

ABSTRACTS*

***Austermann, Philipp:* How the Federal Constitutional Court perceives the Members of Parliament.**

Ever since the Federal Constitutional Court was founded in 1951, it had to deal with the status of the Members of Parliament, especially their income situation. Its decisions strongly effect the Members' legal position. The remuneration for the Members of Parliament has been subject of several proceedings. In an important key case, known as the "Diätenurteil" ("remuneration case") in 1975, the Court decided that the "job profile" of the deputies had changed and had become a "fulltime-job". Therefore the nature of the remuneration had changed as well. It was no longer seen as a non-taxable representation allowance but as a taxable salary. The Court also tried to answer other questions concerning the parliamentary mandate. In this and following cases it prohibited extra allowances for Members of Parliament with a special function in a parliamentary standing committee or a parliamentary party (with an exception for the President of the Parliament, the vice-presidents and the chairmen of the parliamentary parties). However, the reasoning in these decisions is not very convincing. In 2007, the Court had to deal with the question whether other paid work at the time of the mandate is legally acceptable. It was not able to find a common position in that case but was divided into two "fractions". [ZParl, vol. 43, no. 4, pp. 719 – 726]

***Brockmann, Hilke:* Women and mothers in the German Bundestag: An explorative longitudinal study.**

Are women and men, mothers and fathers represented equally in the German Bundestag? Or does politics remain a male-dominated affair and is that owed to the fact that most women have and raise children, which restrains their availability for the demanding time schedule of a politician? This question is highly relevant, given the current debate about a female quota for leadership positions in Germany's economy. A comparison of legislative terms before and after the introduction of a female quota by political parties shows that indeed the number of women increased, but mothers remain considerably underrepresented. The degree of underrepresentation varies between parties. In the CDU/CSU and FDP it has increased significantly. However, a mother quota has potential advantages and disadvantages which are discussed. [ZParl, vol. 43, no. 4, pp. 727 – 738]

***Kintz, Melanie:* Double quota for East German female parliamentarians?**

The assertion that East German women in the Bundestag held a double advantage in the recruitment to intra-parliamentary leadership positions during the period from 1994 to 2010 is only partly true. They enjoyed such a bonus in the parliamentary party group of the Left Party. In all other parliamentary parties, East German women are represented well but below the level of their West German female and male colleagues. Furthermore, East Ger-

* Diese sind in deutscher Sprache zu finden auf www.zparl.de beziehungsweise www.politik.uni-halle.de/zparl.

man male parliamentarians are under-represented in intra-parliamentary leadership positions. And while some measurements indicate that the representation of East German deputies in leadership functions outside of the Left Party's parliamentary party group has improved over time, this is not due to a rising number of members holding positions but to a declining number of members serving in the parliamentary parties Greens, FDP, SPD and CDU/CSU. Only in the Left Party a rising number of East German position holders is found. [ZParl, vol. 43, no. 4, pp. 738 – 753]

Kaltenpoth, Christina and Karsten Mause: Skills shortage in the political business? On the economic competence of economic policy makers in Germany.

In the wake of the recent financial and economic crisis it has been claimed sometimes that German economic policy makers lack economic expertise. By examining a sample of 234 Ministers of Economic Affairs at the federal and state level in Germany since 1945 as well as 73 members of the German Bundestag's Economic Committee since 2005, it turns out that the public criticism hits a nerve: About 27 percent of the considered Ministers of Economic Affairs and 29 percent of the committee members have neither a formal economic education (i.e. degree in economics and/or a commercial training) nor gained work experience in businesses before they received their political position. There are good arguments which hold that economic policy makers without economic expertise are rather unproblematic for the functioning of a society. However, citizens who wish to be ruled by economic policy makers with economic training/experience must hope that many other citizen/voters also have such a preference. If this is the case, vote-maximizing parties and governments would have to ensure that they fill political positions in the field of economic policy with individuals qualified in this field. [ZParl, vol. 43, no. 4, pp. 753 – 765]

Manow, Philip and Peter Flemming: The male and female candidate – no longer a largely unknown species.

How effective are elections in selecting and de-selecting MPs? How do electoral rules affect descriptive representation? To answer such fundamental questions, information is not only needed on those elected to parliament but also data on all those who stood for election. In this article fundamental questions of democratic selection and representation are addressed on the basis of a new data set containing information on each person who ever ran for a seat in the German Bundestag. This new dataset provides us with a complete picture of the personal side of political representation in Germany for the last 60 years – from 1949 to 2009. We look at the different career sequences that typically lead to a seat in parliament, and we investigate the determinants of women's representation, both over time and with an inter-party comparison. [ZParl, vol. 43, no. 4, pp. 766 – 784]

Groh, Kathrin: The development from member-parties to electoral-professional parties – Does the German constitution imply a certain type of political party?

Whereas catch-all parties have dominated the battle for popular support ever since the Federal Republic's foundation, recently a trend has set in for them being replaced by new party types like cartel parties, parties of career politicians, of functionaries, of parties in parliament

or electoral-professional parties. This leads to the question, whether the constitutional conceptions of how parties work and what their role is as “transmission belt” between the people’s will and the government’s decision-making are still able to keep up with the new reality of party-democracy. This can hardly be affirmed for the parties’ “constitutional mandate” of fulfilling intermediation and linkage functions; and especially the regulations on the financing of political parties do unveil strong evidence for legal revisions in this context. [ZParl, vol. 43, no. 4, pp. 784 – 798]

Anan, Deniz: Representational cultures and cultures of decision-making in comparison. The party conventions of the FDP and the Greens.

The parties in Germany seem to resemble each other more and more in organizational matters. However, an analysis of the charters and the participant observation of the conventions of the FDP and the Greens show that significant differences persist. These differences are related to both the representational cultures and the cultures of decision-making and can be traced back to the different origins and self-concepts. The FDP’s roots as a “Honoratiorenpartei” (party of notables) are thus reflected in the dominance of parliamentarians and the perception of the office of a delegate and a board member as an honorary post. In addition, intraparty elections are based on the classical liberal idea of representative democracy. However, with the Greens, where board members and delegates receive money, subdivisions have extensive rights to submit motions and to call meetings, and even the smallest district section is represented at the federal party convention. Furthermore, the self-concept as an anti-party party and the ideal of grassroots democracy continue to have an effect. On the other hand both parties feature partly astonishing similarities, ranging from meetings on weekends to the irrelevance of direct democratic decision-making procedures. [ZParl, vol. 43, no. 4, pp. 799 – 816]

Pilz, Volker: Mundatwald remains German! How the German Bundestag’s Committee on Foreign Affairs hampered the ratification of the Franco-German Treaty of July 31, 1962.

There is only one case in which an international treaty was denied by the German Bundestag based on Article 59 of the German Grundgesetz: Fifty years ago the Franco-German Treaty of July 31, 1962 was signed. According to that treaty the Mundatwald, a piece of forest in the south of Rhineland-Palatinate west of Karlsruhe, was designated to become part of the French territory. The Committee on Foreign Affairs declined to ratify the treaty due to serious objections and did not pass the Consent Act to the Bundestag’s plenary assembly. That very case and the lessons learnt by the government are outlined here in more detail. [ZParl, vol. 43, no. 4, pp. 816 – 830]

Peters, Butz: Parliamentary committees of investigation (Untersuchungsausschüsse): The rights of the minority.

In parliamentary committees of investigation the qualified minority is entitled by the constitution to participate in the investigation on equal footing. Hence the minority must be able to enforce its understanding and concept of an adequate clarification of facts. In par-

ticular, when the enquiry's fact-finding is impacted by procedural law, the minority is allowed to co-determine the procedures. This is the case regarding decisions on motions to take evidence, the enforcement of evidence orders, special sessions, means of coercion, legal means, the insight into non-repudiation protocols and records of the committee, the final report and the completion of the proceedings. In these cases a "qualified right of motion" is in place. The majority may only refuse the motion of the qualified minority if it can base its refusal on constitutional grounds, such as unsuitable evidence, incorrect or illegal means of gathering the evidence. The refusal requires constitutionally sound grounds. The minority may secure legal protection only in case of an institutional controversy, unless the law determines otherwise. The constitutional depth of control is restricted to the control of plausibility, abuse und arbitrariness. [ZParl, vol. 43, no. 4, pp. 831 – 853]

Mader, Oliver: Petitions to the European Parliament and judicial control of decisions taken by its Committee on Petitions.

According to Article 227 of the Treaty on the functioning of the European Union and Article 44 of the Charter of Fundamental Rights, citizens of the Union have the right to address petitions to the European Parliament. From the perspective of the Parliament, this fundamental right corresponds to its duty to receive petitions, and then, provided that they are admissible, to examine their contents, and provide petitioners with substantive opinions. Admittedly, the latter are not entitled to remedies in relation to the matters raised. Nevertheless, certain elements of the fundamental right of petition can be enforced before the EU judge. Unjustified refusal to deal with the substance of an admissible petition is a case in point, because such refusal prejudices effective exercise of the right of petition. Rejection of a petition on grounds of inadmissibility can be checked. The Committee on Petitions must set forth its reasons to classify a petition as inadmissible. In the same way, a petition must be accessible to judicial review if, on the one hand it was considered admissible, but on the other hand, the Committee did not deal with it. The possibility of referring an issue to other institutions is only open to the Committee, to the extent that it refers the matter to the European Ombudsman. And even then, the petitioner must have agreed to this referral in advance. Against this background, the practice of the Committee, introduced in 2011, of "filtering" petitions solely on the basis of a free assessment of their "relevance", designed to avoid dealing with them, either by filing or referring them elsewhere, is not compatible with EU law. [ZParl, vol. 43, no. 4, pp. 854 – 872]

Zähle, Kai: Bell or Gong: Acoustic signals in parliamentary practice.

Acoustic signals are among the parliamentary peculiarities that have a long tradition. In the course of a plenary meeting, the bell or chime can announce parliamentary events and the bell of the speaker may ring during heated debates in order to restore order. The speaker's bell enjoys a prominent role and its use in German Parliaments can be traced back to the beginnings of the Frankfurter Nationalversammlung (Frankfurt Assembly) in 1848. According to the level of autonomy of the parliaments of Bund and Länder, particular sound signals have emerged with different meanings. The signals are bell, gong, horn, and chime. Although the way the signals are used is sometimes comparable, each parliament has its own rules for the signals: for the call to meeting; the opening; and the management of a meeting. Further-

more, it is clear that phrases used to describe current parliamentary business reflect historical uses of sounds in parliamentary procedure. [ZParl, vol. 43, no. 4, pp. 872 – 886]

Ganghof, Steffen, Christian Stecker, Sebastian Eppner and Katja Heefß: Flexible and inclusive majorities? An analysis of law-making coalitions during the minority government in North Rhine-Westphalia.

How minority governments organize parliamentary support for their legislative program is analyzed for the minority cabinet of SPD and Greens in North Rhine-Westphalia between 2010 and 2012. The focus lies on the flexibility and the inclusiveness of law-making coalitions. An analysis of all 59 adopted laws reveals a limited degree of flexibility: the Left Party was the main support party in parliament but some bills were adopted by coalitions of SPD/Greens with CDU and FDP. That 74 percent of all non-technical bills were approved by minimal-winning coalitions sheds light on the inclusiveness. [ZParl, vol. 43, no. 4, pp. 887 – 900]

Lehnert, Detlef: An „obscure“ father of the Constitution of Weimar? – or, how Hugo Preuß obtained his mandate and used it.

For three reasons, *Preuß*'s concept of parliamentarism has not yet been comprehended correctly: Firstly, based on a „Bonn is not Weimar“ perspective he has been blamed for aberrations since 1923, which he criticized by means of original intentions while still alive. Secondly, his selective reference to *Robert Redslob*'s comparative analysis of parliamentary systems has to be read conceptionally in terms of deliberative complements of representative democracy; based on the situation he expected a President of the kind of his constituent *Friedrich Ebert* to essentially concentrate the parties of the Weimar Constitution, SPD, DDP and Zentrum, which had not gained any governmental experience during the Kaiser's Empire. Thirdly, *Preuß* is often equated to mainstream left-wing liberals, which misconceives his genuinely left-democratic origins in the circle of the Berlin „social-progressives“, which is reflected by the fact that he was elected city-councillor with the votes of the SPD in 1910. This contribution in particular exploits publicistic material unknown to date, in order to finally render *Preuß*'s constitutional mandate in 1918/19 less „obscure“ than it appeared to many contemporaries and the later-born. [ZParl, vol. 43, no. 4, pp. 901 – 914]