

ABSTRACTS*

Volkmann, Uwe: Does constitutional law have a theory of the opposition – and does it need any?

Interpretation and application of constitutional law are often influenced by theoretical pre-suppositions, which then finally determine the content of constitutional law. In particular this can be observed in the periphery of the democratic principle where it not only shapes the legal view on the principle as such but also on related institutions and organizations (like parliament, government, political parties etc.). In its recent judgment on the status and the rights of parliamentary opposition the Federal Constitutional Court, however, backed away from any perception of opposition as a theoretical phenomenon; instead, it turned to purely formal and positivist handling of the case brought forward to it. Moreover it broke opposition down from a basically collective phenomenon to a mainly individual attitude of any single MP, thus depriving it from any practical political effect. The article analyzes the judgment and confronts it with the Court's reverse approach in other fields; the question then is why the Court refused to do here what it usually does in other cases. An explanation may be found in the prevailing theory of democracy itself which in Germany by a long tradition focuses mainly on the effective functioning of government and, in addition, is highly consensus-oriented, leaving hardly any space for genuine, not to speak of merely obstructing opposition. [ZParl, vol. 48 (2017), no. 3, pp. 473 – 490]

Achenbach, Jelena von: Parliamentary control and separation of powers in the ruling of the federal constitutional court.

The constitutional right of parliament to request information from the government is a defining part of the system of checks and balances within the separation of powers between the executive and the legislative branch. Most importantly, the scope of parliamentary rights to be informed about executive action determines to what extent the government can be held accountable by the parliament. Against this backdrop, the contribution analyses how the German Federal Constitutional Court in its case-law on parliamentary rights to information construes the separation of powers between the German Federal Parliament and the German Federal Government. Especially focusing on the role of the parliamentary minority, it develops a critical account of the Court's concept of parliamentary control: As a result of partially equating parliamentary knowledge and parliamentary control, the Court over-extensively restricts the publicity of governance and of the reasoning for executive action. The contribution argues that parliamentary rights to information, as exercised by the opposition, generally do not lead to undue inferences with the government, but establish a discursive relation that forms a desired part of parliamentary government. [ZParl, vol. 48 (2017), no. 3, pp. 491 – 515]

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Cancik, Pascale: “Effective opposition” in parliament – an absent discussion?

The principle of “effective functioning of the opposition” in parliament is well recognized in German constitutional debates. It gained new interest due to the forming of a “Qualified Grand Coalition” (supported by more than 75 percent of MPs) in 2013. Its exact meaning, however, is unclear. Would it, e.g., be acceptable that no minority investigation – a main instrument of opposition in Parliament – could be installed throughout the whole legislative term since the constitutionally required quorum (25 percent) cannot be reached? The present discussion avoids these relevant questions of constitutional law and policy. A compromise on parliamentary rules in 2014 pragmatically prevented the question of opposition from escalating. But after a ruling of the Federal Constitutional Court it is seen as dubious in terms of constitutionality. The concrete rights and duties following from the effective opposition principle thus still have to be determined. Also a possible future situation, a parliament with a highly fragmented opposition should be discussed in that regard. The present discussion shows a tendency towards a hidden skepticism regarding parliamentary opposition. This could weaken parliamentary democracy, which relies on the functioning of parliamentary opposition, not least because opposition actors perform their control tasks in the public eye. [ZParl, vol. 48 (2017), no. 3, pp. 516 – 534]

Sydow, Gernot and Hendrik Joof: “Her Majesty’s Opposition”: An institution without power? Rights of the parliamentary opposition in Great Britain.

The role of parliamentary opposition in the German Bundestag is under scrutiny. With the establishment of a Grand Coalition and ongoing party fragmentation, how can an opposition, which lacks to achieve the required quorums, be an effective one? From the German point of view a minority operating under predefined characteristics must be able to control the government and influence the legislative output. The Westminster system, on the contrary, rejects the idea of the opposition playing an active role in the decision-making process and cooperating with government majorities. Its sole function is to present itself as an alternative government-in-waiting. Nonetheless, the opposition is a parliamentary institution with specific rights whose clout is not subject to certain quorums. This structure enables the opposition to criticize the government publicly and to demonstrate an alternative to the electorate which is fit for office without time delay. The effectiveness of these rights is indifferent to changes in the landscape of political parties. The Westminster system, generally not regarded as being overly opposition friendly, proves exceptionally durable and robust in times of party fragmentation when it comes to the rights of the opposition. [ZParl, vol. 48 (2017), no. 3, pp. 535 – 556]

Konrath, Christoph: Parliamentary opposition in Austria: law and practice in times of a fragmented party system.

From 1945 to the late 1980s, Austrian parliamentarism was characterized by coalition governments that secured a significantly high number of seats in parliament. Ever since, opposition parties have continuously gained seats and the political party system has become more diverse and volatile. This development has led to continuous amendments of the Rules of Procedure of the National Council, the lower chamber of the federal parliament. So far, most adaptations were based on securing minimum quotas of speaking time and the use of minority rights as well as proportional representation in parliamentary committees.

However, a closer look on the developments over the last years makes clear which effects may come with such approaches in parliaments dominated by party groups. Internally, they can lead to blockade and overload of sittings and procedures. Externally, they can boost the loss of trust in parliaments and the lack of understanding of parliamentary practice and procedure. [ZParl, vol. 48 (2017), no. 3, pp. 557 – 574]

Knellingen, Wilhelm: Schleswig-Holstein's state election on May 7, 2017: Defeat of the "Coastal Coalition" and first "Jamaica Coalition" in Northern Germany.

Apart from some turbulence in the middle of the legislative period, the "Coastal Coalition", including the SPD, Bündnis 90/Die Grünen and the SSW, was able to follow a stable and smooth course. Results in many previous elections in Schleswig-Holstein were narrow so that the parties had to expect that even minor changes in public opinion would be crucial. Nevertheless, the "Coastal Coalition" began the election campaign as the favorite since the opinion polls did not signal a change of mood but rather comparatively high satisfaction with governmental policy. Nevertheless, the CDU asserted itself not only as the strongest party in the state but also increased its share of the vote to 32 percent. In contrast, the SPD lost significantly. Bündnis 90/Die Grünen came close to confirming their share of the vote, while the FDP achieved the highest gains. The SSW, the party of the Danish minority, lost votes, whereas the AfD, a new right-wing populist party, entered the state parliament for the first time. The course was already set during the evening of the elections in the direction of a coalition between the CDU, Bündnis 90/Die Grünen and the FDP – their party colors are: black, green and yellow, hence "Jamaica". *Daniel Günther* was elected as the new minister-president of Schleswig-Holstein at the end of June 2017. As a result, the state is ruled by a governmental majority that transcends traditional party lines. [ZParl, vol. 48 (2017), no. 3, pp. 575 – 593]

Wagschal, Uwe, Thomas Waldvogel, Thomas Metz, Bernd Becker, Linus Feiten, Samuel Weishaupt and Kamaljeet Singh: The televised debate and the Schleswig-Holstein's state election: The Debat-O-Meter as a new instrument in political communication studies.

Due to their major role in election campaigns, televised debates between political candidates ("TV-Duelle") have attracted substantial scholarly attention. A large body of work has used physical feedback devices to obtain measurements of viewers' reactions to a debate in real-time (RTR – Real-Time Response). However, this approach is limited to lab-based settings with potential negative ramifications for e.g. external validity. In a study in the context of the Schleswig-Holstein election in 2017 the Debat-O-Meter was used, a novel Internet-based web application for smartphones and tablets that allows us to evaluate the effects of televised political debates on large-scale audiences following the discussions in the setting of their private homes. The data show that RTR-measurement outside the lab is possible with a big audience of more than 850 participants due to a new way of engaging people to RTR-measurement with media partners. We identify challenger *Daniel Günther* (CDU) as the winner of the debate and present party identification, RTR-scores and the candidate's evaluations in the pre-survey as predictive variables. [ZParl, vol. 48 (2017), no. 3, pp. 594 – 613]

***Bajohr, Stefan:* North Rhine-Westphalia's state election on May 14, 2017: Black-yellow instead of red-green.**

North Rhine-Westphalia's red-green government led by state premier *Hannelore Kraft* was able to produce some successes (more people in work, no new debt, advancement of women, inclusion, lignite mining reduction); however, a majority of voters was not convinced by the political balance sheet. As early as one year before the election date the weak poll results already hinted that a loss for the coalition government was possible – especially due to the weakness of the Green Party. The opposition – painting a dark picture of the situation in the state – scored on issues of growing concern among all voters: security, education and transportation. The election campaign was uninspired, campaign advertisements were largely unimaginative. The SPD had enjoyed a revival in opinion polls after the nomination of *Martin Schulz* as the party's candidate for chancellor, then slipped in the polls and was eventually overtaken by the CDU during the last week before the election. A decisive factor were the excellent election results of the FDP. They allowed the party to form a coalition government with the CDU without the need for a third partner. The black-yellow government led by state premier *Armin Laschet* was formed on June 30, 2017. [ZParl, vol. 48 (2017), no. 3, pp. 614 – 633]

***Vogeler, Colette S.:* The role of the German states in animal welfare – do parties matter?**

In what ways do political parties shape policymaking in the German single states? This question is analyzed by the interrelation of government coalitions and policy formulation in the field of animal welfare policy. The study reveals that major differences exist between the political parties concerning the priority of animal welfare as well as its details and that different political coalitions in the federal governments are an important explanatory variable for divergent animal welfare policy. Changes towards the improvement of this policy – especially for farm animals – are predominantly driven by state governments in which the Green party is a partner in the government coalition. By systematically including animal welfare policies into policy analysis for the first time in Germany the study creates the foundations for future research perspectives within this disregarded policy field. [ZParl, vol. 48 (2017), no. 3, pp. 634 – 656]

***Kitzing, Michael:* State parliamentarianism after 1945 as a topic of historical research: questions – perspectives – resources for southwest German parliaments.**

When researching the history of constitutions since 1945, topics chosen have often been the executive branch or the national parliament (Bundestag) while at the same time the history and the development of the state parliaments have been seriously neglected. Taking the southwest German parliaments from 1946 till 1952 and the parliaments of the state of Baden-Württemberg as of 1952 as examples, important research questions are discussed leading to a future, more intensive examination of the work and also of the self-concept of state parliaments. An analytical framework is developed that first asks about the main ideas, the self-concept and the legal basis (including their origins) of the parliaments and then, in a second step, how the parliaments in their constitutional reality were able to do justice to their assigned tasks. In a third step the main focus is on exploring aspects of the social and cultural history of the parliaments through selected biographies of their members. Previously unknown or not sufficiently regarded sources of information are also highlighted. [ZParl, vol. 48 (2017), no. 3, pp. 657 – 675]

Kluth, Winfried: The forced amendment of the constitution: The ruling of the Federal Constitutional Court on the National Democratic Party of Germany and parliament's reaction.

In its ruling of January, 17 2017, the Federal Constitutional Court decided that the National Democratic Party of Germany (NPD) cannot be prohibited because there are no indications that it will succeed in achieving its anti-constitutional aims. The notion of a free democratic basic order as formulated in Art. 21 sec. 2 GG encompasses the central basic principles that are absolutely indispensable for a free constitutional state: human dignity (Art. 1 sec. 1 GG), the principle of democracy and the rule of law. The NPD's political concept is aimed at abolishing the free democratic basic order. However, a factor that precludes the party's prohibition is that the element of "seeking" (darauf ausgehen) according to the meaning of Art. 21 sec. 2 sentence 1 GG is not met. The ruling indicates that parliament may change the constitution to allow for less severe sanctions. Following this advice, parliament has changed Art. 21 sec. 2 GG to allow for cutting off public financing to political parties which aim at abolishing the free democratic basic order. [ZParl, vol. 48 (2017), no. 3, pp. 676 – 690]

Erbentraut, Philipp: Oligarchy, democracy, anarchy – three ideal models of party organization in German pre-March.

How were political parties in the political philosophy of the German pre-March ("Vormärz") 1815 till 1848 perceived? A revision of some long-standing prejudices in favor of a more benign view on the pre-March concept of political parties is necessary. In fact a modern and elaborate theory and sociology of political parties is already to be found at the eve of the 1848 German revolution. Although among the relevant academic literature, early German party theorists in general were accused of having interpreted parties first and foremost as loose associations of ideologically like-minded persons ("Gesinnungsgemeinschaften") being unable or unwilling to tolerate real political groups. In fact an understanding of parties as political organization competing for power already was a central element of the pre-March concept of party. The general insight into the organizational character of political parties has led the theorists, in a second step of analysis, to deal more closely with the preferred model of party organization. If the ideas of the internal structure of parties, which were circulating at the time, were to be bundled together, one can already speak of three ideal models of party organization: oligarchy, democracy and anarchy. The findings are based on a broad analysis of more than 250 contemporary German text sources originating from 1815 to 1848. [ZParl, vol. 48 (2017), no. 3, pp. 691 – 711]

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