

ABSTRACTS*

Behnke, Joachim: Surplus Seats and Negative Vote Weight: Two-Member-Districts and Other Solution Proposals.

The Constitutional Court's sentence concerning the effect of the so-called "negative vote weight" in July 2008 set the task for the German Bundestag to reform the electoral law in such a way that this effect cannot occur again. Since the effect of the negative vote weight is closely related to surplus mandates, the Constitutional Court's sentence can be honoured by tackling the problem of such surplus seats directly. The currently most discussed proposal among scholars suggests compensating surplus mandates of one party with "superfluous" list mandates of the same party in other Länder. This proposal, however, is severely flawed. Among other shortcomings, it violates fundamental considerations of justice and fairness. Considering this, one substantive aspect of the reform ought to be aiming at making the emergence of surplus mandates as improbable as possible. This could be achieved by lowering the share of constituency seats of all mandates or by introducing two-member-districts, in which the two most successful candidates would be elected with the voters' first vote. [ZParl, vol. 41, no. 2, pp. 237 ff.]

Pappi, Franz Urban and Michael Herrmann: Surplus Seats But Without Negative Vote Weight: Feasibility, Consequences and Evaluation.

Under the current federal electoral law, an increase in the number of second votes for a given party may cause a loss of seats for that party. This so-called "negative vote weight" has recently been declared unconstitutional by the German Federal Constitutional Court. One way of eliminating the negative vote weight that has not received much attention in the current debate on electoral reform is allocating seats by states. Contrary to other approaches in literature, this one aims at preserving the existing mixed electoral system with its unique electoral effects – including the possibility of surplus seats –, instead of replacing it with a substantially different system. As surplus mandates are a means of facilitating parliamentary majorities they should be regarded as a suitable component of the German mixed electoral system and that they deserve to be preserved. [ZParl, vol. 41, no. 2, pp. 260 ff.]

Lübbert, Daniel: Negative Vote Weights in the German Federal Election 2009.

In July 2008 the German electoral law was declared unconstitutional by the German Federal Constitutional Court because it could violate the principles of direct and equal elections. Not much time is left until June 2011, the date by which the legislature needs to have amended this law in such a way as to eliminate the effect of negative vote weights. In order to support the related debate and to substantiate it with quantitative data, it is shown where and to which extent negative vote weights occurred again in the 2009 election. To assess possible consequences of electoral reform calculations are conducted for the most

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important proposals in the current debate how they would have changed the actual seat apportionment in the 17th German Bundestag if they had been enacted before September 2009. [ZParl, vol. 41, no. 2, pp. 278 ff.]

Linhart, Eric and Harald Schoen: Surplus Seats and Compensating Seats in Schleswig-Holstein: Ambiguous Electoral Law and Proposed Reforms.

The election for the Schleswig-Holstein Landtag was held concurrently with the election for the German Bundestag on September 27, 2009. For both elections, the mixed member proportional system was applied. Unlike the federal law, the Schleswig-Holstein electoral law allows for compensating seats, when surplus seats occur. However, the clause which regulates the compensation of surplus seats is unclear: For one, the maximum number of compensating seats is open to two different interpretations. For another, there are at least two possible ways how to technically allocate the compensating seats to parties. Both disputed aspects are not only important for the Landtag's seat distribution, but also influence which parties receive a parliamentary majority. Accordingly, the members of the Schleswig-Holstein state parliament are prompted to clarify the ambiguous passages in the electoral law and to regulate the way how to distribute compensating seats technically. Simulations help identify which alternatives fulfil various electoral system requirements. [ZParl, vol. 41, no. 2, pp. 290 ff.]

Gothe, Heiko: The Election of the Thuringia State Parliament on August 30, 2009: Disaster for the Christian Democrats under Dieter Althaus' Leadership Ends in CDU/SPD-Coalition.

The outcome of the election can be seen as notable in several respects. The Christian Democrats (CDU) were faced with a disastrous result, lost its dominant position in the Thuringian party system and needs to form a coalition with the Social Democrats (SPD), lead by the first female CDU Prime Minister in Germany. The CDU's loss of trust and reputation could this time not be made up by the popularity of the Prime Minister as *Dieter Althaus* started into the campaign without any advantage of incumbency. *Althaus'* way of dealing with the fatal ski accident he had caused, in which a woman was killed, left voters and his own party disconcerted. His reputation suffered enormously from his missing confession of guilt and the instrumental use of the accident for campaigning purposes. Despite its moderate results, the SPD was able to play the role as kingmaker given that no coalition could be formed without its participation. The hopes of the further strengthened party The Left to provide the prime minister were not fulfilled because the SPD preferred the CDU with later head of government *Christine Lieberknecht* as coalition partner. Both the Liberals and the Greens were able to re-enter the parliament after 15 years of absence, thus increasing the number of parties in parliament to five. [ZParl, vol. 41, no. 2, pp. 304 ff.]

Jesse, Eckhard: The Election of the Saxony State Parliament on August 30, 2009: Saxony's Role as Forerunner for the Federal Election.

In 2009, like in 2004, a candidate stood for election who had not been Prime Minister before. After a tiring election campaign, six parties managed to re-enter Parliament. This

time the CDU (after very quick coalition negotiations) formed a coalition with the FDP. Saxony was meant to serve as a pilot for the election of the Federal Government. The SPD has remained for the third time with a share of votes of about ten percent in a Diaspora situation. For the first time the share of votes of the left decreased in the Land. The party The Left was not successful in profiting from the double opposition bonus (in the Land as well as in the Union) even at a time of most difficult financial and economical political problems. In Saxony, the conservative camp has held a clear majority since 1990. [ZParl, vol. 41, no. 2, pp. 322 ff.]

Winkler, Jürgen R.: The Election of the Saarland State Parliament on August 30, 2009: On the Way to “Jamaica”.

The social structure and the political traditions of the Saarland have favoured the electoral choice of the Christian Democratic Union (CDU) since the 1950s. In 2009, however, a poor government performance reduced the CDU's re-election chances. The chances of the oppositional Social Democratic Party (SPD) to take over power in Saarland were minimized after the party The Left, under the leadership of Saarland's former Prime Minister *Oskar Lafontaine*, entered the political competition. As expected, the CDU lost the election, but as the strongest party their leader *Peter Müller* remained in power. The Left Party was able to mobilize former voters of the SPD and non-voters. Above all, unemployed workers and union members tended to The Left. The Liberal Party (FDP) improved its position in the new state parliament. The Greens could choose between joining a coalition with the CDU and the FDP (known as “Jamaica coalition”) or with the SPD and The Left. Their decision for the first Jamaica-coalition in a state constitutes a landmark in the “theory of political colours” in the Federal Republic of Germany. [ZParl, vol. 41, no. 2, pp. 339 ff.]

Niedermayer, Oskar: The Election of the Brandenburg State Parliament on September 27, 2009: The Brandenburg SPD Defies the Federal Trend.

Since the election took place on the same day as the federal election, considerable effects of the federal level were expected, in a negative sense namely for the SPD. In trying to counteract these negative effects, Brandenburg's SPD focused its campaign on the well-known and popular head of government *Matthias Platzeck*. The SPD made no statement about its coalition preference, while aside from the right-wing extremist DVU all other parties wanted to be its coalition partner. This prevented negative campaigning and *Platzeck's* main competitors *Kerstin Kaiser* (The Left) and *Johanna Wanka* (CDU) conducted what looked a lot like “wellness-campaigns”. With a remarkably higher result compared to the federal election, the SPD remained Brandenburg's strongest party, followed by The Left. The CDU once again came third, both FDP and Greens re-entering the state parliament for the first time since 1994, while DVU failed crossing the five percent hurdle. The SPD's good result is primarily credited to *Matthias Platzeck*, who left his competitors behind and was elected by voters across the board. Furthermore, the SPD was seen as the leading competence in almost all relevant policy fields. After a series of talks and for topical, personal and especially strategical reasons, the SPD decided to form a coalition with The Left. *Matthias Platzeck* was re-elected as head of government. [ZParl, vol. 41, no. 2, pp. 356 ff.]

Horst, Patrick: The Election of the Schleswig-Holstein State Parliament on September 27, 2009: Prime Minister on Call-Off Order Can Form Desired Coalition Government with the FDP After Early Election Call.

The Prime Minister's plan came out even: After *Peter Harry Carstensen* had broken the Grand Coalition in Kiel and called the state parliament election on the same day as the Bundestag election, he was able to build his desired coalition government with the FDP. The narrow victory of the CDU/FDP coalition which won 48 out of 95 seats in the state parliament was due to the overwhelming results of the FDP, the (limited) support of the national election tide and the SPD's weak performance. Although the election took place during a financial and economic crisis, economic issues did not play an outstanding role in the decisions of voters. Both parties of the governing Grand Coalition lost dramatically, and both prime ministerial candidates of CDU and SPD were not able to convince Schleswig-Holstein voters of their personal qualities and political skills. The old and new Prime Minister *Carstensen* made big advances to the FDP during the process of coalition bargaining and was considered a chief executive on call-off order when the coalition agreement was reached. Political pundits in Kiel speculate if *Christian von Boetticher*, leader of the CDU parliamentary group, might be replacing him at midterm. [ZParl, vol. 41, no. 2, pp. 372 ff.]

Ley, Richard: The Election of the Prime Ministers in the German Länder: Regulations and Practice.

Electing the head of the government is a main issue of forming a government in a parliamentary system. This applies to the German Länder as well. Because there is no new government without a Prime Minister, his election shall be deemed to be the origin for a state government. Comparing the regulations of the election process in the Länder concerning timing at the beginning of the legislative term, requirements for the candidate, procedures, and the required majority shows similarities and differences. Likewise, the practice in the Länder unveils differences too, for example with regard to the exercise of the secret ballot. Hence this collection of data for all German Länder can be seen as a source for future electoral reforms and constitutional amendments. [ZParl, vol. 41, no. 2, pp. 390 ff.]

Beek, Ursula J. van: South Africa: Liberal or Democratic?

This essay takes a historical-contextual approach as it sketches the political party scene in South Africa at the time of the last parliamentary elections in April 2009. It does so by tracing the various political strands in the anti-apartheid struggle with a view to assess their impact on the type and quality of democracy in South Africa today. The main focus falls on the interpretation of democracy by the ruling party, the African National Congress (ANC), during the period after *Nelson Mandela's* presidency and in the context of the dynamics between the rule of the Demos and the guarantees of liberal constitutionalism. ANC's policy resolutions taken at the party's 52nd conference serve as a basis for the latter part of the analysis. [ZParl, vol. 41, no. 2, pp. 438 ff.]

Kersting, Norbert: News on Floor Crossing. The Re-Introduction of the Anti-Defection Clause in South Africa.

In 2002 the anti-defection clause was abolished in South Africa. Between 2002 and 2008 members of the national parliament and local government councillors had the opportunity to cross the floor in a predetermined two week time period, one year after the election and one year before the next election. During this period they were allowed to join other parties or to build new parties without losing their political mandate, if they could convince ten percent of their partisan MPs to defect with them. The abolishment of the anti-defection clause was seen as necessary because of a de-alignment in the South African party system. In the years following the adoption of the floor crossing legislation, the possibility of floor crossing generated a number of problems. In a few cases members of Parliament did not cross the floor because of political reasons, but because of corruption and patronage. In the two week floor crossing period the media described various cases of political corruption, which harmed politicians' reputation in general. In 2008, due to the massive pressure by the media, this floor crossing legislation was abolished and the anti-defection clause re-introduced. This will not help overcome South Africa's political deficits: a quasi one-party dominance of the ANC, a non-stabilised party system as well as little autonomy for parliamentarians, which weakens the role of the National Assembly. [ZParl, vol. 41, no. 2, pp. 453 ff.]