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THE MIXED-MEMBER PROPORTIONAL SYSTEM: A MODEL FOR ELECTORAL REFORM?

O SISTEMA PROPORCIONAL MISTO: UM MODELO PARA A REFORMA ELEITORAL?

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RESUMO

O sistema proporcional misto (MMPS), introduzido pela primeira vez em 1949 para eleger o Bundestag alemão, foi considerado um modelo para a reforma eleitoral em todo o mundo. Na sua pátria, no entanto, tem sido alvo de críticas crescentes durante o passado recente e está passando por um processo de reforma moroso que levou a um ajustamento do MMPS em 2013. No entanto, como a nova lei produziu alguns efeitos colaterais críticos, ela está novamente sob intenso escrutínio. O artigo explica porque é que o MMPS surgiu como um modelo internacional, por que razões se tornou um caso de reforma na atual Alemanha e de que forma pode fornecer lições úteis para os reformadores eleitorais noutros lugares.

Palavras-chave: sistema proporcional misto - reforma eleitoral - lugares excedentes - Alemanha - Nova Zelândia.

ABSTRACT

The mixed-member proportional system (MMPS) that was first introduced in 1949 to elect the German Bundestag has been considered a model for electoral reform worldwide. In its homeland, however, it has met with increased criticism during the recent past and undergone a protracted reform process that led to an adjustment of the MMPS in 2013. However, as the new law produced some critical side effects it is again under intense scrutiny. The article explains why the MMPS has emerged as an international model, for what reasons it has become a case for reform in present Germany and in what way it might provide useful lessons for electoral reformers elsewhere.

Keywords: mixed-member proportional system – electoral reform – surplus seats – Germany – New Zealand

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I.

In 1949, the Federal Republic of Germany was the first country worldwide that introduced a mixed-member proportional system (MMPS) to elect its national diet (Bundestag).² Originally, this electoral system was not derived from a theoretically consistent institutional design but rather emerged as an innovative combination from a political compromise between the Christian democrats (CDU/CSU) on the one hand and the Social democrats (SPD) and some smaller parties on the other.³ At that time nobody could assess its political effects beforehand. Therefore, all German parties agreed that it should be of provisional nature, not enshrined in the constitution (Basic Law) and applied exclusively in the first Bundestag election.⁴ Nevertheless, the MMPS has not only be retained in Germany until today but also become an international model.⁵ In fact, it has been taken over by several democracies since the 1980s and played a key role in many debates about electoral reform around the globe.⁶ Moreover, the MMPS is the preferred choice of most academic experts on electoral systems.⁷

Quite in contrast to its international standing, the MMPS has met with increased criticism in its German 'homeland' during the recent past. In particular, the surplus seats (*Überhangmandate*) that the Bundestag electoral system produced in greater numbers since the 1990s were considered highly problematic since they distorted the proportionality between the parliamentary parties.⁸ Following a ruling of the Federal Constitutional Court in 2008, the German electoral law was amended in 2013. Yet, this was not the end of a quite protracted reform process: as the modified MMPS realized full intra-parliamentary proportionality only in exchange for a strongly oversized Bundestag – increasing its seat number from the regular 598 to 709 in the 2017 elections –, a parliamentary working group was installed in summer 2018 to elaborate on key features of a renewed electoral reform that should eliminate the unwanted inflation of parliamentary seats with the smallest possible modification of the original MMPS design. But although a plenty of such 'minimal invasive' reform options has been launched before,⁹ the working group failed to agree on a common proposal in spring 2019.

2 An earlier version of this essay was presented at the Colóquio internacional de direito eleitoral at the Tribunal Regional Eleitoral in Salvador de Bahia on 7 September 2019. The lecture style has been retained. For a more detailed description of the effects and reform of the German electoral system, see BEHNKE, Joachim; et al. *Reform des Bundestagswahlsystems: Bewertungskriterien und Reformoptionen*. Gütersloh: Verlag Bertelsmann Stiftung, 2017; GROTZ, Florian. Happy End oder Endloses Drama? Die Reform des Bundestagswahlsystems. In: JESSE, Eckhard; STURM, Roland (Ed.). *Bundestagswahl 2013. Voraussetzungen, Ergebnisse, Folgen*. Baden-Baden: Nomos, 2014; and NOHLEN, Dieter. *Wahlrecht und Parteiensystem. Zur Theorie und Empirie der Wahlsysteme*. 7. ed. Opladen: Budrich, 2014. p. 367-402.

3 GROTZ, *ibidem*, p. 118-119.

4 JESSE, Eckhard. *Wahlrecht zwischen Kontinuität und Reform*. Eine Analyse der Wahlsystemdiskussion und der Wahlrechtsänderungen in der Bundesrepublik Deutschland 1949-1983. Düsseldorf: Droste, 1985. p. 92.

5 SHUGART, Matthew S.; WATTENBERG, Martin P. (Ed.). *Mixed-member electoral systems*. The best of both worlds? Oxford: OUP, 2001.

6 Relevant cases of MMPS include Albania, Bolivia, Lesotho, New Zealand, Venezuela and, on the subnational level, Scotland, Wales and the London Assembly (NOHLEN, Dieter et al. Appendix: electoral systems in independent countries. In: ROSE, Richard (Ed.). *The international encyclopedia of elections*. Washington D.C.: Congressional Quarterly, 2000). In the meantime, Albania and Venezuela have abolished it again. A recent example where the MMPS played a prominent role in the electoral reform debate is Canada (MILNER, Henry. Electoral system reform, the Canadian experience. *Election Law Journal: Rules, Politics, and Policy*, v. 16, n. 3, p. 349-356, 2017).

7 BOWLER, Shaun, FARRELL, David M.; PETTITT, Robin T. Expert opinion on electoral systems: so which electoral system is "best"? *Journal of Elections, Public Opinion and Parties*, v. 15, n. 1, p. 3-19, 2005.

8 BEHNKE, Joachim. The strange phenomenon of surplus seats in the German electoral system. *German Politics*, v. 16, n. 4, p. 496-517, 9 nov. 2007.

9 BEHNKE, et al., *op. cit.*, 2017.

Against this background, it is interesting to ask why the MMPS has emerged as an international model, for what reasons it has become a case for reform in contemporary Germany and in what way it might nevertheless be a suitable choice for other democracies. To answer these questions, the next section will explain the institutional design of the MMPS for the German Bundestag. The third section will describe its major political effects and the reform process that it has undergone since 2008. The fourth section will have a comprehensive look at the German states (*Länder*), which have adopted institutional variants of the Bundestag model. The fifth section will then deal with a relevant case outside Germany: New Zealand that has replaced the British first-past-the-post system by a MMPS in 1993. The final section will draw some lessons from these comparative insights, which might be useful for debates on electoral reform elsewhere.

II.

The basic rationale of the German MMPS is that a certain number of seats is allocated in SMCs to ‘personalize’ the composition of parliament without affecting the overall proportionality between parliamentary parties. The system that was applied for Bundestag elections without major changes from 1956 until 2009 worked as follows.¹⁰ Each elector has two votes, which are cast independently of each other. The first vote is to elect a candidate in one of 299 SMCs by plurality rule (‘first-past-the-post’). Since the winning candidate in each SMC immediately enters parliament, the SMC seats are called ‘direct seats’. The second vote is cast for a closed party list at the regional level (i.e. the German states or *Länder*). However, the political impact of the two votes is substantially different because only the second votes determine the party composition of the Bundestag. For this purpose, the seat allocation proceeds in several consecutive steps.

In the first step, the overall 598 Bundestag seats are distributed proportionally at national level according to the second votes cast for the party lists. This allocation only includes those parties that have won more than five percent of the list votes (legal threshold) or at least three SMC seats (*Grundmandatsklausel*). In the second step, the seats of individual parties are proportionally assigned to their *Länder* lists. In the final step, the ‘direct seats’ – i.e. the SMC candidates which have immediately entered parliament – are subtracted from their respective party’s proportional seats, and only the remaining seats of this party are then filled from the list.

There are some more institutional details of the Bundestag system that we do not need to specify here.¹¹ Still, one idiosyncratic feature is required for the understanding of the functioning of the Bundestag MMPS and its recent reform process: if a party gains more SMC seats in a *Land* than it is entitled to according to its proportional seat share, it will retain these surplus seats. Before 2013, the other parliamentary parties received no proportional compensation for these extra seats that were mostly won by the largest party.

¹⁰ During its early years, the Bundestag MMPS saw some major changes, the most important being the introduction of the two-vote system and the national application of the five-percent threshold in 1953 as well as the national seat allocation in 1956 (NOHLEN, op. cit., 2014, p. 369). Afterwards, there were only some minor changes of the PR formula from d’Hondt to Hare-Niemeyer (1985) and to Sainte-Lagué/Schepers (2008). Moreover, in the first Bundestag election after re-unification (1990) the legal threshold was applied separately to West and East Germany (SAALFELD, Thomas. Germany: stability and strategy in a mixed-member proportional system. In: GALLAGHER, Michael; MITCHELL, Paul (Ed.). *The politics of electoral systems*. Oxford: OUP, 2005. p. 201-212).

¹¹ See BEHNKE, Joachim; GROTZ, Florian; HARTMANN, Christof. *Wahlen und Wahlsysteme*. München: Oldenbourg, 2017. p.183-184.

Given this institutional design, the Bundestag electoral system is usually classified as mixed-member proportional system or – which is more common in the German terminology – as ‘personalized proportional representation’ (*personalisierte Verhältniswahl*): proportionality is the decisive mode of seat allocation (since the SMC seats are subtracted from the list seats. The SMCs only aim at a personalization of the vote because they determine ‘who fill[s] a party’s seats but not, in general, the number of seats assigned to that party’.¹²

III.

How has the Bundestag electoral system performed since 1949? The most basic observation that can be derived from the data shown Table 1 is that its effects have significantly changed over time. During the first period of its existence, in particular from the 1960s to 1980s, the German MMPS seemed to marry the ‘best of both worlds’,¹³ i.e. the ideal-type consequences of majority electoral systems that aim at facilitating the formation of stable and efficient party governments by a concentration of parliamentary seats and those of proportional electoral systems that aim at maximizing proportionality between votes and seats of the individual parties.

In this regard, three major effects stand out. First, the MMPS led to a high concentration of the parliamentary party system, as usually majority systems tend to do. Between 1953 and 1976, the largest party received between 46.4 and 54.3 percent of the Bundestag seats. This facilitated the formation of small and ideologically coherent coalition governments. Second, the MMPS produced a high degree of proportionality between votes and seats. In the Bundestag elections of 1972, 1976 and 1983, the share of ‘lost votes’ cast for parties not represented in parliament was below one percent – an outcome that is normally produced by ‘pure’ proportional systems only. Finally, German voters made extensive use of the option to split their tickets – mostly in a strategic way that the first votes were cast for candidates of the larger parties and the second votes for a smaller party that was known to be the coalition partner of the respective larger party.¹⁴ In view of this impressive combination of majoritarian and proportional effects, it easy to explain that the MMPS became an international model for electoral reform.

Table 1: Political effects of the MMPS in Bundestag elections (1949-2017)

Election year	Proportionality ^a	Lost votes ^b	Seats of largest party (in %)	Effective Number of Parties ^c	Number of additional seats ^e
1949	91.4	1.1 ^d	34.2	3.98	2
1953	92.7	10.6	49.9	2.78	3
1957	93.1	10.3	54.3	2.41	3
1961	94.3	5.7	48.4	2.50	5
1965	96.4	3.6	49.4	2.38	-

¹² BAWN, Kathleen. The logic of institutional preferences: German electoral law as a social choice outcome. *American Journal of Political Science*, v. 37, n. 4, p. 965–989, nov. 1993. p. 973; emphasis in original.

¹³ SHUGART, WATTENBERG, op. cit., 2001.

¹⁴ NOHLEN, op. cit., 2014, p. 380-385.

1969	94.5	5.6	48.8	2.24	-
1972	98.9	0.9	46.4	2.33	-
1976	99.1	0.9	49.0	2.31	-
1980	97.9	2.0	45.5	2.43	1
1983	99.2	0.4	49.0	2.51	2
1987	98.6	1.3	44.9	2.80	1
1990	91.9	4.2	48.2	2.65	6
1994	96.5	3.6	43.8	2.90	16
1998	94.0	5.9	44.5	2.91	13
2002	93.3	3.0	41.6	2.81	5
2005	96.0	3.9	36.8	3.44	16
2009	94.0	6.0	38.4	3.97	24
2013	84.3	15.7	49.3	2.80	33
2017	94.9	5.1	34.7	4.64	111

Source: updated version of GROTZ, Florian. Verhältniswahl und Regierbarkeit. Das deutsche Wahlsystem auf dem Prüfstand. *Zeitschrift für Politikwissenschaft*, v.19, p. 160, 2009. Special Issue. Update on the basis of official data from the FEDERAL ELECTION OFFICER. Disponible on: < www.bundeswahlleiter.de>.

Remarks: ^a The proportionality index ranging from 100 (ideal proportionality) and 0 (maximum disproportionality) is calculated by subtracting the halved sum of the differences between the vote and seat shares of the individual parties from 100 (MACKIE, Thomas T.; ROSE, Richard. *The international almanac of electoral history*. 3rd ed. London: Macmillan, 1991). ^b Aggregated share of second votes for parties not represented in the Bundestag (except for 1949 when a single-vote system was applied). ^c The Effective Number of Parties results from the quotient of 1 and the sum of the squared seat shares of all Bundestag parties (LAAKSO, Markku; TAAGERPERA, Rein. 'Effective' number of parties: a measure with application to West Europe. *Comparative Political Studies*, v. 12, n. 1, p. 3–27, 1979). ^d The 1949 election is a special case because the five-percent threshold was applied only at the regional level. ^e Before 2013, this category refers to non-compensated surplus seats only. Since then, the figures include both surplus and compensation seats.

Since the 1990s, however, the performance of the Bundestag electoral system has critically deteriorated – in several respects. First, it could not contain the progressing fragmentation of the German party system. The seat share of the largest party has steadily declined since 1990, reaching only 34.7 percent in 2017. Thus, the formation of stable governments turned out to be much more difficult. The fourth government of Chancellor Angela Merkel that has been installed in spring 2018 could only find a sufficient parliamentary majority when the two largest parties (CDU/CSU and SPD) again decided to build a 'grand coalition' which was not wanted any more – neither by the citizens nor by the parties themselves. Second, the disproportionality between votes and seats increased at the same time. Especially the proportion of votes that were 'lost' due to the five-percent hurdle has grown. It reached a historical peak in the 2013 Bundestag elections, when 15.7 percent of the second votes were cast for parties below the legal threshold and thus were not represented in parliament. Last but not least, the number of surplus

seats significantly increased. While such seats emerged only sporadically in the 1970s and 1980s, their number was double-digit in most elections since 1990 and provided the largest party with a small but significant bonus until the most recent electoral reform of 2013.

What are the reasons for this remarkable functional change? It is quite obvious that the institutional design of the MMPS cannot provide a sufficient explanation. As mentioned above, the Bundestag electoral system remained basically unchanged from the mid-1950s to 2013. The clue for understanding its altered effects is the structural change of the German party system. At least three aspects are relevant in this regard. First, the two traditional 'catch-all' parties – CDU/CSU and SPD – have experienced a constant decline in voter support. Under the proportional formula of the MMPS, this de-concentration of votes is translated into a de-concentration of parliamentary seats. Second, many more smaller parties have emerged during the last three decades – but most of them did not surpass the five-percent threshold for a long time. This was most obvious in the 2013 election when both the Liberals (FDP) and the right-wing populist Alternative for Germany (AfD) received about 4.5 percent of the votes respectively and thus barely failed to enter the Bundestag. As a consequence, the legal threshold significantly increased the disproportionality of the election result. The 2017 election, in contrast, saw both parties crossing the legal threshold and entering parliament so that the share of 'lost votes' decreased again. Finally, although the vote shares of both catch-all parties have considerably declined, the Christian democrats have performed significantly better at the polls than the Social democrats since the late 2000s. Therefore, the CDU/CSU tends to win the lion's share of SMC seats but at the same time gets a quite low share of proportional seats in accordance with its weaker share of second votes. This is exactly the party constellation under which a larger number of surplus seats is expected to emerge.¹⁵

Of course, one could easily explore the functioning of the Bundestag electoral system in more detail. For our present purpose, however, this brief case study may already be sufficient to draw an important conclusion: the MMPS does obviously not produce uniform 'best-of-both-worlds' effects independently of the given political circumstances. Rather, its performance is highly dependent on the party-system context in which it operates.

What about the situation today? Given the MMPS' weaker performance, one might have expected that it would be changed sooner or later. Indeed, the surplus seats met with harsh criticism by most observers since the mid-1990s.¹⁶ However, the Bundestag could not agree on an electoral reform. It was rather a judgment passed by the Federal Constitutional Court (FCC) on 3 July 2008 that declared parts of the electoral law unconstitutional and thus triggered a reform process. The FCC's verdict did not censure the surplus seats directly but an idiosyncratic phenomenon closely connected with their emergence: the so-called negative voting weight, i.e. the idiosyncratic effect that a party could get less seats by a gain of second votes

¹⁵ WEINMANN, Philipp; GROTZ, Florian. *Seat enlargements in mixed-member proportional electoral systems*. Hamburg (mimeo). 2019.

¹⁶ BEHNKE, op. cit., 2007; GROTZ, Florian. Die personalisierte Verhältniswahl unter den Bedingungen des gesamtdeutschen Parteiensystems. Eine Analyse der Entstehungsursachen von Überhangmandaten seit der Wiedervereinigung. *Politische Vierteljahresschrift*, v. 41, n. 4, p. 707–729, 2000.

or win more seats by a loss of second votes.¹⁷ In December 2011, the governing coalition of CDU/CSU and FDP unilaterally passed an electoral amendment that removed the negative voting weight but still allowed for the emergence of non-compensated surplus seats. The opposition parties swiftly brought an action against this amendment, which led to another FCC judgment on 25 July 2012 that declared the new law unconstitutional due to some technical inconsistencies. This time, the Bundestag parties quickly reacted and reached a broad agreement on the constitutionally required reform.

The revised electoral law that went into force on 9 May 2013 altered the institutional design of the MMPS in two major respects.¹⁸ First, it introduced an additional level of seat allocation. Now, all seats are assigned proportionally to the individual *Länder* according to their population shares before the elections. Afterwards, the seats are allocated proportionally within these fixed *Länder* contingents according to the second votes. If a party gains more SMC seats than PR seats at this stage, it may retain these additional seats. The total number of seats that each party receives in all *Länder* in this initial distribution makes up its minimum entitlement in the final assignment. Second, the new election law provides for the allocation of compensation seats. More concretely, a reiterated seat distribution takes place in which each party gets as many seats in addition to its minimum entitlement as needed to achieve full proportionality among all parliamentary parties.

The political effects of the 2013 election law are quite ambivalent. On the one hand, it fulfills the constitutional requirements set by the FCC and terminates the distortion of intra-parliamentary proportionality generated by the previous law. On the other hand, it may strongly enlarge the Bundestag beyond its regular size. This was proved in the last election of 2017 that saw an increase by 111 seats. However, this does not seem to be the upper limit: simulations based on recent survey data predict a Bundestag with more than 800 seats.¹⁹

Therefore, the parliamentary parties principally agreed on a renewed electoral reform to curb excessive seat enlargements. Still, their institutional preferences how to modify the MMPS differed significantly. Consequently, the working group installed by Bundestag president Wolfgang Schäuble in July 2018 failed to agree on a common proposal – at least for the time being.²⁰

IV.

The Bundestag is not the only German parliament elected under a MMPS. Most of the fourteen of the sixteen states *Länder* have employed the same type of electoral system.²¹ Table 2 provides a systematic overview of the electoral systems that are currently in use for the 16 *Länder* parliaments.

¹⁷ For more details see GROTZ, op. cit., 2014, p. 123-125.

¹⁸ BEHNKE, Joachim. The new electoral law – or: good things don't always come to those who wait. *German Politics*, v. 23, n. 4, p. 268–283, 2014; GROTZ, Florian. Verzerrte Stimmen. *Frankfurter Allgemeine Zeitung*, 16 Dec. 2013.

¹⁹ FUNK, Albert. Die Zahl der Wahl. *Der Tagesspiegel*, 7 Jan. 2019.

²⁰ ROBMANN, Robert. Parteien scheitern mit Wahlrechtsreform. *Süddeutsche Zeitung*, Politik, 3 Apr. 2019. Disponible on: <<https://www.sueddeutsche.de/politik/bundestag-wahlrecht-reform-gescheitert-ueberhangmandate-1.4395493>>. Last access on: 23 Sep. 2019.

²¹ EDER, Christina; MAGIN, Raphael. Wahlsysteme. In: FREITAG, Markus; VATTER, Adrian (Ed.). *Die Demokratien der Deutschen Bundesländer: Politische Institutionen im Vergleich*. Opladen: Budrich, 2008; MASSICOTTE, Louis. To create or to copy? Electoral systems in the German Länder. *German Politics*, v. 12, n. 1, p. 1–22, 2003.

Table 2: Electoral systems in the German *Länder* (2019)

Land	Electoral System Type	SMC (%)	No. of votes	Party lists	Thresh-old	PR formula	Surplus compensation
Baden-Württemberg	MMPS	58.3	1	-	5%	Sainte-Laguë	Full (regional)
Bavaria	MMPS	50.6	2	Regional	5%	LR Hare	Full (regional)
Berlin	MMPS	60.0	2	Land or Regional	5% or 1 SMC	LR Hare	Full
Brandenburg	MMPS	50.0	2	Land	5% or 1 SMC	LR Hare	Partial
Bremen	PR in MMCs	-	5	Land	5% (regional)	Sainte-Laguë	-
Hamburg	MMPS	-	10	Land and MMCs	5%	Sainte-Laguë	Full
Hesse	MMPS	50.0	2	Land	5%	LR Hare	Full
Lower Saxony	MMPS	64.4	2	Land	5%	d'Hondt	Partial
Mecklenburg-West Pomerania	MMPS	50.7	2	Land	5%	LR Hare	Partial
North Rhine-Westphalia	MMPS	70.7	2	Land	5%	Sainte-Laguë	Full
Rhineland-Palatinate	MMPS	50.5	2	Land or Regional	5%	Sainte-Laguë	Full
Saarland	PR in MMCs	-	1	Land and MMCs	5%	d'Hondt	-
Saxony	MMPS	50.0	2	Land	5% or 2 SMCs	d'Hondt	Partial
Saxony-Anhalt	MMPS	49.4	2	Land	5%	LR Hare	Partial
Schleswig-Holstein	MMPS	50.7	2	Land	5% or 1 SMC	Sainte-Laguë	Full
Thuringia	MMPS	50.0	2	Land	5%	LR Hare	Full
Bundestag	MMPS	50.0	2	Regional	5% or 3 SMC	Sainte-Laguë	Full

Source: author's compilation.

Abbreviations: LR = largest remainder; MMC = multi-member constituency; PR = proportional representation; SMC = single-member constituency.

Fourteen *Länder* use different variants of MMPS. Only Bremen and Saarland employ a PR system in multi-member constituencies (MMCs). In Bremen, every elector has five votes that can be cast across all parties (open lists). The parliamentary seats are proportionally distributed among all parties that have passed the five-percent threshold. The only peculiarity in this respect is that the threshold is separately applied for the two territories of the city of Bremen and Bremerhaven. The Saarland electoral law provides for only one vote per elector. The 51 parliamentary seats are first allocated to the parties at *Land* level. Then, 41 of them are assigned to the parties' lists in three regions, while the remaining ten are assigned to their *Land* lists.

The MMPS at *Länder* level display several institutional features that make them basically similar to the Bundestag system. More specifically, all of them have five-percent thresholds, compensation mechanisms for surplus seats and two-ticket systems with a SMC vote and a list vote. Only Baden-Württemberg provides for one single vote that is counted both for the relevant candidate in the SMC and for her/his party to determine its overall proportional share of seats. Since there are no party lists, the seats are assigned to those SMC candidates that have won the highest share of votes in their respective SMC ('best losers'). In Bavaria, the allocation of PR seats to parties is based on the aggregated numbers of SMC and list votes.

At the same time, some institutional features of the *Länder* MMPS vary significantly. For instance, the ratio of SMC seats exceeds the Bundestag level of 50 percent in Baden-Württemberg, Berlin, Lower Saxony and North Rhine-Westphalia. Hamburg is insofar an exceptional case, as instead of SMCs it uses small MMCs of three to five seats in which each elector may cast five votes within and across open party lists. Moreover, each elector may cast another five preferential votes for one party list at *Land* level. MMC seats for party candidates are then subtracted from the party's overall seat share that is calculated at *Land* level. Therefore, the Hamburg electoral system can be considered the 'most personalized' system among the German *Länder*.

Moreover, the level for the allocation of PR seats varies as well. In this regard, one may differentiate between three subtypes of MMPS. In the first subtype, party lists are set up for the entire electoral area, where PR seats are distributed ('at-large MMPS'). This applies to most *Länder*. In the second subtype, both list candidacies and PR allocation take place at regional level ('regionalized MMPS'). Currently, Bavaria is the only relevant case; there, the MMCs correspond to the administrative regions (*Regierungsbezirke*). The third subtype of MMPS combines features of the two others; in such 'two-level MMPS', the PR seats are first allocated among the parties at-large and then assigned within the individual parties to their regional lists. This subtype known from the Bundestag is also used for the parliaments of Baden-Württemberg and Berlin. Formally, Berlin and Rhineland-Palatinate employ an even more refined system, because their election law stipulates that parties may choose to run either with *Land* lists or with regional lists. As regional lists are predominant in Berlin and *Land* lists in Rhineland-Palatinate, the systems may be categorized as two-level MMPS and at-large MMPS, respectively.

A final institutional feature of MMPS concerns the compensation rules. In this regard, there are two basic alternatives. The first is a complete, i.e. fully pro-

portional compensation of surplus seats, which may lead to particularly strong seat enlargements (like in the Bundestag case). As Table 2 shows, this is used in most *Länder*. A special variety of this option is found in Baden-Württemberg and Bavaria, where full compensation takes place within the regions. Baden-Württemberg is the only *Land* that changes its level of PR seat allocation before and after the emergence of surplus seats (two-level MMPS for the initial allocation, regionalized for the compensation seats). The second option is partial compensation that is employed in Brandenburg, Lower Saxony, Mecklenburg-West Pomerania, Saxony and Saxony-Anhalt. In these cases, the number of compensation seats may not exceed the number of surplus seats, which tends to limit the overall seat enlargement at the cost of intra-parliamentary proportionality. Brandenburg is a quite idiosyncratic case in this respect as it provides for compensation seats only if two or more surplus seats have emerged. Furthermore, the overall seat enlargement must not exceed 25 percent of the regular parliamentary size (i.e. it may increase from 88 to a maximum of 110 seats). In theory, a third alternative is to provide for no compensation at all but there is currently no case among the *Länder* systems.

Overall, the MMPS applied in the German *Länder* display a high degree of structural homogeneity but also vary in some institutional details. Their political effects are basically similar to those observed at federal level. This also includes incidental cases of huge seat enlargements that particularly emerge under more deconcentrated party systems and high proportions of SMC seats.

V.

Given its ‘best-of-both-worlds’ effects in the 1970s and 1980s, the MMPS was also taken over by some other democracies (see above). The most prominent case in this context has been New Zealand that introduced the German model after a referendum in 1993 replacing its traditional British-type first-past-the-post-system. As the MMPS has been employed for more than 25 years in this Westminster democracy by now, it is instructive to see which effects it has produced in that context. The basic design of New Zealand’s MMPS is very similar to the German archetype.²²

Around half of the parliamentary seats (71 out of 120) are elected in SMCs according to the first votes, while the overall seats are distributed proportionally according to the second votes cast for national party lists. Likewise, the successful SMC candidates are subtracted from the seats of the respective party lists. There is also a five-percent threshold but no compensation of occasional surplus seats – just as it had been in the Bundestag case before 2013. Additionally, seven seats are reserved for the aborigines (Māori).

The political effects of the MMPS in New Zealand resemble the ones observed in Germany. The most striking difference is that there have not been significant numbers of surplus seats yet. Since 1996, only one or two additional seats emerged per election – like in the Bundestag case before 1990. This outcome is not explained by the institutional design of New Zealand’s system but rather by the structure of

²² ROBERTS, Nigel S. New Zealand. In: NOHLEN, Dieter; GROTZ, Florian; HARTMANN, Christof (Ed.). *Elections in Asia and the Pacific. A data handbook*. Oxford: OUP, 2001. p. 705–739. 2 v.; SHUGART, Matthew S.; TAN, Alexander C. Political consequences of New Zealand’s MMP system in comparative perspective. In: BATTO, Nathan F. et al. (Ed.). *Mixed-member electoral systems in constitutional context. Taiwan, Japan, and beyond*. Ann Arbor: University of Michigan Press, 2016.

its party system.²³ More concretely, the strong party-system concentration has so far prevented significant seat enlargements. As the largest parties in New Zealand – the National Party and the Labour Party – always received between 39 and 48 percent of the votes respectively, nearly all SMC seats could be assigned to the respective party lists so that no surpluses emerged.

However, if New Zealand's party system would experience a stronger fragmentation (with one party winning most SMCs), a substantial increase of parliamentary seats would be the likely outcome – just as in Germany since 1990. Apart from this, an institutional idiosyncrasy could become relevant in the medium and long term. New Zealand's Electoral Act stipulates that the South Island is assigned sixteen SMCs while the North Island receives a corresponding number of SMCs in proportion to its population size. As there has been a constant migration from the South to the North Island, the number of SMCs has subsequently grown while the overall number of parliamentary seats remained the same. As such a higher SMC ratio increases the probability of surplus seats, parliamentary enlargements become more probable in the course of time even if New Zealand's party system does not get as strongly fragmented as the German one over the last three decades.²⁴

VI.

Which lessons can be drawn from these comparative insights on MMPS? First of all, there is no 'ideal model' for electoral reform that fits at any place and time. This does not mean that institutional choices are irrelevant – on the contrary. In particular, mixed-member electoral systems that combine plurality in SMCs with proportionally allocated seats are popular among electoral reformers worldwide because they offer opportunities to balance the antagonistic effects of majoritarian and proportional rule to a certain extent. Still, identifying an appropriate electoral system for a particular country is no easy task. To find out if an electoral system actually produces the envisaged effects, one has not only to study its institutional details but also the context in which it is going to operate.

What does this mean for electoral reformers? The reflections of this essay do not imply a definite preference for or against a German-type MMPS to be introduced elsewhere. Rather, they would suggest some general guidelines for electoral system reform. First, the reform objectives should be identified and prioritized. Key questions in this regard include: what are the most important aims of the electoral system in the given context? Which effects of the previous system should change – and which remain? Second, one might elaborate on a concrete institutional design, including constituency sizes, voting procedures, formulas and levels of seat allocation, legal thresholds, etc., resulting in an electoral system that is expected to meet the reform objectives defined before. Finally, one might test this 'tailor-made' electoral system by simulating its effects under various scenarios, i.e. a broad range of realistic distributions of votes between the existing political parties. Such contextualized examination is certainly the best way to ensure that electoral reformers get in the end what they originally wanted.

²³ WEINMANN, GROTZ, *op. cit.*, 2019.

²⁴ WEINMANN, GROTZ, *op. cit.*, 2019.

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