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**Executive Leadership and the Role of “Veto Players”
in the United States and Germany***

by

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ABSTRACT

In recent comparative works on the constitutional structures of contemporary liberal democracies, the United States and Germany have been grouped together as examples of democratic systems with an exceptionally high degree of “institutional pluralism”. In other typologies both countries have even been classified as “semisovereign democracies”. Whereas such classifications are of some use, especially in the field of public policy research, they fail to pay reasonable attention to the fundamental difference between parliamentary and presidential government that dominated the older literature on comparative political systems. As the comparative assessments offered in this paper suggest, the difference between parliamentary government and presidential government does not only constitute very different conditions of executive leadership in the core executive territory and at the level of executive-legislative relations, but has also a strong impact on the role and performance of the various “veto players” that characterize the political systems of the United States and Germany, and which are at the center of this paper.

INTRODUCTION

This paper offers a comparative institutionalist perspective on the constitutional practice in the United States and in the Federal Republic of Germany, Western Europe's largest economy and a key player in the European Union. While there have been occasional attempts on either side of the Atlantic to put individual German and American political institutions in perspective,¹ there is certainly no tradition of systematic comparison of key areas of politics and policy in both countries. Several possible reasons may account for this, including persisting language barriers (especially on the American side) and the lack of viable theoretical concepts to stimulate German-American comparisons. Another may be observed in that few American scholars consider Germany as the prototype of parliamentary government in Western Europe. Most two-country-comparisons focusing on the different structural features and working logics of presidential and parliamentary government tend to compare the United States with the United Kingdom,² rather than the U.S. with Germany, even though the British version of parliamentary government can barely be considered a typical manifestation of West European parliamentary government.

The starting point for the comparative assessment of some of the key institutional arrangements in the United States and Germany to be offered in this paper is the strikingly

* I feel indebted to Paul-André Bompéchat for his exceptionally kind and generous support in turning an earlier draft of this paper into a publishable essay.

¹ See for instance Uwe Thaysen, Roger H. Davidson and Robert Gerald Livingston, eds., *The U.S. Congress and the German Bundestag* (Boulder: Westview Press, 1990); Daniel Halberstam and Roderick M. Hills Jr., "State Autonomy in Germany and the United States," *The Annals* No. 574 (2001): 173-184; Franz Gress and Jackson Jones, eds, *Reforming Governance. Lessons from the United States of America and the Federal Republic of Germany* (Frankfurt a.M. and New York: Campus, 2001).

² See, for instance, Richard Hodder-Williams and James Ceaser, eds., *Politics in Britain and the United States. Comparative Perspectives* (Durham: Duke University Press, 1986); Malcolm Walles, *British and American Systems of Government* (Deddington, Oxford: P. Allan, 1988); Colin Campbell and Margaret Jane Wyszomirski, eds, *Executive Leadership in Anglo-American Systems* (Pittsburgh: University of Pittsburgh Press, 1991); Colin Campbell, *The U.S. Presidency in Crisis. A Comparative Perspective* (New York and Oxford: Oxford University Press, 1998).

similar classification of both countries in many of the more recent typologies of contemporary liberal democracies. In Josep Colomer's well-known institution-focused typology of contemporary constitutional democracies, the United States and Germany are grouped together as types of liberal democracy that share exceptionally high degrees of "institutional pluralism"³ – to be understood as a large array of what many would now call institutional "veto players,"⁴ such as independent central banks, powerful second chambers or constitutional courts. A similar assessment has been offered more recently by Manfred G. Schmidt, who – for the same reasons – classifies both the United States and Germany as "semisovereign democracies."⁵ These and other classifications hold common ground in that they do not specifically account for the fundamental difference between presidential and parliamentary government, which has been at the center of most older works within the field of comparative politics.⁶ As far as this dimension has been considered in the more recent literature on constitutional structures and public policy at all, presidential government has been treated as just another component of "institutional pluralism" and a power-separating state structure.⁷

In this paper I would like to combine both perspectives – the variations of the "veto player"-approach, which has dominated more recent public policy research, and the more

³ Josep M. Colomer, "Introduction," in Josep M. Colomer, ed., *Political Institutions in Europe* (London and New York: Routledge, 1996), 9.

⁴ The term "veto player" has been popularized by the works of George Tsebelis, in which political processes are studied from a rational choice perspective. See George Tsebelis, "Decision-Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism, and Multipartyism," *British Journal of Political Science* 25 (1995): 289-326; "Veto Players and Law Production in Parliamentary Democracies: An Empirical Analysis," *American Political Science Review* 93 (1999): 591-608; "Veto Players and Institutional Analysis," *Governance* 13 (2000): 441-474; *Veto Players. How Political Institutions Work* (Princeton: Princeton University Press, 2002). – In Tsebelis's works the traditional differentiation between specific institutional characteristics of political systems – such as the structure of the party system or the electoral system – has been replaced by the idea of variable constellations of "veto players." For Tsebelis, the key dependent variable to which attention must be drawn is the degree of policy stability within a given political system or, differently stated, the degree to which actors are able to change the (legislative) status quo. – While I do not explicitly draw upon Tsebelis's sophisticated theoretical concept of "veto players," some of his key assumptions are readily acknowledged here. This holds true in particular for Tsebelis's contention that the positioning of individual "veto players" (especially in terms of party control of political institutions) usually matters more than the sheer number of "veto players" to be found in a given system – a proposition that would seem to make a comparison of two political systems with an equally large number of institutional "veto players," such as the United States and Germany, an even more instructive exercise.

⁵ Manfred G. Schmidt, "The Impact of Political Parties, Constitutional Structures and Veto Players on Public Policy," in Hans Keman, ed., *Comparative Democratic Politics* (London: Sage, 2002), 178.

⁶ See, *inter alia*, Arend Lijphart, ed., *Parliamentary versus Presidential Government* (Oxford: Oxford University Press, 1992).

traditional focus on parliamentary vs. presidential government – in order to reassess the institutional parameters of executive leadership and public policy-making in the United States and Germany.⁸ In the following sections I will consider both the role of the “classic” institutional “veto players” (such as second chambers, central banks, and constitutional courts) as well as the role of the interest groups, and the media, which have more recently been identified by some observers as the real “veto players” with which contemporary governments in western democracies must contend.⁹ Given the predictably greater familiarity of most readers with American political institutions, this study will highlight the differences between the two countries from an American perspective.

⁷ See for instance the highly influential index by E. Huber, C. Ragin and J. D. Stephens, “Social Democracy, Christian Democracy, Constitutional Structure, and the Welfare State,” *American Journal of Sociology* 99 (1993): 728.

⁸ The aim of this article is strictly confined to looking at the institutional parameters of executive leadership in the wider political process. Both a discussion of the respective institutional parameters of executive leadership in the core executive territory and an inquiry into the leadership process itself have been offered elsewhere and lie beyond the focus of this paper. Valuable volumes that include chapters on both countries are Richard Rose and Ezra N. Suleiman, eds., *Presidents and Prime Ministers* (Washington DC: American Enterprise Institute for Public Policy Research, 1980); Robert Elgie, *Political Leadership in Liberal Democracies* (London: Macmillan, 1995); B. Guy Peters, R. A. W. Rhodes and Vincent Wright, eds., *Administering the Summit. Administration of the Core Executive in Developed Countries* (London: Macmillan, 2000); R. Kent Weaver and Paul B. Stares, eds., *Guidance for Governance: Comparing Alternative Sources of Public Policy Advice* (Tokyo and New York: Japan Center for International Exchange, 2001).

⁹ Ralf Dahrendorf, “Regierungen ohne Opposition,” *Süddeutsche Zeitung*, 14 November 2002.

THE U.S. SENATE AND THE GERMAN BUNDESRAT

Bicameralism is one of the few institutional characteristics of contemporary western democracies unanimously considered to be among the most important “counter-majoritarian institutions,” or institutional “veto players.” Unlike the U.S. Senate, the German Bundesrat is formally not a “second chamber” at all. In a 1974 judgment, the German Federal Constitutional Court in Karlsruhe explicitly dismissed the idea of referring to the Bundesrat as the second chamber of a split yet integrated legislative assembly.¹⁰ Still, in comparative works by leading German and foreign scholars alike, the Bundesrat in terms of its own functioning has long been accepted as very much a second chamber.¹¹ Whereas some of the structural features of a genuine “second chamber” are absent, the Bundesrat even plays a stronger role in the federal decision-making process than most of its counterparts in other advanced democracies.

Nevertheless, as a closer look reveals, the Bundesrat’s formal position in the political decision-making process is slightly weaker than that of the U.S. Senate. Not only does the Senate have considerably more power in the legislative arena, as each bill has to secure the Senate’s approval, but there is also no equivalent in Germany for the Senate’s powerful role in the confirmation process of presidential nominees for high public office. Whereas in the legislative arena the Senate has proved to be an easier-to-tackle body for most presidents than the House – at least in terms of the statistically calculated average presidential success rates¹² – the Senate’s power to block presidential nominations has come to be considered a serious structural defect of the American system. While only a very small proportion of presidential nominees formally fails to secure the Senate’s approval, especially in the area of cabinet nominations, the indirect power of the Senate is immense. In fact, presidents try inexorably to avoid a final showdown in the Senate by

¹⁰ *Entscheidungen des Bundesverfassungsgerichts*, Vol. 37 (Tübingen: Mohr, 1974): 380.

¹¹ See Klaus von Beyme, “Die Funktionen des Bundesrates. Ein Vergleich mit Zwei-Kammer-Systemen im Ausland,” in Der Bundesrat, ed., *Der Bundesrat als Verfassungsorgan und politische Kraft* (Bad Honnef and Darmstadt: Neue Darmstädter Verlagsanstalt, 1974); Arendt Lijphart, *Democracies. Patterns of Majoritarian and Consensus Government in Twenty-one Countries* (London and New Haven: Yale University Press, 1984), 100.

¹² Roger H. Davidson and Colton C. Campbell, “The Senate and the Executive,” in Burdett A. Loomis, ed., *Esteemed Colleagues. Civility and Deliberation in the U.S. Senate* (Washington DC: Brookings Institution Press, 2000).

withdrawing candidates who cannot reasonably be expected to secure approval.¹³ However, even if an administration eventually gets its way, the extreme time costs of the senatorial process of scrutiny puts a heavy burden on any incoming administration that many observers now find unreasonable or even unacceptable.¹⁴

As opposed to the constitutional structures of some other major western countries, such as Britain or Italy, bicameralism both in the United States and in Germany has been inseparably associated with the concept of federalism.¹⁵ This having been said, there are important differences as to how bicameralism is organized in each country's political system. To begin with, there are differences in terms of representation and recruitment of the Senate and the Bundesrat.

At the federal level, the Bundesrat basically represents the state governments, rather than a given state's population. Members of the Bundesrat are not elected, but appointed as delegated members of the state government. The number of seats a state may have in the Bundesrat¹⁶ varies according to demographics, but each state has to cast its vote as a bloc vote. Very differently from U.S. senators, individual members of the Bundesrat do not play any role in the legislative process. The state governments, rather than their delegates in the Bundesrat, are the initiators of legislation. However, since the early days of

¹³ Glen S. Krutz, Richard Fleisher and Jon R. Bond, "From Abe Fortas to Zoë Baird: Why Some Presidential Nominations Fail in the Senate," *American Political Science Review* 92 (1998): 871-881.

¹⁴ See on this the special issue of *The Brookings Review* 19, 2 (2001), ed. by G. Calvin Mackenzie.

¹⁵ Some degree of assessment of the key characteristics and historical developments of the German and American federal system are in order at this stage. Both the basic institutional characteristics of the federal system and the cultural inclination towards the very idea of federalism have remained very different in the United States and Germany. While the American federal system has never fully lost the roots of its "dual federalism," the German system may best be described as a system of "interlocking" federalism, in which the lion's share of legislation is mandated at the federal level, whereas its implementation is left to the states. As to the historical developments of both federal systems, each country has experienced an extended period of centralization, at times countered by various attempts to devolve power to the states. Indications of decentralization appeared earlier in the United States than in Germany, and strategies to reform the federal system remained rather different. In both countries, however, an interest of the respective federal administrations to reduce the financial responsibilities of the federation played an important role. For comparative assessments see Roland Sturm, "Föderalismus in Deutschland und in den USA – Tendenzen der Angleichung?" *Zeitschrift für Parlamentsfragen* 28 (1997): 335-345; David B. Walker, "Von der Differenz zur Konvergenz? Deutscher und amerikanischer Bundesstaat im Vergleich," in Tobias Dürr and Franz Walter, eds., *Solidargemeinschaft und fragmentierte Gesellschaft: Parteien, Milieus und Verbände im Vergleich. Festschrift für Peter Lösche* (Opladen: Leske & Budrich, 1999); Halberstam and Hills, "State Autonomy in Germany and the United States."

¹⁶ The degree of inequality in terms of representation is less significant than in the United States, but still considerable when compared to some of the smaller federations in Western Europe, such as Austria or Belgium. For comparative figures see Alfred Stepan, "Toward a New Comparative Politics of Federalism, (Multi)Nationalism, and Democracy: Beyond Rikerian Federalism," in Alfred Stepan, *Arguing Comparative Politics* (Oxford: Oxford University Press, 2001), 350.

the Federal Republic, the veto powers of the Bundesrat, rather than its role as the initiator of federal bills, have been at the center of public political debate.

The Bundesrat's veto power – or more precisely, the proportion of bills which the Bundesrat can effectively veto¹⁷ – has significantly increased over the past decades. Whereas just about 42 percent of all federal bills were considered to fall into the category of so-called “*Zustimmungsgesetze*” between 1949 and 1953, this proportion has grown to 60 percent in the past decade.¹⁸ The state governments had a vested interest in compensating their gradual loss of legislative decision-making power by securing a greater say on federal bills. They could not have brought about this development, though, without the support of the Federal Constitutional Court, which issued a plethora of judgments that established notably generous co-determinative powers of the states (*Länder*) via the Bundesrat.¹⁹

The majority of political debates concerning the Bundesrat's role in the federal decision-making process have, however, focused on the degree and the effects of “party politicization” of the Bundesrat, rather than on the weight of the individual states or state governments in the federal decision-making arena. Until the late 1960s, the decision-making logic in the Bundesrat was barely influenced by the regional party majorities. The early institutional conflicts between the Bundestag and the Bundesrat focused on the Bundesrat's general role in the federal decision-making arena, rather than on the impact of the parties on the voting behavior of individual states.²⁰ This changed after the first major shift of power in the Federal Republic's political history in 1969, which brought to office the first Social Democratic chancellor of the postwar period. The Social-Liberal government under Chancellor Willy Brandt encountered almost constant opposition by a

¹⁷ The Bundesrat may veto any bill that has been passed by the Bundestag, but only some bills (so-called “approval bills” or “*Zustimmungsgesetze*”) require the explicit approval of the Bundesrat. Vetoes on other bills may be overruled by the Bundestag. However, if the Bundesrat has vetoed a bill with a two-thirds majority, an equivalent majority in the Bundestag is needed to overturn a veto of the Bundesrat.

¹⁸ Stephen Silvia, “Reform Gridlock and the Role of the Bundesrat in German Politics,” in Joanne B. Brzinski, Thomas D. Lancaster and Christian Tuschhoff, eds., *Compounded Representation in West European Federations* (London: Cass, 1999), 175.

¹⁹ Philip Blair and Peter Cullen, “Federalism, Legalism and Political Reality: The Record of the Federal Constitutional Court,” in Charlie Jeffery, ed., *Recasting German Federalism. The Legacies of German Unification* (London and New York: Pinter, 1999).

²⁰ Ursula Münch, “Der Bundesrat im Kontext neuer Regierungsprogramme,” in Hans-Ulrich Derlien and Axel Murswieck, eds., *Regieren nach Wahlen* (Opladen: Leske & Budrich, 2002).

Bundesrat controlled by the Christian Democrats.²¹ The 1970s also witnessed an important change in the political culture of the federal decision-making process, with one powerful opposition leader and later chancellor, Helmut Kohl, declaring publicly that he would not consider it reasonable to lend his party's support to help achieve the goals of a SPD-led federal government. While a notable degree of "party politicization" of the Bundesrat has always existed, its actual manifestations have changed in accordance with changing patterns of party control between the Bundestag and the Bundesrat. For much of the 1980s and the first half of the 1990s – a period marked by long years of SPD opposition in the Bundestag and a less than impressive electoral performance by the Social Democrats in most of the states – the extant "party politicization" of the Bundesrat manifested itself primarily by a notable absence of Bundesrat vetoes on major government bills. In contrast, reflecting the changes in patterns of party control, "party politicization" of the Bundesrat since the mid-1990s has been more likely to produce a notable reluctance of the "second chamber" to pass legislation initiated by the federal government.

The dramatically increased frequency of "divided government" that marked important spells of the more recent past in the United States and in Germany²² has, however, been accompanied by a series of ambivalent developments. Whereas in the United States the past decade has been marked by an increasing degree of "party politicization" in the legislative arena,²³ the structural conditions for making the Bundesrat an instrument of party power and opposition have been seriously challenged, indeed partly undermined, by the various effects of German unification. Not only has the number of states signifi-

²¹ Manfred G. Schmidt, "Die „Politik der Inneren Reformen“ in der Bundesrepublik Deutschland," *Politische Vierteljahresschrift* 19 (1978): 217-219.

²² The meaning of the term "divided government," as it is used in the American context, would not seem to be in need of any explanation here. In the more recent literature on the German political system, the term has been used to refer to the condition of split party control between the Bundestag and the Bundesrat, rather than between the executive and the legislature. As in any parliamentary system, the majority within the Bundestag and the executive branch are functionally integrated and form what is commonly referred to as a "governing majority," even though many decisions by this "governing majority" cannot become law without the support of the Bundesrat. See Roland Sturm, "Divided Government in Germany: The Case of the Bundesrat," in Robert Elgie, ed., *Divided Government in Comparative Perspective* (Oxford: Oxford University Press, 2001).

²³ While the degree of "party government," in terms of statistically recorded "party unity votes," has slightly declined since its peak in the mid-1990s, the congressional atmosphere in the very early twenty-first century has been even more aggressively partisan than during earlier periods. For figures on the development of partisan voting by chamber since the mid-1950s, see *Congressional Quarterly Weekly Report*, 14 December 2002: 3281-3282; for an analysis of the more latent aspects of "party warfare" in Congress, see Eric Schickler, "Congress," in Gillian Peele et al., eds., *Developments in American Politics 4* (London: Macmillan, 2002), 108-109.

cantly increased (from eleven to sixteen since 1990), but also the gap between the wealthier states (mostly located in the west) and between the poorer ones (mostly located in the east) has dramatically widened, with many state governments of the poorer states facing a sometimes irresistible temptation to literally “sell” their Bundesrat votes in exchange for generous financial support from the federal government. Moreover, the party composition of the state governments has reached an unprecedented level of diversity, making it even harder for the two major German parties (CDU/CSU and SPD) to organize any kind of “concerted action.” In January 2003 there were no less than eight different coalition patterns at the level of state governments. Of the sixteen state governments, only two had exactly the same party composition as the federal government (SPD-Green), and just three others were pure CDU/CSU-FDP coalitions corresponding neatly to the composition of the “bourgeois” opposition “camp” in the Bundestag.²⁴

The potential impact these structural developments within the German federal arena may have on the political executive’s room for manoeuvre cannot be meaningfully discussed without considering the “typical” party constellations in the Bundestag and Bundesrat. Whereas since 1945 “divided government” in the United States has usually meant Democratic control of Congress and Republican control of the presidency (the exceptions being phases of the Truman and Clinton presidencies, 1947/8 and 1995-2001),²⁵ the Christian Democrats in Germany have controlled the federal government and held a majority in the Bundesrat significantly more often than the Social Democrats. The rather differing strategic positions of both parties become particularly obvious if one compares the periods during which CDU-led and SPD-led federal governments have been able to draw on the support of a Bundesrat being controlled by their own party fellows. Whereas the final three years of the Kohl administration marked a rare exception for a CDU-led government to face a SPD-controlled Bundesrat, the Social Democrats

²⁴ Since 1990 the PDS, the successor party of the Communist ruling party of the German Democratic Republic, has been represented in the Bundestag alongside the SPD, CDU/CSU, FDP and the Greens, but has failed to be acknowledged by the other parties as a potential partner in either government or opposition at the federal level. After the federal election of September 2002 the PDS’s share of Bundestag seats was dramatically reduced to just 0.3 percent (down from about 5 percent).

²⁵ However, between 1981 and 1987 “divided government” resulted only from a Democratic majority in the House, whereas both the presidency and the Senate were under Republican control. By contrast, during spells of the 2001-02 term, “divided government” was due to the wafer-thin Democratic majority in the Senate.

have hardly ever enjoyed any extended period of “unified government”.²⁶ The Red-Green Schröder government, elected to office in October 1998, began with a working majority in the Bundesrat, but lost it soon afterwards due to a major electoral defeat in the state of Hesse in early 1999. Later state elections would bring further defeats and successive losses of Bundesrat seats for the SPD and the Greens.

Therefore, the extent to which one might expect future majority constellations in the German party system to be similar with those that prevailed for much of the post-war period, a relaxation of “party government” in the Bundesrat should quantitatively benefit the Social Democrats more than the Christian Democrats. However, the obstacles faced by the Schröder government, even during the short spells of “unified government” they enjoyed at the start of the 1998-2002 legislative term,²⁷ are apt to underscore the fact that the entire legislative process has become, and seems likely to remain considerably more fragmented and less predictable than in the past.

²⁶ Uwe Wagschal, “Der Parteienstaat der Bundesrepublik Deutschland. Parteipolitische Zusammensetzung seiner Schlüsselinstitutionen,” *Zeitschrift für Parlamentsfragen* 32 (2001): 872-873.

²⁷ A brief analysis of the key decisions of this term, including the role of the Bundesrat, can be found in Ludger Helms, *Politische Opposition. Theorie und Praxis in westlichen Regierungssystemen* (Opladen: Leske & Budrich, 2002), ch. II, 1.

THE U.S. SUPREME COURT
AND THE GERMAN FEDERAL CONSTITUTIONAL COURT

From a wider comparative perspective, both the United States and Germany belong to that group of advanced democracies with very powerful constitutional courts and strong judicial review.²⁸ Apart from this very basic parallel, differences between the very nature of judicial review in both countries – especially as to the conditions of executive leadership in the United States and Germany – abound. Some of the most obvious differences between the Supreme Court and the Federal Constitutional Court relate to their respective positions in either country’s legal system. Unlike the Supreme Court, the Constitutional Court is the Federal Republic’s sole court mandated to rule on cases relating to questions of constitutionality at the national level. The only other difference recognized by most comparative assessments of judicial review in both countries is the existence – or non-existence – of the “political question” doctrine. Unlike the Supreme Court, which may refuse any judgment by classifying an issue as a “political question” to be settled outside the court,²⁹ the Federal Constitutional Court must rule on any case that meets the formal criteria, however problematic its political implications may be.³⁰

The more striking differences between the overall nature of judicial review in the United States and Germany relate, however, to the structure of the political process rather than to the formal competencies of either court. In most comparative works on the practice of judicial review in contemporary liberal democracies the primary focus is on the role of the constitutional court as a political player throughout the wider legislative process. Reflecting the basic institutional logic of parliamentary democracies with their high degree of power-fusion marking the relationship between the executive and (parts of) the legislative branch, court judgments challenging the constitutionality of bills are usually considered as powerful counter-balances against majority rule in the legislative arena. Given the constitutionally and politically independent status of the executive and

²⁸ Christine Landfried, ed., *Constitutional Review and Legislation: An International Comparison* (Baden-Baden: Nomos, 1988).

²⁹ It should be acknowledged that there is no clear-cut definition of the term “political question.” As Tresolini and Shapiro have noted, “a political question is whatever the Supreme Court says it is.” Rocco J. Tresolini and Martin Shapiro, *American Constitutional Law*, 3rd ed. (London: Macmillan, 1970), 86.

the legislature in a presidential democracy, no such perspective may be meaningfully applied in the United States – at least if the focus is specifically on the possible restrictions imposed on the executive. Even bills which have been explicitly supported by a president and passed during periods of “unified government” reflect very clearly the character of legislation enacted by Congress. Consequently, the entire debate on “judicial legislating” in the United States has naturally been centered upon the relationship between the Supreme Court and Congress, rather than between the former and the presidency.³¹

By contrast, the German legislative apparatus is markedly different. From the early days of the Federal Republic, the Federal Constitutional Court has been understood to be a potential veto-player against the executive and its supporting parties in the Bundestag. The fundamental empirical parameters of “judicial review” in Germany leave no doubt as to the central role of the Court within in the legislative process. A longitudinal study on the legislative process in Germany (1949-1994) found that the Court was involved in 40 percent of all legislative “key decisions.”³² Nonetheless, the more relevant issue is the extent to which the Court has actually been inclined to veto majority decisions of a governing majority. As empirical assessments show, the overwhelming majority of cases falling into the particularly important category of “abstract norm control”³³ has been lodged by the opposition parties in the Bundestag or state governments led by the same parties.³⁴ There is, however, no convincing empirical evidence that the Constitutional Court has actually tended to decide cases in favour of the opposition. By contrast, the Court’s judgments have disclosed a remarkably favourable disposition for the political majority constellations in the Federal Republic. While there have been major instances, in which the government of the day was defeated by the Constitutional Court, these stand

³⁰ See Christian Rau, *Selbst entwickelte Grenzen in der Rechtsprechung des United States Supreme Court und des Bundesverfassungsgerichts* (Berlin: Duncker & Humblot, 1996).

³¹ Henry J. Abraham, *The Judicial Process. An Introductory Analysis of the Courts of the United States, England, and France*, 7th ed. (New York and Oxford: Oxford University Press, 1998), 371-384; Colton C. Campbell and John F. Stack Jr, ed., *Congress Confronts the Court. The Struggle for Legitimacy and Authority in Lawmaking* (Lanham: Rowman & Littlefield, 2001).

³² Klaus von Beyme, *Der Gesetzgeber. Der Bundestag als Entscheidungszentrum* (Opladen: Westdeutscher Verlag, 1997), 302.

³³ According to Article 93 (1), No. 2 of the German constitution (the Basic Law), one-third of the members of the Bundestag may challenge any law they think may conflict with the Basic Law before the Constitutional Court. The procedure is “abstract” in the sense that the question of the law’s validity may be purely hypothetical and need not have arisen in the course of a legal dispute.

³⁴ Klaus Stüwe, “Das Bundesverfassungsgericht als verlängerter Arm der Opposition? Eine Bilanz seit 1951,” *Aus Politik und Zeitgeschichte B* 37-38/2001: 34-44.

out as exceptions rather than the rule. Those administrations facing the largest numbers of defeats at the hands of the Constitutional Court were those with the weakest political support bases in the Federal Republic as a whole (i.e. at the federal *and* the state level), such as the Social-Liberal governments under Chancellors Willy Brandt and Helmut Schmidt (1969-1982).³⁵ Nevertheless, no administration can be guaranteed that its bills will remain unchallenged by the Constitutional Court, and even the mere possibility of a lawsuit triggered by the opposition significantly strengthens the position of the latter in the legislative arena.³⁶

On the other hand, it would not be too much of an exaggeration to argue that both the institutional and the cultural parameters of executive leadership in Germany have allowed administrations, under certain conditions, to view the Court as an institution that may ease, rather than complicate, the process of governing – a scenario that has remained largely unnoticed by the international literature on “veto players.” While a widespread consensus exists that the degree of “judicialization” of the political decision-making process is rather high in Germany, it remains quite debatable as to who is actually to blame for this phenomenon. Whereas the Court has, upon several occasions, not hesitated to use its resources to influence the decision-making process to the fullest, it must be remembered that the Court may act only after having been addressed and, unlike the Supreme Court, has no possibility of refusing a decision for political reasons. Given the innate logic of the parliamentary system of government, the opposition parties can hardly be blamed for trying to make the most of their veto powers and co-governing devices in their attempts to influence political decision-making. Even though no respected tradition of democratic “adversarial politics” exists in Germany, opposition forces have rarely been criticized for applying frequently to the Court. This is clearly symptomatic of the

³⁵ See Göttrik Wewer, “Das Bundesverfassungsgericht – eine Gegenregierung? Argumente zur Revision einer überkommenen Denkfigur,” in Bernhard Blanke and Hellmut Wollmann, eds., *Die alte Bundesrepublik: Kontinuität und Wandel* (Opladen: Westdeutscher Verlag, 1991). The basic correlation between the degree of public political support for the executive and judicial decision-making has also been highly familiar in the United States. As Jeff Yates and Andrew Whitford have been able to demonstrate, high public approval ratings of a president may have a significant impact on Supreme Court judgments. See Jeff Yates and Andrew Whitford, “Presidential Power and the United States Supreme Court,” *Political Research Quarterly* 51 (1998): 539-550.

³⁶ For all the differences between the German and the American nature of executive leadership and “judicial review,” similar “anticipated effects” have also been identified in the United States. See Michael McCann, “How the Supreme Court Matters in American Politics: New Institutional Perspectives,” in

decidedly legalistic German political culture, which appears to find more satisfaction in having an issue settled by a court judgment rather than by the political players in the competitive arena. In more recent studies on the problem of “judicialization” of politics in Germany, assessments abound which highlight the notable inclination of administrations to shelve unpopular political decisions until such time as the Court eventually intervenes to decide a pending issue. This may also imply that judges, rather than the political elite, “take the heat” for potentially unwelcome – though not unintended – consequences of a decision.³⁷

Howard Gillman and Cornell Clayton, eds, *The Supreme Court in American Politics: New Institutional Perspectives* (Lawrence: University Press of Kansas, 1999).

³⁷ See, with further references, Ludger Helms, “The Federal Constitutional Court: Institutionalising Judicial Review in a Semisovereign Democracy,” in Ludger Helms, ed., *Institutions and Institutional Change in the Federal Republic of Germany* (London: Macmillan, 2000). For a critical assessment by a former president of the Court see Jutta Limbach, “Mißbrauch des Bundesverfassungsgerichts durch die Politik?” *Gegenwartskunde* 48 (1999): 11-18.

THE FEDERAL RESERVE BOARD AND THE BUNDESBANK

Alongside the powerful “second chambers” and constitutional courts, a third common characteristic of both countries’ institutional parameters of executive leadership exists in the high degree of independence of their respective central banks. In comparative works both the Federal Reserve Board (henceforth, the Fed) and the Bundesbank have been considered to be among the most independent and powerful central banks in the world.³⁸ The Fed has just recently been described as “arguably the most influential policy organ in the United States.”³⁹ Until the creation of the Euro and the transfer of the Bundesbank’s power to the European Central Bank, the Bundesbank even enjoyed a slightly higher degree of independence than the Fed. Again, however, what really matters is the actual behavior, rather than the formal quality of the players’ veto resources.

More recent assessments of the Fed’s degree of political independence suggest that presidential checks on the Fed – namely the president’s power to appoint the chairman and other members of the Board of Governors – may have been overestimated. Not only are such appointment opportunities infrequent during a president’s term, but nominees also need the support of the Senate. Even upon confirmation, they may not always operate as reliably loyal supporters of the president.⁴⁰ Notably harmonious and close working relationships between the president and the Fed’s chairman – exemplified by the terms of President Gerald Ford and Chairman Arthur Burns – remain the exception and not the rule. Whereas explicit bargaining between the president and the Fed, such as to be observed during the Johnson presidency, has remained a rare occurrence, various case studies suggest that generally a significant degree of presidential influence on the decision-making process of the Fed’s Board of Governors has existed.⁴¹

³⁸ See for instance, Alex Cukierman, *Central Bank Strategy, Credibility, and Independence: Theory and Evidence* (Cambridge MA: MIT Press, 1992), 381.

³⁹ Bert A. Rockman, “Administering the Summit in the United States,” in B. Guy Peters, R. A. W. Rhodes and Vincent Wright, eds., *Administering the Summit. Administration of the Core Executive in Developed Countries* (London: Macmillan, 2000), 49.

⁴⁰ Irwin L. Morris, *Congress, the President, and the Federal Reserve. The Politics of American Monetary Policy-Making* (Ann Arbor: University of Michigan Press, 2000), 71-86.

⁴¹ See Nathaniel Beck, “Presidential Influence of the Federal Reserve in the 1970s,” *American Journal of Political Science* 26 (1982): 415-445; George A. Krause, “Federal Reserve Policy Decision Making: Political and Bureaucratic Influences,” *American Journal of Political Science* 38 (1994): 124-144.

Nothing similar can be said about the relationship between German federal governments and the Bundesbank, even though scholars have occasionally doubted the Bank's proverbially high degree of independence. Chancellor Kohl, in particular, was criticized for increasing the government's influence on the Bundesbank through the "back door" of party political appointments.⁴² The Kohl government also ignored the Bundesbank to the largest possible extent in matters of foreign policy, even when issues involved highly important currency matters. Broader historical assessments seem, however, to confirm the strong and independent role of the Bundesbank vis-à-vis the government that has been emphasized in comparative works on central bank independence in western democracies. A recent thorough empirical analysis of central bank decision-making and political control in the Federal Republic concludes that "the Bundesbank won most of its conflicts with the government."⁴³ More specifically, it has been suggested that the policies of the Bundesbank have even directly influenced the termination of no less than three chancellorships – Erhard in 1966, Kiesinger in 1969, and Schmidt in 1982.⁴⁴ While the Bundesbank lost its traditional veto player position due to the creation of a European single currency, and the establishment of the European Central Bank, there is a widespread consensus of opinion that the recent stages of "Europeanization" have yet further diminished – rather than increased – the room for manoeuvre of German governments in the area of monetary policy.⁴⁵

⁴² Roland Sturm, "How Independent is the Bundesbank?" *German Politics* 4, 1 (1995): 39.

⁴³ Uwe Wagschal, "Monetary Institutions: Maintaining Independence in Times of Fiscal Stress," in Helms, *Institutions and Institutional Change in the Federal Republic of Germany*, 163.

⁴⁴ David Marsh, *The Bundesbank: The Bank that Rules Europe* (London: Mandarin, 1992), 170.

⁴⁵ See for instance Fritz W. Scharpf, "Regieren im europäischen Mehrebenensystem – Ansätze zu einer Theorie," *Leviathan* 30 (2002): 78.

INTEREST GROUPS AND THE MASS MEDIA

While interest groups and the mass media have to date rarely been the focus of more recent works on “institutional pluralism” in liberal democracies, their very nature provides them with the potential to function as major “veto players” against governments in the United States and Germany. The specific character of interest-group politics in the U.S.,⁴⁶ is the result of both the highly pluralist nature of the interest-group system and the key features of the constitutionally provided separation of powers. As a British observer has stated, “well-organised groups confront a disorganised state.”⁴⁷ Some of the significant powers of American interest groups in the wider political process relate to their remarkable, mainly finance-based influence on the making and breaking of candidates campaigning for the office of president – a systemic function of interest groups for which there is no equivalent in Germany and most other West European parliamentary democracies. The strength of the American interest groups can also be identified in the public policy-making process. In many more recent assessments of the political parameters of executive leadership in the United States, the interest groups are considered the *key* reason for the president’s (alleged) inability to govern properly.⁴⁸ As White House involvement with political agenda-setting and law-making has become more pronounced over recent decades, lobbyists have indeed long come to infect the power centers at both ends of Pennsylvania Avenue. This notwithstanding, and all other things being equal, the executive branch in presidential systems remains to a lesser extent the target of interest groups than their counterpart in parliamentary democracies. Still, presidents have rarely profited from this somewhat lower intensity of lobbyism at the core executive. On the contrary, the fact that many interest groups are successful at establishing long-term working relationships with selected congressional committees and cabinet departments, in-

⁴⁶ For the best up-to-date overview on the role of the interest groups in the United States, see Allan J. Cigler and Burdett A. Loomis, eds., *Interest Groups Politics*, 6th ed. (Washington DC: Congressional Quarterly Press, 2002).

⁴⁷ Martin Harrop, “Comparison,” in Martin Harrop, ed., *Power and policy in liberal democracies* (Cambridge: Cambridge University Press, 1992), 269.

⁴⁸ Benjamin Ginsberg, Walter R. Mebane Jr. and Martin Shefter, “The Presidency, Social Forces, and Interest Groups: Why Presidents Can No Longer Govern,” in Michael Nelson, ed., *The Presidency and the Political System*, 5th ed. (Washington DC: Congressional Quarterly Press, 1998).

creases the likelihood that presidents in many policy fields can find themselves outside the core of the applicable decision-making network.

In Germany, as in other parliamentary democracies, much of the lobbying activities of interest groups focuses on the executive branch. While there is no legal requirement for major interest groups to be consulted by the federal government at the early stages of the law-making process, there has been a long-standing practice whereby administrations do consult key interest groups in a given field, and on a regular basis. In fact, as recent surveys confirm, the interest groups themselves consider contacts with the administration as significantly more important, and effective, than activities within the parliamentary arena.⁴⁹

However, this is not the only major difference between the German and American models of interest-group politics. In contrast to their American counterparts the major interest groups in Germany, especially in the field of economics and labor relations, have little in common with the textbook prototype of “pressure groups” which describe many of the American interest groups fairly well. Whereas Germany cannot be considered as a classic example of a corporatist country⁵⁰ either, a notable tradition of peaceful “tripartite” negotiating marks an important component of the “German model.” Although, even at the height of the corporatist era in Germany during the late 1960s and early 1970s, the impact of corporatist arrangements has been limited to a small number of policy fields (such as health policy in particular), the results of negotiations have temporarily eased the burden of governing for German administrations. Since German unification, the sociological and structural conditions for establishing functional tripartite decision-making networks have, however, deteriorated rather improved.⁵¹ While the so-called “*Bündnis für Arbeit*” (“Alliance for Jobs”), created in 1998 by the Schröder government, following earlier half-hearted experiments of the Kohl government, figured largely in the public debate about possible solutions to the problems of soaring unemployment and an ailing economy, it remained a debating club and a strategically useful instrument for Chancellor

⁴⁹ Martin Sebaldt, “Interest Groups: Continuity and Change of German Lobbyism since 1974,” in Helms, *Institutions and Institutional Change in the Federal Republic of Germany*, 200.

⁵⁰ Bernhard Weßels, “Die deutsche Variante des Korporatismus,” in Max Kaase and Günter Schmid, eds., *Eine lernende Demokratie – 50 Jahre Bundesrepublik Deutschland* (Berlin: Sigma, 1999).

⁵¹ Roland Czada, “Vereinigungskrise und Standortdebatte. Der Beitrag der Wiedervereinigung zur Krise des westdeutschen Modells,” *Leviathan* 26 (1998): 24-59; Rolf G. Heinze, *Die blockierte Gesellschaft:*

Schröder rather than a powerful decision-making agency. In hindsight, its eventual scrapping by the Schröder government early in 2003 seems to have been in the cards since the summer of 1999.⁵² Aside from the recent breakdown of such tripartite arrangements, the nearly legendary veto-power of the major German interest groups, and of the trade unions in particular, has gradually dissipated. The reasons for this were largely the same as in many other West European countries: declining membership, increasing intra-organizational conflicts over the distribution of scarce resources, growing competition among different groups from the same spectrum of political interests, and a structurally deteriorating political opportunity structure due to ever scarcer financial resources of the state.⁵³

There are, last but not least, also a number of major differences regarding the role of the media and media management as a variable within the leadership process in the United States and Germany. There has been scant truly comparative research on the institutional conditions of public leadership in presidential and parliamentary democracies. Most accounts, even when discussing a single country, focus on the different talents and strategies of individual “chief executives” in the field of media management and public leadership. In fact, the huge differences in the performances of individual office-holders (acting under largely identical institutional conditions within a given country), would suggest that most differentials may be explained by the differing personalities and skills of the actors involved.⁵⁴

Some important differences in the institutional parameters of executive leadership in both countries may, nevertheless, be identified. To begin with, a number of differences (some ambiguous), exist with regard to the functional roles of the media in presidential and parliamentary democracies. On the one hand, the role of the mass media in American

Sozioökonomischer Wandel und die Krise des „Modell Deutschland“ (Opladen: Westdeutscher Verlag, 1998).

⁵² Somewhat ironically, although corporatist arrangements are usually more likely to prosper under Social Democratic governments, the Red-Green electoral victory in 1998 had the effect of strongly limiting the trade unions’ interest in investing much time and energy in the “Alliance.” In fact, from the unions’ perspective, most of their policy ambitions seemed to stand a better chance to be satisfied outside the “Alliance,” i.e. within a dualistic rather than a tripartite decision-making apparatus, including just themselves and the government. See Wolfgang Streeck, “No Longer the Century of Corporatism. Das Ende des ‚Bündnisses für Arbeit,‘” *MPIfG Working Paper* 03/04, Mai 2003.

⁵³ Thomas von Winter, “Verbändemacht im kooperativen Staat,” in Andrea Gourd and Thomas Noetzel, eds., *Zukunft der Demokratie in Deutschland* (Opladen: Leske & Budrich, 2001).

politics is a more central one than that one of their counterparts in most West European parliamentary democracies, including Germany; in the latter, many systemic functions continue to be performed mainly by the political parties.⁵⁵ However, the quasi-ubiquitous nature of the media must not be confused with its alleged omnipotence. In fact, the net impact of the mass media, especially on political agenda-setting, tends to be even more limited in the U.S. than in the parliamentary democracies, as each alteration in the office of president is accompanied by the introduction of a completely new policy agenda.⁵⁶

There are, secondly, major differences regarding the overall concepts and public expectations of public leadership in both countries. These, again, are strongly influenced by the basic constitutional structures of the American and German polity, respectively. The virtually unquestioned position of the president as the system's "focal point" may have been favored by the potent cultural paradigms of this country; but it is also attributable to the very nature of the American constitutional construct, in which the president is the only politically responsible actor. There is no natural "opposition leader" or an "alternative government" in the presidential system, who can adequately compete with the president for media attention (even though some congressional majority leaders, such as Gingrich or Daschle, have tried play this role). This may be perceived as having both advantages and disadvantages from the president's point of view. While his exceptionally exposed position would seem to provide him with a unique opportunity to serve as the system's "agenda-setter-in-chief"⁵⁷ – which is not (or at least not to a comparable extent)

⁵⁴ See in this vein, for the U.S., Fred I. Greenstein, *The Presidential Difference. Leadership Style from FDR to Clinton* (New York: Martin Kessler, 2000).

⁵⁵ For a comparative assessment that covers both the United States and Germany see Wolfgang Jäger, *Fernsehen und Demokratie. Scheinplebiszitäre Tendenzen und Repräsentation in den USA, Großbritannien, Frankreich und Deutschland* (Munich: Beck, 1992). For a comparison between the American and the German parties see Peter Lösche, "The American Parties after the Cold War. A Comparative Perspective," in Herbert Dittgen and Michael Minkenberg, eds., *The American Impasse. U.S. Domestic and Foreign Policy after the Cold War* (Pittsburgh: University of Pittsburgh Press, 1996).

⁵⁶ Klaus von Beyme and Hartmut Weßler, "Politische Kommunikation als Entscheidungskommunikation," in Otfried Jarren, Ulrich Sarcinelli and Ulrich Saxer, eds., *Politische Kommunikation in der demokratischen Gesellschaft* (Opladen: Westdeutscher Verlag, 1998).

⁵⁷ It should be noted, however, that this is not what the findings of recent research on presidential leadership and the president's role in the political agenda setting process suggest. In fact, recent studies have questioned the conventional wisdom that considers the president as the country's "chief agenda setter." According to the authors of these works, the president is better described as a political player able at times to operate as "issue entrepreneur" than the system's dominant agenda setter. See George C. Edwards and B. Dan Wood, "Who Influences Whom? The President, Congress, and the Media," *American Political Science Review* 93 (1999): 327-344; Roy B. Flemming, B. Dan Wood and John Bohte, "Attention to Issues in a System of Separated Powers: The Macrodynamics of American Policy Agendas," *The Journal of Politics* 61 (1999): 76-108.

available to German chancellors or to other West European “chief executives” – it also compels U.S. administrations to focus intently on issues of media management. Thus, all other things being equal, German chancellors have been able to devote a considerably larger share of their time and energy to tackle the policy dimensions of political decision-making than their American counterparts.⁵⁸

Another difference concerns the “emotional” climate in which the relationship between the media and the two countries’ “chief executives,” i.e. presidents and chancellors, evolves. As many observers accustomed to the style of media reporting on politics in West European democracies are quick to realize, most media reports on the president in the United States are decidedly more respectful than those of the German mass media on the chancellor. Also this pattern may be explained, not exclusively but also, by institutional differences. As the office of president combines the roles of head of the political executive and head of state, there are manifold situations in which he can draw from the well of public respect, which in most parliamentary democracies is available only to the head of state, be it a monarch or an elected president as in Germany.

⁵⁸ However, changes in this field mark certainly one of the most remarkable features of the changing German chancellorship. See L. Helms, “The Changing Chancellorship.”

CONCLUSIONS

The aim of this paper has been to highlight the significant differences that mark the conditions of executive leadership in the wider political processes of the United States and the Federal Republic of Germany despite their common, high degree of “institutional pluralism.” Similar differences can be found at the level of scholarly assessments of the key problems within the constitutional practice of both countries. While in most studies on the American political system, the focus has been primarily on what one author has described as “a quite awesome deficit of accountability”⁵⁹ of the political process, many critiques of the contemporary German polity tend rather to concentrate on the system’s inability to bring about major policy reform.⁶⁰ Given the rather different natures of American and German political culture, it may not come as too much of a surprise that comparable differences can be found at the level of beliefs and perceptions among both countries’ citizens. These, in turn, generate rather different “cultural parameters” of executive leadership in Washington and Berlin which may well reinforce the effects of the institutional differences discussed above.

One may therefore conclude that the structural conditions of governing and governance in both countries are in fact rather different, and are likely to remain as such for the foreseeable future. The theoretical implications of this finding can be easily summarized: Whereas the number and strength of institutional “veto players” that characterize a given system marks, in fact, an important dimension of contemporary liberal democracies to be duly considered in future comparative political research, the older distinction between parliamentary and presidential government has not become obsolete. Even though many “textbook views” on presidential and parliamentary government may be in need of revi-

⁵⁹ Anthony King, “Distrust of Government: Explaining American Exceptionalism,” in Susan J. Pharr and Robert D. Putnam, eds., *Disaffected Democracies. What’s Troubling the Trilateral Countries?* (Princeton: Princeton University Press, 2000), 95.

⁶⁰ See for instance Hans-Herbert von Arnim, “Reformblockade der Politik? Ist unser Staat noch handlungsfähig,” *Zeitschrift für Rechtspolitik* 31 (1998): 138-147; Hans-Wolfgang Arndt *et al.*, “Zehn Vorschläge zur Reform des deutschen Föderalismus,” *Zeitschrift für Rechtspolitik* 33 (2000): 201-206; Manfred G. Schmidt, “Thesen zur Reform des Föderalismus in der Bundesrepublik Deutschland,” *Politische Vierteljahresschrift* 42 (2001): 474-491.

sion,⁶¹ there can be no doubt that institutional “veto players” do perform different roles, and produce different effects, under parliamentary and presidential government.

⁶¹ For a critical reassessment of some of the most popular (mis)conceptions of parliamentary and presidential government see G. Tsebelis, *Veto Players*, 72-75.