

## ABSTRACTS\*

***Meyer, Holger and Ferdinand Müller-Rommel: The state elections in Lower Saxony on January 20, 2013: Social Democrats and Greens win by a slim margin.***

The Social Democrats together with the Greens gained only a slight majority in the state elections. Both parties succeeded a ten year duration of the conservative and liberal government coalition on state level. SPD and the Greens received a total of 46.3 per cent of the vote while CDU and FDP gained only 45.9 per cent. With this result, the new coalition government holds only one seat more in parliament than the opposition parties. The new Left and the small Pirate Party fell below the five per cent hurdle which results in four parties being represented in the state parliament. The electoral participation increased modestly and reached a level comparable to the turnout in other state elections. The very short “winter campaigning” was dominated by national political issues. Among the very few state-oriented political concerns were the educational, the labour market and the family programs of the competing political parties. The electoral behaviour of social groups fulfils all expectations and predictions of contemporary electoral research. Only one among the nine ministers of the new coalition has political experience in governing on state level. [ZParl, vol. 44, no. 2, pp. 247 – 263]

***Jankowski, Michael, Cord Jakobkeit, Philipp Hiller and Nils Thomsen: The agony of choice? On voter turnout and the new electoral law in the city-state of Hamburg.***

The new electoral law in the city-state of Hamburg has gained a lot of criticism from scientists and politicians alike. The law was held responsible for the decrease of 6.2 per cent in the voter turnout in the 2011 election. Yet, this connection has not been proven scientifically. On the basis of interviews with some 3.000 voters and 500 non-voters only very little evidence for the criticism of the electoral law becomes apparent. The decrease in voter turnout was mainly caused by other factors. In particular, the weak party front-runners, boring election campaigns, and the predictable result of the election had a negative impact. If at all, the electoral law had only a marginal influence. Therefore, apart from minor adjustments no comprehensive reform is needed. [ZParl, vol. 44, no. 2, pp. 264 – 275]

***Rütters, Peter: Direct election of the Federal President: A desire for presidential authority?***

There has been repeated criticism of the political parties dominating the election of the Federal President as being detrimental to his reputation and dignity. Therefore, as an alternative to the election by the party-dominated Federal Assembly (Bundesversammlung), the critics propose to elect the President directly, to give him more independent legitimacy and to strengthen his position within the political system not least against the political parties. Today, reviewing 15 presidential elections, it can be found that though won by narrow

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margins, the outcomes were always determined by the majority-proportions prevailing in Parliament. However, this did not make Presidents to puppets on the strings of the majority-holding parties. Likewise, the presidential elections during the Weimar Republic give little reason to prefer a direct election. For while *Friedrich Ebert*, the democrat and republican, was legitimized with high consent by indirect vote, *Paul von Hindenburg*, the monarchist and anti-republican, secured only a very close majority by direct voting. Consequently, a direct election of the President of the Federal Republic of Germany was not an option to the Parliamentary Council (Parlamentarischer Rat). Based on their experiences during the Weimar-Republic and still guided by the ideas of the German Constitutionalism in the 19th century, the “mothers” and “fathers” of the Grundgesetz favoured the corrective power of a neutral, party-independent President as “pouvoir neutre”. This ideal or rather caricature is shared by the present supporters of a direct election and it comes along with an anti-pluralistic, anti-parliamentary (mis)understanding of public offices and the democratic way of functioning. [ZParl, vol. 44, no. 2, pp. 276 – 295]

***Decker, Frank:* Direct elections of State Premiers: Justification, design and feasibility of a change in the system of government in Germany’s federal states.**

The suitability of the parliamentary system of government in Germany’s states was already debated in the 1950s. Due to the establishment of direct democratic procedures that can also be employed for the purpose of amending state constitutions, the debate has come to the fore again since the 1980s. The direct election of state premiers cannot be justified by claiming that such a change would lead to more democracy or re-establish the separation of powers. A more appropriate argument in favour of such a change to a presidential form of government can first of all be based on the assertion that the existing procedures of popular legislation in the states tend to dovetail poorly with a parliamentary system based on a fusion of executive and legislative powers. At the same time the establishment of a form of government at the state level that differs from the system used at the federal tier would serve to highlight the independence of state politics. Any implementation of such a reform would have to bear in mind the institutional path dependence. In lieu of a pure presidential system the most prudent solution therefore appears to be a hybrid of the parliamentary and presidential systems in which the directly elected head of government is incorporated into the will of the parliamentary majority. [ZParl, vol. 44, no. 2, pp. 296 – 314]

***Jung, Otmar:* “The State Parliament adopts the initiative proposal”. Challenges of a trimmed direct democratic procedure, as seen in the State of Brandenburg.**

It is not an uncommon practice in German legislative dealings – generally referred to as “indirect referendum” – for a state parliament to adopt the petition for the referendum thus avoiding the ballot on it. Taking an in-depth look at the most recent case of such an adoption is the state of Brandenburg in 2013, where the flaws of this practice, especially with regard to the political and debate culture, are obvious. Foremost, the adoption by the parliament deprives the opponents of the opportunity and the constitutional privilege to a formal hearing of their arguments. In addition, this trimming of the direct democratic procedure is especially undemocratic when the opponents of the issue at hand appear to be ahead in opinion polls. Moreover, taking away the opportunity of a public, open, and fair debate and

vote on the issue wipes out the pacifying effect of the debate and closure by the act of casting a vote. To make matters worse, the debate is not taken from the street into the parliament, but is avoided altogether, as the debate on content is frequently forfeited by MPs as they submit to the referendum initiators' views. As a matter of principle the duality of direct and representative democracy is well founded, and should be observed by parliaments. Once constitutionally chartered direct democratic procedures have been initiated, they should be followed through according to their designed procedure with intervention only taking place under exceptional circumstances. [ZParl, vol. 44, no. 2, pp. 315 – 328]

***Leonardy, Uwe: The roles of the whole and the parts in federal territorial reforms: A constitutional comparison on Länder restructuring.***

In the imminent approach of the ban on state debts the territorial reform of the Länder will be brought to the political agenda with increasing urgency. Its failure up to now is largely due to the fact that the procedural rules for it serve to prevent rather than to achieve it and that for this reason Art. 29 of the Basic Law is a constitutional norm unworthy of a constitution. The analysis quotes the relevant procedural rules in the 19 most important federations of the world in a comparative manner and examines the rules they attach to the whole and its parts in territorial reforms. The role of the whole is nowhere as weak as in Germany despite its significance for the territorial structure and a relative equilibrium in it; this fact blocks renewals of the federal system and for this reason, a new and adumbrated procedural model is necessary, properly balancing the said roles. [ZParl, vol. 44, no. 2, pp. 329 – 348]

***Reiners, Markus: Administrative structural reform of Saxony. Guidelines and enforceability.***

Saxony wants to rebuild its administrative structures. The existing ones in the eastern federal states remind of the structural import from the West German federal states in the early 1990s. When setting up the federal state of Saxony more than 20 years ago, it was modelled after a decentralized structure. Based on changed conditions and after the state has attained a high degree of self-confidence, it is now more concerned with effects of centralization. It is therefore that the Saxon government wants to devise a new organization for the administration. Moreover they aspire to merge the three regional governing bodies into one. This efforts are laid out as a ten years process. It is questionable what can be attributed to these measures and whether the government is pursuing the right course. Moreover it is important to know whether the project is enforceable. To assess this other federal states are also taken into account. [ZParl, vol. 44, no. 2, pp. 349 – 365]

***Buchstein, Hubertus: Lottery drum or ballot-box – the use of lotteries in parliamentary democracies.***

In contrast to the restricted function of lotteries as tie-breakers in German parliaments, ancient democracies made wide use of lotteries for the selection of political personnel. The historical triumph of modern representative democracy, however, was closely linked to the triumph of elections over all other available methods of recruiting political personnel. Nev-

ertheless, this kind of electoral parliamentarism has some shortcomings of its own. Thus, the author argues for the establishment of assemblies, which consist of 100 to 200 randomly selected citizens vested with political decision making powers. These “Houses of Lots” are not meant to substitute the general role of elected parliaments in modern democracies but should serve as decision making powers only on those few issues, on which the (majority or all) professional members of parliaments have an exclusive collective self-interest (like law-making for electoral reform, payment for politicians or campaign financing measures). [ZParl, vol. 44, no. 2, pp. 384 – 403]

***Lhotta, Roland: “Do not pass Go”! Against randomness in parliamentary democracy: A reply to Hubertus Buchstein.***

The article takes a firm stand against *Hubertus Buchstein’s* plea for the occasional introduction and institutionalization of randomness through a “House of Lots” in cases of politicians apparently displaying neutrality deficits and a populace apparently displaying will deficits. This proposal misinterprets the institutional logics of modern representative democracy and, in consequence, leads to a conceptual decoupling of decisions, responsibility and office, hence to a serious damage of trust as a corner stone of representation and parliamentarism. More, the introduction of a randomly gathered deliberative *pouvoir neutre* would substitute trust by dense control in the name of a (presumed) general will of the people. Obviously, this signifies an – historically well-known – over-stretching of the concept of representation and, in the end, a dissatisfaction with the performance of professional party politicians and under-performing “citoyens”. Representative democracy, however, cannot shield against bad decisions or bad policies. And its corner stones are not fairness, rationality and, therefore, good decisions but trust by delegation. Introducing elements of randomness through, for instance, a randomly selected “House of Lots” as an occasional, preference-laundered *pouvoir neutre* and agent of the good is, therefore, a cure which might be seriously harmful for representative democracy and its office-based multiple representation and division of powers. [ZParl, vol. 44, no. 2, pp. 404 – 418]