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Author(s): Merkel, Wolfgang

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**INSTITUTIONS AND REFORM POLICY:  
THREE CASE STUDIES ON THE VETO PLAYER THEORY**

Wolfgang Merkel

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Wolfgang Merkel is Professor of Political Science at the Institut für Politische Wissenschaft, Universität Heidelberg. This paper is based on a seminar he presented at the *Center for Advanced Study in the Social Sciences*, Juan March Institute, Madrid, on 24 May 2002, entitled "The Schröder Government and Its Veto Players (1998-2002)".

## Introduction<sup>1</sup>

A new theory is haunting comparative politics that has gained increasing importance within the last few years: the veto player theory. In 1995 George Tsebelis published his first article on it in the *British Journal of Political Science*. In subsequent articles (1995b; 1997 (with J. Money); 1999; 2000) he further refined his theory culminating in his book *Veto Players: How Political Institutions Work* (2002). Various authors have used and tested Tsebelis' veto player theory in different policy analyses. Topics include the extent of government expenditure in the German Federal Republic (Bawn 1999), the reduction of business and income tax in Western industrial countries (Hallerberg/Basinger 1998), legislation in Italy (Kreppel 1997), labor-laws in OECD countries (Tsebelis 1999), the economic policy of the Kohl government (1982-1998) (Zohlnhoefer 2001), structural changes in the household of OECD countries (Tsebelis/Chang 2002), social security reforms in the German Federal Republic (Siegel 2002) and constitutional policy and legislation in Eastern Asia (Croissant 2002). Tsebelis himself concluded quickly that empirical data confirmed most of his predictions "both with respect to policy stability and with respect to the other politically relevant variables" (Tsebelis 2000: 467). This is a proud as well as daring statement.<sup>2</sup> Therefore, I will subject the theory<sup>3</sup> to another critical test and discussion. By using the example of tax reform, pension reform and the not yet-materialized labor-market reform of the red-green government,<sup>4</sup> I will reconstruct the strategic steps of decisive veto players and comment on the outcomes of the reforms to test the explanatory power of the veto player theory. I will proceed in the following steps:

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<sup>1</sup> I wish to thank my colleagues and collaborators in Heidelberg for critical comments. Special thanks go to Inga Kröger and Markus Krämer. I thank Johanna Boersch-Supan for the translation.

<sup>2</sup> Tsebelis' theory has been reduced or modified in various empirical studies to overcome its presumed explanatory shortcomings.

<sup>3</sup> I do not want to discuss at this point, if it actually is a theory or should rather be called a theorem or approach. I follow Tsebelis own terminology ("theory") in this paper (2000: 441), even though I think approach would be the appropriate term.

<sup>4</sup> I restrict my case study to the first term of government of the red-green coalition from 1998 – 2002.

- reconstruct the explanatory claim of the veto player theory
- clarify the veto players within the political system of Germany
- specify the relevant veto players in the three policy areas
- reconstruct the three chosen reform policies and the strategic moves of the government and the veto players
- evaluate the explanatory power of the veto player theory in regards to the outcomes of the reforms
- review the ability of the red-green coalition to implement reforms, and
- finally, generally assess the strengths and weaknesses of the veto player theory.

## **1. The Veto Player Theory by George Tsebelis**

With his theory, George Tsebelis claims to be able to predict the reform capacities of political systems in certain policy fields. In the theory veto players are regarded as independent variables. The dependent variables are the capacity for policy change (Tsebelis 1995a: 289) and the actual extent of the change (Tsebelis 1995a: 289; Tsebelis 1999). According to Tsebelis, his theory allows for ex post analysis (of actual change) as well as for predictions (the “capacity for change”).<sup>5</sup> The dependent variable can be change in a specific policy field (such as fiscal policy), a single reform (such as a tax reform) or the potential for policy change in a political system in general. The theory can be applied to a single country or can be used as a comparative framework for several countries. It should be consistent for “comparisons across regimes, legislatures and party systems” (Tsebelis 1995: 293).

The independent variables are the so-called veto players. According to Tsebelis’ definition these are “individual or collective actors whose agreement<sup>6</sup> (by majority rule for collective actors) is required for a change in the status quo” (1995a: 302). Two categories of

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<sup>5</sup> “The framework is sufficiently precise to permit the formation of a priori expectations which can subsequently be tested.” (Tsebelis 1995a: 315)

<sup>6</sup> The internal approval of collective actors is established by majority vote.

veto players are identified: institutions (*institutional veto players*) and parties (*partisan veto players*). Institutional veto players are those actors whose consent to a political decision is required by the constitution or by law. In a presidential system the institutional veto players are the president and the two chambers of parliament. In parliamentary systems the parliament is an institutional veto player – in bicameral systems, therefore, there are two veto players if the agreement of both houses is necessary for passing a bill. In a strict constitutional sense, institutional veto players are a necessary and sufficient condition for policy change.

Partisan veto player are all parties that belong to the governing coalition. Although their agreement is “strictly speaking, neither necessary nor sufficient” (Tsebelis 1995: 302) for a policy change, a government’s proposal has to be approved by a majority of each of these parties.<sup>7</sup> Tsebelis explicitly assumes that there is no de facto difference between the approval of a policy by an institutional and a partisan veto player (Tsebelis 1995: 302). Institutional veto players, though, cannot simply be added to the partisan veto players in order to determine the effective number of veto players. In cases where there are identical partisan majorities in both chambers they have to be counted as one veto player. In cases where the majorities in parliament are congruent with the parties in government they will be absorbed and only the number of partisan veto players is relevant. Tsebelis calls this the “absorption rule” (1995: 310).

Institutional and partisan veto players constitute the core of Tsebelis’ theory. However, in some cases and in various articles he also speaks of “other” veto players (1995a: 305; 1999; 2000). These “others” vary from policy field to policy field and therefore depend on the particular context. As examples, Tsebelis names courts,<sup>8</sup> central banks, the military,

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<sup>7</sup> This is true for governing parties and their leadership which control their parliamentary groups. It does not apply to parties such as those of the IV French Republic or to large periods of the Italian Republic (1948-1993), in which, as a consequence of lack of party discipline, various coalitions were possible (Tsebelis 1995a: 302). When government and parts of the opposition form informal ad hoc “issue” coalitions stretching over various policy fields, the explicit approval of every single party in government is unnecessary — even in consensual democracies, like Denmark, Finland and Sweden — without endangering the existence of the government.

<sup>8</sup> In some cases Tsebelis speaks of “courts”, in others of “constitutional courts” or simply of the “judiciary.” In his article on veto players and institutional analysis (2000: 465) he clearly states, “If a court

powerful interest groups, constitutionally required super majorities<sup>9</sup> and referendums. He seems to propose the narrower concept of institutional and partisan veto player only for comparisons with high n-numbers.<sup>10</sup> “However, in case studies one must identify all the relevant veto players” (1995: 308). One can assume that especially in case studies and comparisons with low n-cases the “other veto players” have to be taken more seriously.

Three parameters are relevant to assess the influence of independent variables on the stability and mobility of policies regarding the status quo: the number of veto players, the ideological distance (congruence) between them and the internal cohesion (of collective veto players). The last two factors are often left out by analyses, which simply add the number of veto players to derive the strength of each veto potential.<sup>11</sup> The actual veto potential, however, can only be concluded from the complex interaction of all three parameters. The veto potential in a certain policy field, for example, can be much larger in the case of only one additional veto player with a high internal cohesion and a large policy distance from the government or the agenda setter than in a constellation with a larger number of veto players with a high congruence and/or a low internal cohesion. Merely adding up the number of players, therefore, can lead to arbitrary solutions and has nothing in common with the theoretical implications of Tsebelis’ theory.

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makes a constitutional interpretation, then it has to be considered another veto player.” However, he remains imprecise and seems to stretch the term “courts” beyond the realm of constitutional interpretations.

<sup>9</sup> In a strict sense one should not speak of veto “players” here, but rather use the term constraint or “rule.” For a clear distinction between the terms constraint and “rule” see North 1990.

<sup>10</sup> He states: “[...] while the number of veto players may vary by issue or over time, these variations will cancel each other out when applied across several issues for sufficiently long periods of time” (Tsebelis 1995a: 308). He fails, however, to specify the length of this period of time and it remains unclear whether comparisons with high n-cases then lead to arbitrary results, since the period of the analysis is not long enough to even out statistical effects.

<sup>11</sup> Tsebelis states, “simply counting the number of veto players may be misleading” (Tsebelis 2002: 25).

Tsebelis concludes the following hypotheses:

- The higher the number of veto player, the smaller the *winset* for policy change and the lower the probability that the status quo will change.
- The greater the ideological and programmatic distance between the veto players, or the less congruent their positions on the relevant issues are, the smaller the *winset* against the status quo will be – i.e. the more improbable a change in the status quo.
- The higher the internal cohesion of the collective veto players, the better they are able to use their veto power against a change in the status quo and the lower the probability that the agenda setter can implement his reforms.

## **2. The Veto Players in the Political System of the Federal Republic of Germany**

In many comparative analyses the political system of Germany is characterized as one of the most rigid institutional constraints against policy change. Arend Lijphart (1999) subsumes Germany under the type “consensual democracy”, Peter Katzenstein (1987) calls Germany a “semi-sovereign” state, Fritz W. Scharpf emphasizes the “Politikverflechtungen” (policy intertwinements) and its traps for innovative policy making (Scharpf et al. 1976) and Manfred G. Schmidt (2002a) speaks of an informal but permanent “grand coalition state”. Tsebelis (1995a: 310) notes that Germany, Switzerland and the United States are the only countries in the Western world in which the second chamber has consistent veto potential. He forgets to mention that the approval of the German Bundesrat is only needed for around 55% of all legislation.<sup>12</sup> The veto power of the Bundesrat, therefore, has to be determined in each case depending on the policy field or issue. Particularly in times when both chambers are dominated by opposing majorities, the federal government uses its power as an agenda setter to single out specific laws from a law-package, before submitting them to the Bundesrat for

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<sup>12</sup> From 1949-1998 52,2% of the bills passed in the Bundestag (first chamber) needed the additional approval of the second chamber (Rudzio 2000). In the rest of the cases the Bundesrat has a right to appeal (“Einspruchsgesetze”). If a simple majority in the second chamber objects to the bill, the Bundestag can outvote the Bundesrat’s decision by a simple majority; an objection by 2/3 of the members of the Bundesrat calls for a 2/3-majority vote in the Bundestag.

approval. Then the majority of the coalition parties can pass the laws for which an approval of the Bundesrat is not required and present only the rest of the bills to the Bundesrat. After 50 years of legislative practice, coalition parties have developed an enormous creativity in splitting up single bills strategically to avoid their introduction into the Bundesrat.<sup>13</sup> In times of opposing majorities in the two chambers this has enhanced the ability of governments to implement reforms. The agenda setting power of the federal government matters and the second chamber is by no means a “consistent veto player” in the federal legislation.

The number of actual veto players in Germany depends on which parties form the government coalition and which parties have the majority in the Bundestag and in the Bundesrat. Since 1949 Germany has mostly been governed by two-party coalitions.<sup>14</sup> Until 1998 Germany customarily had in power either centre-right (CDU/CSU – FDP: 1949-1966 and 1982-1998)<sup>15</sup> or centre-left coalitions (SPD and FDP: 1969-1982) as well as the grand coalition of CDU/CSU and SPD (1966-1969). In cases where the two governing parties control the majority of both houses they are the only two veto players.<sup>16</sup> Here, the absorption rule applies, since the institutional player Bundesrat is absorbed by the two partisan veto players of the governing coalition. In times when the opposition dominates the Bundesrat, three veto players exist: one institutional and two partisan veto players. However, the picture drawn here is still too simple, as the opposition in the Bundesrat can be very heterogeneous. The state governments, sending representatives to the Bundesrat, themselves consist of different coalitions. In addition, in certain issues the interests of the Länder are not congruent with the tactical federal interests of the coalition parties on a federal level. In these cases the prime ministers of the Länder do not always follow their respective party leaders. The

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<sup>13</sup> At times there is a dispute whether certain bills have to be approved by the Bundesrat. In these cases the opposition usually calls upon the constitutional court in order to decide the dispute.

<sup>14</sup> The CDU/CSU-government under Konrad Adenauer (1960-61) as well as several minority governments, which formed interim cabinets for a couple of days or weeks only (1962 Konrad Adenauer; 1966 Ludwig Erhard; 1982 Helmut Schmidt), are the exception.

<sup>15</sup> Including the above mentioned exception; additionally until 1960 several smaller parties like the Deutsche Partei (DP) or the Block der Heimatvertriebenen und Entrechteten (GB/BHE) formed different coalitions within CDU/CSU-led governments.

<sup>16</sup> Here I follow Tsebelis’ terminology. In this specific case, however, this is confusing, since the governing parties (partisan veto players) are agenda-setters and veto players (of their own agenda) at the same time.

cohesion of the potential veto player Bundesrat can therefore change immensely over time. These changes have to be considered in every empirical analysis, otherwise it is impossible to determine a priori if the Bundesrat is an actual veto player.

The congruence of the parties, measured by ideological polarization and programmatic differences, has been relatively high throughout the 60s and 70s. With the advance of the Greens (1983) and the post-communist PDS (1990) into parliament, party differences have widened regarding the materialist and post-materialist dimension. The programmatic distance between the most important parties, CDU/CSU and SPD, has been comparatively low in central issues like fiscal, economic and social policy since the 60s<sup>17</sup> – at least considerably lower than between conservative and social-democratic parties in Great Britain, Italy, Spain, France or Greece.

Germany has a much more complicated procedure of decision-making than the British Westminster-Model, unicameral systems like those in Scandinavia, or countries with dominant single-party governments, like Spain or Greece. Germany has tighter constitutional constraints, more institutional veto points, closer checks and balances and more cohesive partisan veto players than most other western European political systems (Katzenstein 1987; Lijphart 1999; Schmidt 2002a). However, policy congruence of the partisan veto players is relatively high in Germany compared to Europe. This is a general estimate, though, which can easily change over time and differ with changing policy fields and veto player constellations. A specific analysis of the particular situation is therefore unavoidable.

### **3. The Veto Players during the Red-Green Coalition**

From 1998 until 2002 a red-green coalition governed on the federal level in Germany for the first time in history. The two partisan veto players showed a higher degree of policy congruence at the level of the party elites (government and parliament) than was expected

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<sup>17</sup> In economic and social policy the difference between the FDP and the “welfare state parties” CDU/CSU and SPD has always been higher than between the two latter.

before 1998. In policy areas such as economic and social policies the degree of congruence of the two parties was considerably higher than in matters like civil rights, environmental protection and foreign policy. The internal cohesion of the SPD has been very high on the parliamentary level, whereas the internal cohesion of the Greens is considerably low. The reason lies in the stronger leftist-, radical democratic- and pacifist-oriented wings of the party and the fact that, in spite of the parliamentarization of the party during the last two decades, its elites are still more closely linked to the (more “fundamentalist”) rank and files than the elites of the rest of the major political parties in Germany.

While the partisan majorities in the Bundestag did not change throughout the governing period and the ruling parties voted disciplined on the bills introduced by the government, the majorities in the Bundesrat were changing. For only five months, until February 1999, the SPD led “A-Länder” nominally had the majority in the Bundesrat with 35 of 69 votes. In a series of state elections the red-green coalition lost their majority votes one by one. The opposition was able to seize power in Hessen (February 1999), the Saarland (September 1999), Hamburg (September 2001) and Sachsen-Anhalt (April 2002). In Thüringen the CDU gained the absolute majority and was able to avoid a coalition with the SPD (September 1999), while in Brandenburg the SPD lost its absolute majority and was forced to form a coalition with the CDU (September 1999). After these state elections the “A-Länder” had only 16 votes all together and therefore no chance of establishing a majority in the Bundesrat.

**Table 1.** *Majorities in the Federal Council 1998-2002*

	Votes of the government coalition	Uncertain votes <sup>*</sup>	Votes of the opposition
Accession to power of SPD / Green Party	35	18	16
Since 02/1999 (Hesse)	30	18	21
Since 05/09/1999 (Brandenburg / Saarland)	23	22	24
Since 12/09/1999 (Thuringia)	23	18	28
Since 09/2001 (Hamburg)	20	18	31
Since 10/2001 (Berlin)	20	18	31
Since 04/2002 (Saxony-Anhalt)	16	18	35

<sup>\*</sup> SPD/FDP coalition, SPD/PDS-coalition or Grand Coalition

The situation is even more complex, though, than Tsebelis' generalized concept of the second chamber as a veto player would make it seem. Neither the opposition nor the red-green coalition were able to rely on a majority in the Bundesrat between February 1999 and April 2002. The simple division into SPD-led "A-Länder" and CDU-led "B-Länder" leaves out the existence of "uncertain votes", sometimes called "C-Länder." In these "C-Länder" coalitions govern which cannot be simply added to the government's or opposition's side. There were a total of 18 uncertain votes from the SPD-PDS coalition in Mecklenburg-Vorpommern, the SPD-FDP coalition in Rheinland-Pfalz, the two grand SPD-CDU coalitions in Brandenburg and Bremen and the grand CDU-SPD coalition (until October 2001) in Berlin. All these state governments agreed in an informal coalition agreement to abstain from a vote in the Bundesrat if they cannot agree on a common point of view. Usually this is positive for the opposition, since abstained votes are de facto no-votes because the majority of yes-votes is necessary for the approval of the Bundesrat. Of course, the decision to abstain from the vote in the Bundesrat is always preceded by complicated negotiations in the "C-Länder" in which the coalition partners sometimes try to blackmail each other by threatening to leave the coalition or form a new coalition with another party. It is therefore unpredictable how these states will vote in the Bundesrat. Analyses looking at a longer period of time have to consider the always changing majorities in the Bundesrat.<sup>18</sup>

**Table 2.** *Distribution of votes in the Federal Council 1998-2002*

	SPD	SPD / Green Party	SPD / PDS	SPD / FDP	Grand Coalition	CDU / FDP	CDU/ CSU
Red-Green accession to power	17	18	3	4	11	6	10
Since 02/1999 (Hesse)	17	13	3	4	11	11	10
Since 05/09/1999 (Brandenburg/ Saarland)	10	13	3	4	15	11	13
Since 12/09/1999 (Thuringia)	10	13	3	4	11	11	17
Since 09/2001 (Hamburg)	10	10	3	4	11	14	17
Since 10/2001 (Berlin)	10	10	7	4	7	14	17
Since 04/2002 (Saxony-Anhalt)	6	10	7	4	7	18	17

<sup>18</sup> As I will show later on, even this is not enough to predict the actual voting behavior.

#### 4. Testing the Veto Player Theory: the Tax Reform of 2000

To test the explanatory power of Tsebelis' veto player theory I have chosen three policies where the red green coalition promised reforms in the electoral campaign of 1998: the tax reform, the pension reform and reform on the labour market. I will start with the tax reform of 2000. In my analysis I will closely follow the four steps Tsebelis (2000:450) proposes for his theory: First, the veto players have to be identified and counted. Then, the institutional veto players have to be checked, as the partisan veto players might absorb them. In the third step the policy congruence of the relevant veto players has to be measured and finally the internal cohesion of the players has to be taken into account.

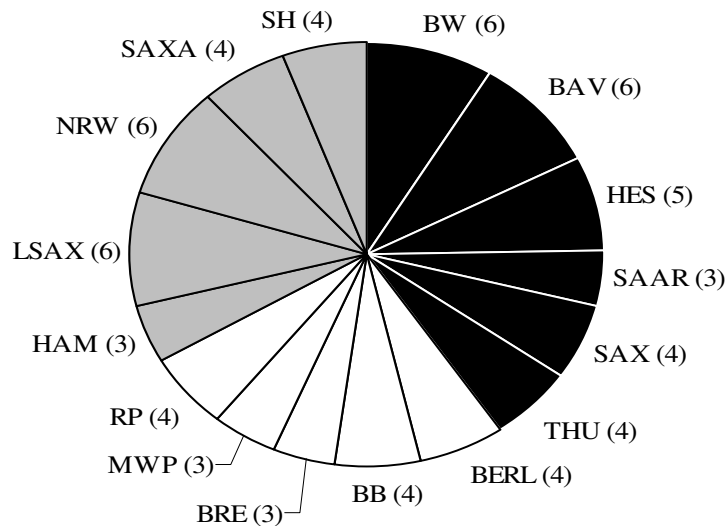
During the legislative procedure of the tax reform there were two partisan veto players: the SPD and the Greens. Together they formed the governing coalition. The coalition could generally rely on a disciplined majority in the Bundestag.<sup>19</sup> There was no major disagreement between the two parties in respect to economic and fiscal policy in general and the tax issue in particular.<sup>20</sup> The only potential institutional veto player against the government plans to change the status quo was the Bundesrat. When the tax reform was passed in July 2000 the red-green coalition could only rely on 23 relatively secure "A-Länder" votes. The oppositional "B-Länder" held 28 votes and the neutral "C-Länder," all in all, 18 votes (Fig. 1).

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<sup>19</sup> There is a slight difference between the parliamentary group of the SPD and the Greens: while the SPD parliamentarians turned out to be highly disciplined in their voting behavior, the Greens were sometimes divided, especially if normative questions appeared on the parliamentary agenda, such as "peace and war," military interventions in the Balkans or in Afghanistan, immigration, citizenship or minority rights.

<sup>20</sup> There was a minor incongruence concerning the question of how much energy consumption should be taxed. The Greens favored higher taxes on energy, but the coalition partners were able to settle the dispute and dissent on this topic never challenged the survival of the coalition.

**Figure 1.** *Distribution of votes in the Federal Council, July 2000*



Grey: “A-Länder” – Black: “B-Länder” – White: “C-Länder” (neutral)

Source: Federal Council ([www.bundesrat.de](http://www.bundesrat.de)); Abbreviations: BW=Baden-Wuerttemberg, BAV=Bavaria, BERL=Berlin, BB=Brandenburg, BRE=Bremen, HAM=Hamburg, HES=Hesse, MWP=Mecklenburg-Western Pomerania, LSAX=Lower Saxony, NRW=North Rhine-Westphalia, RP=Rhineland-Palatinate, SAAR=Saarland, SAX=Saxony, SAXA=Saxony-Anhalt, SH=Schleswig-Holstein, THU=Thuringia.

If all “C-Länder” would abstain from their vote which means a de facto no-vote, in this situation, the Bundesrat would be a powerful veto player and could prevent any reform, since the absolute majority in the Bundesrat (at least 35 votes) is needed to pass the approvable (“zustimmungspflichtige”) bills. Even if the SPD could rely on the “yes” vote of their small coalition partner PDS (in Mecklenburg-Vorpommern) and the FDP (in Rheinland-Pfalz), the government side would only have a maximum of 30 votes.

Applying Tsebelis counting rules there were three veto players at the time of the tax reform: the SPD, the Greens<sup>21</sup> and the Bundesrat. The latter alone could have blocked the

<sup>21</sup> After having easily agreed on the basics of the tax reform, the two partisan players acted as one collective player in this policy field. An absorption rule with regard to partisan veto players, however, is not integrated in Tsebelis’ concept.

government's bill. What would Tsebelis' veto player theory predict in this situation? If the partisan veto players of the government and the oppositionally-dominated institutional veto player Bundesrat could find a common policy winset, the bill could be passed. This solution, however, is opposed by the *office-* and *vote-seeking* motives of the CDU/CSU-FDP opposition dominating the second chamber, which Tsebelis' theory does not take systematically into account. Considering the hypothesis of the *office-* and *vote-seeking* behavior, the prediction in this case would be the failure of the tax reform in the Bundesrat even in the case of a common *policy winset*, since this winset would be subordinate to the strategic *vote-seeking* preference to harm the government.

What actually did happen? The red-green government, as the agenda setter, introduced the bill to the Bundestag, where it was passed with the majority of the governing coalition. The opposition voted unanimously against it. The bill then went to the Bundesrat. Because of the reservations of the oppositional Länder the standing mediation committee was appealed. During the bargaining rounds in the mediation committee the government made some concessions, thereby widening the policy winset, but was unable to gain the support of the opposition. With the narrow majority of the SPD and the Greens within the committee, the bill was again presented to the Bundestag, where it was passed a second time. According to the constitution the second chamber had to approve the bill in a second reading as well.

At this point of time the policy congruence of the government and the opposition was very high. Both were in favor of a reduction of tax rates for high- and low-income, a reduction of the low-income and high-income tax brackets and both called for a reduction of the overall net tax burden on private and corporate income. The CDU/CSU-FDP opposition, however, preferred a faster and more drastic reduction of the tax rate for high incomes from 53% to 42% (or even 35%), while the government's draft of the bill proposed a reduction to 48% in the first step and eventually to 43% in the last phase of the reform. Additionally, the opposition called for a further decrease of the total tax burden. The government made considerable concessions and a common winset definitely existed: the status quo was less attractive for all parties than any reform reducing taxes. Still, the opposition publicly claimed

to turn down the changed bill in a second reading in the Bundesrat.<sup>22</sup> The strategy of the opposition to gain more votes for the next (state) elections by painting the government as incapable of implementing any reform was more influential than the fact that the reform plans were preferred over the status quo by the opposition. In other words: vote seeking prevailed over policy seeking. Here, a weakness of Tsebelis theory comes to the fore: The theory does not take into account the potential conflict between party strategies (office seeking) and the wish for a policy change (policy seeking) (see Zohlnhoefer 2003). Out of this conflict situations can evolve where, despite a considerable *policy winset* of the government and the opposition against the status quo, the opposition will not vote in favor of a government reform, since this would strengthen the power and performance of the government and thereby lower the chances of the opposition of being elected. In this case *vote seeking* prevails over *policy seeking*. The rejection of a reform, then, would be rational, even though conditions after the reform are seen as preferable to the status quo.

When it became apparent that the opposition would not agree to the reform, the Schröder government changed its strategy. It no longer enlarged the *policy winset* by granting more concessions, but tried to erode the cohesion of the oppositional block by “buying” the votes of certain “C-Länder” in granting bilateral financial aid. In general it promised compensation payments for the expected lower tax revenues and financial help for the infrastructure of the respective states. Berlin was promised financial assistance for police, museums and the Olympic stadium, Brandenburg financial support for road construction, and Mecklenburg-Vorpommern subsidies for power plants and road construction. In general the federal government promised to support these states through the so called “vertical financial compensation fund”. The fact that all these states belong to the poorest among the German Länder made them particularly susceptible to the side payments. On July 14, 2000, the red-green government’s bill passed the Bundesrat by 41 votes to 28. All states from the “neutral camp,” including the state governments in which either the CDU or the FDP were part of the coalition with the social democrats, voted in favor of the bill. The Christian Democratic or Liberal representatives voted explicitly against the demand of their party leadership on the

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<sup>22</sup> The major counter arguments against the reform were that it did not proceed fast and far enough in reducing taxes on personal and corporate income. A minor argument concerned some technical rules taxing stock dividends (Halbeinkünfteverfahren).

federal level. Single state interests prevailed over party interests. Expressis verbis, the federal CDU leadership admitted their defeat in the vote.

## 5. The Pension Reform

Who were the veto players in the decisive vote over the pension reform in the Bundesrat (February 2001) and in the mediation committee (May 2001)? In the Bundestag the red green coalition had a stable majority regarding the pension reform, since both partisan veto players had the same opinion and worked together as a single agenda setter. In the second chamber, however, the coalition had only 23 votes at their disposal, while the opposition could count on 28 votes and the “neutral camp” consisted of 18 votes.<sup>23</sup> The government coalition had to win at least 12 votes from the neutral camp to pass their bill with a majority in the Bundesrat (35 votes). The Bundesrat, therefore, was a major veto player in the pension reform legislation set on the agenda by the federal government.

The actual behavior of this institutional veto player cannot be predicted without determining the congruence<sup>24</sup> between the government coalition and the opposition in the pension reform matter. All parties agreed on the basic principles of the reform: the compulsory contribution to the pension scheme<sup>25</sup> had to be reduced to stabilize the contribution rate in the future and had to be complemented by a private pension scheme. A clear *winset* prevailed over the status quo in the most important questions, meaning that a compromise on the topic and subsequently a majority for the bill in the Bundesrat could have been expected according to Tsebelis’ theory. However, the realization of a *winset* is not

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<sup>23</sup> These were split up the following way: SPD/PDS 3, SPD/FDP 4, and the grand coalitions 11 votes. For a majority (35 votes), the approval of all grand coalitions was necessary. However, even these votes were not sufficient to successfully pass the bill, since their votes together with the votes of the coalition only added up to 34 votes.

<sup>24</sup> I consider the existence of a policy winset only a necessary but not a sufficient precondition for the approval of any bill.

<sup>25</sup> It is financed by the contribution of employers (50%) and employees (50%).

enough to predict voting behavior, which is also dependent on the internal cohesion of the different veto players.

Were the veto players cohesive enough to act as a single, united actor? There were internal conflicts within the SPD over the extent of the cuts on the pension level. Especially the (weak) left wing and the trade unions protested and influenced the draft of the government's bill in so far as the extent of the reform compared with the (supposedly socially more just) status quo stayed limited.<sup>26</sup> The Greens were able to present themselves as more open to reform: they were in favor of a more far-reaching reduction of premiums and argued against any delay of the pension reform. The CDU/CSU showed unity in rejecting the plans for the reform as not sufficiently far-reaching. After their defeat in the vote over the tax reform the sister parties had a strong interest in demonstrating their unity and ability to act. The FDP can only be seen as a partial veto player as its only way to support the opposition's blockade of the bill was to neutralize the vote - in the Bundesrat - of Rheinland-Pfalz, where a SPD/FDP coalition was in power. The party itself favored a more rapid reduction of the compulsory contribution to the pension scheme and a faster creation of a private pension insurance. However, the small reform steps of the government coalition were preferred by the party over the status quo.

Regarding *policy congruence*, *winset* and the *internal coherence* of the veto players, an approval of the pension reform in the Bundesrat could have been expected. This policy-success, however, would have opposed the strategic interests of the oppositional parties as *vote* and *office seekers*, since the federal government *could present* itself as being able to reform and to govern effectively. Therefore, two logics stood against each other. But which logic prevailed when and why cannot be predicted by Tsebelis' theory as I will demonstrate.

What actually did happen? In the fall of 1998 the red-green coalition suspended the modest pension reform of the former christian-democratic-liberal government and announced

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<sup>26</sup> It is one of the paradoxes of the debate among social democrats in Germany that the defendants of the status quo call themselves "left," "innovative" and socially "just." The status quo, therefore, has its roots in the structural preconditions of the turn of the century at 1900 (Bismarck's insurance schemes), the economic and demographic context of the post-war prosperity and a theoretically underdeveloped debate about justice (see Merkel 2000, 2001).

its own reform. The demographic factor, that should have led to a reduced pension level of 64% until the year 2015, was suspended. Pensions for the year 2000, however, were tied to the rise and fall of net wages in the economy. Only inflation was supposed to be compensated for. Environmental taxes were supposed to be used to reduce the rate of pension contributions from 20,3% to 19,3% in the year 2000. In May 2000 the government coalition put forth an innovative concept for a pension reform with an additional compulsory private pension scheme at its core. In various “pension summits” the government coalition and the opposition worked on an agreement on the pension reform. In June they decided to raise state funding for the additional private pension scheme<sup>27</sup> and in September 2002 the government agreed to raise the pensions of the following year by more than only the inflation compensation, thereby granting concessions to the demands of the CDU/CSU and the unions. Though the trade unions are not a veto player in the restrictive sense, in this case they influenced the draft of the reform bill and the internal cohesion of the SPD greatly.<sup>28</sup> Further adjustments were made to reduce the CDU/CSU’s opposition, to not challenge the unions and to not scare away the retired as voters. In November 2000 the cabinet passed the modified draft of the bill. At the same time the draft was divided into a part to which the Bundesrat had to agree, the *Altersvermögensgesetz* (funding of private pension savings) and a part to which the Bundesrat’s approval was not necessary, the *Altersvermögensergänzungsgesetz* (“supplementary bill for private pension savings”).

Both bills were passed in the Bundestag with the majority of the coalition on January 26, 2001.<sup>29</sup> In February 2001 the majority of the Bundesrat rejected those parts of the bill that needed its approval, whereupon the federal government appealed to the mediation committee. The opposition went along with its veto in the Bundesrat, trying to receive more substantial concessions from the red-green coalition and, in addition, showing off its programmatic

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<sup>27</sup> Instead of the originally planned public support of DM 3 billion per year, the parties decided to raise state funding step by step from DM 2,6 billion in 2001 to DM 19,5 billion in 2008. Against its usual market-oriented rhetoric, the opposition had called for even higher state funding (*Süddeutsche Zeitung*, 15.6.2000).

<sup>28</sup> At some points Tsebelis uses the term other veto players for unions e.g.. He does not, however, discuss the inconsistencies thereby created with his own definition.

<sup>29</sup> On the initiative of the unions, the parliamentary groups of the governing red-green coalition passed an application, which granted that the pensions would not drop below 67% of the average net wages, a day before the vote.

differences with the government. After additional concessions had been made, the head of the conference committee, Heribert Blens (CDU), recommended the grand coalitions of Berlin, Bremen and Brandenburg to agree to the bill. After concessions had been made to the CDU/CSU (increase of federal funding of the private pension scheme, improvement of the pension for widows), the FDP (the investment in real estate was accepted as provisions for one's old age saving) and the specific interests of Berlin and Brandenburg (establishment of federal institutions and offices, revision of the vertical financial compensation fund), the grand coalitions in Berlin and Brandenburg agreed to the bill on May 11, 2001. The SPD/CDU government of Bremen stayed neutral and the SPD/PDS government in Mecklenburg–Vorpommern, surprisingly, supported the bill, too.<sup>30</sup> The bill for the pension reform passed the Bundesrat. As opposed to the tax reform situation the CDU leadership accepted the approval of the CDU state parties in Berlin and Brandenburg.

Is it now possible to explain the passing of the pension reform with the veto player theory by George Tsebelis? The general answer is yes. However, the answer to the question of which of the three parameters — number, congruence and cohesion — was able to develop such specific explanatory power has to be considered with more precision. The number of veto players does not offer a good explanation for the problems the government had passing their bill. The partisan veto players SPD and the Greens were able to agree on a concept for the reform without big controversies and acted as one single player. Therefore, in the legislative process, the partisan veto players did not matter as a veto power, but were able to act as a single unified agenda setter. The actual contestant for the government coalition was the Bundesrat. The red-green coalition had a minority of 23 votes in the second chamber in the first half year of 2001, when the decisive votes were made. The Bundesrat was therefore not absorbed and had to be seen as an institutional veto player. Following Tsebelis' method of counting there would have been three veto players: two partisan veto players (SPD and the Greens) and one institutional veto player (the Bundesrat). The following description, however, seems more illuminating to me: the government was a compact agenda setter and the only opposing veto player was the Bundesrat. The question, therefore, should be how cohesive this veto player was at the time of the vote.

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<sup>30</sup> The approval of Harald Ringstorff, the SPD minister president of the SPD/PDS coalition in Mecklenburg-Vorpommern, against the will of his coalition partner, led to a crisis in the coalition.

Neither the government (23 votes) nor the opposition (28 votes) had a majority in the Bundesrat. The Bundesrat was neither absorbed, nor a cohesive veto player. The neutral camp, with different coalitional demands, dissolved the cohesion of the Bundesrat. However, there was no way of telling a priori if the opposition could or would use the Bundesrat as an actual veto player.

The congruence on the basic questions concerning the pension reform was fairly high – there definitely was a winset against the status quo. However, this winset collided with the same strategic imperative as it did in the case of the tax reform: to present the government with a low ability to assert itself and as unable to reform. The logic of *vote seeking* was decisive for the decision making of the opposition in the Bundesrat.<sup>31</sup> The logic of the winset can only prevail over the strategic imperative of vote seeking if the winset is very large and if it is clear to the voters that it was widened by integrating the ideas of the opposition. Under these circumstances the logic of *vote seeking* and *policy seeking* are largely complementary and a rationally acting opposition can agree to a government's bill. Within the CDU leadership there were different opinions on how close vote seeking and policy seeking lay together.<sup>32</sup> Even if its skepticism was stronger, the CDU agreed on accepting a softer strategy towards state governments with CDU participation. When the federal government decided on side payments for Berlin and Brandenburg (grand coalitions), both states voted for the bill without being scolded by the party leadership on the federal level.

The consent of the veto player Bundesrat to the bill on the pension reform can be explained with the following arguments:

- a winset existed
- the winset was large enough after the publicly formulated demands of the opposition had been incorporated into the reform plans

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<sup>31</sup> This is valid independently of whether the CDU/CSU is the opposition. Policy winsets and state interests are normally subordinate matters.

<sup>32</sup> The two hardliners in the opposition, Koch (prime minister of Hesse) and Stoiber (prime minister of Bavaria), called for a rejection.

- therefore, policy congruence did not expose the strategic imperative (vote seeking) of the opposition to let the government (alone) seem unable to govern and weak in taking action
- different preferences regarding vote seeking and policy seeking loosened the internal cohesion of the CDU on the federal as well as on the state level
- side payments to certain states of the “neutral camp” reduced the motives of the CDU-opposition to veto the governmental bill.

Only through the subsequent loosening of cohesion did the approval of the Bundesrat become possible. This does not oppose Tsebelis’ theoretical concept (number – congruence – cohesion) but the theory is not able to explain the situation sufficiently. In this case it is especially obvious that the Bundesrat cannot just be taken for granted as an institutional veto player when the federal government has a minority in the lower house. The neutral camp especially has to be examined carefully since side payments or political concessions can loosen the cohesion and the willingness of the opposition to veto.<sup>33</sup> The passing of the pension reform does not falsify Tsebelis’ veto player theory. The theory, however, is too limited to sufficiently illuminate the *black box* of decision making.

## **6. The failed reform of the labor market**

Despite the central importance of the problem of unemployment, public opinion, reports of the economic council,<sup>34</sup> analyses of the labor market (see Blancke/Schmid 2003; Merkel 2002) and the government itself agree that in terms of the labor market little has changed. This is surprising for various reasons. First, the SPD successfully criticized the performance of the Kohl government in the labor market as a scandal of social injustice

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<sup>33</sup> At this point, one can also see that the application of Tsebelis’ theory in cases with high n-numbers leads to arbitrary predictions and explanations, since such a comparison determines over nominal majority relations only if the Bundesrat acts as a blocking veto player or not.

<sup>34</sup> The economic council (“Sachverständigenrat”) is a non governmental board which consists of economists of the five leading economic research institutes. It advises the government on economic matters, but it is completely independent from it.

during the 1998 election campaign.<sup>35</sup> Second, the chancellor-to-be Schröder had even vowed to reduce unemployment from over 4 million to under 3,5 million. Third, even more than other parties, social democrats feel committed to the programmatic goal of full employment. Lastly, the electoral imperative of the social democrats demands a radical reduction of unemployment figures, since a disproportionate number of voters for the SPD are endangered or affected by unemployment (Merkel 2002).

The results of the labor market policy of the red-green coalition are negative, regardless of which indicators are looked at. Not only the outcomes but also the “cosmetic” measures taken seem sobering against the background of enduring mass unemployment. This is so obvious (see Sachverständigenrat 2002) that it does not even have to be explored here. The question here is, can this policy stability be explained by Tsebelis’ veto player theory?

Who were the veto players? In most cases reforms concerning the labor market can be passed without the Bundesrat. Therefore, in labor market policy there is usually no effective institutional veto player. This leaves only the two coalition parties as partisan veto players. However, especially in the field of labor market legislation, the wider definition of the term “veto player” can be used. In a strict constitutional sense neither the employers nor unions fulfill the definition of a veto player (see Tsebelis 1995a: 302) since their approval of labor market legislation is legally neither needed nor necessary. However, they have actual veto potential in regards to wage policy, labor peace and investments. But what does actual veto potential mean? It means that there must be ways for these “other veto players” (Tsebelis 1995a: 305) to influence the decisions of the actual, constitutional veto players. Looking at it this way, interest groups are ‘indirect’ veto players, which can only have a lasting influence through ‘direct’ veto players. Since the Bundesrat plays a marginal role in labor market legislation, the direct veto players would be the two governing parties. The Greens, however, were only a partial actor regarding labor market policy. Though parts of the party made clear that they would vote for particular measures of deregulation on the labor market, the party as a whole was neither very cohesive on the question, nor was the employment policy seen as

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<sup>35</sup> For the importance of inclusion into the labor market from the perspective of social justice, see Merkel 2001.

being at the core of the green programme. In a sort of implicit exchange, labor market policy was left to the big coalition partner SPD, so that is where explanations have to start.

Besides marginal reforms, the government and especially the SPD in government did not take over an agenda-setting function in labor market policy. Even if parts of the government were in favor of major reforms regarding the labor market, in the coalition, the parliamentary group or especially in the party itself the “reformers” were a minority. The close link to the unions and the established, though theoretically unreflected, opinion that highly regulated labor markets were per se “more social by just” than deregulated ones, belongs to the firm principles of many party officials and the unions.<sup>36</sup> For unions this might even be logical since they especially represent the insiders of the labor market, who might actually lose something in the case of a reform. It is different though with political parties in general and the SPD in particular. Political parties want to be elected. If unemployment is really seen as the most important political problem,<sup>37</sup> the solution to this problem seems to promise great electoral success. The SPD leadership and the chancellor miscalculated this matter. Relying on the hope that a revival of the world economy - there was an upswing of the business cycle in 2000 - would solve the unemployment problem without conflicts, costs and structural reforms was tempting as well as short sighted. Additionally, the blackmail potential of the unions and the lack of cohesion within the SPD led the government to an enduring and irrational attitude of attentism for a long time regarding labor market policy. If the flood catastrophe in Eastern Germany in summer 2002 and the looming Iraq war had not prevented the threatening electoral defeat, the government would have already had to pay the price for failing in labor market policy with its defeat in the 2002 elections.

Tsebelis’ veto player theory shows little heuristic, prognostic or even analytical strength to explain the policy stability regarding labor market reforms. Even if one argues that the policy congruence between the majority of the SPD and the CDU did not allow for a

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<sup>36</sup> The successes of the labor government under Tony Blair regarding employment policy were rejected as “neo-liberal” by referring to other failures (e.g. a high poverty rate). Although the success of the more deregulated labor markets in Denmark and the Netherlands is not denied, these best practices stayed without consequences for the SPD’s own labor market policy.

<sup>37</sup> Opinion polls taken throughout the whole period of government leave no doubt about this with regard to the German population.

workable winset<sup>38</sup> the actual explanation only begins after this statement. It could be about something like the following: right- as well as left-wing traditionalists of the SPD formed an implicit blockade coalition with unions. The two confirmed each other in their “Weltanschauung”, which were shaped in the early 70s. These ideology not only prevented reforms of the labor market, but also blocked a more serious discussion<sup>39</sup> of the best way to achieve a modern and just society based on a dynamic service sector creating employment. This situation was made worse by the shortsighted misperception that a revival of the domestic and world economy would make far-reaching structural reforms of the labor market unnecessary. When it became clear at the end of 2000 that this was only an illusion, the government’s agenda was already completely filled with unpopular measures in foreign policy. After the intervention in the Kosovo conflict which was considered by many functionaries and rank and files as a breach of international law (Merkel 2000), the participation in a war against Afghanistan and its legitimization were at the top of the government’s agenda. To open another unpopular front in domestic policy against unions and their own party traditionalists in this situation seemed too risky for the chancellor.<sup>40</sup> The consequences were a cautious attitude towards employment policy and a few homeopathic reforms. It was the so called Hartz commission, which was set up outside of the government and the party,<sup>41</sup> which finally ended government inactivity on labor market reform. The commission was a reaction to tumbling polls, scandalous events in the federal office of labour market administration and an impending defeat in the parliamentary elections in September of the same year. This was a cleverly chosen strategy of the chancellor, especially in regards to the logic of office seeking, since the actual implementation of the commission’s decisions, which were expected to produce conflict, had to fall into the next legislature. Moreover, the

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<sup>38</sup> Such a winset was apparent at the times of the Blair-Schröder paper. However, it was laid ad acta early as a reaction to pressure from the anti-reform traditionalists in the SPD.

<sup>39</sup> Historically speaking there has seldom been a situation within the SPD in which the left has argued on such a narrow theoretical basis. The left has voluntarily changed from the theoretical avant-garde to the preserver of the status quo, whose conditions for existence have mostly eroded and whose achievements are highly problematic from a theoretical justice point of view.

<sup>40</sup> The crowded agenda of government policies with unpopular measures made the chancellor impose a “reform moratorium” over the health department as well.

<sup>41</sup> Rolf G. Heinze (2002) sees this style of government, which moves decisions out of the reach of official institutions to avoid conflict and spread consent, as typical for the “Berliner Rätorepublik” (“Republic of Councils”).

chancellor started a reform initiative which can no longer be stopped by small disruptive maneuvers of the opposition and unions.

## 7. What Can the Veto Player Theory Explain and What not?

The veto player theory was able to predict the success of the tax reform because of the small number of veto players (three), the narrow programmatic distance between the players and the obvious *policy winset* between the government and the opposition, which left the status quo without a chance. If one thinks in categories of office seeking, however, the bill should have been blocked, since one veto player, the Bundesrat, dominated by the opposition, had a rational (electoral) interest in defeating the government and damaging its reputation. The actual outcome, therefore, met the theoretical *prediction* of the theory but the theory in turn is unable to *explain* the outcome sufficiently.

Tsebelis' theory emphasizes the winset, which opened up for the partisan veto players (SPD and the Greens) as well as for the institutional veto player (Bundesrat). Although the reform bill of the government did not go far enough according to the preferred policy of the opposition, it was preferable to the status quo since the CDU/CSU and the FDP wanted to reduce taxes, too. Despite this common policy winset the opposition tried to block the government's bill in the Bundesrat and sent it to the conference committee. This is not very surprising since the oppositional parties could hope to enlarge the winset for their own favor through further bargaining in the mediation committee of the Bundestag and Bundesrat. Insofar as the behavior of the oppositional parties was rational and in accordance with the assumptions of the veto player theory. The government, in fact, made some concessions, but these did not go far enough to gain the support of the opposition. *Vote seeking* prevailed over *policy seeking*. Chancellor Schröder countered this vote-seeking strategy of the opposition with a buying-out strategy, promising financial help to single Länder in different policy areas. The party leadership of the CDU/CSU opposition remained cohesive at the federal level and rejected the bill. They publicly asked their party branches in the state governments to turn down the bill in the Bundesrat. However, some Länder could not refrain from the temptation

of these side payments. The cohesiveness of the Bundesrat majority eroded, despite a continuously increasing winset. The phenomenon of erosion of cohesion is explicitly mentioned in Tsebelis theory, but the theory fails to explain the complex interrelation between winset and internal cohesiveness. In our test case it cannot explain why the internal cohesiveness of the institutional veto player eroded despite an increased winset; it fails to explain why the common winset did not lead to an approval of the bill. The side payments which finally made the passing of the bill possible are not included - and probably they cannot be included - in the winset argument. Next to the bargaining over tax reform a second game was started which was played by the “C-Länder” and the federal government of chancellor Schröder. The CDU/CSU and FDP opposition was excluded from this game. The approval of the neutral states was no longer dependent on the tax reform, but on concessions in other policy fields. The approval of the bill, therefore, has to be explained by the decrease of internal cohesion in the Bundesrat through multi-level games and package deals. This is not incompatible with Tsebelis’ theory, but it asks for a modification of the assessment that decisions are primarily made on policy winsets. The exact relationship of policy congruence to cohesion stays as ambiguous as the relationship of vote seeking to policy seeking.

The theory does not take into account that in a “cooperative federalist system” (Scharpf et al. 1976) with intertwined federalist institutions, such as the Bundestag and Bundesrat in the Federal Republic of Germany, most political decision making is at least a two-level game. In particular, the multilevel game of policy formation in Germany (including the Länder, the federal government and the EU) is open for many alliances and cross-cutting package deals, which often cut across policy areas and levels making predictions on the basis of two-dimensional policy winsets difficult and misleading.

The example of the pension reform shows that the prognostic strength of a policy winset is especially large when its logic is not opposed by the strategic imperative to maximize votes. The relationship between these two logics has to be laid out more precisely in Tsebelis’ theory to maintain its prognostic ability.

The policy stability regarding the labor market can be explained by the parameter of lacking congruence in the question of labor market reforms between the veto players and

insufficient cohesion of the bigger governmental party. The fact that the federal government as the agenda-setter stayed passive in regards to the labor market, despite the overriding importance of reforms in this policy field, has to be explained more comprehensively.

The examples also show how difficult it is to treat partisan and institutional veto players equally.<sup>42</sup> They have different motives, interests, resources and strategies and therefore a different impact on policy outcomes. If an institutional veto player such as the second chamber is not absorbed, it will follow the overriding rational motive of damaging the reputation of the incumbent government. There is a strong electoral motive for the opposition to use its institutional veto power to block the reform bills of the government as long as it does not lose its own credibility. Institutional veto players, therefore, tend to be “competitive veto players” (Wagschal 1999, Zohlnhoefer 2001) or represent “competitive veto points” (Crepaz 2001: 8; 2002). This was the case when the SPD opposition led by Lafontaine vetoed the tax reform (1997) of the then-governing bourgeois coalition under chancellor Kohl even though the government had granted major policy concessions to the opposition (Zohlnhoefer 2001: 236ff).

In contrast, partisan veto players within a governing coalition have an overriding common interest to stay in power. They follow the logic of iterated games, i.e. of knowing that they will meet again for other cooperative games. Therefore, they are rationally more interested in cooperation and less in competition than the competitive institutional veto players, so they should be called “cooperative veto players” (Wagschal 1999; Zohlnhoefer 2001) or “collective veto points” (Crepaz 2001: 8). Cooperative veto players share responsibility and deal with each other on an on-going basis, without having autonomous institutional veto power, as bi-cameral legislatures. Competitive veto players, on the other hand, operate through separate institutions with mutual veto powers (ibid.) and they have a

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<sup>42</sup> Tsebelis consciously refrains from distinguishing the different logics of action of institutional and partisan veto players. He takes this from Riker (1992), who argues “that parties in coalitions work essentially the same as chambers in a bicameral system: in both cases an agreement is necessary for a change in the status quo” (Tsebelis 2002: 6). The example of the FRG falsifies this general assumption.

rational interest in using it. Their primary goal – stemming from the logic of office seeking – is not cooperation, but competition and the defeat of their opponents.<sup>43</sup>

## 8. Do these cases falsify the theory?

Using Popper's prescription of testing and falsifying hypotheses, one could argue these cases do not falsify the theory in regards to predicting outcomes, but they do falsify it with regard to its explanatory power. However, paradigm changes in social sciences do not follow exactly the same pattern as paradigm changes in natural science. Imre Lakatos, one of Popper's most prominent students, proposed that each paradigm and theory should be broken into an inner core and a peripheral orbit. The periphery protects the core of assumptions and predications of a theory. One single test alone cannot falsify and eliminate a specific paradigm or theory. This can only be done if a theory  $t_1$  would demonstrate a superior explanatory power over theory  $t$ . But this is not the place to discuss this problem in detail. To do this, the theory would have to be tested against other approaches such as "neo-institutional theories," "power resource approaches," "structuralist theory," the "do parties really matter hypothesis" or more integrated "constitutional concepts" with their multiple added indices of institutional constraints.

Such a broadly-backed falsification attempt, however, is not the topic of this paper. In none of these approaches or theories do I see Tsebelis' explaining triad of number-congruence-cohesion revoked.<sup>44</sup> The analytical surplus value of the veto player theory should therefore secure its survival in the competition of paradigms in comparative politics. However I will use my case studies to generalize some critical remarks with respect to the veto player theory. Most of the critique does not challenge the theory as a whole but rather should be integrated into it. For some of the criticism I do not see an easy solution,

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<sup>43</sup> The distinction between "competitive" and "cooperative veto players" also takes into account the logic behind Lijpart's (1984; 1999) distinction between the "executive-parties dimension" and the "unitary-federal dimension".

<sup>44</sup> Such as Tsebelis' theory does not make these other approaches obsolete.

particularly at the level of its operationalization for empirical research with a high number of cases. My critical points are:

- There is no clear distinction between partisan and institutional veto players, although their different roles, interests and resources result in different logics of action and have different impacts on policy change. The proposal to distinguish between “competitive” and “cooperative veto players” takes the different rational behavior to some extent into account. These terms indicate the varying rational incentives and limits veto players have in actually using their veto potential.

- By distinguishing between larger and smaller partisan veto players (for example the SPD and the Greens) different power resources regarding the ability to change policies should be taken into account. A large coalition party has often a larger potential to threaten, veto or bargain than a smaller coalition partner.

- The naming of the veto players is imprecise.<sup>45</sup> Especially the category of “other” veto players is too ambiguous. At different points in his work Tsebelis gives examples of actual “other veto players” like central banks, constitutional courts, powerful interest groups or simply “powerful ministers” (2000: 447). In the narrower sense, though, interest groups especially do not fulfill the criteria for his definition of veto players. On the other hand, it is exactly these interest groups which can develop major potential for blocking far-reaching reforms. The present situation in the FRG can be a prime example.

- It is unclear how the policy congruence between veto players should be measured. Should it be simply on an ideological left-right axis? This would be rather insensitive vis-à-vis many political issues and would reduce policy competition to a single dimension. If it is measured by party manifestos (see Budge et al. 2001) it would disregard the gap between party program and the policy stance of the party elites in government. The difficulty in measuring policy congruence or the cohesiveness of veto players for many n-

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<sup>45</sup> From a purely terminological logic it is a paradox that the government and its parties are veto players and agenda setters simultaneously.

cases over a long period of time is often solved by simply counting the veto *points*. But if one does not take into account the absorption rule or determine the internal cohesiveness and the congruence, one cannot even determine the actual number of veto players.

- Those “structural-variables-approaches” fall back on different additional indicators, which measure institutional constraints, oppositional dominated institution, etc., as Lijphart (1984; 1999), Huber/Ragin/Stephens (1993), Colomer (1995) or Schmidt (2002b) do. These approaches have little to do with the veto player theory, since actors and structures are indiscriminately cumulated into indices without differentiation; and therefore cannot be analyzed in their dynamic interdependence.

- The veto player theory appears too rigid to conceptualize the difference between potential and actual veto players. The model does not incorporate political strategies that circumvent or “buy” veto players with package deals or side payments. This is particularly relevant in federalist systems, where the political actors engage in multi-level games. Such interdependent multi-level games have to be integrated into Tsebelis’ concept to strengthen its ability to explain and predict policy change. Only then can cases like the changing cohesion or actual veto behavior of the *Bundesrat* in Germany be explained sufficiently. The black box of the *Bundesrat* has to be illuminated to illustrate the bargaining dynamics. A nominal a priori accounting of partisan majorities at a certain point in time is hopelessly static and under complex as I have exemplarily shown.

- The theory tends to assume that political elites more often act according to the logic of policy seeking than that of office seeking. The respective interdependence of both strategies has to be taken into account more readily.

- Tsebelis’ (2000: 465ff.) assumptions about constitutional courts as veto players are not convincing. Constitutional courts are neither policy oriented nor vote seekers. They often cannot act on their own behalf but have to be called upon by one of the conflicting parts which are constitutionally entitled to do so. They act differently than partisan and institutional veto players because they do not follow a primarily political and electoral logic, but constitutional norms. They step in when judicial review and judicial interpretations are called

for. In contrast to Tsebelis' assumption that judicial review often occurs when the status quo does not change appears to be neither logically nor empirically convincing. Often judicial activism correlates with political activism, particularly when governments pursue policy change and the politically defeated opposition asks for judicial review trying to use constitutional courts "as weapons" (Maravall 2001). This is at least often the case in Germany.

- It's debatable that the theory can be used in analyses with high case numbers without producing arbitrary results. The special dynamic between veto players, their changing congruence and cohesion, two-level or multi-level games that influence the outcome and bargaining across policy fields can probably not be incorporated into abstract mathematical formulas without becoming trivial.

In contradiction to the expectation and demands of Tsebelis, I see the actual strength of his theory in analyses with a limited, rather than a high, number of cases. Only then can the analytical advantage of his theory fully develop and explain policy stability and policy change not only through structures and cumulated veto points but through the dynamic interplay of actors within confining and enabling institutional structures. Institutional structuralism would be linked to political action and would thereby be synthetically "lifted" with considerable analytical surplus value.

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