Legislative Politics in Germany: Some Lessons and Challenges

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This paper reviews the articles in this volume and places them in the broader discussion about German politics and comparative legislative behaviour. I describe their collective understanding of German law-making and highlight the strong empirical foundation of the research. Some challenges of the research agenda appear after comparing and contrasting the individual articles. Specifically, I start with a simple veto game and then amend and scrutinise this model using theoretical and empirical insights from this volume and the larger literature on legislative politics. The article closes by suggesting two future areas of research: institutional transformation and policy dynamics.

INTRODUCTION

While Germany’s parliamentary system is generally classified as a consensus democracy,1 the articles in this volume contend that a careful examination of each decision node in the parliamentary process delivers a more nuanced picture. Their central argument is that while the overall legislative outcome appears consensual in nature, the mechanisms of parliamentary decision-making are conflict-laden. The papers demarcate two key features of parliamentary conflict in Germany. First, the source of this conflict is partisan competition between government and opposition parties. Second, this competition plays out across all legislative institutions, ranging from the initiation of bills, committee work and Bundesrat (BR) deliberation to the conference committee (Vermittlungsausschuss) and final passage. Together, the contributions presents an impressive array of quantitative evidence to substantiate these two core claims.

In this essay, I review the articles in this volume and ask what lessons the German case delivers to research on comparative parliamentary behaviour. I proceed as follows. First, I illustrate a simple veto player game that serves as the key analytical tool for most of the articles. Second, using theoretical and empirical insights from this volume and the larger literature on legislative politics, I present some extensions, challenges and alternatives to the model. Third, I evaluate the data and methodological contributions of the volume. Specifically, I applaud the collective effort of amassing a huge amount of quantitative information on the detailed workings of the German legislative process. Finally, I outline two possible routes for future research: how rational actors design and reconfigure institutional structures within legislatures and what the dynamics of policy outcomes are.
THE BASIC ANALYTICAL TOOL – A VETO GAME

The most common analytical tool in this volume is a simple spatial veto game between two players – the government (G) and the opposition (O) – with single-peaked preferences in a one-dimensional space. In this one-shot game, the government proposes a new policy and the opposition holds an institutional tool that allows it to either accept or veto the proposed policy. Figure 1 depicts three analytically interesting scenarios via an exemplary budget increase. In all scenarios the current policy is indicated by the status quo (SQ). In Scenario 1, both government and opposition desire to increase the budget, albeit at different rates – the government at 4 per cent and the opposition at 7 per cent. The resulting policy is a 4 per cent increase because the opposition would rather take a 4 per cent increase than the current 2 per cent. The government proposes 4 per cent knowing that the opposition will not veto it and has no ability to make a counterproposal. In Scenario 1, the opposition’s veto threat is empty.

For the next two scenarios, the opposition’s veto power is crucial. In Scenario 2, government and opposition aim to change policy in different directions. Here the outcome of the game is the status quo. Since the opposition prefers the status quo to any lowering of the budget increase, it will veto the government’s proposal. Finally, in Scenario 3, government prefers a much larger budget increase (9 per cent) than the opposition (4 per cent). In this case, the government proposes a policy that is as close as possible to its ideal preference but also small enough that the opposition prefers it to the status quo (2 per cent). In the example, the government would

FIGURE 1
COMMON VETO GAME SCENARIOS FOR THE GERMAN LEGISLATIVE PROCESS

Scenario 1

Scenario 2

Scenario 3
propose a budget increase of just under 6 per cent and the opposition would accept it. In short, the veto threat worked and the actors compromised.

The veto game nicely illustrates key outcomes in German law-making – incremental implementation of the government’s programme (Scenario 1), status quo perseverance (Scenario 2), and compromise (Scenario 3). On the surface these policy outcomes may seem consensual in nature. However, vastly different mechanisms of policy change are at work. These different policy outcomes stem from institutional features channelling competition in German legislative politics. First, note that in the game, consensus is a result of a similar preference profile. If the government’s proposal is ‘close enough’ to the opposition’s policy stance, the opposition accepts the deal. Second, the game shows that in cases where preferences of government and opposition go in the same direction and government favours a more incremental move, government determines the policy outcomes. In short, consensual politics occur when actor preferences are alike and institutional rules favour incrementalism.

Scenarios 2 and 3 illuminate the challenges of observing direct conflict and vetoes in German legislative politics (therefore misinterpreting politics as consensual). Scenario 2 illustrates a situation in which the opposition prefers a veto. However, the government can anticipate the move and will not even bother to introduce the bill. This process is called legislative autolimitation. In Scenario 3, casual observers might label a policy outcome that lies between the government and opposition preferences as compromise. However, this compromise has a conflict-laden root: the veto threat of the opposition party.

Collectively, the articles highlight the analytical power of the simple veto game in several legislative processes. Some indirect evidence is provided by Seemann’s work in which government introduces more bills before state elections. This activity may be due to the government’s fear of a larger policy distance to the opposition in the future, or even worse, the emergence of a veto game if it loses the majority in the Bundesrat. Miller and Stecker offer stronger support for veto game logic. They show that in situations where the Bundesrat has veto power, the government employs Bundestag committees in order to reach a legislative compromise with the opposition. Empirically, about 50 per cent of all bills are amended in committee. Lehnert argues that the conference committee is far from consensual; government uses its majority for restating its legislative position, while opposition dominance kills government proposals. Manow and Burkhart’s study of the duration of the law-making process demonstrates that government anticipates the opposition’s veto ability and restrains its legislative output. Lehnert et al. provide some descriptive evidence of Scenario 2 by showing that only 2 per cent of all bills fail enactment. Finally, several articles demonstrate that conflict between government and opposition is more visible for Zustimmungsgesetze (consent laws) than for Einspruchsgesetze (objection laws) where the oppositional Bundesrat has strong veto power. In sum, the articles exhibit the wide applicability of the veto game at the various decision-making nodes in the German legislative process. Most commonly the game is employed for bills that are introduced in the Bundesrat, but this volume makes clear that the same logic is also at work in committees and conference committees.

The veto game also delivers some normative insights on German legislative politics. In line with classical works stressing gridlock and Reformstau in Germany, a
common theme of this volume is that the partisan competition between government and opposition within and across the two legislative institutions produces suboptimal outcomes. ‘German style’ divided government leads to legislative delays, generates a greater amount of bargaining, and is responsible for failed legislation. Political immobilism is rampant. Several of the papers claim that these features are particularly noticeable when the stakes are high (i.e. for important bills) and when the Bundesrat has a more powerful veto tool (i.e. for consent bills). This negative diagnosis of German legislative politics stands in contrast to early and recent proponents of incremental policy-making. Indeed, the intellectual fathers\(^5\) and current major analysts\(^6\) of veto politics stress the virtues of checks and balances. In a recent review, Heller lists the following merits of divided control: stability, careful review, deliberation and the supply of additional information.\(^7\) Given that a central goal of the German constitution is stability of the political system, one has to wonder: why are these features less frequently appreciated in scholarly works on German legislation?

Why are these virtues of veto politics downplayed in the German discussion? The veto game helps us to address some normative implications of party competition and bicameralism in German legislative politics. First, it shows that the normative debate arises only when the partisan compositions of each chamber are sufficiently distinct. More precisely, veto situations and institutions come about because preference constellations and the locus of the status quo influence the nature of the play. The divergence of partisan preferences brings institutionally granted powers of political actors to the forefront. Second, when government and opposition preferences clash, divided government can lead to either gridlock or consensus politics. Scenario 2 typifies the gridlock situation. The opposition vetoes a proposed policy change and the status quo remains. Scenario 3 indicates that consensus politics is possible as long as actors agree on the general direction of change. The theoretical and empirical focus on Scenario 2 and the difficulties associated with observing Scenario 3 might contribute to the disregard for veto politics in the German scholarly discourse.

EXTENSIONS, CHALLENGES AND ALTERNATIVES

This section outlines some extensions and alternatives to the basic veto game logic. The starting point of this inquiry is the notion that policy processes and outcomes are functions of the interaction of institutional structures and actors’ preferences. Specifically, I discuss the possibilities of identifying different sets of actors, delineating various preference profiles, and considering alternative game structures. I thereby expand the notion of German legislative politics as a simple game between government and opposition.

So far, the proposed veto game is played by government and opposition. The question is whether it is reasonable to assume that government and opposition are ‘unified’ actors. In other words, does each actor intend to produce a joint outcome and serve a common purpose?\(^8\) The assumption that the opposition has a common intent and purpose appears to be questionable. Consequently, some of the articles provide alternative actor constellations. While the majority of them (Miller and Stecker, Lehnert, Manow and Burkhart, as well as Lehnert \textit{et al.}) employ the presented government vs. opposition set, Brunner and Debus as well as Shikano consider \textit{Bundesländer} as
individual actors in the Bundesrat, and finally Seeman and Bächtinger et al. identify political parties as the actors.9

Since strong theoretical justifications for certain actor sets are absent in the individual articles, it is worth considering some advantages and disadvantages of specific sets. The veto game illustrates that the government and opposition scenario enables researchers to propose a wide range of theories based on minimal assumptions. However, the two most immediate drawbacks are that (1) one must ignore coalition dynamics within government and (2) assume that members of different chambers have the same preferences (since the Bundesrat majority bestows the opposition its veto power). If one takes states (Länder) as a composite actor in the Bundesrat, inter-branch bargaining becomes more difficult to explain. Moreover, individual BR members are supposed to serve the interest of the state; as party leaders they are supposed to support policy positions of their parties and foster their electoral prospects.10 For example, Brunner and Debus as well as Shikano are stuck with the dilemma that individual states might be interested in policy compromise while the state’s partisan leaders are better served with an alternative policy or even visible policy failure. Resolving these divergent ambitions is still an outstanding issue in much of the legislative research on German politics and in comparison.

One possible option for avoiding some of the drawbacks mentioned is to define political parties as the central actors of legislative politics.11 The study of individual MPs’ voting behaviour in the Bundestag by Becher and Sieberer stresses the centrality of parties in legislative politics by referring to literature on the Congress.12 Moreover, political parties hold several advantages over other ‘composite actors’ in legislative affairs. They overcome the problem of organisation and cycling; they reduce the policy options and discipline legislators; and they unequally redistribute agenda powers within their members to fit specific circumstances. A future task for German legislative studies in the veto player tradition is to build up a party-centred model based on these insights.

Furthermore, modelling competition based on political parties gives rise to some interesting theoretical implications. First, the article by Shikano provides hints regarding the question of how federal parties of the Bundestag control regional parties of the Bundesrat. When partisan and individual aspirations depend on chamber-specific success and leadership, it is difficult to reach intra-partisan compromise across chambers. In his study of Norway, Heller suggests two tools for imposing a federal party position on the partisan members in the upper chamber: (1) the federal party needs to provide some additional benefits to its upper chamber members and (2) it needs to place high-ranking party members in the upper chamber in order to ensure that the national-level position is observed.13 Second, Seemann’s article on the influence of Bundesrat elections also suggests some intricate partisan dynamics. Federal parties in the Bundestag need to respond to state elections and therefore are forced to employ the Bundestag as a forum of permanent campaigning. Does this campaigning compel Bundestag parties, specifically the governing coalition, to respond to the voters of a specific state? In other words, are the governing parties in the Bundestag obliged to pork-barrel politics and not just, as conventional wisdom holds, the specific partisan representatives of an individual state in the Bundesrat? The argument here is that these two examples show that by using parties as actors, one can generate a new set
of expectations concerning political competition in German legislative politics. It enables researchers to consider how political parties might strategically employ their institutional positions.

Once the actors of the game are identified, their utility functions need to be specified. The question is, what is maximised? In Strøm’s classic formulation, is it policy, office or votes? While clearly Seemann’s piece argues for votes and Becher and Sieberer suggest office, the majority of the articles in the volume implicitly stress the importance of policy. More importantly, a more nuanced stance is theoretically compelling. Lehnert, following Ganghof and Bräuninger, argues that negotiations in the conference committee are possible because government and opposition parties have policy and electoral goals. He shows that these dual incentive structures allow the opposition to compromise and to make a publicly visible policy difference.

In a similar vein, several other articles inquire into the consequences of relaxing the complete information assumption. Does this lead to reputation, blame, learning and other dynamic effects (such as modelling over multiple bills at the same time) in the veto player game? The study by Bächtiger et al. suggests that uncertainty based on information deficits might not be a problem in the German legislative realm, as just a few parties, which are cohesive, engage in long periods of interactions. Lehnert et al. consider incomplete information as a potential source of failed legislation. In their empirical analysis, however, they show that other extrinsic motives, such as illustrating partisan competitors as obstructionist, ambiguous or weak provide a more powerful explanation for legislative failure. Finally, Brunner and Deb sum find that only one-quarter of all bills introduced by the Bundesrat are ultimately successful. This result evokes the importance of reputation-building and signalling – i.e. opposition parties show that they are capable of advancing the legislative agenda in order to appeal to the electorate and therefore do mind legislative defeats. Taken together, these mixed motive models supply rich and dynamic theorising about legislative bargaining.

As a final modelling choice, what other game-theoretic forms do American legislative studies offer in order to replace the veto game? A similarly flavoured alternative would be the sequential bargaining model developed by Baron and Ferejohn. In its simplest form, two or more actors sequentially bargain over a policy outcome. In the first round, player A proposes a policy that player B then can either reject or accept. If s/he accepts, the payoffs are divided according to A’s proposal. If s/he rejects, another proposer is selected. The game continues until a proposal is accepted. One might argue that the sequential nature of the game more accurately depicts the back and forth between government and opposition parties taking place within and across legislative institutions. This inter-branch feature might be especially attractive for the German case because of the multiple paths a bill can follow between introduction and final passage (e.g. consider the ability of the Bundesrat to introduce bills in the Bundestag). A more complex alternative might be the rent-seeking model of Diermeier and Myerson which gives legislative actors (they might be parties) an incentive to make buying policy (by lobbyists that deliver votes) as expensive as possible. By making it difficult to pass legislation, e.g. through holding hearings, increasing the complexity of a bill or engaging in extended debates, the legislative actors are able to maximise their rents. Clearly, these two alternative game-theoretical models
create very different sets of expectations than the standard veto player model. Unfortunately, they have received scant attention in modelling German legislative processes so far.

Ultimately, the discussion about actors, preferences and games leads to the question of whether and how researchers can broaden the scope of inquiry from one legislative decision-making node to the whole legislative process. I contend that a prerequisite for this undertaking is incorporating coalition politics\(^\text{22}\) in the modelling strategy. While most articles in this volume concentrate on partisan competition in a bicameral setting, legislative politics in Germany specifically is cabinet-level policymaking plus bicameralism. In accordance with the veto model, the executive offers policy proposals and sets the legislative agenda.\(^\text{23}\) Since the government is the source of nearly all legislation, the legislative arena is the place for changing and passing government legislation. The focus on bicameralism and veto models has resulted in neglecting the study of proposal rights. However, comparative research suggests that it can make a big difference if there is a last mover who can make a final proposal late in the legislative process.\(^\text{24}\) In addition, when neither government nor opposition are unitary actors and when political parties have mixed motives (policy and votes), legislative politics is prone to the ‘art of political manipulation’.\(^\text{25}\) In short, a firmer and richer understanding of how political parties might use legislative institutions to achieve their separate and often competing electoral and policy goals should be an indispensable part of future research.

DATA AND METHODS

Before discussing future directions of the presented research agenda more broadly, an acknowledgment of the sheer wealth of the presented data should spur the interested reader to develop a multitude of new research ideas. For the quantitative studies of legislative process presented in this volume, inference is necessarily a product of observations about both institutional structures and actor behaviour. Measurement of the underlying concepts remains difficult. To the extent that actors are operating strategically, it becomes challenging to measure actors’ intentions and separate them from institutional effects in a quantitative framework. Since many of these challenges are discussed elsewhere, it worth pointing out that the collectively collected data is all the more impressive and might only be rivalled by the data gathered by students of American legislative institutions.

The articles present data at the individual level of analysis as well as the legislative level. On the individual level, Bächtiger et al. collected and categorised over 1,700 speeches in the Bundestag and conference committee from the 1980s and 1990s, while Becher and Sieberer assembled nearly 1,700 legislators’ public explanations of their voting decision. The remaining articles largely rely on detailed bibliographical information on every federal legislative initiative that has been published by the Bundestag and Bundesrat and is available online for the period from 1976 onwards. The following features of the legislative process are analysed using this so-called GESTA data: Brunner and Debus concentrate on more than 500 motions in the BR during the 1990s, Miller and Stecker examine more than 500 committee decisions, Lehnert focuses on more than 400 conference committee decisions, and finally
Seemann, Manow and Burkhart as well as Lehnart et al. compile more than 2,000 Bundestag votes. In addition, Shikano analyses roll-calls in the Bundesrat during the period 1949 to 2005. This amazing task can only be outdone by collecting data on the first six legislative periods, which is likely to be considered as the time of consensus politics in Germany.

Given this large amount of data, what might be some methodological concerns for future work? Following Achen, two strategies are available and both of them are related to issues of measurement and modelling. First, research should aim at bringing theory and empirical implications closer together. For example, if the conference committee has the option of leaving a bill unchanged, modifying it or delaying its referral, all three options need to be identified. This identification then structures the estimation procedure. Likewise, while the ability to measure actors' preferences based on party manifestos or roll-call data is extensively discussed in the field, some other measurement problems remain. For example, if part of the definition of a key decision is that it is confrontational, it becomes 'tautological to some degree' (Miller and Stecker) to explain conflict politics via key decisions. In contrast, when strong theoretical expectations are absent, exploratory data analysis, simple cross-tabulations or sub-setting the sample serves as a basis for empirical generalisations. While Achen’s statement that ‘no specification with more than three explanatory variables is at all likely to have been checked adequately’ might be too strong, basic diagnostics and model heuristics such as cross-validation are required to substantiate empirical findings in a multivariate setting. In short, the richness of the GESTA data provides fertile ground for new theoretical conjectures as well as empirical generalisations about German legislative politics.

FUTURE CONSIDERATIONS

In this concluding discussion, I briefly elucidate two potential areas of future research that lie outside the considerations of the presented approach. These two areas might be called institutional transformation and policy dynamics. The first theme is an extension of the standard legislative rational choice institutionalist inquiry. Instead of asking what mechanisms determine cooperation and conflict under the influence of institutions, one might ask why and how rational actors adapt to changes in their environment and reconfigure legislative structures to their advantage.

Cox’s question as to ‘why are legislatures organized as they are?’ might serve as a starting point here. Since legislative rules and procedures are changeable, what are the conditions for reorganisation? For example, one might ask whether the use of packaged votes and large omnibus legislative is expanding. Why would a legislature occupied by rational actors create and maintain a situation in which nearly half of all legislative motions fail (as Figure 2 illustrates for the 7th to 15th legislative period in the Bundestag)? Do political parties create new institutional structures in order to evade the disadvantages of bicameralism or to capture its benefits (and if so why?)? For a specific example, why do German governments not internalise the costs by forming a larger coalition with several small opposition parties, thereby converting mixed states in the Bundesrat into government supporters? Druckman and Thies find evidence for the hypothesis that cabinets should incorporate extra parties
when it is necessary to ensure a majority in the upper chamber as well as the lower chamber. Another question might be why the government majority is willing to distribute committees proportionally to seat share and yield agenda-setting power to the Council of Elders. In short, there are large areas of fairly uncharted territory once we consider how actors transform institutional structures.

A final example employs some descriptive data from the Manow and Burkhart article. They show that, in recent years, government bypassed the act of forwarding a bill to the Bundesrat for a six-week-long period of first deliberation (Erster Durchgang). The questions arise: why did it take so long for government to discover this tool, and why does government not use it to its fullest extent? Indeed, why does government not invest even more resources into shortening the time necessary for a bill to become law? In fact, Figure 3 provides some empirical indication that the German legislative process has been streamlined since the 1970s. The figure displays the lifetime of all bills from their introduction to their final enactment as a law. The graph shows that, on average, legislative duration was reduced by about 50 days in the last three decades. In addition, extremely long deliberation processes of more than 600 days became a rarity in the last two legislative periods. My suspicion is that this trend is not due to political sources, such as divided government, but is rather a product of changes in procedures and rules of the legislative process itself. This suspicion is based on the expectation that rational actors are not just caught within a given institutional setting; instead they are able to reconfigure these structures to their advantage. This ability holds especially for the legislative realm.

The second theme of future research on legislative politics is the study of policy dynamics and is an attempt to formulate a new set of expectations regarding the nature of policy outcomes. While recent works on legislative politics in Germany have shied away from public policy-making, ‘who gets what?’ is still a crucial question for the public at large. Literature on American policy-making addresses this question
by studying the general properties of policy dynamics across all political issues. Researchers then ask why government prioritises some policy problems over others. They respond that humans (due to their cognitive constraints) and legislative organisations (due to their penchant for the status quo) process information disproportionally. Because both actors and institutions pay attention only to some parts of the environment, government is forced to sequentially catch up to the changing reality. Thus, policy-making is dynamic; it displays a pattern of extreme stability and disruption.

Do we find initial indicators for such a pattern in German legislative politics? Based on the GESTA data, Figure 4 displays the proportion of laws grouped by ministerial portfolio. The graph is purposely messy. First, it shows that some portfolios consistently occupy a considerable proportion of laws (such as the finance and interior ministries), while others gain prominence just for a single legislative period. Second, government creatively combines different portfolios with each other over time. This is an indicator of institutional reconfigurations. Beyond this chart, nearly all presented analyses in this volume include indicator variables for various public policy issues in their regressions. This inclusion is founded in the belief that institutional variations and partisan interests differ systematically across policy areas. In fact, in several articles some of these policy dummies are statistically significant and highly influential. However, there is very little discussion and theorising as to why this impact occurs. Future work might pick up from here and aim at integrating policy studies and institutional analysis. The outlined American policy-making literature can serve as a starting point for this endeavour.
CONCLUSION

Taken together, the articles in this volume present an important addition to the current state of German politics and the comparative study of legislatures. Regarding German politics, the volume reflects the growing understanding of Germany legislative politics as both consensual and conflict-laden. It shows that the logic of partisan competition is conditioned by a bicameral institutional arrangement. While political institutions might force compromise on the political actors, their behavioural inclinations appear to be combative. For comparative legislative studies, the papers illuminate how institutional variations at various decision-making nodes in the German legislative process influence strategic action and political outcomes. By focusing on individual processes, some of the more fine-grained mechanisms of legislative politics are clearly exposed. Future research might utilise these individual insights and concentrate on modelling the legislative process as whole. Finally, massive and detailed data collection and assembly efforts provide the necessary foundation for future work, including the analysis of policy outcomes.

NOTES

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im Bundesstaat. Regel- systeme und Spannungslagen im politischen System der Bundesrepublik Deutschland (Wiesbaden: Westdeutscher Verlag, 2000).
11. The scarcity of scholarly works on Germany that employ parties as the central actor in legislative bargaining might be due to the intellectual origin of the bargaining process, namely the American Congress.
20. Note that this game is also a zero-sum exercise.
27. Ibid., p. 448.
33. For example, Epstein and O’Halloran show that divided government changes the quality of legislation. When government is divided, the legislative branch delegates less policy-making authority to the executive and constrains ministries’ and executive agencies’ policy-making power more severely. D. Epstein and S. O’Halloran, Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Power (Cambridge: Cambridge University Press, 1999).