remarkable was the result of the FDP with 14.6 per cent of the votes, an increase of 4.8 per cent from 2005 (B90/Grüne increased their share by 2.6 and Die Linke by 3.2 per cent). The 2009 election result can also

not simply be dismissed as a normal reaction of voters to four years of a grand coalition government, where one would expect gains for the smaller parties. Figure 3 illustrates that opposition parties have consistently increased their standing in elections since 1998 at the expense of both CDU/CSU and the SPD.

Figure 3: Share of the votes for the parties currently in the Bundestag since 1949



Source: Bundeswahlleiter (2009.)

If this trend continues CDU/CSU and the SPD will both no longer be able to claim that they are catch-all parties that represent large sections of German society. Their role in the political process would consequently diminish significantly. This puts doubt on the interpretation of the 2005 general election outcome as “a return to Volkspartei dominance”, as was argued by Lees. His assumption that specifically the SPD would benefit from the new diversity in potential coalition options (Lees 2005: 372) has been proven wrong with the outcome of the 2009 general election, where the SPD received the disastrous result of 23

per cent, its lowest share of the votes in a general election since 1949. The SPD has hence been significantly weakened in terms of its political influence and rather than to be strengthened as a key player in Germany's political process it is currently fighting for its political survival.

The greater variation of votes has lowered the level of political consistency and therefore increased the veto power of the Bundestag in relation to the federal government. The former four-party division in the German parliament has been replaced by a five-party division (CDU/CSU, SPD, FDP, B90/Grüne, Die Linke). This matters greatly in the German political system, where the federal government strongly depends on the uniform support of the coalition parties in parliament. Dissent amongst government MPs can hardly be tolerated in a system, where government legislation has to pass a multiplicity of veto points: Bundestag, Bundesrat for any laws that affect Länder interests, the Bundestag-Bundesrat mediation committee in case of disagreements between the two bodies, the federal president, who needs to sign laws and very frequently the federal constitutional court, which acts as the final referee on major disputes. The reality of the day-to-day legislative business in the Bundestag shows that the federal government is relatively weak in setting the legislative agenda and is faced with a large number of partisan veto players in the legislative process. This means that even smaller parties have a disproportionately strong impact on the Bundestag's legislative program because they are able to introduce their own bills (Sieberer 2006: 56-59). Dissent within its own ranks can therefore easily wreck a government's legislative program.

This was already a problem in the Bonn republic, albeit to a lesser extent. Before the emergence of the Green Party in 1983, the FDP as the smallest party whose share of total votes in a general election had reached its peak at 12.8 per cent in 1961, had a disproportionate influence on government policies in its role as the holder of the balance of power for the CDU or the SPD (Strohmeier 2006: 42-43). In the Berlin republic, the cohesion of the internal party structure has weakened substantially as a result of the inner party reorganization of the both the CDU and the SPD in the wake of reunification. König consequently speaks of

a new internal party structure of the two former catch-all parties which is based on “several groups with distinct interests” (König 2007: 528). Chancellors hence are increasingly in danger of being held ransom by the demands of sectional groups within the parties of their government coalition. The prime example for this was the growing resistance towards the Hartz IV labor market reforms amongst the left wing of the SPD in 2005, which forced Gerhard Schröder to call early elections in order to avoid the risk of his policy agenda being continuously undermined by dissenters within its own party (Schröder 2006: 376). With the exception of grand coalitions, governments hence now face the dual pressures of increasing party disunity within their own ranks and, as a result of the new diversity of the party system, a greater difficulty to achieve a strong support base in parliament (Paterson and Miskimmon 2008: 227). Since 1994, government coalitions have had a relatively small majority of seats in parliament, which meant that additional direct seats (Überhangmandate) became crucial in the formation of a government majority. In 1994, the CDU/FDP coalition of Helmut Kohl would only have managed to gain a narrow majority of two on the basis of the total number of second votes in the general election but stabilized its majority because it gained an additional 12 extra seats in Bavaria and the East. The exception was the general election of 1998, where the SPD gained 13 extra direct seats as a result of a clear desire for change amongst the German electorate, which ensured a relatively comfortable governing majority. At the subsequent election in 2002, the red-green coalition was however only narrowly re-elected on the basis of four extra mandates (in Hamburg and Eastern Länder). In the 2009 election CDU/CSU and FDP again managed to secure relatively comfortable majority with 332 out of a total of 622 seats, mainly due to the fact that CDU and CSU gained 24 additional seats by winning constituencies directly.

The increasing unpredictability of the outcome of elections nevertheless makes it much more difficult for the two main parties to obtain stable majorities for their preferred to obtain their “traditional minimal connected winning coalitions” (Saalfeld 2008: 105). With the exceptions of 1998 and 2009, the CDU/CSU preference for a coalition with the FDP and the SPD

preference for a coalition with Bündnis90/Die Grünen has hence become an ever more unrealistic option. Moreover, even when they manage to form their preferred minimum winning coalitions, both CDU/CSU and SPD are almost always strongly dependent on one another in order to secure at least a minimum of progress in legislative terms. Change in crucial policy areas therefore only becomes possible on the basis of “consensus beyond the narrow range of governing parties” (Sieberer 2007: 67). This relates mainly to the fact that the general tendency to achieve only narrow government majorities allow the opposition to argue that the government of the day does not have a clear mandate for radical policy change.

The institutional entanglement between the federal level and the Länder, which Fritz Scharpf famously described as the “joint decision trap” (Scharpf 1976) de facto forces the CDU/CSU and the SPD into a constant informal grand coalition if they want to avoid complete policy gridlock (Lehmbruch 1976; Katzenstein 1987). The number of laws that require the consent of the Bundesrat has risen to over 60 per cent since the 1990s (Brunner and Debus 2008: 234). Coalitions of one of the two major parties with one or more of the smaller parties hence tend to be quickly confronted with a “divided government” scenario, where the opposition parties control the regional chamber and tend to “force the government to seek substantial political consensus” (Manow and Burkhart 2008: 365). This is the result of the tendency for regional elections to act as a “barometer of public opinion on current federal policy” (Seemann 2008: 256). Voters show a tendency to punish the governing parties for unpopular decisions by supporting opposition parties on the regional level. The mediation committee between Bundestag and Bundesrat then frequently turns into the actual decision-making body for crucial legislative areas, which require Länder consent. Empirical studies show that the way the committee operates in practice depends substantially on the partisan setup of the Bundesrat (Lehnert 2008: 337). As a result, the status quo in major policy areas such as taxation, economic and welfare state reform tends to evolve “half-way between the ideal points of the SPD and the CDU” (König 2007: 524). In addition, policy changes of a constitutional nature al-

ways demand a consensus between the two main parties because they can only be obtained by a two-thirds majority in both the Bundestag and the Bundesrat (Article 79 GG). This dilemma for the federal executive government became most noticeable in the wake of the 1994 and the 2002 elections. In the two periods between 1994 and 1998, and similarly from 2002 to 2005, the Bundesrat became an effective means for the opposition to successfully undermine the legislative agenda of increasingly unpopular governments. During both periods, the main opposition (1994-98: SPD during the Kohl government; 2002-2005: CDU/CSU during the Schröder government) managed to win a number of regional elections and gained control of the Bundesrat, which allowed them to wreck the government's legislative agenda, especially in crucial reform areas. During the 15th legislative period of the Bundestag (2002-2005), a record 102 laws had to be negotiated in the mediation committee because the CDU/CSU opposition refused to accept them in the form they had been introduced by the red-green coalition. This included central elements of the Hartz labor market reforms of the Agenda 2010 (Koggel 2006: 8). The elections in Germany's biggest region North Rhine-Westphalia in May 2010 confirmed the usual tendency of voters to punish a federal government that has become unpopular. The increasing unpopularity of Chancellor Merkel's CDU/CSU-FDP coalition turned into a substantial defeat for the CDU in North Rhine-Westphalia, where the CDU lost 10.2 per cent. As expected the election result does not allow the formation of a minimum-winning coalition of two parties and therefore demands the formation of a three-party coalition or alternatively the formation of a grand coalition. After the failure of negotiations between SPD, B90/Grüne and the Linkspartei, the only remaining options are a "traffic light" coalition between SPD, B90/Grüne and FDP, a "Jamaica" coalition between CDU, FDP and B90/Grüne or alternatively a grand coalition. Even if CDU and SPD end up governing with in a grand coalition in NRW, the CDU/CSU-FDP coalition in Berlin will still lose its current majority of 37 votes in the Bundesrat. The Merkel government will therefore have to find a compromise with the SPD in major poli-

cy areas for the remaining period of this parliament if it wants to avoid a gridlock in the regional chamber.

The Bundesrat has moved away from its destined role as a representative body of Länder interests, which it was supposed to adopt under the original constitutional setting established in 1949. Instead it has increasingly adopted the role of a partisan player which the opposition parties can use to prevent the federal government of the day to implement its own political agenda. This already frequently occurs before legislation is formally introduced in the Bundesrat, where the threat of a possible veto on legislation requiring Länder consent causes the federal government to compromise on the content of laws (Burkhart 2008: 197).

The inclusion of the new Eastern Länder in the Bundesrat has turned the latter into a more variable body, with an increasing diversity of government coalitions, often with alternative roles for one party. An example is the current role of Bündnis90/Grüne as an opposition party on the federal level but yet as a coalition partner for the SPD in Bremen and for the CDU in Hamburg and in the Saarland. The predictability of Bundesrat voting patterns on federal legislation has therefore decreased, which makes it hard for any small government coalition on the federal level to ensure the implementation of its policy agenda (Green and Paterson 2008: 182). Moreover, due to the crisis in the budgets of both the federal and most Länder governments, the formerly “cooperative” nature of federalism displayed in the Bundesrat has been replaced by a fierce competition for resources.

This goes hand in hand with a new form of “territorialization”, in which the individual Länder governments and affiliated parties pursue their own regional strategies at the expense of party unity on the federal level (Jeffery 2005: 84; Breunig 2008: 385). There are only limited periods without a forthcoming regional election taking place in one of the Länder. This leads to a situation where the federal government is almost constantly faced with the political ambitions of senior regional party figures, be they prime ministers or opposition leaders. In the German political system the leading national political figures usually emerge on the basis of a political career on the regional level. Successful promotion to a higher office on the federal level, such as ministerial positions,

party leadership or candidacy for the chancellery usually demands the development of a distinctive political agenda, which often stands in opposition to the party leadership on the federal level. This could be seen during the battle for the succession of Willy Brandt as SPD leader amongst the ‘grandchild’ generation of regional party leaders (particularly Oskar Lafontaine, Gerhard Schröder und Rudolf Scharping) in the 1990s. It again became obvious in the CDU during the 2005-09 grand coalition, when chancellor Angela Merkel was repeatedly confronted with opposition from individual Länder prime ministers within her own party (Jun 2008: 175). The current prime example is the CDU prime minister in North Rhine-Westphalia, Jürgen Rüttgers. Rüttgers had been trying to win over the electorate in North Rhine-Westphalia by voicing public criticism of the plans of Merkel’s current CDU/CSU-FDP coalition to lower taxes and to reform the healthcare system. He also supported a reform of the controversial Hartz IV unemployment benefits, which brought him much closer to the current position of the SPD.¹

The growing territorialization of politics in the united Germany poses a particular problem because it re-emphasizes the constraints of the “joint decision trap”. Increasing disunity within the Bundesrat, which now even frequently occurs if majority of the regional governments are controlled by government parties, has strengthened the role of the Bundesrat as a partisan veto player. In a re-evaluation of his original hypothesis, Scharpf hence argues that the “joint decision trap” has turned into a vicious circle, where the federal government is constantly forced to make concessions, either towards regional party elites in its own camp or towards the opposition, who both tend to follow their own political agenda (Scharpf 2005: 7).

The chancellor as the head of government, who is responsible for the determination of the general policy guidelines of the federal government under article 65 of the German basic law is hence frequently left with only two choices: The first is to accept that Germany’s system of “large scale inter-party consensus and

¹ Der Spiegel “Wahlkampfstrategie in NRW: Rüttgers rückt von Merckels Chaostruppe ab”, 19 March 2010.

corporatists politics” (Czada 2005: 186) allows only slow incremental changes to the policy status quo, which poses the risk of being accused of lacking decisive leadership qualities and shying away from difficult decisions. This happened to Helmut Kohl in the 1990s, who was accused of having ignored the need for change in crucial policy areas (“Aussitzen”) and to Gerhard Schröder during his first term in office between 1998 and 2001, where he famously claimed to govern with a steady hand (“Die ruhige Hand”).

The alternative option is the more radical approach adopted by Schröder after the 2002 general election, which tries to avoid institutional veto points through informal negotiations and agenda-setting on the basis of expert advice, usually in the form of policy commissions. This “government by commission” approach allowed Schröder to reduce the level of partisan veto power in the Bundestag (both within his own coalition and amongst the opposition parties) and the Bundesrat, which had been mainly controlled by CDU/CSU-led regional governments since 1999. The main purpose of the expert commissions was to “provide intellectual support and legitimacy for decisions which most of the time have already been made by the government” (Sturm 2003: 117). Schröder installed a number of non-partisan commissions between 1998 and 2003, most prominently the Rürup commission, which analyzed the future challenges for the German welfare state and the Hartz commission, which published its labor market reform plans in August 2004 (Patzelt 2004: 280-81). The controversial Hartz labor market reforms became the core of Schröder’s Agenda 2010 economic reform program. The approach was relatively radical by previous German standards. It adopted the Anglo-American welfare-to-work principle, which had previously been implemented by the Democrat US president Bill Clinton and the British New Labor government under Tony Blair in the 1990s. This represented a fundamental challenge to the German welfare state status quo. Schröder used the authority of the commission recommendations to undermine resistance within his own party and amongst the opposition against the implementation of the legislation of the Agenda 2010 (Saalfeld 2006).

By putting the proposal of the Hartz commission at the heart of the SPD 2002 general election campaign, Schröder was able to claim after the election that he had obtained an (albeit narrow) electoral mandate to implement the reform agenda as quickly as possible. It is hence a prime example of a new style of governance, which focuses on the avoidance of institutional veto points through a number of informal contacts and negotiations between the chancellery, policy experts and the opposition parties. Critics have branded this as “secret government” and accused Schröder of having done lasting damage to the political process in Germany (Patzelt 2004: 296-97). Schröder himself argued that the proceedings surrounding the Agenda 2010 debate were a reflection of the political stalemate in the German political system, which allowed trade unions and employer organizations to play a game of cat and mouse with the government and to create a public climate which prevented “any room for an objective discussion” (Schröder 2006: 386). Schröder’s “government by commission” approach hence attempted a three-way strategy to overcome the intrinsic limitations of vested interests and institutional veto points in the German polity which were limiting the government’s room for maneuver. According to Dyson, this boiled down to “subtly binding political opponents; creating a new dynamics of policy reflection and learning that could break down ideologically fixed modes of thinking about policy; and, not least, testing how far reform could be pushed” (Dyson 2005: 228). Schröder’s strategy reflects the need to adopt informal negotiation practices in a consensus democracy, where the tendency to provide groups representing major vested interests with veto rights over government policies requires the establishment of a permanent consensus (Freitag and Vatter 2008a: 317)

Schröder also repeatedly used the threat of resignation when his cabinet and party would not agree to major policy changes (Patzelt 2004: 294-95). In this context Schröder initiated a vote of confidence under article 68 of the basic law twice, first linked with the decision on the deployment of military troops to Afghanistan in 2001 and then as a deliberate means to initiate early elections in 2005. However, as Döring and Hönnige point out,

the vote of confidence cannot be considered as a strong means to achieve agenda setting-powers in the German system. This is due to the fact that any abstentions from MPs within the government's own coalition parties are counted against the chancellor (Döring and Hönnige 2006: 22). The vote of confidence in the political system of the Federal Republic therefore is a much riskier means of policy implementation than in other political systems, where abstentions are actually beneficial for the government.

The controversy surrounding the background of the early general election in September 2005, which Gerhard Schröder initiated through a deliberately negative vote of confidence once again illustrated the intrinsic problems of the German political system which had reached a new tipping point at the time. Although the red-green coalition had managed to get the core of its Agenda 2010 reform program through Bundestag and Bundesrat, the process had been long and painstaking. In the meantime, Germany's economic performance and its unemployment figures were worsening and Schröder's party faced crucial regional elections. The losses of the SPD majority in the Saarland, Schleswig-Holstein and North Rhine-Westphalia in the short period between the autumn of 2004 and early summer 2005 showed that the red-green coalition was slipping deeper into the vicious circle of the joint decision trap with a Bundesrat that was increasingly dominated by the opposition parties. The example of the red-green coalition under Schröder shows that it is usually not electorally beneficial for federal governments to implement unpopular structural reforms, particularly in the area of employment and welfare, where they are facing an electoral that tends to be hostile towards change (Green and Paterson 2008: 192).

The legislative activity of the federal governments consequently tends to be substantially affected by the frequency of regional elections in the German systems, with a clear tendency to delay legislation when an election is imminent. Due to the "electoral intensity", which subjects the federal government to frequent "regional interim evaluations" in the form of elections in the Länder (Seeman 2008: 263) the ability of the federal governments to pursue a long-term strategy of swift policy implementa-

tion is severely hampered. With the exception of grand coalitions, the threat of a dwindling influence in the Bundesrat as a result of a growing unpopularity and losses in the regional elections hence tends to prevent governments from actively responding to the growing number of challenges. This confirms the assumption that consensus democracies “are less able to achieve decisive breaks in the overall policy direction and swift responses to challenges” (Freitag and Vatter 2008b: 20). As the example of the red-green coalition shows, once a government based on a small coalition tries to implement its policy agenda without substantial compromise, it is bound to face the consequence of handing control of the Bundesrat to the opposition parties (Burkhart 2008: 195). Following the 2009 federal election, the new SPD leadership under Sigmar Gabriel announced that it intends to use its newly acquired veto powers in the federal council after the elections in North Rhine-Westphalia to block the healthcare and tax reform plans of the current CDU/CSU-FDP in Berlin.²

The increasingly obvious incremental anti-reform bias of the German polity has in recent years become the focus of a new public debate on the efficiency of the institutional setting of the semisovereign democratic process. Former Federal President Roman Herzog, who in 1997 famously had called for German society to be jolted out of its anti-reform complacency, has founded the “Convent for Germany” which assembles leading politicians and academics who are developing proposals for reforms of the German polity. The convent criticizes the German system for having moved from “stability” towards “immobility”³ and risking to undermine the country’s international competitiveness due to the failure to achieve rapid policy change. Herzog himself criticizes the German political system for having institutionalized an anti-reform climate amongst the electorate, which had established “insurmountable hurdles for rapid and responsible action” (Herzog 2005: 28). The former Federal President

² Süddeutsche Zeitung “Debatte um Steuersenkungen—SPD droht Blockade”, 28 March 2010.

³ Reform der Reformfähigkeit—Konvent für Deutschland. Retrieved May 27th 2010, from www.konvent-fuer-deutschland.de/derKonvent/Ziele

Horst Köhler used his annual speech to the political elite in Berlin in 2008 to criticize the failure of the German system to clearly define political responsibilities between the federal, regional and local level. He particularly emphasized the negative effects of what he called a state of “permanent election campaigning” due to the frequency of regional elections, which prevented governments from “pursuing long-term plans and to make decisions which initially are uncomfortable for the citizens”.⁴

The result of the 2005 general election was an expression of the electorate’s desire to avoid the formation of another unstable small party coalition of either the CDU/CSU with the FDP or a third term red-green coalition. Although all major opinion pollsters had predicted a decisive win for a CDU/CSU-FDP coalition it became clear that the majority of the German electorate was not ready to follow Angela Merkel’s neoliberal reform program. The latter was symbolized by the proposals to introduce a flat tax rate and a standard individual health contribution rate for everyone (“Kopfpauschale”) as the basis for a radically reformed healthcare system, which was proposed by Merkel’s shadow finance minister Professor Paul Kirchhoff. Detailed studies of the polling data available show that, contrary to the claims made by opinion pollsters in the run-up to the election, the majority of CDU/CSU and SPD voters had already made up their mind about their voting intention early on in the campaign (Schmitt-Beck and Faas 2006: 411). This indicates that a large section of the German electorate deliberately tried to create a situation where both the CDU/CSU and the SPD would be represented in government. The feeling that profound reforms could only be implemented by a grand coalition government was indeed widespread. Although the election outcome would technically have made the formation of a “Jamaica” coalition between CDU/CSU, FDP and B90/Grüne or a “traffic light” coalition between SPD, FDP and B90/Grüne possible, the majority of voters favored a

⁴ “Arbeit, Bildung, Integration”. 2008 Berlin speech by Federal President Horst Köhler. Retrieved May 27, 2010 from www.bundespraesident.de/Reden-und-Interviews,11057.646080/Arbeit_-Bildung_-IntegrationB.htm?global.back=-%2c11057%2c12/Reden-und-Interviews.htm%3fmlink%3dbpr_liste

grand coalition. This was shown by the final opinion polls immediately before the elections. The ARD DeutschlandTrend conducted by opinion pollster Infratest dimap in September 2005 registered 36 per cent support amongst the German public for a grand coalition, with 29 per cent preferring a coalition between CDU/CSU-FDP, 19 per cent a renewal of the red-green coalition and eight per cent for the formation of a left-wing coalition between SPD, B90-Grüne and Linkspartei. 85 per cent of voters confirmed that they had made a firm decision who they would vote for.⁵

In their analysis of the theoretical government possibilities available in the aftermath of the 2005 general election, Proksch and Slapin show that of all available options, only a grand coalition was likely to overcome the substantial intrinsic hurdles of Germany's political decision-making process. All other options would have had a very limited scope for the introduction of substantial policy reform, especially in the area of economic policy and labor market reform (Proksch and Slapin 2006: 548-49). From the point of view of policy-makers and the electorate's desire for consensual reform, the choice of both parties to enter into the first grand coalition since 1969 therefore represented the most obvious political choice. It was assumed that this new coalition would finally be able to break open institutional decrepitude on the basis of a stable majority in both Bundestag and Bundesrat. Accordingly, in their coalition agreement signed in November 2005, both parties set out their determination to use their parliamentary majority for structural reforms (CDU/CSU and SPD 2005: 10). The coalition treaty nevertheless remained relatively vague on policy detail and general in many areas. This showed the difficulty of both parties in finding a compromise between the positions set out in their election manifestos, which had been diametrically opposed in central policy areas.

The lack of detail in the coalition treaty was an indication of the limited progress the grand coalition under Chancellor Angela

⁵ ARD DeutschlandTREND extra September 2005 II. Retrieved May 27th, 2010 from www.infratest-dimap.de/umfragen-analysen/bundesweit/ard-deutschlandtrend/2005/september-ii-extra/

Merkel would make on major policy issues and particularly on any structural reforms of the German political system. The best example for this is in the area of healthcare reform. Both parties went into the 2005 general election with two fundamentally incompatible concepts for a reform of healthcare funding. The CDU/CSU proposed a flat-rate individual health premium for everyone (“Solidarische Gesundheitsprämie”) (CDU 2005: 26), while the SPD promoted a citizens insurance system, under which the self-employed and public servants (Beamte) would also subscribe to the semi-public health care providers, the Krankenkassen (SPD 2005: 55). The coalition emphasized the difficulty in reconciling these two concepts and simply states that the coalition partners would work towards the development of an “efficient healthcare system, which shows solidarity and is demographically reliable” (CDU/CSU and SPD 2005: 87). The resulting health care fund which came into effect in 2009 represents a middle-of-the way compromise which introduces the same contributions for all those insured by the public healthcare providers (Krankenkassen). The reform has been controversial because it has failed to address the issue of cost containment adequately and led to new demands from the health insurers to raise the level of contributions.⁶ Since the 2009 election the policy differences between the CDU/CSU and SPD on healthcare reform have resurfaced. This is mainly the result of the insistence of the CDU/CSU’s new coalition partner FDP to return to the concept of a flat-rate health premium for all citizens. The SPD condemns it as an unfair “Kopfpauschale” (capitation) and used it as one of its central campaign themes in the May 2010 regional elections in North Rhine-Westphalia.

The policy progress under the 2005-09 grand coalition was limited to patchwork like the extension of the duration of payments of the standard short-term unemployment benefit (ALG I) and an increase in the benefit levels of the long-term unemployed support (ALG II), the introduction of an environmental premium for discarding older cars and two economic stimulus packages in response to the global economic crisis. The most significant (and

⁶ Handelsblatt, “Kassen rutschen ins Defizit”, August 18, 2009.

probably most controversial) policy reform that was achieved came in the increase of the legal pension age from 65 to 67. The grand coalition failed to push through substantial structural reforms of the economy, education system and the political system as a whole. It managed to rescue some results from the failed negotiations of the joint committee implemented by the Bundestag and the Bundesrat in 2003 with the aim of modernizing Germany's federal structure towards more efficient processes of decision-making. The committee led by former CSU leader Edmund Stoiber and SPD leader Franz Müntefering concluded their negotiations without achieving a compromise on the major issues. The first stage of the federal reform package (Föderalismusreform I) nevertheless found its way into the coalition negotiations between the CDU/CSU and the SPD following the 2005 general election.⁷ The grand coalition has consequently modified article 84 of the basic law which determined the principle of co-decision for the Bundesrat on any laws that are administered regionally. The reform limits the number of laws that fall under the co-decision procedure between Bundestag and Bundesrat in return for greater exclusive Länder autonomy in areas such as education. At the same time however, it has introduced a new co-decision principle under article 104a, paragraph 4, which requires Bundesrat consent on any federal policies that result in a substantial financial burden for the regions.⁸ The consensus amongst academic experts is that the reform has fallen short of its original ambition to restrain the power of the regions over federal policy-making and to consequently loosen the "joint decision trap". This is because the reduction in laws that require the consent of the Bundesrat under article 84 is in danger of being outweighed by the new article 104a, which could effectively be used to undermine the legislative agenda of a small coalition in a divided gov-

⁷ Bundesrat (2009). Föderalismusreform I. Retrieved May 27th, 2010 from www.bundesrat.de/cln_090/nn_276146/DE/foederalismus/foederalismus-node.html?__nnn=true

⁸ Bundesrat (2009). Die Mitwirkungsrechte des Bundesrates im Gesetzgebungsverfahren nach Inkrafttreten der Föderalismusreform. Retrieved May 27th 2010 from www.bundesrat.de/cln_090/nn_8344/DE/service/thema-aktuell/06/mitwirkung.html

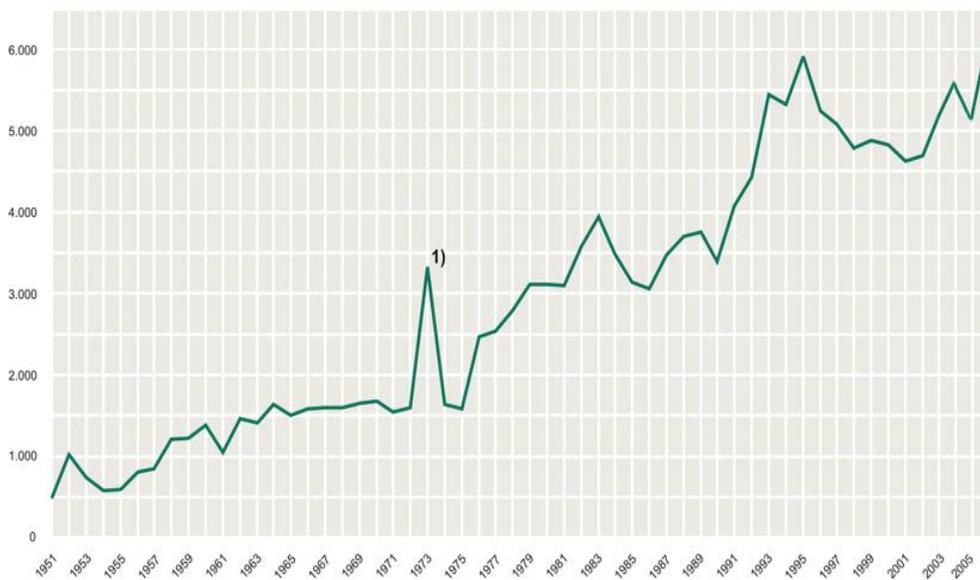
ernment situation (Höreth 2008: 418; Green and Paterson 2008: 197; Burkhart 2008: 192). The second stage of the reform of the federal system was initiated in December 2006 on the basis of a commission with 32 members, with representatives from the federal government, the Bundestag, regional governments and parliaments. The Föderalismusreform II was aimed at redesigning the financial relations between the Länder and the federal government (Deutscher Bundestag 2008b). Its limited scope is unlikely to resolve the failure of the first stage of the federal reform to disentangle relations between the federal level and the regions. The negotiations have shown that the Länder are unwilling to substantially reduce their veto power. The changes made under stage one of the reform makes it likely that major conflicts between the federal level and particularly poorer regions will dominate future relations in the Bundesrat (Auel 2008: 436).

The substantial majority the grand coalition under Merkel had in the federal parliament and the Bundesrat was therefore no guarantee for a profound change of the policy and institutional status quo. This is partly the result of the policy distance between the CDU/CSU and the SPD on major issues and a tendency of Merkel to restrict herself to the role of a “moderator” within the coalition rather than to actively make use of her capacity as chancellor to determine the overall direction of the government agenda (Clemens 2009: 131). More substantially it results from a persistent intrinsic resistance towards fundamental change amongst the political elite and the public in Germany (Green and Paterson 2008: 200). The fact that even a renewal of the grand coalition could not overcome the culture of reform lethargy in Germany’s semisovereign polity raises serious doubts about the capacity of the system to produce efficient policy change even under the most advantageous circumstances.

The support for the smaller parties which came at the expense of the CDU/CSU and the SPD in the 2009 federal election have led to the further fragmentation of the party system. In spite of the ability to form a minimum winning coalition with the FDP, the CDU/CSU is likely to encounter the same obstacles during the next four years in government as the last small red-green coalition encountered during its period in office between 1998 and

2005. The dominant role of the federal constitutional court in the political process is hence unlikely to diminish and could even grow further in the future. As figure 4 illustrates, since its establishment the Constitutional Court has had to deal with a constantly increasing inflow of cases, which has exceeded the volume of more than 6,000 per year since 2006.

Figure 4: Annual influx of cases since 1951



Source: Federal Constitutional Court.

The role of the court as the final referee in a political process which gives preference to the scrutiny of the federal legislative powers over the implementation of a decisive long-term government agenda has created a level of judicial intervention which is uncommon in other European democracies. The ample room that is being granted to the court to act as a “major restraint to policy-makers” (Schmidt 2008: 84) has led to a problematic juridification of policy-making in Germany’s semisovereign democracy.

Conclusion: A way out of the consensus straightjacket?

The record of the Merkel grand coalition government shows that even a coalition between the two largest parties, which faced no substantial opposition in the *Bundesrat*, struggles to achieve poli-

cy change in a system which has become fixated on consensus and maintaining the status quo of vested interests amongst multiple levels. Due to the difficulties in safeguarding the central priorities of their electoral manifestos in a federal government coalition, all political parties and in particular the larger parties CDU/CSU and SPD, therefore struggle to credibly promote policy change during elections. This leads to growing support for smaller parties and in the long run risks undermining the status of the CDU/CSU and the SPD as parties who can credibly claim to represent broad sections of society (*Volksparteien*). The new diversity of the party system is certainly offering a broader set of coalition options for the CDU/CSU and, to a lesser extent, to the SPD which is less likely to attract the support of the FDP for a “traffic light” coalition with the Green Party and struggles to find common ground with the Linkspartei. It could therefore be argued that this new setting enhances the strategic position of the larger parties as they “are in principle less vulnerable to threats of a decisive defection by small parties to alternative coalitions” (Lees 2010: 90). Enforced changes of government as a result of the switching of one small party to a new coalition partner, like in the case of the defection of the FDP from the SPD to the CDU/CSU in 1982, are hence in principle less likely. On the other hand the necessity to include more than two parties in a coalition to achieve a governing majority will make it even harder to achieve policy consensus and consequently to implement the policy manifestos of the leading parties. This matters in terms of policy outcomes and consequently voter trust in the ability of the political elites to implement the core policies their parties advocated at elections. A situation where a middle-of-the-road consensus amongst an increasing number of coalition partners becomes the norm on the regional and federal government level is unlikely to increase the efficiency of Germany’s political system and risks alienating the general public even further from the political process.

The failure to produce political change when it is urgently needed in order to be able respond to internal and external challenges therefore lies in a lack of determination amongst the political elite to break open the intrinsic constitutional weakness at

the heart of the German polity. The most promising way of breaking up the institutional decrepitude of Germany's democracy would be the establishment of a new constitutional assembly. This would demand an all-party consensus on the need to examine ways to disentangling Germany's system of multi-level governance. Reforms would have to predominantly concentrate on the electoral system, with the possibility of creating more stable government majorities through the introduction of elements of first-past-the post candidate selection, further limitation of the influence of the Bundesrat on federal legislation and possibly the introduction of direct participatory mechanisms to counter the growing public disillusionment amongst the population about the political process.

While the central element of Länder participation in the legislative process should be preserved, a new constitutional setting for Germany has to set clearer boundaries between the legislative responsibilities of the federal and the regional level. It should also limit the number of cases that can be brought before the Federal Constitutional Court, which would reduce the level of constitutional review and enhance the agenda-setting powers of the federal government.

The high level of existing veto points and the multiplicity of veto players will make it difficult to achieve a substantial reform of Germany's semisovereign consensus democracy on the basis of streamlined decision-making processes and more decisive policy changes. A first step towards achieving this goal therefore has to be the acceptance amongst all major players that new rules are needed when the nature of the game changes. The refusal to engage in this process of constitutional revision risks widening the evident gap between the expectations of the electorate and the actual problem-solving capacity of the political system even further, with unpredictable consequences for the future of the German democracy.

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