

PORTADA

SUMARIO

PRESENTACIÓN

ÁREAS DE ESTUDIO

**NOVEDADES DEL  
FEDERALISMO COMPARADO**NOVEDADES DEL  
ESTADO AUTONÓMICONOVEDADES  
PARLAMENTARIASACTUALIDAD  
IBEROAMERICANA

CALIDAD DEMOCRÁTICA

AGENDA

ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020

CRÉDITOS

INSTRUCCIONES PARA  
LOS AUTORES

LISTA DE EVALUADORES

INFORME

**THE POLITICS OF LEGISLATIVE INITIATIVES IN THE GERMAN BUNDES RAT<sup>1</sup>****por Patrick Finke y Antonios Souris**

Department of Political Science, Friedrich-Alexander-Universität Erlangen-Nürnberg

**ABSTRACT**

In the German legislative process, the Bundesrat as the de facto Second Chamber is supposed to represent the territorial interests of the federal states ('Länder'). It has been subject to party politics for decades, however. Its 'partisan capture' has mainly been associated with its power to vote down bills proposed by the federal government or the Bundestag. These 'blockades' fall short in determining the extent to which political parties try to push through their own agendas via the Bundesrat, especially because it ignores the latter's rights to initiate legislation. For evaluating its usage by Länder governments, we suggest focusing on the Bundesrat committees as the place of actual policy-making. Drawing on a new dataset of roll call votes in the committees since the German reunification, we find profound partisan interests. The new data suggest that legislative initiatives are a strategic instrument for the Bundestag opposition to initiate federal policy-making.

**Keywords:** Federalism, German Bundesrat, Parliamentary Committees, Right of Initiative

**RESUMEN**

Los Länder participan en el proceso legislativo a través del Bundesrat. Sin embargo, el Bundesrat ha estado también sujeto a la política partidista durante décadas. Su uso partidista se ha asociado principalmente por su poder de vetar iniciativas legislativas propuestas por el gobierno federal o el Bundestag. No obstante este "bloqueo" es solo una parte de los mecanismos que utilizan los partidos políticos para imponer sus propias agendas a través del Bundesrat. Por ello, en este texto se analizan también las iniciativas legislativas del Bundesrat. Con el objetivo de evaluar su uso por parte de los gobiernos de los Länder, la investigación se centra en las comisiones del Bundesrat como lugar de la formulación de políticas. Basándonos en nuevos datos de las votaciones nominales en las comisiones desde la reunificación alemana, se puede confirmar un uso partidista de las iniciativas. Los resultados de la investigación sugieren que las iniciativas legislativas son un instrumento estratégico a través del cual la oposición del Bundestag inicia la formulación de políticas federales.

**Palabras clave:** Federalismo, Bundesrat alemán, Comisiones parlamentarias, Iniciativas legislativas

## PORTADA

## SUMARIO

## PRESENTACIÓN

## ÁREAS DE ESTUDIO

**NOVEDADES DEL  
FEDERALISMO COMPARADO**NOVEDADES DEL  
ESTADO AUTONÓMICONOVEDADES  
PARLAMENTARIASACTUALIDAD  
IBEROAMÉRICANA

## CALIDAD DEMOCRÁTICA

## AGENDA

ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020

## CRÉDITOS

INSTRUCCIONES PARA  
LOS AUTORES

## LISTA DE EVALUADORES

**I. INTRODUCTION**

The German Bundesrat is one of a kind: while it effectively acts as a Second Chamber with even more (veto) powers than most of them in other countries, the Basic Law formally treats it as a federal organ that assembles the envoys of the sub-national ('Länder') governments. While originally designed to represent the territorial interests of the Länder, the Bundesrat has been subject to party politics for decades. Following the upheavals from the mid-1960s onwards, Willy Brandt and his coalition government of Social Democrats (SPD) and Liberals (FDP) came into power, aiming at changing post-war political culture and routines. For the implementation of its agenda, the government depended on the Bundesrat because reforms included policy areas such as education which largely concern the Länder competences. Eventually, the Conservatives (CDU/CSU) made use of 'their' Länder governments in the Bundesrat, trying to obstruct the government program at the federal level (Sturm 2015: 203).

As the Bundesrat was bound to transform into a 'tool' of the opposition, its 'partisan capture' has received lots of attention among scholars and practitioners alike (essential: Lehbruch 1976; 2000). By now, most agree that political parties generally play a significant role in the Bundesrat, yet territorial interest of the Länder "(...) have not (...) in total fallen victim to party political confrontation" (Sturm 2015: 221). But what does this mean for policy-making procedures? Ever since, this question has been hard to answer, largely because of the available empirical data. Apart from a few exceptions, the individual positions of the Länder are not recorded in the monthly plenary sessions, in which the final decisions of the Bundesrat are made.

In this contribution, we revisit the question, focusing on a specific legislative procedure that is said to be a highly 'political' one: its right to initiate federal legislation. According to Basic Law Article 76(1), the Bundesrat is allowed to propose own federal bills to the Bundestag. In practice, only a few of the Bundesrat's legislative initiatives become actual law (Münch 2011: 88; Oschatz and Risse 1989: 317). But the political leaders of the Länder perceive the right of initiative as being one of the Bundesrat's core competences as it underlines its legislative power and ambition (Münch 2011: 88-92). The right of initiative has also become a political party tool, however. If a legislative initiative is tabled by one Land or a group of Länder in the Bundesrat, it bears the label of the federal chamber, implying federal states' interests as the driving motive for the bill instead of political party ones. This, in turn, should make it harder for members of the Bundestag to vote against the bill (Harle and Stecker 2011: 328). For the empirical analysis, we take a novel approach, which makes a large-scale empirical analysis possible: we look at the committees. As in other parliaments, they are the actual place of policy-making in the Bundesrat and, in contrast to the plenary sessions, they register the individual positions of the Länder (Sturm and Müller 2013).

The remainder of the paper is structured as follows. In the second section, we outline the main features of the Bundesrat committees, including their tasks, composition and working methods. In the third section, we explain our analytical approach to study Bundesrat decision-making and party politics via the committees. In the fourth section, we introduce a new dataset we have developed based on the information in the committee protocols. In the fifth and in the sixth section, we present the results of our data and a more detailed analysis of the authorship of the initiatives. In the final section, we discuss whether the right of initiative is a political party tool.

## PORTADA

## SUMARIO

## PRESENTACIÓN

## ÁREAS DE ESTUDIO

NOVEDADES DEL  
FEDERALISMO COMPARADONOVEDADES DEL  
ESTADO AUTONÓMICONOVEDADES  
PARLAMENTARIASACTUALIDAD  
IBEROAMERICANA

## CALIDAD DEMOCRÁTICA

## AGENDA

ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020

## CRÉDITOS

INSTRUCCIONES PARA  
LOS AUTORES

## LISTA DE EVALUADORES

**II. POLICY-MAKING IN THE BUNDESRAT COMMITTEES**

The committees develop recommendations for the plenary decisions. There are 16 standing Bundesrat committees. Their jurisdictions largely mirror the ones of the Bundestag committees and of the federal ministries: Agriculture; Labour; Foreign Affairs; Women and Children; Families and Seniors; Finance; Health; Internal Affairs; Culture; Environment; Transport; Economic Affairs; Defence; and Housing.

The members of the Bundesrat are the Länder governments, consisting of a minister president (or mayor) and ministers (or senators), who are responsible for the specific departments. The cabinet members share the same territorial association, meaning, for example, they are ministers of Bavaria, yet they are not necessarily members of the same party. The Länder governments are usually composed of at least two parties forming a coalition. In the plenary sessions, in which the Land population determines the distribution of votes (from three to six with a total of 69), each (coalition) government has to vote 'en bloc'. By contrast, in the committees, each Land has one vote, and decisions require a simple majority only. The ministers are members in the committees corresponding with their area of jurisdiction at the federal state level, meaning, for example, the Bavarian minister of justice is a member in the Committee on Legal Affairs (Alter 2002: 300). They are responsible for the committee work and position of the Land on the subject matters.

The politicians delegate the substantial work related to the committees to public servants who prepare all committee activities, including the draft of legislative initiatives. Afterwards, these staff positions are coordinated with the political leadership of the ministry, the ones deemed highly political such as legislative initiatives possibly with the ministers themselves.

Depending on whether the issue at stake cross-cuts policy fields and jurisdictions, several ministries of a Land might get involved at this stage. According to common practice, experts from one Land are also interested in cooperating with their counterparts in other Länder. Cross-party initiatives that are prepared from Länder governments which are made up of different parties are rather an exception, however (Münch 2011: 94-95) – although they subsequently have a high chance to be accepted by the Bundestag (Harle and Stecker 2011: 334). The draft bill is then sent to the Bundesrat secretariat and then circulated among Länder governments and committees which get involved in the consultation. Normally, legislation is referred to several committees. Thereby, one committee acts as the leading one, taking on the organizational work related to a procedure, including the eventual draft of a document, comprising the recommendations of all committees.

In the committee meetings, civil servants, acting as 'delegated commissioners', normally substitute for their respective ministers. The German Basic Law explicitly allows for this routine in Article 52(4). This rule exists because of the workload in the Bundesrat, which is hardly manageable next to the duties as a minister, as well as the skills of civil servants for contributing Länder expertise in legislative and administrative affairs to the committee work (Sturm and Müller 2013: 148). The 'delegated commissioners' are obviously no elected politicians. Their margin of discretion is low as they are bound to the politically agreed positions within their respective ministries.

Despite the dominance of bureaucrats at the committee stage, officials like Oberthür (1989: 395) report that the coordination among them becomes particularly intense when they have to agree both substantially and politically on a common text of the initiative. Different sectoral preferences as well as political party and territorial interests are all at play. The committee negotiations regularly result in decisive changes to the draft.

## PORTADA

## SUMARIO

## PRESENTACIÓN

## ÁREAS DE ESTUDIO

NOVEDADES DEL  
FEDERALISMO COMPARADONOVEDADES DEL  
ESTADO AUTONÓMICONOVEDADES  
PARLAMENTARIASACTUALIDAD  
IBEROAMERICANA

## CALIDAD DEMOCRÁTICA

## AGENDA

ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020

## CRÉDITOS

INSTRUCCIONES PARA  
LOS AUTORES

## LISTA DE EVALUADORES

**III. DECISION-MAKING TYPES IN THE BUNDESRAT COMMITTEES**

For an analytical framework, we introduce three decision-making types that take account of both the prevailing preferences of actors in German federalism and the distinct institutional set-up of the committees. The first type depicts an institutionally driven consensus in the committees. It assumes congruent interests of the Länder that translate into shared policy positions of their representatives in the committees, which eventually result in unanimous decisions. This may be due to federal imperatives as the Länder might all support a legislative initiative to fix a particular administrative problem they all face. Thereby, the initiative is uncontested as the Länder experts provide an identical (technical) evaluation of the problem and its solution.

The second type of decision-making assumes diverging positions of the Länder representatives in the committee because of distinct territorial characteristics, including the budgetary situation, the economic structure, or the geographic location. We call this type of decision-making territorial bargaining. One Land or a group of Länder with, for example, the same economic structure may table a legislative initiative aimed at supporting a certain industry. In the committee sessions, the Länder with like-minded interests might form a situational alliance, no matter what their political party affiliation is, to ensure the adoption of an initiative that serves their interests.

Party politics is the third type of decision-making. A necessary condition for party politics is that Länder representatives in the committees actually vote in accordance with a political party line. This is understood as an a priori coordinated position promoted by at least 70 percent of the Länder, whose respective members in the committees have the same political party affiliation, in any non-unanimous committee decision. The 70-percent-threshold is informed by the two-thirds majority requirements we often find for constitutional change and excludes coincidence due to marginal deviations, while at the same time it provides a clear-cut distinction from non-partisan voting. Of course, political party lines that emerge from cross-state coordination are only plausible if at least two Länder with the same political party affiliation participate in the committee decision.

The presence of (a) party line(s) is not a sufficient condition for party politics as an analytical category of decision-making, however. For us, this presupposes competition. Party lines indicate a direction. This means that we are able to build on them to assess whether the Länder representatives of one party cohesively supported a subject matter ("yes"), while the ones tied to another party did not ("abstention") or even rejected it ("no"). Diverging party lines are therefore a prerequisite for party politics. This is best described with the following example.

In a given roll vote on whether to recommend tabling a legislative initiative in the Economic Affairs Committee, for example, seven Länder representatives voted in favor of it and six against it, while three opted for "abstention". In order to identify party lines, we need to ask: Are there at least two Länder representatives of ministers who share the same political party color? In our present example, there are seven SPD-affiliated representatives, five of the CDU/CSU, two of the Greens, and one each of the Left and of the FDP. The latter two therefore do not meet the minimum criterion of two representatives. For the other three political parties, we now turn to the level of cohesiveness. Six of the seven SPD-affiliated representatives voted "yes", all CDU/CSU-representatives "no", and the two Greens split into one supporter and one opponent. Therefore, only the SPD and CDU/CSU met the cohesion criterium of 70-percent. Eventually, we count two party lines in different directions, so we would assign the case to the party politics type of decision-making.

**PORTADA****SUMARIO****PRESENTACIÓN****ÁREAS DE ESTUDIO****NOVEDADES DEL  
FEDERALISMO COMPARADO****NOVEDADES DEL  
ESTADO AUTONÓMICO****NOVEDADES  
PARLAMENTARIAS****ACTUALIDAD  
IBEROAMÉRICANA****CALIDAD DEMOCRÁTICA****AGENDA****ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019****ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020****CRÉDITOS****INSTRUCCIONES PARA  
LOS AUTORES****LISTA DE EVALUADORES****IV. RESEARCH DESIGN**

The meetings of the committee are not open to the public; the protocols are accessible, however. These comprise an attendance list as well as information on the pieces of legislation (usually the name, type and identification number) and the related motions that were tabled by the Länder as well as their individual positions. The protocols up to October 2013 are accessible for academia in hard copy by now. Within a larger research project, the information for 14 Bundesrat committees – the committees on Foreign Affairs and Defence were not included because of the lack of empirical material as their protocols mostly continue to be confident – has been retrieved from their protocols and transferred to a new dataset (Finke and Souris 2017). For our analysis, we use a subset, containing 834 roll call votes (RCV) on tabling a legislative initiative. For each of the cases, the dataset includes the individual position of the 16 Länder, which can be “yes”, “no” or “abstention”. The dataset also includes the political party affiliations of the ministers who were in charge at the time of the decision.

Due to the large scale of the empirical material, sample periods between July 1991 and June 2012, all a couple of months long, were selected. On the one hand, these samples cover all coalition governments at the federal level – CDU/CSU and FDP, SPD and Greens as well as the Grand Coalition of CDU/CSU and SPD – along with all legislative periods since 1991. On the other hand, the samples refer to political party majority constellations at the federal level, an important framework condition for partisan behaviour in the Bundesrat (Sturm 2001). Existing contributions have already shown that depending on the Land or the group of Länder tabling a legislative initiative, political party affiliations and thus majority constellations between Bundestag and Bundesrat plenary bear on their eventual success (Harle and Stecker 2011; König and Bräuninger 2005; Münch 2011).

In our research project, the samples follow the so-called “GOM”-Scheme (Stecker 2015: 1314f.), which takes into account the variations of political party coalitions at the Länder level and their effects on majorities in the Bundesrat plenary. “G”-Länder are those, governed by a political party or party coalition which is part of the government at the federal level. “O”-Länder are those governed by a political party or party coalition which is part of the opposition at the federal level. “M”-Länder are governed by a coalition comprising a Federal Government party and a federal opposition party or a party not represented at the federal level.

In periods in which the G-Länder have absolute majority in the Bundesrat plenary (i.e. at least 35 seats), the opportunities for action of O-Länder in the Bundesrat are severely limited since they may be blocked at any time. The opposite holds true when there is an absolute majority in the Bundesrat plenary for the O-Länder. If that is the case, they can ensure the passing of their motions regardless of their political rivals. But normally, majority constellations are not that easy. There may be times, in which the G- and O-Länder only have a relative majority or the M-Länder have a (relative or absolute) majority. To successfully table a bill, there is the need to find supporters from the other camps, which implies cross-party negotiation, coordination and compromises. Table 1 relates the political party colours of the federal government to the majority constellations at the federal level. As a result, we get eight different investigation periods.



## PORTADA

## SUMARIO

## PRESENTACIÓN

## ÁREAS DE ESTUDIO

NOVEDADES DEL  
FEDERALISMO COMPARADONOVEDADES DEL  
ESTADO AUTONÓMICONOVEDADES  
PARLAMENTARIASACTUALIDAD  
IBEROAMERICANA

## CALIDAD DEMOCRÁTICA

## AGENDA

ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020

## CRÉDITOS

INSTRUCCIONES PARA  
LOS AUTORES

## LISTA DE EVALUADORES

Table 1. Investigation Periods and Cases in the Dataset.

Parties of the Federal Government	Majority Type in the Bundesrat plenary	Cases in the Dataset
CDU/CSU and FDP	<i>Absolute majority for G-Länder</i>	50
	<i>Absolute majority for O-Länder</i>	105
	<i>Unclear majorities</i>	280
SPD and Greens	<i>Absolute majority for G-Länder</i>	39
	<i>Absolute majority for O-Länder</i>	103
	<i>Unclear majorities</i>	165
CDU/CSU and SPD	<i>Absolute majority for G-Länder</i>	76
	<i>Unclear majorities</i>	16

Annotation: Cases in the dataset = number of RCV.

## V. DATA ANALYSIS

How do parties deal with the different windows of opportunity the majority constellations offer them? As presented in Table 2, the data shows large differences across investigation periods. The minimum value for decisions which fall under the category “party politics” – about ten percent – is identified for periods in which CDU/CSU and SPD formed the federal government and could rely on an absolute majority of G-Länder in the Bundesrat plenary. At the same time, we observe a relatively high level of consensus. This does not imply the absence of conflict, however, yet it shifted from political party to territorial ones as the data reveal the second highest share of RCV that fall under the category “territorial bargaining”.

The investigation period, in which the SPD and the Greens form the federal governments and ‘their’ Länder governments also have the absolute majority in the Bundesrat presents the highest value for the category “party politics”. It also registers the lowest share of unanimous decisions (eight percent).

## PORTADA

## SUMARIO

## PRESENTACIÓN

## ÁREAS DE ESTUDIO

NOVEDADES DEL  
FEDERALISMO COMPARADONOVEDADES DEL  
ESTADO AUTONÓMICONOVEDADES  
PARLAMENTARIASACTUALIDAD  
IBEROAMERICANA

## CALIDAD DEMOCRÁTICA

## AGENDA

ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020

## CRÉDITOS

INSTRUCCIONES PARA  
LOS AUTORES

## LISTA DE EVALUADORES

Table 2. Decision-making types across investigation periods.

Investigation Period		Decision-making Types		
Federal Government	Majority in the Bundesrat	Consensus	Territorial Bargaining	Party Politics
CDU/CSU and FDP	G-Länder (absolute)	10,00	70,00	20,00
	O-Länder (absolute)	11,43	53,33	35,24
	unclear	17,50	61,79	20,71
SPD and Greens	G-Länder (absolute)	7,69	48,72	43,59
	O-Länder (absolute)	13,59	63,11	23,30
	unclear	10,91	47,88	41,21
CDU/CSU and SPD	G-Länder (absolute)	17,11	72,37	10,53
	unclear	12,50	62,50	25,00

Annotation: values in percent.

This investigation period covers the first months of Gerhard Schröder's chancellorship, which followed the first, and up until today, only complete change of government in postwar (West-) German history. This period was characterized by intense partisan, ideological conflict between the federal government and the new leader of the opposition in the Bundestag: the CDU/CSU. The Länder right of initiative fell victim to this politicization and was utilized heavily to pursue partisan goals.

During the periods in which the CDU/CSU and the FDP form the federal government and either an absolute majority of the G-Länder or an unclear majority in Bundesrat, the share of "party politics" is almost on a par with 20 percent. In both situations, the O-Länder have no majority in the plenary. The unclear majorities in the second constellation forces the Länder to find supporters for their initiatives outside their own political party camps. This facilitates the introduction of initiatives that address problems which all Länder face. As a result, this constellation registers the highest share of consensual decision-making (at 17.5 percent). The values change when the O-Länder led by the SPD, the Greens and the Left have the absolute majority in the Bundesrat: "Party politics" rises to above 35 percent. Without having to look for support among their rivals, the O-Länder were free to use the right of initiative as a tool for opposition politics to pursue alternatives to the federal governments' policies.

When the SPD and the Greens formed the federal government, we observe the opposite pattern. In periods of an absolute majority of G-Länder, we find the highest share of "party politics", namely more than 40 percent, although initiatives tabled by O-Länder are faced with a high chance of failure in the Bundesrat (Harle and Stecker 2011: 333). When the O-Länder have the absolute majority, the value is just over 23 percent. The O-Länder control the Bundesrat plenary and can thus ensure that their initiatives will pass. Yet, it seems as if they restrain from tabling politically controversial initiatives.

PORTADA

SUMARIO

PRESENTACIÓN

ÁREAS DE ESTUDIO

NOVEDADES DEL  
FEDERALISMO COMPARADONOVEDADES DEL  
ESTADO AUTONÓMICONOVEDADES  
PARLAMENTARIASACTUALIDAD  
IBEROAMERICANA

CALIDAD DEMOCRÁTICA

AGENDA

ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020

CRÉDITOS

INSTRUCCIONES PARA  
LOS AUTORES

LISTA DE EVALUADORES

This rather surprising result can be explained by looking at parliamentary cycles at the federal level. Unlike the Bundesrat, the Bundestag is no “permanent body” (Reuter 2009: 15). At the end of each legislative period, any ongoing legislative procedures face discontinuity (Oschatz and Risse 1989: 329). Thus, there is a high chance that a Bundesrat initiative near the end of a legislative period comes to nothing as the Bundestag would not come to a final decision on it. As the formulation of an initiative comes with a significant workload for Länder bureaucracies, they appear to refrain from tabling them if it is unclear whether there is the chance to be passed in time.

At the beginning of a parliamentary term, the new federal government usually initiates the central pieces of its political agenda for the upcoming years. If the opposition parties want to do more than just vote against these bills in the Bundestag, they can table alternatives. Due to the option to mask the partisan nature of a bill by tabling it within a *federal* chamber (Harle and Stecker 2011: 328), the Bundesrat’s right of initiative presents itself as a viable option. As discussed above, strategically tabled O-Länder initiatives explain the high share of “party politics” in the period that covers the first months of Schröder’s chancellorship.

In periods in which CDU/CSU and FDP formed the federal government, the majority constellations and thus windows of opportunity for political parties determined how the Länder used their right of initiative. After the O-Länder gained an absolute majority and could thus ensure the passing of their own bills, we observe both a higher number of RCV’s on initiatives in Table 1 and higher values for “party politics” in Table 2. Thus, the right of initiative was used frequently to table politically contested initiatives. In the periods, in which the SPD and the Greens formed the federal government, the Länder governed by CDU/CSU tabled initiatives no matter the majority constellations and chances of success, fighting against chancellor Schröder’s reform agenda. This led to the tabling of numerous initiatives designed as straightforward alternatives to the federal government’s proposals. As soon as the O-Länder achieved an absolute majority in the plenary, they changed their strategy: they blocked a considerable number of government bills, leading to a ‘blockade’ and eventually the step down of chancellor Schröder. At the same time, our data show that the Bundesrat’s right of initiative lost significance as a tool for opposition politics.

## VI. AUTHORSHIP OF LÄNDER INITIATIVES

In this section, we first focus on the question of which Länder governments frequently tabled initiatives. We answer this question by looking at two subsets of Länder initiatives, those decided upon unanimously and those subject to party politics, as they present the two extreme points of decision-making, the consensual one and the competitive one based on partisan ideology. Out of the 834 RCV related to initiatives, 116 were made unanimously and 226 fall under the category “party politics”.

Figure 1 presents the authors of initiatives. Oschatz and Risse (1989: 321) as well as Harle and Stecker (2011: 328f.) show that certain Länder use the right of initiative more actively than others. Especially the ones with larger bureaucracies like Baden-Württemberg, Bavaria, Hesse or North Rhine-Westphalia stand out. Our data confirm this finding.

Baden-Württemberg and North Rhine-Westphalia followed by Lower Saxony and Saxony table the most initiatives, on which the committees eventually decide unanimously. For the other eastern Länder as well as Bremen, Saarland and Schleswig-Holstein, the data presents the opposite results. Interestingly, our data show that the likelihood of unanimity does not increase with the number of authors of an initiative.



**PORTADA**

**SUMARIO**

**PRESENTACIÓN**

**ÁREAS DE ESTUDIO**

**NOVEDADES DEL FEDERALISMO COMPARADO**

**NOVEDADES DEL ESTADO AUTONÓMICO**

**NOVEDADES PARLAMENTARIAS**

**ACTUALIDAD IBEROAMERICANA**

**CALIDAD DEMOCRÁTICA**

**AGENDA**

**ACTIVIDADES REALIZADAS JUNIO A NOVIEMBRE 2019**

**ACTIVIDADES PREVISTAS DICIEMBRE 2019 A JUNIO 2020**

**CRÉDITOS**

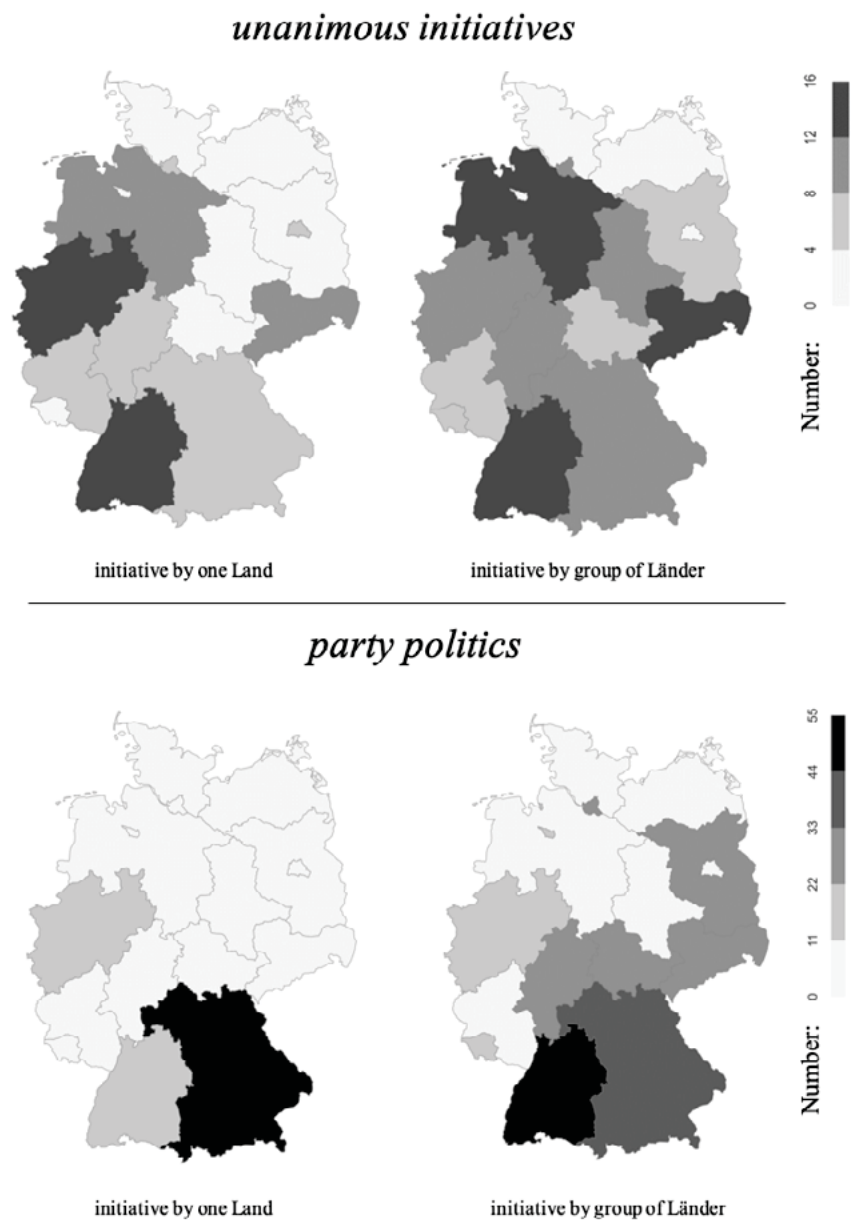
**INSTRUCCIONES PARA LOS AUTORES**

**LISTA DE EVALUADORES**

Out of the 116 cases, one Land tabled the corresponding initiative there are 83 with one author and only 33 initiatives by a group of Länder.

Looking at initiatives whose RCV's were shaped by party politics, we see a different distribution of authorship. In 40 percent of the cases, Bavaria tabled the corresponding initiative. Baden-Württemberg and North Rhine-Westphalia also tabled several initiatives, the other Länder were responsible for only a few. This is far from being a surprise: Baden-Württemberg and Bavaria have been traditionally been the leaders of the conservative Länder, North Rhine-Westphalia of the social democratic side.

**Figure 1. Authorship of initiatives.**



PORTADA

SUMARIO

PRESENTACIÓN

ÁREAS DE ESTUDIO

NOVEDADES DEL FEDERALISMO COMPARADO

NOVEDADES DEL ESTADO AUTONÓMICO

NOVEDADES PARLAMENTARIAS

ACTUALIDAD IBEROAMERICANA

CALIDAD DEMOCRÁTICA

AGENDA

ACTIVIDADES REALIZADAS JUNIO A NOVIEMBRE 2019

ACTIVIDADES PREVISTAS DICIEMBRE 2019 A JUNIO 2020

CRÉDITOS

INSTRUCCIONES PARA LOS AUTORES

LISTA DE EVALUADORES

The data for Bavaria also confirms a study by Brathuhn (1989: 322-331) who analyzed Bavarian Bundesrat initiatives between 1986 and 1988. He shows that Bavaria tabled a large number of contested initiatives. He concluded that the CSU utilizes the right of initiative mainly for electoral and political reasons. In the months before a state legislature election in Bavaria, an exceptionally large number of initiatives was tabled even if they were introduced to the Bundestag just shortly before a federal election and therefore had no realistic chance of success. Brathuhn assumes politicking on part of the CSU. At the same time, he argues that the CSU uses the Bundesrat's right of initiative to pursue policy goals they could not reach during coalition negotiations on the federal level, trying to underline its claim to be an independent political party with its own (federal) policy goals.

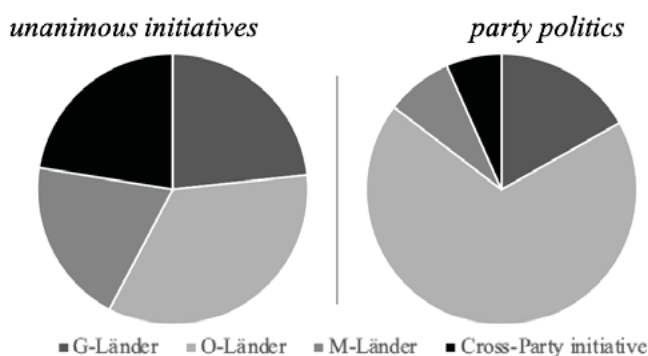
When it comes to initiatives tabled by a group of Länder, the majority of Länder regularly participated in tabling bills. Brandenburg and the Saarland must also be mentioned. Both Länder tabled no party politically contested initiatives by themselves but frequently co-authored them. Since they are among the least populous Länder, it is plausible to assume that they lack administrative resources to prepare initiatives by themselves but were eager to support their political allies.

Out of the 226 RCV that fall under the category "party politics", one Land tabled the corresponding initiative 135 times. In the other 91 instances, we observe a group of Länder, a much higher share compared to the unanimous initiatives.

Looking at the authorship of Länder initiatives could identify some particularly active ones. However, the affiliation of the state governments to the group of G-, O-, or M-Länder opens up a further perspective on the use of the right of initiative. Figure 2 relates the authorship of initiative (no matter if it was one Land or a group of Länder) to the GOM-affiliation.

Unanimous initiatives were tabled by all camps nearly with a similar frequency. Interestingly, the O-Länder are slightly overrepresented. Cross-party initiatives are just as common as initiatives tabled by G- or M-Länder. Looking at the ones subject to party politics, O-Länder tabled nearly 70 percent of the corresponding initiatives. Only few cross-party or M-Länder initiatives exist. Surprisingly, a total of 38 RCV relate to an initiative tabled by G-Länder. In part, those bills were prepared by the federal government and only tabled by one Land to mask its actual initiator. One of those initiatives was the "Entwurf eines Zweiten Gesetzes zur Änderung des Gesetzes zur Regelung der Miethöhe" (document number 109/99). This initiative dealt with tenancy law and sought to extend the duration of the current legal situation until the federal government could pass a reform. By having a G-Land table the initiative in the Bundesrat, the federal government could avoid the blame for delays of their reform.

Figure 2. Authorship of initiatives according to GOM-affiliation.



Source: own calculations.

## PORTADA

## SUMARIO

## PRESENTACIÓN

## ÁREAS DE ESTUDIO

NOVEDADES DEL  
FEDERALISMO COMPARADONOVEDADES DEL  
ESTADO AUTONÓMICONOVEDADES  
PARLAMENTARIASACTUALIDAD  
IBEROAMERICANA

## CALIDAD DEMOCRÁTICA

## AGENDA

ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020

## CRÉDITOS

INSTRUCCIONES PARA  
LOS AUTORES

## LISTA DE EVALUADORES

## VII. IS THE RIGHT OF INITIATIVE A POLITICAL PARTY TOOL?

The importance of the right of initiative of the Länder in the Bundesrat itself does not arise solely from its actual stake in federal legislation. In fact, it represents a procedurally secure opportunity for the Länder to formulate their interests in matters of federal legislation vis-à-vis the Bundestag and the federal government. In addition, the literature has described the use of the right of initiative as a mean of opposition politics and hence a political party tool (Harle and Stecker 2011: 327f, Münch 2011: 100). So, what is the “nature of the beast”? The new data offers empirically grounded answers.

An overview of possible motives for Länder initiatives can be found in Table 3. The first two possible motives, solving technical issues and preserving the Länder rights and competences, imply consensus. It is sometimes unclear, however, whether this consensus is reached because the Länder assess the necessity of the bill equally, or whether unanimity was reached to form a common front against the federal government. In order to make that distinction, we have analyzed the committee protocols.

**Table 3. Motives for tabling a Länder initiative.**

	Motive	Role of the Bundesrat	Definition
Consensus	Solving technical issues	Länder utilize the expertise of their ministries to solve problems	Constructive solution to a problem without potential for a federal conflict
	Preserving federal states' rights	Länder utilize the Bundesrat to shape legislative competencies or fiscal matters in their favor	Law aims at a transfer of costs to the federal level or a transfer of competencies to the Länder
Party Politics	Tabling politically contested initiatives	Bundesrat as an arena for political party confrontation	Initiative without reference to actions of federal government
	Strategic opposition behaviour	Political parties use the Bundesrat to table alternatives to bills proposed by the federal government	Initiative is a reaction to a bill tabled by the federal government or aims to regulate an issue in which the federal government has announced a bill

If a specific problem has been raised in the protocols, but the proposed solution has not touched upon any questions of finance or competence, or if even the federal government explicitly supported the project, the bill was counted towards solving a technical issue. In order to qualify towards preserving the Länder rights, the initiative would have to require the federal government to cover the costs of a measure, improve the Länder tax revenues or strengthen their legislative competencies vis-à-vis the federal level. Finally, some of the submissions were not attributable to either type, not least because of the concise nature of the protocols.

For the other two motives, we assume a conflict between at least two political parties. The distinction between the two motives is based on whether the Länder initiative refers directly to a project of the federal government or whether the initiative was introduced without such strategic goals. The party conflict would therefore be an expression of diverging policy interests. This comprises cases for which we found no reference to legislative actions of prepared by the federal government in the protocols. If, on the other hand, we found some references or even explicit ones, referring to an on-going legislative process, the decision was considered strategic opposition behavior. Again, some initiatives could not be clearly assigned to either motive.

**PORTADA****SUMARIO****PRESENTACIÓN****ÁREAS DE ESTUDIO****NOVEDADES DEL  
FEDERALISMO COMPARADO****NOVEDADES DEL  
ESTADO AUTONÓMICO****NOVEDADES  
PARLAMENTARIAS****ACTUALIDAD  
IBEROAMÉRICANA****CALIDAD DEMOCRÁTICA****AGENDA****ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019****ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020****CRÉDITOS****INSTRUCCIONES PARA  
LOS AUTORES****LISTA DE EVALUADORES**

Out of the 116 unanimous RCV, we found just twelve cases in which federal interests proved decisive. The focus was clearly on financial relations. In nine cases, the Länder initiative aimed at the federal level, bearing the financial burden of several policy programs. In one case, the Länder sought to increase their tax revenue. One initiative was about protecting the states' rights while a last one aimed at both legislative competencies and the federal level, bearing a financial burden. On the other hand, in 81 cases, the initiative aimed at solving a technical issue. In the remaining 23 cases, the protocols were too brief to identify underlying motives.

Among the 226 decisions shaped by party politics, we found 70 in which strategic opposition behavior was at play. 127 touched upon contested issues but were not influenced by strategic considerations. In 29 cases, this distinction could not be made. Of the 70 initiatives tabled as part of a strategic opposition behavior, 25 were planned as an alternative to a federal government bill. Sometimes, the Länder initiative and the federal government bill were successively discussed in the same committee session. In 19 cases, the initiative aimed at amending or reverting one of the Federal Government's reforms after a short period of time. In 23 instances, the initiative aimed at a policy field in which the federal government was preparing a bill or had announced one in their coalition agreement. While all of these 67 decisions were on initiatives tabled by O-Länder, in three instances the corresponding initiative was tabled by a G-Land. In two of them, the federal government and a G-Land initiated the same bill simultaneously. In the third case, Bavaria aimed at increasing the sentences for child abuse. During the chancellorship of Helmut Kohl, this criminal offense was reformed. The CSU government, however, deemed the legal regulation implemented by the federal government (they were part of) as insufficient.

The majority of legislative initiatives unanimously adopted in the committees are aimed at solving a technical issue. Rarely, Länder use the right of initiative to pursue federal interests. If this happens, the Länder usually aim to pass on costs to the federal level. On the other hand, almost a third of decisions shaped by party politics are based on strategic considerations of political parties. Such initiatives are not the expression of genuine interest of the federal state, but a reaction to the policy of the federal government and thus could just as well be introduced by the opposition parties in the Bundestag. However, although controversial among the parties, decisions shaped by political party interests are usually not intended exclusively to serve strategic calculations. If strategic calculations are at play, however, tabling an initiative via the Bundesrat can mask this actual purpose (Harle and Stecker 2011: 328).

For those who perceive the Bundesrat primarily as a chamber of territorial interest representation, our results are, in fact, good news. Almost 500 RCV under investigation are assigned to our decision type "territorial bargaining", which refers to confrontations based on territorial – and not political party – interest of the Länder. So, we find that legislative initiatives are indeed a political party tool, especially if the partisan majority constellations at the federal level open up windows of opportunity or if there is a fierce ideological conflict as during the time of Schröder's reform program. Yet, at the same time, we also confirm all the scholars, which have argued that territorial interests do not fall victim to political party confrontation. They go hand in hand, together with the institutional interests, and are no mutually exclusive modes of decision-making.

**PORTADA****SUMARIO****PRESENTACIÓN****ÁREAS DE ESTUDIO****NOVEDADES DEL  
FEDERALISMO COMPARADO****NOVEDADES DEL  
ESTADO AUTONÓMICO****NOVEDADES  
PARLAMENTARIAS****ACTUALIDAD  
IBEROAMERICANA****CALIDAD DEMOCRÁTICA****AGENDA****ACTIVIDADES REALIZADAS  
JUNIO A NOVIEMBRE 2019****ACTIVIDADES PREVISTAS  
DICIEMBRE 2019 A JUNIO 2020****CRÉDITOS****INSTRUCCIONES PARA  
LOS AUTORES****LISTA DE EVALUADORES****REFERENCES:**

- ALTER, ALISON B. (2002): Minimizing the Risks of Delegation: Multiple Referral in the German Bundesrat, in: *American Journal of Political Science*, 46(2), pp. 299-315.
- BRATHUHN, Ralf (1989): Bundesratsanträge der bayerischen Landesregierung: Profilierungsanträge oder ernstgemeinte Gesetzgebungsakte?, in: *Zeitschrift für Parlamentsfragen (Zparl)*, 20(3), pp. 322-331.
- FINKE, Patrick, SOURIS, Antonios (2017): Die Veralltäglicung von Parteipolitik im Bundesrat? Ein neuer Datensatz zu den Voten in den Ausschüssen, in: *Zeitschrift für Parlamentsfragen (ZParl)* 4/2017, pp. 773-784.
- HARLE, Isabella, STECKER, Christian (2011): Die Initiativtätigkeit des Bundesrates im Lichte der Parteipolitisationsthese, in: *Zeitschrift für Parlamentsfragen (ZParl)* 2/2011, pp. 325-334.
- KÖNIG, Thomas, BRÄUNINGER, Thomas (2005): Gesetzgebung im Föderalismus. Speyer Forschungsberichte 237. Speyer: Forschungsinstitut für öffentliche Verwaltung bei der Deutschen Hochschule für Verwaltungswissenschaften.
- LEHMBRUCH, Gerhard (1976): Parteienwettbewerb im Bundesstaat, Stuttgart et al.
- LEHMBRUCH, Gerhard (2000): Parteienwettbewerb im Bundesstaat: Regelsysteme und Spannungslagen im politischen System der Bundesrepublik Deutschland, Wiesbaden.
- MÜNCH, Ursula (2011): Die Initiativtätigkeit des Bundesrates im Wandel der Zeit, in: Leunig, Sven, Uwe Jun (eds.): *60 Jahre Bundesrat. Tagungsband zum Symposium an der Friedrich-Schiller-Universität Jena vom 12. bis 14. Oktober 2009*. Baden-Baden, pp. 88-105.
- OBERTHÜR, Karlheinz (1989): Ausschussarbeit aus Sicht des Sekretariats, in: Hrbek, Rudolf (ed.): *Miterlebt-Mitgestaltet. Der Bundesrat im Rückblick*. Bonn, pp. 374-386.
- OSCHATZ, Georg-Berndt, RISSE, Horst (1989): Bemerkungen zum Gesetzesinitiativrecht des Bundesrates, in: *Zeitschrift für Gesetzgebung (ZG)*, 4(4), pp. 316-331.
- REUTER, Konrad (2009): *Bundesrat und Bundesstaat*, Berlin.
- STECKER, Christian (2015): Parties on the Chain of Federalism: Position-Taking and Multi-level Party Competition in Germany, in: *West European Politics*, 38(6), pp. 1305-1326.
- STURM, Roland (2001): Divided Government in Germany: The Case of the Bundesrat, in: *Divided Government in Comparative Perspective*, ed. R. Elgie, pp. 167-181. Oxford.
- STURM, Roland (2015): Kapitel 4: Party Competition and the Federal System: The Lehmburch Hypothesis revisited. In Sturm, Roland: *Der deutsche Föderalismus. Grundlagen – Reformen – Perspektiven*. Baden-Baden, pp. 203-223.
- STURM, Roland, MÜLLER, Markus M. (2013): Blockadepolitik in den Ausschüssen des Bundesrates Offene Fragen und erste Antworten, in: *Europäisches Zentrum für Föderalismus-Forschung Tübingen (ed.): Jahrbuch des Föderalismus, Band 14*. Baden-Baden, pp. 142-154. ■