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Rule Makers and Rule Takers: On Volkspartei Adaptation and Strategy.

CHARLES LEES, Department of Politics, University of Sheffield (UK)

ABSTRACT

The last three decades has seen a steady electoral decline in the Volksparteien, culminating in the historically low share of the vote garnered by the CDU/CSU and SPD in the 2009 federal election. Despite this low vote share, and the poor performance of the SPD in particular, this article argues that party system change has in many ways enhanced the coalition options available to the Volksparteien. However, with reference to the notion of path-dependence and the associated role of rules, norms, and beliefs in locking-in standard operating procedures, the article argues that the CDU/CSU is better placed than the SPD to take advantage of these new strategic options. This is because the CDU/CSU has been and remains more capable of shaping German party politics, whereas the SPD has internalised a more reactive role. The article examines why this is the case and discusses how the SPD might overcome path-dependence and, in doing so, transform its strategic prospects.

INTRODUCTION

The outcome of the 2009 federal election saw the combined vote of the two Volksparteien (catch all parties) fall to an historic low of 56.8 per cent. This was down 12.6 per cent from the combined 69.4 per cent share they won in the 2005 election and a pale shadow of the overwhelming support the Volksparteien enjoyed over the eight elections from 1961 through to 1987, in which they consistently won over 80 per cent of the vote and, in 1976, managed to gain 91.2 per cent of the vote. Indeed, the 2009 result was even worse than the 60.2 per cent of the total vote share that the CDU/CSU and SPD won in 1949, before the consolidation of the party system began.

On the face of it, the 2009 election result is deeply worrying for the two Volksparteien. The CDU/CSU only won 33.8 per cent of the vote, down 1.4 per cent on the 2005 election and way down on the 50.2 per cent won in 1957. For its part, the SPD only won 23 per cent of the vote, down 11.2 per cent from 2005 and even further from its best electoral performance of 45.8 per cent in 1972. Moreover, the 2009 election saw the three smaller parties within the German party system all make gains: the Greens won 10.7 per cent (up from 8.1 per cent in 2005), the Left Party 11.9 per cent (up from 8.7 per cent in 2005) and, most notably, the FDP won 14.6 per cent (well up from 9.8 per cent in 2005). Such a shift in the relative weights of the parties arguably does have some impact on what has become the *de facto* constitutional role of the Volksparteien.

Article 21 of the Basic Law states that ‘political parties shall participate in the formation of the political will of the people’ and the Volksparteien, more than other political parties, have internalised this integrative function to such an extent that any perceived loss of public support for them has direct implications for wider system support. A more sanguine view, however, is to regard the decline of the Volkspartei vote as indicative of the emergence in the Federal Republic of a ‘fluid party system’¹, reflecting broader changes in a society that is more diverse, pluralistic, and de-aligned than was the case in the past (see Dalton and Weldon in this Special Issue).

A full coverage of this debate is beyond the scope of this article. The article does, however, work from the somewhat counter-intuitive premise that in strategic terms the changes noted above can *potentially* enhance the strategic position of the Volksparteien in the coalition game. This premise has been elaborated on in more depth elsewhere² but, to sum up, it works from the argument that, despite their relative electoral strength in the 1960s and 1970s, the Volksparteien were nearly always forced to bargain with the FDP, which acted as the ‘kingmaker’ within the party system and consequently punched far above its weight in the coalition game. By contrast, the emergence of the Greens and the PDS (later the Left Party) means that, in most instances, no single small party can now act as kingmaker in this fashion. In addition, because of their relative positions in ideological space, the small parties would have difficulty acting in concert to extract concessions from the Volksparteien. Thus, even when smaller parties perform extraordinarily well (as the FDP undoubtedly did in 2009), the Volksparteien are in principle less vulnerable to threats of a decisive defection by small parties to alternative coalitions.

But the reader will note the use of the word *potentially*. For although we might discern political opportunities within a certain set of structural attributes it cannot be in a deterministic fashion and it is down to political agents to (1) identify these attributes as political opportunities rather than threats; (2) possess the political skills and acumen effectively to pursue these opportunities; and (3) enjoy sufficient resources (be it political authority, electoral and legislative support, or even sheer luck) to overcome the inevitable constraints on agents’ strategic potential. When all three of these factors are in alignment then agents are able to, as it were, ‘make the political weather’: a point we shall return to in the conclusion to this article. However, to demonstrate how far short of this ideal political agents can fall, consider the fate of the SPD over the period 2005-2009.

The SPD went into the 2005 federal election in some disarray. Indeed, the election had been called a year earlier than scheduled after the incumbent Chancellor Gerhard Schröder contrived to lose a vote of no confidence in order to wage a *Lagerwahlkampf* to re-establish discipline within the SPD, head off a rebellion by the left of the party's parliamentary party, and also deny the PDS and the newly formed 'Electoral Initiative for Social Justice', or WASG, the time to merge and consolidate a genuinely 'national' party³. Yet the outcome of the 2005 election produced a relatively benign institutional configuration for the SPD in the new Bundestag. The SPD had won 222 seats, only four behind the CDU/CSU, controlled the median legislator within a legislature with a left majority, and as a result enjoyed more feasible coalition options than the CDU/CSU. Moreover, the eventual coalition agreement between the CDU/CSU and SPD dealt the SPD a strong hand in the division of ministerial portfolios, an outcome that seemed to reflect the strong strategic position enjoyed by the SPD⁴. Yet, if the SPD was indeed dealt such a strong hand in 2005, it played that hand abominably. In the following four years as junior member of the Grand Coalition the SPD was comprehensively outflanked by its senior coalition partner – and, in particular, by Chancellor Angela Merkel – underwent a string of leadership crises, and endured a protracted fall in its opinion poll ratings, culminating in the historic electoral disaster described above. Elements of this cumulative misfortune, such as the impact of the global financial crisis (from which centre-left parties across Europe signally failed to derive any electoral advantage) or even the ill-health that ended the short-lived leadership of Matthias Platzeck, were beyond the SPD's control but, nevertheless, on balance it was the architect of most of it. Or perhaps 'architect' is the wrong word, for what seemed to characterise the SPD – in its failure either constructively to engage with the Left Party or to formulate an electorally attractive centrist narrative, its lack of emotional appeal to its core working class voters, its inability to counter the 'rhetorical social democratisation' of the CDU/CSU under Angela Merkel's leadership⁵, or its nomination of the decent but uncharismatic Frank-Walter Steinmeier as Chancellor-Candidate – was an extraordinary passivity, bordering on fatalism. In short, unlike the CDU/CSU, the SPD seemed not only unable but also unwilling to make the political weather.

This article explores why this might be the case. It argues that, partly through luck and good fortune, but also through a clearer strategic calculus and an ability to shape political events rather than merely react to them, the CDU/CSU is, and has historically been, a more effective political competitor than the SPD. The key to why this is the case lies in the related notions of institutional lock-in and path-dependence. In short, the article argues that at key junctures in the

institutional development of the Federal Republic, the CDU/CSU has not only successfully identified the political opportunities inherent within these junctures but also possessed the political acumen and resources to pursue those opportunities. It will be argued that such junctures, such as during the period of Allied Occupation and subsequent foundation of the Federal Republic or the collapse of the GDR regime and subsequent unification process, not only set up or re-enforced a set of institutional structures, but also buttressed the beliefs, rules, norms, and standard operating procedures (SOPs) that underpin those structures and mould their development going forward. Thus, in playing the decisive role in these junctures and the early moves associated with them, the CDU/CSU was not only better placed to work with the grain of institutional practice going forward but also to shape or, when necessary, even break with patterns of path-dependence. By contrast, and with the important exception of Brandt's *Ostpolitik*, the SPD was forced into and, it is argued, has internalised and continues to pursue a reactive role within the Federal Republic's political system. In the language of Wolfgang Streeck and Kathleen Thelen, therefore, the CDU/CSU are more often than not the 'rule makers', whilst the SPD tend to be the 'rule takers'⁶.

The rest of the article is structured as follows. In the next section, the notion of path-dependence and its impact on institutional agents is discussed. Through reference to the evolutionary economics literature, I adapt a framework of path dependence that is not over-deterministic, allows for significant political agency and change, and develop an organising narrative that is used later in the article. Second, the article provides an historic overview of the roles of the Volksparteien within this rule making/rule taking format and builds upon the point made above about the SPD's reactive role in German politics. Third, I return to our framework of path dependence and a discussion about the persistence of SOPs, which actors they benefit and why, and how, in the context of the SPD's relative strategic weakness, path-dependence might be overcome by political agents.

INSTITUTIONS, PATH-DEPENDENCE AND POLITICAL AGENCY

There is no agreement as to the manner in which agents interact with institutions. Rational actor-centred approaches⁷ regard institutions as artefacts of 'congealed tastes'⁸ or, in those accounts where institutional context is more privileged, as 'prescriptions' for strategic action⁹. Such 'thin' accounts of institutions have parsimonious elegance but, for students of German politics, they force us to discount too much of the warp and weft of politics in the Federal Republic that make our field of study so rich. On the other hand, constructivist, sociological,

and normative institutionalist approaches reverse the polarity of analysis and foreground established practices, beliefs, and values as profound constraints on agency. This notion of a 'logic of appropriateness'¹⁰ is intuitive and plausible but also imposes *a priori* limits on the extent of transformative change brought about by strategic actors within institutional settings. In the context of the study of German politics it is, as it were, the reification of the *Sonderweg* narrative and therefore equally unhelpful.

In addition, although both the rational choice and normative institutionalist approaches have analytical power they attach little importance to how and why institutional settings, principles, and practices emerged in the Federal Republic, for instance, in the first place. Insights from the Europeanisation literature¹¹, for example, demonstrate that institutional consolidation and change is complex and non-linear, marked by a 'complex causality'¹². We find similar degrees of nuance within historical institutionalist narratives¹³ in which institutions' evolution¹⁴ is occasionally marked by 'punctuations' or junctures in which 'rapid bursts of change [are] followed by long periods of stasis'.¹⁵ Thus these accounts stress how the practices - and the rules, norms, and beliefs in which they are embedded - that are in place at the time of institutional formation persist over the long run. As a result SOPs develop that serve to routinise activities and cultivate incremental rather than fundamental change. This incremental process is not, however, set in stone and we can observe junctures in which institutions undergo rapid change. Thus, despite a bias towards inertia, institutions do adapt over time, either because of changes in the external environment, and changes in internal perceptions of the real or perceived performance of such institutions in the context of the environment in which they operate. Nevertheless, it requires agency - be it individual or collective, goal-directed or dispersed and cumulative - to overcome path-dependency.

This understanding of path-dependency is not a fatalistic and/or deterministic notion in which structure inevitably takes precedence to agency. In fact, a careful reading of the notion of path-dependency reveals a marked leaning towards the contingent over the deterministic. The concept is associated with evolutionary economics¹⁶, which challenges the neo-classical paradigm of market clearance and utility maximising individuals. In doing so, it argues that markets - as the aggregate of agents' actions - make errors in their choice of products and that these initial errors are 'locked in' through a process of 'positive feedback'.¹⁷ And although the notion of lock-in implies sub-optimal collective outcomes, it does *not* necessarily imply irrational choices on the part of agents, given the incentives and information available to them.

In order to operationise the notion of path-dependence in the context of Volkspartei adaptation and strategy, the article draws upon the debates covered above and makes the distinction between ‘structure-driven’ and ‘rule-driven’ path dependence.¹⁸ . Structure-driven path dependence, as the name implies, exists where existing structures impact on the choice and evolution of subsequent structures. This might be for reasons of efficiency or because of rent seeking on the part of agents. And in the case of rent seeking, the incentives to retain the status quo are powerful, even when it is clear that the institution has ceased to be efficient. Similarly, rule-driven path dependence exists when the emergence of rules and practices is shaped by existing power relationships and their path-dependence is grounded either in reasons of efficiency or because public-regarding decisions are thwarted by interest group politics. For the purpose of our analysis, our notion of rules is expanded to include informal rules, norms, practices and SOPs, in so far as they can be judged to have a material effect on party competition and coalition outcomes. The two types of path dependence and the reasons for their persistence are summarised in Table One.

TABLE ONE ABOUT HERE

Bebchuck and Roe’s typology has considerable empirical and analytical potential. In empirical terms it allows us to distinguish between formal institutions and structures on the one hand and the principles and practices associated with political action. And in analytical terms, it allows us to take into account the impact of political agency. I return to this schema later in the article.

RULE-MAKING AND RULE-TAKING IN HISTORICAL CONTEXT

As already noted, the period of Allied occupation from 1945-1949 was when the key early moves in the institutional development of the Federal Republic were set in train. And it was in these early moves, especially during the Allied occupation itself, that the organisation and political preferences of the CDU/CSU was forged and became dominant. Political actors on what German political commentators refer to as the ‘bourgeois’ side of the party system rejected narrow Conservatism in favour of establishing a right-of-centre, cross-class, cross-confessional party, drawn from a heterogeneous set of political milieus.¹⁹ The impact of this heterogeneity within the new party could be seen in its developing programmatic profile (with the emphasis more on the ‘Christian’ than on ‘Democracy’ in the ascendant Catholic west and south) and also in the highly personal power struggle between Adenauer, based in Cologne, and Jakob Kaiser,

based in Berlin. But in what was to be a crucial early move in the institutional development of the Federal Republic, the resolution of the CDU's internal party conflict was intimately entangled with the consolidation of power relations and political economy in the wider polity. Thus the successful currency reform and subsequent adoption of Erhard's economic policies in the Western zones of occupation was both reflected in and a reflection of Adenauer's ascendancy over Jakob Kaiser, whose increasing isolation in beleaguered West Berlin was both real and metaphorical.²⁰

It can be argued, therefore, that the CDU/CSU that formed the first government of the new Federal Republic was also its key architect and that the consequences of its preferences and actions would shape the political action arena going forward. Thus, party, state, and society all displayed a socially-conservative, pro-free market profile and, despite cross-confessional aspirations, a pronounced Catholic bias in as far as social theory underpinned institutional design, policy-making and political economy. To borrow and slightly stretch a concept from critical realism, it was a strongly morphogenic relationship²¹ that became more pronounced over time, as the Cold War, the Economic Miracle of the 1950s and early 1960s, as well as Adenauer's personal acumen and charisma not only enabled the Union parties to widen their support and consolidate their hold on power but also re-established Germany as a major European player. For as long as the positive feedback between party, state, and society was maintained there was no need to challenge established SOPs. Thus, up until the late 1960s, the CDU/CSU remained little more than a *Kanzlerwahlverein* (party that existed to elect the Chancellor) rather than the professionalised party organisation it is today.

What is striking, however, is that when the CDU/CSU went into opposition in 1969 it was relatively quick, despite being an organisation with a record of success behind it and therefore a strong narrative and rationale to defend SOPs, to react to failure and adapt to the new circumstances. This process actually began before 1969, with the formulation of the Berlin Programme of 1967/8, and continued through the 1973 Hamburg conference to the adoption of the 1978 Basic Programme. In a pattern that would be repeated again at the time of unification, the CDU either implicitly accepted or explicitly co-opted those elements of the 1970s Federal Republic (such as growing social diversity or the process of *Ostpolitik*) that it could not change and, in as far as it could, made them its own. And in terms of organisational renewal, the CDU moved away from the previously loose union of state parties towards a more professional and centralised structure. As a result of this organisation renewal, the party's Federal Executive and

Federal Committee were given enhanced powers and the General Secretary was provided with a well resourced central apparatus which not only possessed co-ordinating capacity but also a policy-making function. In addition, party financing was restructured and there was a push to increase and extend the scope of party membership.²² As a result, when the CDU returned to government in 1982 it possessed an efficient party machine and had boosted its membership from around 400,000 to over 750,000.²³

Moving on a decade, the CDU's reactive capacity and morphogenetic qualities was also demonstrated in its response to the collapse of the Communist regime in the GDR. On the face of it, this looked like an uphill task. At the start of the process, the incumbent Black-Yellow coalition, led by Helmut Kohl, was unpopular, about to enter a federal election year and under increasing pressure from a resurgent SPD. In addition, the CDU's eponymous sister party in the GDR was part of the so-called 'block-party' system and, as a result, was deeply implicated both collectively and individually in the injustices of the old GDR regime. Yet, the CDU - and Chancellor Kohl in particular - showed an unexpected capacity to seize upon and shape events. Within a month of the opening-up of the inter-German border, Kohl had put forward his ten-point programme for unification and was instrumental in the creation of *Allianz für Deutschland*, consisting of the East German CDU, the German Social Union (backed by the Bavarian CSU), and Democratic Awakening (the conservative wing of the East German dissident movement), which was successfully to fight the *Volkskammer* election of March 1990.

The CDU/CSU's co-option and shaping of the process of unification contrasted with the SPD's more honest but ultimately self-defeating scepticism. Thus, in a pattern reminiscent of the foundation of the Federal Republic, the CDU/CSU's ideology and political style became intimately enmeshed with the dominant political narrative of the new unified Germany. This not only had consequences for the direction of travel in policy terms but also had a significant structural impact: both upon the preferences of individual voters in what were now the new federal states and, as a result, upon the shape of party politics in post-unification Germany. This impact was visible as early as the 1990 *Volkskammer* election, in which an 'inverted social profile' in voting behaviour was already evident. This was also to be seen in the 1990 Bundestag election, in which the CDU enjoyed disproportionate support amongst manual workers compared with its overall share of the vote: polling 49.8 per cent compared with 41.8 per cent overall (and 24.8 per cent for the SPD). In addition, the CDU not only led the SPD amongst Catholic voters but also commanded a majority of voters with affinity to the Protestant church.²⁴

The only section of the population in which the SPD was ahead of the CDU was amongst those sections of the electorate that claimed no religious affiliation, but here it had to compete with the Greens and, more significantly given its present predicament, the PDS. This trend continued in the 1994 Bundestag election, in which the CDU still polled four per cent more of the manual worker vote than the SPD. The reduced margin of CDU dominance indicated that industrial workers were returning slowly to what Padgett described as their 'natural political home'²⁵ but the party still benefited from a distinct form of the confessional cleavage in the new federal states. This took two forms, both of which worked to the advantage of the CDU. First, the small numbers of Catholic voters in the eastern states were more likely to vote CDU than SPD than their counterparts in the western states and, second, Protestant voters in the east were also far more likely to vote CDU rather than SPD.²⁶

By the time of the 1998 Bundestag election, the impact of these initial electoral anomalies was less pronounced and the SPD, through inner-party initiatives such as *Arbeitsgruppe Ost*, had engaged with the need to win over voters in the new eastern states.²⁷ Nevertheless, the point remains that the SPD's 1998 strategy was an exercise in catch-up and that the CDU's penetration of the new eastern electorate during the early moves in the development of the all-German polity had disproportionate weight and generated three major lock-in effects. First, it prevented the SPD from reviving and consolidating what had historically been its political heartland. Second, as a result, the eastern states remained politically marginal territory in which the CDU was a major player (and from which, of course, it would eventually recruit the current federal Chancellor). Finally, it provided the political space to the left of the party system for the consolidation of the PDS and, through this, the eventual emergence of the Left Party as a major competitor on the left flank of the SPD.

None of these were happy outcomes for the SPD and echoed, albeit in a minor key, the manner in which it found itself on the wrong side of history immediately after 1945. If, as already discussed, the new Federal Republic was conceived in the image of the CDU and its emergence was only made possible by the process that led to the division of Germany over the period 1945-1949, then the key political loser in that process was the SPD. On the one hand, it was the loser in a very direct fashion, through the so-called *Zwangsvereinigung* (forced unification), in which the faction of the SPD under Russian occupation, led by Otto Grotewohl, merged with the Communist KPD to form the SED. The direct consequences of this merger need no further elaboration or discussion. On the other hand, it was the loser in a more nuanced manner;

through the polarisation of German and, indeed, international politics that the *Zwangvereinigung* represented. This is worth exploring further.

It would be a mistake to either interpret the majority SPD's rejection of merger with the KPD as a vote of confidence in the emerging political and economic settlement in Bizonia or to view the subsequent post-split party as anything like the moderate Catch-all party the SPD is today. With regard to the first point, the SPD's limited leverage over events in those early years reflected its lack of an effective champion amongst the occupying powers. The newly merged SED obviously had the full support of the Soviet Union and the United States provided crucial support to the CDU/CSU, as it did to Christian Democratic parties elsewhere in Western Europe. By contrast, although the SPD had the support of the British Labour Government, the United Kingdom's powers were clearly in decline and the SPD's nationalism, neutrality, and resistance to the division of Germany also clashed with the direction of British Foreign policy as pursued by UK Foreign Minister Ernest Bevin. And with the return to power in London of a Conservative Government in 1951, the ongoing fraternal ties that the SPD enjoyed with the Labour Party were of less importance than they had been in the 1940s. Moving on to the second point, the SPD was slow to adapt to the changed conditions described above, even though by the early 1950s the party was clearly swimming against the tide. The SPD remained a Marxist-inspired mass party and it took a decade for the party to come to terms with the division of Germany and the social market model established by Adenauer and Erhard, with the encouragement of the USA. In these early years of the Federal Republic, the SPD continued to promise to 'socialise' the production of coal, iron and steel, energy, chemicals, basic building materials, large banks and insurance companies. Moreover, it remained prepared to trade the new Federal Republic's western political orientation for neutrality if this was the price to be paid for a united Germany.

In political terms, therefore, the new Federal Republic was a foreign country that was very much *not* made in the SPD's image: a truth that was hammered home by a string of election defeats, not just in 1949, but also again in 1953 and 1957. Eventually, this set in train a process of programmatic revision, culminating in the Bad Godesberg conference of 1959, which went beyond the kind of re-adaptation that the CDU would undergo in the late 1960s and 1970s and involved the revision of the party's fundamental beliefs. The Bad Godesberg Programme rejected Marxism and re-framed the SPD's core principles of democratic socialism within the wider context of Christian ethics, classical philosophy and humanism. In doing so, the

programme endorsed the political settlement in the Federal Republic and the centrality of the social market economy to it. This was rule-taking in its purest form – in which the SPD accepted to all intents and purposes the entirety of a political settlement made in the CDU/CSU's image. And of course it meant an end to aspirations for radical socialism, neutrality, or German re-unification.

The transformation of the SPD, as represented by the Bad Godesberg Programme, coincided with a generational change at the top of the party. Now under the leadership of the charismatic Willy Brandt, the newly pragmatic SPD enjoyed a 10 per cent rise in popular support over the period 1957 to 1969. In turn the combination of ideological moderation and rising electoral support eventually led to participation in government, first as junior partner to the Christian Democratic CDU in the Grand Coalition of 1966 to 1969, and then as senior partner to the liberal FDP in the Social-Liberal Coalition of 1969 to 1982. To his credit, Brandt used his position first as Foreign Minister and subsequently as Chancellor effectively to embark on the one major constitutive process, comparable with the early moves of the Adenauer-Erhard partnership, in which the SPD could genuinely be considered to be rule-making; that of *Ostpolitik*. *Ostpolitik* was transformative along three dimensions. First, it had profound constitutional implications in that it explicitly ditched the Hallstein Doctrine that had helped define German foreign policy after 1949 and, in doing so, weakened the Federal Republic's claim to be the one true German state. Second, in the Federal Republic's recognition of the GDR, expansion of trade links with COMECON, provisional recognition of the Oder-Neisse line and treaties with the Soviet Union, *Ostpolitik* fundamentally eased Cold War tensions and helped set in train processes – such as detente and the signing of the Helsinki accords – that would eventually end the division of Europe. Finally, the process of *Ostpolitik*, although not opposed by the US, was very much a German-initiated undertaking, representing a confidence and independence that would have been impossible even a decade earlier and paving the way in procedural terms for the more assertive style of German foreign policy that Kohl would deploy during the process of unification twenty years later.

Ostpolitik aside, however, the SPD's approach to government over the period from 1969 to 1982 was to work with the grain of the political settlement. And, after the collapse of the Social-Liberal coalition in 1982, the party would have to endure another 16 years in opposition before being returned to power following the 1998 Bundestag election. In opposition it found itself once more having to react to developments over which it found little leverage. The process of

German unification has already been discussed but four other challenges are worth noting. First, the SPD's share of the vote in federal elections was in decline: from a high of 45.8 per cent in 1972, it fell to 38.2 per cent in 1983, 37 per cent in 1987, and 33.5 per cent in 1990. This trend was temporarily reversed under the leadership of Gerhard Schröder but has since continued, culminating in the historic low of 23 per cent in 2009. Second, the emergence of the Greens in the early 1980s opened up a flank of political contestation along the materialist/post-materialist dimension and made it more difficult for the SPD to construct a coherent programme that engaged with the 'new politics'²⁸ without alienating the party's core blue-collar vote. Third, the SPD's subsequent strategic dilemma was further complicated by the persistence, for reasons already discussed, of the PDS in the eastern states and its more recent incarnation as the core of the Left Party, which has so successfully mobilised around what was formerly part of the SPD's core vote. Finally, with the exception of Gerhard Schröder, the SPD has failed to produce leaders of sufficient personal appeal or political acumen to match the likes of Helmut Kohl before 1998 or Angela Merkel since 2005. Indeed, an analysis of the 2009 federal election debacle by the Friedrich Ebert Foundation reported that, although voters were in broad agreement with key aspects of the SPD's 2009 programme, such as the introduction of minimum wage, the phase-out of nuclear energy, and tighter regulation of the financial markets, the party was not able to parlay this support into votes at the ballot box.²⁹

PATH-DEPENDENCE AND ELECTORAL ADVANTAGE

So how are we to explain the CDU/CSU and SPD's differing fortunes over time and the relative failure of the SPD to impose itself upon events in the manner of the CDU/CSU? Let us return to the dichotomy between 'structure-driven' and 'rule-driven' path dependence posited earlier in this article. As already discussed, structure-driven path dependence persists where existing structures impact on the choice and evolution of subsequent structures and is sustained through reasons of efficiency or because of rent seeking on the part of agents, whilst rule-driven path dependence exists when rules and practices are shaped by power relationships and is sustained through reasons of efficiency or because of interest group politics. Let us deal with the efficiency arguments first.

In the economics literature from which our framework is derived, an accepted notion of efficiency is that of 'Pareto optimality', used to describe situations in which any change that is made to make any agent better off is impossible without making another agent worse off.³⁰ Under conditions of Pareto Optimality, any changes to the status quo of agents' welfare

distributions would require the consent of all agents within the institution and possibly, where agents would be worse off in welfare terms, require their compensation as well.

Without pursuing this argument to any great length, we can see how this notion of efficiency in the broad structures and power relations of the Federal Republic would constrain the SPD's options. As already noted, the SPD had little leverage over the early moves in the institutional development of the Federal Republic and its initial opposition to many of its key features, including the division of Germany, the Federal Republic's western orientation and the social-market economy, led to a series of defeats in federal elections. As a result, it had to undergo the process of adaptation that culminated in the Bad Godesberg Programme. Moreover, by the time the SPD had become the senior partner in the Federal Government in 1969, even the newest of these structures were at least two decades old and reasonably embedded and efficient. Thus, even if the SPD was minded to – and, for reasons to be discussed below, it was not so minded – there was no chance of the party winning the consent of all key political agents in any transformative change.

By contrast, the arguments for the efficiency of rule-driven path-dependence are weaker, particularly with regard to those rules that shape and structure political competition. Formal rules that help determine outcomes obviously include Germany's Mixed Member Proportional Voting System (MMP), and the 'five per cent barrier' to representation, as well as various constitutional constraints upon party organisation and activity³¹ and also encompasses all of the principles or regulations governing the conduct, actions, procedures, and arrangements that underpin the process through which parties seek votes and office. And, if we *do* regard political parties as vote- and office-seeking, then a good proxy indicator of parties' welfare are the Banzhaf scores³² generated by the outcomes of federal elections since 1949. Banzhaf scores measure potential voting power³³ in terms of the coalitions that can form, given the distribution of party weights in a given legislature. Banzhaf scores for the main political parties in the Bundestag over the period 1949-2009 are set out in Table Two.

TABLE TWO ABOUT HERE

Table Two demonstrates that the pattern of distribution of welfare can be divided into three phases. The first phase coincides with the party system consolidation discussed earlier and is characterised by fluctuating Banzhaf scores, culminating in the 1957 federal election, in which

the CDU/CSU, SPD, and FDP all enjoyed scores of 0.1. This is followed by a second phase, notable for its stability, in which there are only three parties in the Bundestag and they all have scores of 0.3333. This period, the high-point of the triangular party system described in the ‘Pappi model’³⁴, encompasses six federal elections from 1961 until 1980 and – given the stable equity of Banzhaf scores - can arguably be described as Pareto Optimal. The third phase, however, coincides with two historic junctures within the German party system: the emergence of the Greens as a national force following the 1983 federal election and the entry of the PDS. What follows is a period of trendless fluctuation in the relative Banzhaf scores - and therefore the distribution of welfare - of all political parties. There are instances in which either the CDU/CSU (after the four successive federal elections between 1983 and 1994, as well as after the 2009 election) or the SPD (after the 1998 federal election) enjoy enhanced welfare and therefore a tactical advantage, as well as others (after the 2002 and 2005 elections) in which their welfare functions are broadly similar. But what the institution of the German party system in this third phase clearly is *not* is ‘efficient’ in the manner used in this article.

If we are to move towards a fuller understanding of path-dependency in German party politics, therefore, we must look beyond the notion of efficiency to the more agential explanations posited in our framework: those of rent-seeking and interest-group politics. As already discussed, the incentives to continue rent seeking are powerful, even when institutional efficiency is in decline. Similar incentives are at work when public-regarding decisions to break path-dependence are thwarted by interest group politics.

First, let us consider rent-seeking. The rationale for, and evidence of, rent-seeking by political parties in most polities is fairly self-evident³⁵. In the Federal Republic, however, there are a number of historical conditions that make the incentives for rent-seeking particularly strong. As already noted, Article 21 of the Basic Law constructed a new norm of state power in Germany in which state legitimacy was directly linked to the legitimacy of the political parties. The privileged position enjoyed by the political parties led to what Wiesendahl³⁶ has famously described as a ‘modernisation trap’ in which party identities blurred and politics increasingly became the preserve of a cosseted world of ‘cliques, cabals, and careers’.³⁷ The co-option of the political class into the state made rent-seeking increasingly rational for political agents, not least for the SPD, where the previously Marxist-informed ideology of evolutionary social transformation moderated into one of technocratic welfarism. The SPD’s capacity for rent-seeking was especially evident in those states, such as North Rhine-Westphalia and Berlin, where the Social

Democrats were often the governing party and achieved significant penetration of senior civil service and other public positions.³⁸ Under such circumstances, even prolonged periods of opposition at the federal level were not without their compensations.³⁹

Many of the arguments behind the notion of rent-seeking as a buffer of structure-driven path-dependence are straightforward and have been put forward in a different form in Katz and Mair's notion of the 'Cartel-party'.⁴⁰ More difficult to establish is the second notion of interest-group politics as a buffer for rule-driven path-dependence. We have already mentioned the more formal rules that shape political competition in the Federal Republic. However, a recent comparative analysis of coalition outcomes in Germany and New Zealand (a country with an MMP system modelled on Germany's and a similar distribution of party weights), drawing upon the coalition theory literature, identified a number of more informal rules, norms and SOPs that had a material effect on coalition outcomes. These include (1) the absence or presence of a rule or norm regarding majority rule, (2) a tendency towards minimum-connected winning coalitions, (3) the presence within coalitions of the party controlling the median legislator within the legislature, and (4) the key role of the party controlling the median legislator within the coalition. In the German case, (1), (3), and (4) were particularly salient, albeit skewed through the ongoing status of the Left Party as a 'dummy' in coalition calculations.⁴¹

It is this exclusion of the Left Party from the coalition game in particular that the SPD must address if it is to overcome path-dependence and begin to shape its political environment in the manner of the CDU/CSU. Twenty years after unification, what is now the Left Party⁴² has not gone away; on the contrary the 2009 federal election result was its best electoral performance to date and it now also enjoys a degree of penetration into the western states of Germany. Other mainstream parties no longer use the explicit language of the past, when labels such as 'ex-Stasi', the 'Eastern League', the 'nostalgic association', or even 'Red Polished Fascists' were deployed to demonise what was then the PDS and deter its voters, and there is now a tacit acceptance that the Left Party is a fixture of the German party system for the time being. However, this acceptance does not extend to including the Left Party in real-world coalition calculations at the federal level, despite a record of relatively successful co-operation between the SPD and Left Party in the eastern states, including Berlin. This pattern of co-operation at the *Land* level, balanced by a frostiness at the federal level, is reminiscent of the 15-year process that preceded the formation of the Red-Green coalition in 1998.⁴³ As with the Greens, there are certain policy positions (such as hostility to NATO) that the Left Party would have to moderate or downplay

in order to become a feasible coalition partner in federal government. Where the parallel between the Left Party and the Greens breaks down, however, is that whereas opposition to the integration of the Greens soon lost its emotional edge and came to focus on concrete policy differences, disapproval of the Left Party still possesses a visceral quality that defies rational calculation. Within the SPD, this emotiveness has either harked back to institutional memories of the *Zwangsvereinigung* and its aftermath or is grounded in a more general disapproval of the GDR regime from which the PDS originally emerged. More recently SPD opposition to engagement with the Left Party has fixated on the role of Oskar Lafontaine, considered a turncoat by many SPD activists.

In short, rule-driven path-dependence has imposed limits on engagement with the Left Party and the reasons for its persistence lie in what Bebchuck and Roe refer to as interest group politics⁴⁴. So which actors benefit from the status quo? Clearly, the ongoing exclusion of the Left Party from the coalition game is to the benefit of the bourgeois parties as it limits the SPD's coalition options. This was particularly the case following the 2005 federal election, when a Red-Red-Green coalition would have constituted the minimum-connected-winning coalition, within which the SPD would have controlled the median legislator: a much stronger role than it eventually enjoyed as junior partner in a surplus majority Grand Coalition.

For the right-wing of the SPD as well, a very narrow conception of inner-party factional advantage might also make it rational to oppose engagement with the Left Party. For inevitably such a process of engagement would mean a degree of programmatic re-orientation towards the left. However, in the broadest terms it has been apparent since the mid-1990s⁴⁵ that the SPD can and should more fully engage with what is now the Left Party. Beyond the greater coalition options that would be made available to the SPD as a result, such a strategy would provide a clearer choice to voters and enhance the notion of responsible government in German politics. This is not without its electoral risks but would be preferable to the SPD's only other coalition option at present or in the near future: another surplus majority Grand Coalition.

So to sum up, although interest group politics buffer rule-driven path-dependence they are not an insurmountable barrier to change. In order to break with path-dependence the SPD must display the same capacity for political agency shown by the CDU, for instance when it co-opted its sister party in the GDR, despite the latter's long-standing and ongoing links with the Communist regime. An active and constructive engagement with the Left Party 20 years after

the fall of the GDR is relatively orthodox by comparison and for the SPD would be a first step along the road back to political power on its own terms.

CONCLUSION

This article has worked from the premise that, despite a steady decline in the Volkspartei vote, and the poor performance of the SPD in particular, party system change has in many ways enhanced the coalition options available to the Volksparteien. It works from the argument that, despite the relative electoral strength of the CDU/CSU and SPD in the 1960s and 1970s, they were nearly always forced to bargain with the FDP, which acted as the 'kingmaker' within the party system and consequently was decisive in the coalition game. By contrast, the article argues that under the current more fluid conditions, the Volksparteien are in principle less vulnerable to threats of a decisive defection by small parties to alternative coalitions. This has generated more strategic options for the Volksparteien, albeit options that the CDU/CSU is better placed to take advantage of than the SPD. This is because the CDU/CSU has been and remains more capable of shaping German party politics, whereas the SPD has internalised a more reactive role, for the reasons – related to the persistence of structure-driven and rule-driven path-dependence – discussed above.

So where does this leave us? It will be recalled that at the start of this article I argued that, when strategic opportunities arise, political agents must be able to (1) identify these as opportunities rather than threats; (2) possess the political skills and acumen effectively to pursue them; and (3) enjoy sufficient resources to overcome constraints on agents' strategic potential. I argued that when all three of these factors are in alignment then agents can 'make the political weather'. When they are not, as the current predicament of the SPD demonstrates, then all bets are off.

There are, however, two additional points that are worth bearing in mind. First, although the SPD's failure is undeniable, it is not necessarily worse than the failure suffered by many centre-left parties in advanced democracies. Indeed, with the exception of the Australian Labor Party (ALP) and, it might be argued, the US Democrats, very few such parties have benefited from the global financial crisis, regardless of whether they have been incumbents or in opposition. Moreover, with the exception of the ALP or the Swedish Social Democrats, most centre-left parties in advanced democracies have tended to be reactive and adaptive rather than take on the role of proactive institutional architects. One might argue that such a reactive role is, as it were, one of the features that define social democracy.⁴⁶

The second point is that all but the most 'vulgar' readings of path-dependence allow for the change and the potential for agents to shape and, under certain circumstances, transform the institutional environment within which they operate. Clearly, this is empirically the case and is not a lesson that the CDU/CSU has had to learn. It is, however, one that the SPD must more fully take on board if it is once more to become a progressive force in German politics. Like the CDU/CSU, the SPD must learn to show a little less respect for the institutional setting in which it operates and a little less deference towards the rules, norms, beliefs and practices that hold it back.

TABLE ONE: TYPES OF PATH-DEPENDENCE AND WHY THEY PERSIST

Type of path dependence	Reasons for path dependence
Structure-driven	Efficiency/Rent-seeking
Rule-driven	Efficiency/Interest group politics

Source: after Bebchuck and Roe (1999)

TABLE TWO: INSTITUTIONAL EFFICIENCY EXPRESSED BY STANDARDISED BANZHAF SCORES FOR THE MAIN POLITICAL PARTIES FOLLOWING GERMAN FEDERAL ELECTIONS, 1949-2009

<u>Year</u>	<u>Party</u>					<u>Efficiency</u>
	CDU/CS U	SPD	FDP	Greens	PDS/Left Party	
1949	0.3082	0.2594	0.2373	—	—	Increasing
1953	0.75	0.05	0.05	—	—	
1957	0.1	0.1	0.1	—	—	
1961	0.3333	0.3333	0.3333	—	—	Pareto Optimal
1965	0.3333	0.3333	0.3333	—	—	
1969	0.3333	0.3333	0.3333	—	—	
1972	0.3333	0.3333	0.3333	—	—	
1976	0.3333	0.3333	0.3333	—	—	
1980	0.3333	0.3333	0.3333	—	—	
1983	0.5	0.1667	0.1667	0.1667	—	
1987	0.5	0.1667	0.1667	0.1667	—	
1990	0.5	0.1667	0.1667	0	0.1667	
1994	0.5	0.1667	0.1667	0.1667	0	
1998	0.1667	0.5	0.1667	0.1667	0	
2002	0.3333	0.3333	0	0.3333	0	
2005	0.5	0.5	0.25	0.25	0.25	
2009	0.5	0.1667	0.1667	0	0.1667	

Source: calculated from data sourced at <http://www.wahlrecht.de>

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- ¹ O. Niedermayer, 'Das Parteiensystem Deutschlands' in R. Stöss, M. Hass and O. Niedermayer (eds.), *Die Parteiensysteme Westeuropas* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2006), pp. 109-34.
- ² C. Lees 'The Paradoxical Impact of Party System Change in Germany'. Paper presented at the APSA 100th Annual Meeting and Exhibition, Metro Toronto Convention Centre, Toronto, Canada, September 3-6, 2009.
- ³ For a detailed analysis of the PDS/WASG merger see J. Olsen, 'The Merger of the PDS and WASG: From Eastern German Regional Party to National Radical Left Party?', *German Politics*, 16 (2), 2007: 205-221; See also C. Lees, D. Hough and D. Keith, 'Towards an analytical framework for party mergers – operationalising the cases of the German Left Party and the Dutch GroenLinks', *West European Politics*, 33, 2010, forthcoming.
- ⁴ C. Lees, 'The German Party System(s) in 2005 – a return to *Volkspartei* dominance', in C. Clemens and T. Saalfeld (eds.), *The German Election of 2005: Voters, Parties and Grand Coalition Politics* (Abingdon: Routledge, 2008).
- ⁵ T. Albrecht, 'The German elections: consequences for the SPD' (London: Friedrich Ebert Stiftung briefing paper, 2009), pp. 2-3.
- ⁶ W. Streeck and K. Thelen, *Beyond Continuity: Institutional Change in Advanced Political Economies* (Oxford: Oxford University Press, 2005).
- ⁷ G. Tsebelis, *Nested Games: Rational Choice in Comparative Politics* (Berkeley: University of California Press, 1990); M. Laver and N. Schofield, *Multi-Party Government: The Politics of Coalition in Europe* (Oxford: OUP, 1990); K. A. Shepsle and B. R. Weingast, 'Studying institutions: lessons from the rational choice approach', *Journal of Theoretical Politics*, 1, (1995): 131-47.
- ⁸ W. H. Riker, 'Implications from the disequilibrium of majority rule for the study of institutions', *American Political Science Review*, 74, (1980): 432-446.
- ⁹ E. Ostrom, 'An agenda for the study of institutions', *Public Choice*, 48 (1986): 3-25.
- ¹⁰ J. G. March and J. P. Olsen, 'The new institutionalism: organisational factors in political life', *American Political Science Review*, 78, (1984): 738.
- ¹¹ M. G. Cowles, J. Caporaso and T. Risse (eds.), *Transforming Europe* (Ithaca and London: Cornell University Press, 2001); C. Radaelli, 'Europeanisation: Solution or Problem?', in M. Cini and A. Bourne (eds.), *The Palgrave Guide to European Studies* (Basingstoke: Palgrave, 2005).
- ¹² S. Saurugger, 'The professionalisation of interest representation: a problem for the participation of civil society in EU governance?' in S. Smismans (ed.) *European Governance and Civil Society* (Cheltenham, Edward Elgar, 2006), pp. 260-276.
- ¹³ See for example S. Krasner, 'Approaches to the State: alternative conceptions and historical dynamics', *Comparative Political Studies*, 21, 1988: 223-46.
- ¹⁴ See for example P. Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004).
- ¹⁵ S. Krasner, 1988, p. 242.
- ¹⁶ A. Arthur, 'Competing, technologies, increasing returns, and lock-in by historical events' *Economic Journal* 97, 1989: 642-5; J. Mokyr, 'Evolutionary biology, technological change and economic history' *Bulletin of Economic Research* 43, 1991: 127-147.
- ¹⁷ Examples of real-world instances of the lock-in of sub-optimal outcomes to be found in the literature include, for instance, the persistence of the QWERTY keyboard over the superior Dvorak alternative in the 1870s and the victory of the VHS video format over the Beta system a century later. There is disagreement in the literature about the extent to which these instances are actually examples of the lock-in of suboptimal choices but there is agreement about the analytical power of the positive feedback concept itself.
- ¹⁸ L. A. Bebchuck and M. J. Roe, 'A theory of path dependence in corporate governance and ownership' (New York: Columbia Law School Working Paper Series, No. 192414, 1999).
- ¹⁹ In organisational terms, the new party had little central core, but rather was built around state parties dominated by local notables who controlled membership and, after 1949, party funds and communications with Bonn. Before 1949, rivalry between these regions was often intense and it was through this conflict that the organisational division between the CDU and CSU was forged (C. Lees, 2005).

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- ²⁰ This struggle was replicated in Bavaria, where state parliament leader Alois Hundhammer's particularist/capitalist approach won out over the more cross-confessional/Kaiser-esque policies of Josef Muller.
- ²¹ M. Archer, *Realist Social Theory: The Morphogenetic Approach* (Cambridge: Cambridge University Press, 1995).
- ²² C. Lees, *Party Politics in Germany: A Comparative Politics Approach* (Basingstoke: Palgrave MacMillan, 2005).
- ²³ S. Padgett and T. Burkett, *Political Parties and Elections in Western Germany* (London: Hurst/St. Martins, 1986), p. 107.
- ²⁴ S. Padgett, (ed.), *Parties and Party Systems in the New Germany* (Aldershot: Dartmouth, 1993), pp. 39-41.
- ²⁵ S. Padgett, 'Superwahljahr in the new Länder: polarisation in an open political market', *German Politics*, 4 (2), 1995: 87.
- ²⁶ P. Gluchowski and U. von Wilamowitz-Moellendorff, 'Sozialstrukturelle Grundlagen des Parteienwettbewerbs in der Bundesrepublik Deutschland' in O. Gabriel et al (eds.), *Parteiendemokratie in Deutschland* (Opladen: Westdeutsche Verlag, 1997).
- ²⁷ C. Lees, 2005.
- ²⁸ R. Dalton and M. Kuechler (eds.), *Challenging the Political Order: New Social and Political Movements in Western Democracies* (Oxford: Oxford University Press, 1990).
- ²⁹ T. Albrecht, 2009, pp. 2-3.
- ³⁰ For far more advanced discussions of Pareto Optimality, see A. Sen, 'Markets and freedom: achievements and limitations of the market mechanism in promoting individual freedoms', *Oxford Economic Papers*, 45 (4), 1993: 519-541.
- ³¹ Article 21 paragraph 3 of the Basic Law sets out clear parameters for party organisation, with a strong emphasis on the internal political processes by which parties formulate their 'political line'. These parameters were firmed up in the German Party Law of 1967 and cover such areas as: (1) Regulating the grass roots level of organisation; (2) Admission to and resignation from political parties; (3) Elections and votes within political parties; (4) Ballots in the case of the dissolution of political parties or their consolidation; (5) Ex officio members in party institutions; (6) Arbitration and internal party discipline; (7) Protection of minorities with party organisations.
- ³² J. F. Banzhaf III, 'Weighted voting doesn't work: a mathematical analysis', *Rutgers Law Review*, 19, 1965: 317-43.
- ³³ The Banzhaf index is contested in the literature. For more on this see C. Lees and A. Taylor, 'Explaining the 2005 coalition formation process in Germany – a comparison of Power Index and Median Legislator coalition models', *Politics*, 26 (3), 2006: 151-160.
- ³⁴ F. Pappi, 'The West German Party System', *West European Politics* 7, 1984: 7-26.
- ³⁵ For the empirical application of rent-seeking models to democracies see C. Calderón and A. Chong, 'Do democracies breed rent-seeking behavior?', *Journal of Policy Reform* 9 (4), 2006: 247-260.
- ³⁶ E. Wiesendahl, 'Der Marsch aus den Institutionen', in *Aus Politik und Zeitgeschichte*, B21, 1990.
- ³⁷ E. Scheuch and U. Scheuch, *Cliquen, Klüngel und Karrieren* (Hamburg: Reinbek, 1992).
- ³⁸ C. Lees, *The Red-Green Coalition in Germany: Politics, Personalities and Power* (Manchester: Manchester University Press, 2000).
- ³⁹ C. Lees, 'Social Democracy and Structures of Governance in Britain and Germany: how institutions and norms shape political innovation', in L. Martell et al (eds.), *Social Democracy: Global and National Perspectives* (Basingstoke: Palgrave, 2001).
- ⁴⁰ See R. S. Katz and P. Mair, 'Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party', *Party Politics* 1, 1995: 5-28; R. S. Katz and P. Mair, 'Cadre, Catch-all or Cartel? A Rejoinder', *Party Politics* 2, 1996: 525-34; R. S. Katz and P. Mair, 'Ascendancy of the Party in Public Office: Party Organizational Change in Twentieth-Century Democracies', in R. Gunther, R. M. Montero and J. J. Linz (eds.), *Political Parties: Old Concepts and New Challenges* (Oxford: Oxford University Press, 2002), pp. 113-135.
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- ⁴² D. Hough, M. Koß and J. Olsen, *The Left Party in Contemporary German Politics* (London: Palgrave, 2007).
- ⁴³ C. Lees, 2000.

⁴⁴ L. A. Bebachuck and M. J. Roe, 1999.

⁴⁵ C. Lees, 'Bringing the PDS into the coalition equation', *German Politics*, 4 (1), 1995: 150 - 154.

⁴⁶ See L. Martell et al., 2001.