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# Delay as a Political Technique under Divided Government? Empirical Evidence from Germany, 1976–2005

PHILIP MANOW and SIMONE BURKHART

*This article analyses whether the majority situation of Germany's second chamber has an impact on the duration of the legislative process. While it is often assumed that diverging majorities between Bundestag and Bundesrat delay law-making, the little empirical research that exists could not confirm such an effect of divided government. We therefore seek to discover whether and how an oppositional majority in the Bundesrat can credibly threaten to delay the legislative process for an undue length of time. Our study is based on a comprehensive dataset featuring a wealth of information on all bills adopted between 1976 and 2005. We show that divided government delays legislation, but to a somewhat lesser extent than often assumed. We show that under divided government the federal government loses some of its power over the parliamentary calendar – with possible consequences for its ability to implement its political agenda. Interestingly, this finding is not limited to bills that require the consent of the second chamber, but applies to all bills.*

## INTRODUCTION

A common feature of Western parliaments, namely government control over the parliamentary agenda, has been interpreted as a 'response to the scarcity of plenary time in the legislative state of nature'.<sup>1</sup> In the light of this interpretation, it comes as a surprise that divided government situations in which the parliamentary majority loses full agenda control do not seem to affect the duration of the legislative process. This, at least, apparently holds true for the German case, in which the few studies that exist could not detect any effect on the duration of law-making if majorities in the first and second chambers diverge.<sup>2</sup> Do political majorities in the two chambers then show absolutely no impact on the duration of the legislative process? This would be a premature conclusion, as we will argue, since the influence might be indirect and a bit more complicated than is often assumed.

In this article we study in greater detail the effects of divided government on the duration of the legislative process. We ask whether, in such a situation, the federal government not only loses agenda control to a considerable degree because it is forced to find substantial consensus with the oppositional majority in the Bundesrat, Germany's strong second chamber,<sup>3</sup> but whether it also loses its control over the parliamentary timetable. In other words, we inquire whether an oppositional majority in the Bundesrat has not only – in the case of consent laws – absolute veto power, but whether it can

also credibly threaten to severely delay the legislative process for both types of laws, consent as well as objection laws. Delay might lead to a bill not being passed by the end of the legislative period, which would spell its ultimate failure. In this period at least, so it seems, the opposition's hold-up power might also affect so-called objection laws, for which it has 'only' a suspensive veto. Received wisdom has it that divided government in Germany is relevant only for those laws that need the consent of the second chamber (consent laws, *Zustimmungsgesetze*), but does not affect laws in which the second chamber has only a suspensive veto (objection laws, *Einspruchsgesetze*). In this article we want to challenge this received wisdom.

Our article is motivated by the finding in the American literature on divided government that 'delay [is] . . . one of the primary techniques' in the battles between congressional majorities and the president.<sup>4</sup> In Germany, too, divided government is often associated with stalemate and delay. Therefore one of the main goals of the federalism reform act, which became effective in September 2006, was to accelerate the legislative process.<sup>5</sup> Assumptions about prolonged law-making under divided government, however, have found only little empirical support.<sup>6</sup> In our article we focus on effects of divided government on legislative duration. We go beyond previous studies a) by breaking down the entire legislative process into its major stages, b) by looking only at bills introduced by the government (or the government's majority within parliament), since we are primarily interested in the hold-up potential of the opposition (we therefore disregard all bills introduced by the opposition), and c) by focusing in particular on the potential effects of divided government at the end of the legislative period. As argued elsewhere, it can be questioned whether the overall duration of the legislative process is a particularly good indicator for the opposition's actual veto power because the government can anticipate that the opposition will attempt to drag out the process and therefore introduce only less controversial bills in times of divided government (which then take less time to pass).<sup>7</sup> At the end of the legislative process, when the temporal constraints on law-making become binding, such anticipatory effects might become open to empirical investigation.

Our article is divided into five sections. In the next section, we formulate more precise hypotheses on the possible effects that diverging majorities in German bicameralism may have on the control of the parliamentary calendar. We also briefly discuss how to test for these effects empirically. In section three, we describe our dataset and offer the first descriptive findings on the duration of law-making in Germany. Section four reports our results. Section five provides a summary of our findings.

#### POLITICAL CONTROL OF THE PARLIAMENTARY CALENDAR

Herbert Döring has pointed out the need to differentiate between agenda control as control over the voting agenda on the one hand and agenda control as control over the parliamentary calendar on the other.<sup>8</sup> Control over the plenary voting agenda is held by those who decide which bills will finally be submitted to a vote. A common instrument in this respect is the government's last amendment right.<sup>9</sup> Germany is one of the few parliamentary democracies in which the executive branch does not possess this right. The federal cabinet can exert only limited control over the

plenary voting agenda.<sup>10</sup> However, the fact that party discipline and voting cohesion is high and that government bills are defeated only very rarely indicates that the federal cabinet possesses other means with which to implement its political agenda.<sup>11</sup> Quite far-reaching control over the parliamentary timetable apparently compensates for the lack of control of the voting agenda, which would confirm Döring's conjecture that both dimensions of agenda control are – to some extent at least – functional equivalents for each other.

Even if the German executive actually had the right of a last amendment at its disposal, it would be void whenever an oppositional majority exists in the Bundesrat: this holds true at least for consent laws, because the opposition could block these with its absolute veto power, thereby nullifying the cabinet's (hypothetical) last amendment right.<sup>12</sup> In such a case, the joint conference committee would become the 'conditional agenda-setter'<sup>13</sup> because the actual authority over the plenary voting agenda would lie with it and not with the government. This is anything but a merely hypothetical scenario if we take into consideration that consent laws make up more than 50 per cent of all bills (before the federalism reform) and that, over the years, divided government has become the norm in Germany and unified government the exception.

Usually, however, the German government has relatively extensive control over the parliamentary calendar. The parliamentary agenda is passed by the Council of Elders of the Bundestag with traditional unanimity or at least a large majority. Yet the Council members know full well that the agenda decisions they make may be changed in the plenary at any time by simple – meaning governmental – majority. In this respect, all of the consensual decisions in the Council are made in the awareness that the government actually can dictate the parliamentary calendar. In the same vein, parliamentary debate of a bill can be ended by majority decision once every parliamentary group has stated its opinion. Obstructive measures such as the filibuster used by the opposition in the American Congress do not exist in the Federal Republic of Germany. Under certain circumstances, the rules of procedure even permit all three readings of a bill to take place on a single day. This occurs regularly for the second and third readings anyway. Moreover, the so-called 'first run-through' (*Erster Durchgang*) – the act of forwarding a bill to the Bundesrat for a six-week-long period of first deliberation – can be circumvented when the government's parliamentary groups introduce a bill 'from the floor of the Bundestag' that is actually a government bill.<sup>14</sup>

The – limited – means available to the opposition in Germany for delaying legislation are based chiefly on the legislative involvement of the Bundesrat and not on the opposition's parliamentary minority rights. In this respect the right of the Bundesrat majority to reject legislation passed by the Bundestag and to call for the conference committee (*Vermittlungsausschuss*) plays an important role. Since the Bundesrat can call the conference committee for both consent and objection bills, the threat of delay affects both, whereas the threat of an absolute veto can only impact on consent legislation. Therefore the parliamentary majority could possibly find itself vulnerable to political blackmail by the Bundesrat in two distinct ways: first, by the Bundesrat's threat to veto a consent law, and second, by its threat to delay the law-making process in general. We assume that this latter threat is used especially at the end of a legislative period to exert pressure on the government. Contrary to the widely held opinion that under divided government the opposition's influence is

limited to consent legislation, we suggest that divided government may also substantively hamper the ability of the government to implement objection laws.

How can we test empirically for the influence of divided government on legislative duration? The simplest indicator for the opposition's hold-up power would be a longer legislative process overall. However, as yet we have no empirical evidence in support of this assumption. Thomas König and Thomas Bräuninger found time effects neither with respect to the type of law (objection versus consent legislation) nor with respect to unified vs. divided government constellations.<sup>15</sup> Still, this does not preclude the possibility that diverging majorities may affect the relative time shares of the various steps within the entire law-making process. Thus, it is plausible to assume that it takes the Bundestag and the Bundesrat longer to agree when the latter is dominated by the opposition. At the same time, the phase of actual parliamentary deliberation could possibly be shorter – particularly because the actors involved anticipate that a compromise solution will have to be worked out in the ensuing negotiations between the two chambers. We therefore need to analyse not only the total length of the legislative process but also potential shifts in the time span required for each procedural step under different majority constellations. Therefore, the first two hypotheses open to empirical scrutiny are as follows:

- a) Law-making takes longer with an oppositional Bundesrat majority.
- b) An oppositional Bundesrat majority leads to internal shifts between the different stages of the legislative process.

Two qualifications need to be made from the start. Firstly, a more time-consuming legislative process does not necessarily indicate that the opposition has acquired some control over the parliamentary calendar. The procedure may last longer simply because it is more difficult and therefore more time-consuming to arrive at a political agreement when an additional veto player has to be accommodated.

Secondly, it is important to note that the effects of time and content tend to work in contrary directions. We know that in times of divided government the amount of controversial consent bills is lower because the government, at least in some cases, abstains from introducing bills that have no prospect of passing or moderates its own policy in order to get legislation through the second chamber.<sup>16</sup> These self-restraint effects of the government could prevent an actual delay for a considerable amount of legislation during times of divided government because less controversial bills are introduced into parliament, which take less time from introduction to final passage. Therefore, the finding that diverging majorities do *not* significantly influence either the overall duration of the legislative process or the allocation of time within the legislative process cannot be unequivocally interpreted to mean that the opposition is *not capable* of exerting pressure by using delay as a threat. In other words, if diverging majorities in the Bundestag and Bundesrat do not end up prolonging the duration of the legislative process substantially, this would not prove that the opposition has no power to do so.

These considerations show us that it is necessary to search for more sophisticated indicators regarding divided government effects on the duration of legislation. The simple duration of the entire legislative process or the relative duration of various steps within the process can be helpful for some first insights, but they do not give us the entire story. If we are interested in studying the possibility that the opposition

can use the time factor to pressure a government, then we should focus on the end of the legislative period because it is here that procedural delay can lead to the complete failure of a legislative initiative. Although the ways to obstruct legislation are rather limited in the German political system overall, the opposition can use the time factor at the end of the legislative period to pose a very real threat to a bill. This is why it should be possible here to prove empirically – if at all – the influence on the parliamentary calendar.

If a rational government fears obstruction by the opposition at the end of the legislative period, it could decide to introduce only bills that are uncontroversial on both sides of the political fence and which are therefore not in danger of being obstructed by the opposition. A relatively large percentage of uncontroversial bills passed at the end of the legislative periods in which the opposition holds the majority in the Bundesrat would be empirical proof of this hypothesis. ‘Uncontroversiality’ can be measured here by way of the opposition’s voting behaviour in the third reading: will it vote for, abstain, or vote against the bill? This expectation holds in particular for objection laws, which the opposition has no means to influence otherwise. Empirically, we therefore expect a greater percentage of uncontroversial bills at the end of a legislative period if the government does not enjoy a majority of its own in the Bundesrat. Thus, our third hypothesis states:

- c) In times of divided government, the amount of confrontational legislation decreases at the end of the legislative period.

#### OPERATIONALISATION, DATA AND SUMMARY STATISTICS

Because it is necessary to consider the majority constellations in the Bundesrat when testing our hypotheses, we must briefly discuss here the necessary delineations of these majorities for our context. In the literature on German bicameralism, the coalitions in federal states (Länder) are classified as part of the government (G-Länder) if no party in the opposition at the national level (co-)governs in the Land, as part of the opposition (O-Länder) if no party in the national government (co-) governs in the Land, or as one of the so-called M-Länder (incongruent or mixed governments) if parties in government and in opposition on the national level govern together the Land in coalition.<sup>17</sup> Many mixed Länder coalitions specify in their coalition contracts that the Land will abstain from voting in the Bundesrat should there be disagreement within the coalition over a bill.<sup>18</sup>

Yet one special aspect must be considered. The majorities required for the passage of legislation differ between consent and objection bills. The decisive question for consent bills is ‘who approves the bill?’ Since consent laws require a majority for approval in the Bundesrat and votes can only be cast *en bloc*, abstentions act as no votes in such cases. Therefore, it appears reasonable for all consent laws to classify mixed coalitions at the Land level as belonging to the opposition camp. For objection laws, however, an objection (or, beforehand, the call for a mediation committee) must be approved by a majority of the votes cast. Here, abstentions favour the government (and not the opposition, as in the case of consent bills). If we assume that mixed coalitions are more likely to abstain from voting, the O-Länder then need more than

half of the Bundesrat votes in order to garner a majority in dealing with objection laws. For consent laws, a majority of the G- and O-Länder is sufficient. Therefore, we cannot uniformly codify the majorities for our period of study, but have to distinguish between the types of legislation. As a result, in the fourteenth legislative period (1998–2002) the opposition had a majority for consent laws for most of the time but never achieved a majority for objection laws.

The basis of our analysis is a data set that covers all bills introduced into the Bundestag from the eighth to the fifteenth legislative periods, that is, from 1976 to 2005 (N = 5801). Excluded from the study were bills dealing with international treaties (N = 1010), most of which were uncontroversial ratification bills.<sup>19</sup> The following analysis deals only with those bills that found a parliamentary majority in the Bundestag, meaning bills approved by the Bundestag in the third reading (N = 2270). By doing so, nearly all bills introduced by the opposition or by the Bundesrat are excluded from our analyses. This leaves us only with such bills that find the parliamentary approval of the governing parties in the Bundestag but does not restrict us to bills which at the end of the legislative process actually became law. In addition, we do not face the dilemma of having to designate the end of the legislative term as being the end of the duration of the law-making process for those bills considered but not adopted by the Bundestag. Doing this would have greatly distorted the entire analysis of the duration of the legislative process.

We begin with the overall duration of the legislative process. We limit ourselves to the duration of the *parliamentary* handling of a bill, which means that we do not include the preparatory, pre-parliamentary process that takes place within ministries, within the cabinet, among the Länder and involved interest groups.<sup>20</sup> We define the introduction date of a bill as the day it is actually introduced into the Bundestag or the Bundesrat (the date of the first printing of a bill), depending on the legislative process. The legislative process ends the day the adopted bill is promulgated in the *Federal Law Gazette*. Should a bill not be promulgated, for whatever reason, we use the last day of its legislative process as a proxy date in order not to exclude these failed bills from the survey. Such a date could be, for example, the day the Bundesrat denies its approval of a consent bill.

Since the eighth legislative period, the average duration of the legislative process for a bill has been about 250 days (8.5 months). The variance in legislative duration is rather high, with a standard variation of 190 days. Consideration of consent laws takes about a month longer than that of objection laws. This might reflect the higher requirements to coordinate with the opposition; it might also simply reflect a higher degree of controversy in the case of consent bills as compared to objection bills.

The overall legislative process can be divided into four phases. Phase 1 is the so-called first run-through, meaning the consideration of a bill in the Bundesrat before it is introduced into the Bundestag (defined as the period from the date of introduction into the Bundesrat until the date of introduction into the Bundestag). This applies to all bills that are initiated by the Bundesrat itself or by the Federal Government. For bills (and a few resolutions) that are initiated from the floor of the Bundestag, this phase is coded as 0. Phase 2 is the consideration of a bill in the Bundestag. This phase starts with the introduction of a bill into the Bundestag, includes the first two readings and the mediation time in committee, and ends with the final vote on the

bill during the third reading in the Bundestag (defined as the period from the date of introduction into the Bundestag to the final vote in the third reading). Phase 3 is the consideration of a bill in the Bundesrat following its passage in the Bundestag and, if need be, joint committee mediation. It ends with the final vote on the bill. (This phase is defined as the period from the final vote in the third reading of the Bundestag until the final vote either in the Bundesrat or – after the mediation process – in the Bundestag). Phase 4 is the period from the final vote until the promulgation in the *Federal Law Gazette*. It includes the countersignature of the bill by the ministers under whose jurisdiction it falls, the signature by the federal president (with a possible call for verification of the bill’s constitutionality) as well as the time leading up to the written promulgation in the *Federal Law Gazette*.

Figure 1 presents the boxplots (without outliers) for each of the four phases. The first phase (should it occur) takes up a relatively large amount of time (53 days on average). The Bundestag spends the greatest amount of time on a bill – more than four months (131 days) on average. The subsequent vote by the Bundesrat takes roughly a month on average; however, there are several exceptions. For example, the maximum value is 539 days. The last phase, the period from the final passage until the promulgation in the Gazette, is certainly anything but insignificant and also takes more than a month on average. Since the duration of this (strictly speaking) post-parliamentary treatment is also influenced by factors other than those of theoretical interest for this article, we limit ourselves for the following analyses to examining only the length of the parliamentary process, that is the time span from the introduction of a bill to its final vote (in the Bundestag or the Bundesrat, whichever the case may be).

Has the overall amount of time to pass legislation changed over the years from 1976 to 2005? Figure 2 shows that the duration of the law-making process has become shorter over time, not longer, as we might assume in light of the increasing

FIGURE 1  
DURATION OF THE LEGISLATIVE PROCESS – SPLIT BY PHASES

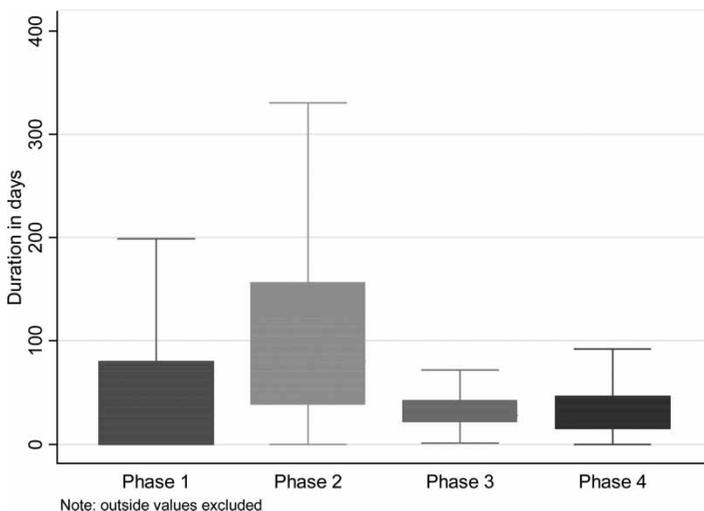
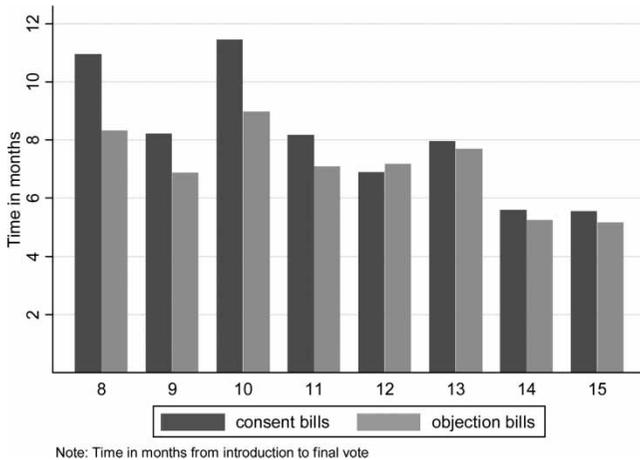


FIGURE 2  
AVERAGE DURATION OF LEGISLATIVE PROCESS FOR BILL TYPE AND LEGISLATIVE PERIOD



complexity of regulation. Methodologically, this finding is important for our subsequent data evaluation. At the same time that the duration of the legislative process has been shrinking, the frequency of divided government in the Federal Republic has been increasing. As a result, it is possible that the influence of the latter phenomenon has been hidden because the periods of oppositional majorities in the Bundesrat occur more often in legislative periods in which the legislative process tends to take less time. Therefore, in the following data analysis, it makes sense to control for the effect of an increasingly short duration of the legislative process over time.<sup>21</sup>

#### TESTING THE HYPOTHESES

We start with our first and simplest hypothesis and test whether or not oppositional majorities extend the duration of the legislative process. We test this hypothesis on all bills adopted by the Bundestag between 1976 and 2005 without including international ratification bills. We observe partisan majorities at the time of the vote in the Bundestag and examine the period from the introduction to the final vote (in the Bundestag or Bundesrat) as measured in months. Our measurement of the length of time needed to pass a bill does not extend from the introduction of the bill to its promulgation, but from its introduction to the final vote (in either the Bundestag or the Bundesrat, see above). For the 'final vote', we use the date on which the last vote was taken to be the end of the legislative process. This variable is coded both for laws that are promulgated and those that are not. In the latter case the last available date of the legislative process is used, even if the legislative procedure only formally concludes with the end of the legislative period. (An example would be cases in which the committee mediation process was not finished.)

At first glance it seems that the type of majority has diverging effects on the two kinds of legislation. Oppositional majorities *shorten* the time bills need when the

legislation depends on the consent of the second chamber (from 9.5 to 7.3 months on average) and seem to *lengthen* it for objection laws (from 6.6 to 7.4 months on average). When interpreting these findings, we must remember that the previously mentioned time effect can have an impact here, since oppositional majorities (especially in the case of consent laws) have occurred more frequently since 1990. At the same time, the legislative process is shorter in later legislative periods. Therefore, we cannot completely exclude the possibility that the different effects on time attributed to oppositional majorities are only a reflection of the general trend toward a reduction in the time required for such bills. As mentioned earlier, the reason is that the observed time spans are not identical for consent and objection laws due to different majority codifications. The limitations of bivariate analyses quickly become obvious. Once we run a regression that controls for legislative periods and policies, we find that both types of legislation indeed take longer under divided government: the legislative process is lengthened by about 1.3 months for consent bills and by about 1 month for objection bills when there is an oppositional majority in the Bundesrat (Table 1). Interestingly, these effects prove significant only for objection legislation, i.e. for those bills for which the veto power of an oppositional second chamber is much weaker. Compared to other variables, such as effects of time and policy field, the majorities in the second chamber do not play a major role. For example, bills on social and financial issues shorten the duration of legislation by about two months.

These findings lead us to conclude that the opposition possesses the capability to delay bills *particularly* in the case of objection legislation where delaying tactics are all the more attractive to the opposition because it does not have any veto rights

TABLE 1  
THE INFLUENCE OF OPPOSITIONAL MAJORITIES ON THE DURATION OF THE LEGISLATIVE PROCESS

	Consent Laws	Objection Laws
<b>Oppositional Majorities</b>	<b>1.309(1.47)</b>	<b>0.935*(1.70)</b>
8th term (1976–80)	5.920(7.84)***	3.743(5.90)***
9th term (1980–83)	3.653(3.24)***	2.892(3.33)***
10th term (1983–87)	7.561(6.61)***	5.062(6.67)***
11th term (1987–90)	4.099(4.01)***	3.109(4.57)***
12th term (1990–94)	1.337(2.03)**	2.990(4.37)***
13th term (1994–98)	2.462(3.67)***	2.419(3.93)***
14th term (1998–2002)	0.197(0.30)	0.887(1.35)
Labour/Social Welfare	-1.889(2.85)***	-1.551(2.63)***
Education	-2.520(2.36)**	0.408(0.32)
Agriculture	-0.409(0.59)	-1.148(1.46)
Interior	-0.664(1.22)	-1.045(2.01)**
Justice	2.776(4.85)***	3.412(8.11)***
Finance	-2.203(4.36)***	-1.888(3.53)***
European Impulse	0.425(1.04)	1.372(3.54)***
Constant	4.377(4.17)***	3.485(5.83)***
Observations	1210	1060
Adj. R <sup>2</sup>	0.15	0.18

T-value in parentheses.

\*significant at 0.1; \*\*significant at 0.05; \*\*\*significant at 0.01.

Reference group: 15th term (2002–5).

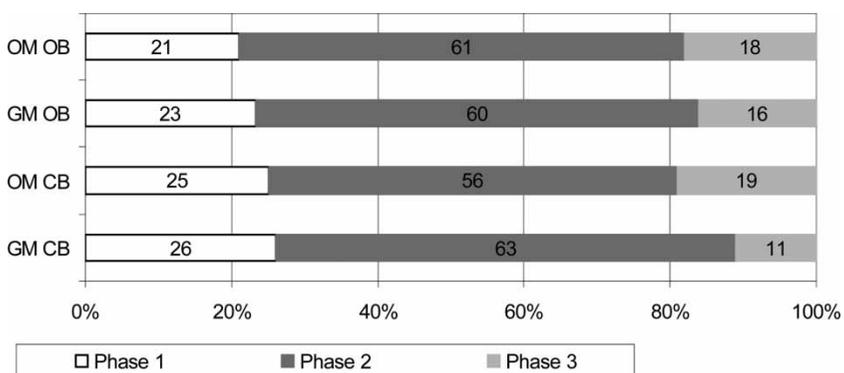
when it comes to the bill's content. This capability can be presented a bit more tangibly by examining the 51 objection bills for which the Bundesrat in fact issued an objection under oppositional majorities in the Bundesrat. For these bills, the third phase of legislation (starting from the passage of the bill in the Bundestag until the final vote on the bill, here in most cases the Bundestag's rejection of the objection) took 85 days on average. For all other objection bills this phase took about 32 days. This means that the opposition is in a position to hold up objection laws by about two months.

Empirical evidence so far gives us some hints regarding a prolonged legislative process under opposing majorities. We will further examine these effects by testing our second hypothesis which stated that an oppositional majority in the Bundesrat leads to internal shifts in the percentage of time spent for each stage in the legislative process; it shortens the percentage of time for parliamentary deliberation and lengthens the period of decision between the third reading in parliament and the final passage by a vote in the Bundesrat. Figure 3 presents the share of time spent on each of the three main procedural phases for objection and consent laws.

Figure 3 indeed confirms that more time elapses between the final vote on a bill in the Bundestag and the vote in the Bundesrat when the latter is dominated by an oppositional majority. The price for more time in this phase of the process is less time for parliamentary deliberation. This seems to hold true in particular for consent laws. For objection laws, the relative time shares of the various steps in the legislative process do not seem to be significantly affected by whether a governmental or an oppositional majority exists. However, the reported findings cannot yet be read as clear evidence that an oppositional Bundesrat majority poses a specific threat, one that would indicate the opposition's increased influence on the parliamentary calendar. We might receive a more definite answer when looking at the end of the parliamentary term when the time constraints for legislation become binding.

We argued that, at least at the end of the legislative period, the threat that the opposition will block or delay legislation in divided government situations translates into

FIGURE 3  
TIME PERCENTAGE FOR EACH LEGISLATIVE PHASE ACCORDING TO TYPE OF BILL AND MAJORITY RELATIONS



Note: OM=Opposition Majority, GM=Government Majority, OB=Objection Bills, CB=Consent Bills.

increased pressure for policy moderation on the part of the government. Now, the government faces pressure in an area of legislation for which the constitution stipulates no or only a very small co-legislative role for the Bundesrat, namely in objection laws. Just how effective the opposition's threat to delay the law-making process is becomes clear when we look at those objection bills that still failed after their adoption in the third reading in the Bundestag. Of the 20 cases in our data set that fall into this category (in nine, the Bundesrat objection was not overturned; in 11, the bill did not come up for a vote again in the Bundestag), only three cases do *not* fall into a six-month deadline before the next Bundestag election. The median for the final vote in the Bundestag (third reading) for these bills lies at about four months before the next election. This shows that oppositional majorities turn into a very relevant threat for the passage of objection bills as well – at least at the end of a legislative period.

A government can react in two ways. It can circumvent the problem altogether by relinquishing all legislative initiatives after a certain point at the end of the legislative period. Or, more realistically, it can tackle the problem by pursuing only those initiatives at the end of the legislative period that do not evoke controversy between the government and the opposition and will therefore not prompt the opposition to engage in obstructive politics. This policy of 'self-restraint' or autolimitation<sup>22</sup> on the part of the government during situations of divided government should become empirically evident in a comparatively high percentage of bills put to a vote at the end of the legislative period in which no controversy occurs during the third reading in the Bundestag. In this context, it is important to point out once again that this expectation applies in particular to objection laws when the opposition otherwise has no opportunity to exert its political clout. Therefore, at the end of a legislative period, we expect empirically to find a high percentage of uncontroversial objection bills if the government does not have a majority in the Bundesrat.

To test this hypothesis we ran a logistic regression in which we asked whether the timing of a vote influences its controversiality. We coded all Bundestag votes (in the third reading) as being uncontroversial in which the largest opposition party either abstained or voted in favour of the bill; all other votes were coded as being controversial. We included as independent variables a dummy for bills on which the vote took place six months before the next election ('next election') and a dummy for an 'oppositional Bundesrat'. We also formed an interaction term that measures the influence of diverging majorities shortly before an election ('next election' \* 'oppositional Bundesrat'). We also included in the regression equation a series of control variables (in particular dummies for the legislative periods and for individual policy areas) that have proven important in explaining the level of contentiousness of a vote.<sup>23</sup>

As we see in Table 2, oppositional majorities *always* have the effect of reducing the level of controversy of a vote on consent laws.<sup>24</sup> The conflict-reducing effect of oppositional majorities is even stronger prior to a national election. Six months before an election and under oppositional majorities (next election = 1 and oppositional majority = 1) the coefficient is  $-0.822$  ( $= -0.113 + (-0.21) + (-0.399)$ ). If there is no election coming up (next election = 0) and the opposition dominates the second chamber (oppositional majority = 1), the coefficient indicates a reduction of conflict between government and opposition of only  $-0.399$ . For objection laws, in contrast, an oppositional majority significantly *increases* (positive sign of the

TABLE 2  
LOGISTIC REGRESSION: PREDICTING A CONFRONTATIONAL VOTE IN THE BUNDESTAG  
(3RD READING)

Variables	Consent Bills	Objection Bills
Next Election	-0.113(0.30)	-0.328(1.39)
Oppositional Majority*Next Election	-0.210(0.49)	-0.711(1.70)*
Oppositional Majority	-0.399(1.08)	0.670(2.36)**
European Impulse	-0.321(2.04)**	-0.657(3.56)***
9th term (1980–83)	0.774(1.59)	0.309(0.73)
10th term (1983–87)	0.662(1.36)	0.461(1.21)
11th term (1987–90)	0.710(1.54)	0.008(0.02)
12th term (1990–94)	0.840(2.56)**	0.418(1.17)
13th term (1994–98)	1.042(3.19)***	0.410(1.30)
14th term (1998–2002)	1.518(4.80)***	1.499(4.47)***
15th term (2002–5)	1.605(4.84)***	0.980(3.23)***
Labour & Social Welfare	0.097(0.42)	0.963(3.90)***
Education	0.037(0.09)	-0.139(0.26)
Agriculture	-0.559(2.02)**	0.089(0.25)
Interior	-0.561(2.63)***	-0.992(3.71)***
Justice	-1.099(4.17)***	-0.660(3.32)***
Finance	0.026(0.14)	1.148(5.08)***
Constants	-1.211(2.59)***	-1.421(4.46)***
Observations	1186	1056
Pseudo R <sup>2</sup>	0.055	0.13

Note: Wald test (absolute value of z statistics) in parentheses.

\*significant at 0.1; \*\*significant at 0.05; \*\*\*significant at 0.01.

Reference group: 8th term (1976–80).

Next election: 6 months prior to the next general election.

coefficient) the likeliness of conflict between government and opposition but only as long as there is no election coming up (next election = 0). This might reflect a shifting of conflict from consent to objection bills during situations of divided government. However, at the end of the legislation period (next election = 1), oppositional majorities *reduce* the probability of a confrontational vote, which indicates government self-restraint for objection laws but only prior to elections. If next election = 1 and oppositional majority = 1 then the effect is  $-0.369 (= -0.328 + (-0.711) + 0.67)$  indicating a decline in the probability of a confrontational vote. As we predicted, it is at the end of the term that the ‘bark’ of oppositional obstruction threatens to become a ‘bite’, and that the suspensive veto is transformed into an absolute one. Divided government therefore not only affects consent legislation but hampers, by the use of delay as a political technique, the ability of the government to pass objection bills.

## SUMMARY

Do the frequent situations of divided government in the political system of the Federal Republic of Germany reduce the government’s normally rather extensive control over the parliamentary calendar, in addition to the loss of government control over the plenary voting agenda? This effect, we argued, should be particularly evident at the end of a legislative period and should apply not only to consent but also to objection

bills. As the test of our hypotheses showed, there is indeed evidence indicating that situations of divided government in Germany not only force the government to seek substantial political consensus with the opposition on consent laws, but also that the opposition can exert political influence on objection laws. When confronted with a hostile Bundesrat, a government is more likely to pursue non-controversial initiatives which do not provoke oppositional obstruction. Divided government does not manifest itself in a significantly longer legislative process, because legislative delay as a credible political threat translates into governmental self-restraint. The main effects of divided government are anticipatory.

## NOTES

We would like to thank the participants of the workshop on 'Legislative Data Analysis' at the Max Planck Institute for the Study of Societies, especially Bernhard Miller and Ulrich Sieberer, for helpful discussions.

1. Gary W. Cox 'The Organization of Democratic Legislatures', in Barry R. Weingast and Donald A. Wittman (eds.), *The Oxford Handbook of Political Economy* (Oxford: Oxford University Press, 2006), pp.141–61.
2. Thomas König and Thomas Bräuninger, *Gesetzgebung im Föderalismus* (Speyer: Deutsche Hochschule für öffentliche Verwaltung, 2005).
3. Philip Manow and Simone Burkhart, 'Government's Legislative Self-Restraint under Divided Government – Evidence from the German Case, 1957–2002', *Legislative Studies Quarterly* 32/2 (2007), pp.167–91.
4. Gary W. Cox and Samuel Kernell, *The Politics of Divided Government* (Boulder, CO: Westview, 1991), pp.242–3.
5. The expectation of a considerably accelerated legislative process thanks to the federalism reform is based on the assumption that long-drawn-out negotiating procedures between the government and the opposition, as well as a possibly deliberate protraction of legislative proceedings by the opposition, could be expected to occur less frequently if the Bundesrat's rights of participation in the process were reduced. These hopes, however, are highly unlikely to become reality, see Simone Burkhart and Philip Manow, 'Was bringt die Föderalismusreform? Die wahrscheinlichen Effekte der geänderten Zustimmungsregeln', *MPIfG Working Paper* 06/6 (2006); and Werner Reutter, 'Regieren nach der Föderalismusreform', *Aus Politik und Zeitgeschichte* 50 (2006), pp.12–17.
6. König and Bräuninger, *Gesetzgebung im Föderalismus*.
7. Simone Burkhart and Philip Manow, 'Kompromiss und Konflikt im parteipolitisierten Föderalismus der Bundesrepublik', *Zeitschrift für Politikwissenschaft* 16/3 (2006), p.808.
8. See Herbert Döring, 'Time as a Scarce Resource: Government Control of the Agenda', in Herbert Döring (ed.), *Parliaments and Majority Rule in Western Europe* (Frankfurt am Main/New York: Campus/St. Martin's Press, 1995), pp.223–47; Herbert Döring, 'Worauf gründet sich die Agenda-Setzer Macht der Regierung? Theoretische und vergleichende Perspektiven auf den deutschen Fall', in Steffen Ganghof and Philip Manow (eds.), *Mechanismen der Politik. Strategische Interaktion im deutschen Regierungssystem* (Frankfurt am Main: Campus, 2005), pp.109–48.
9. William B. Heller, 'Making Policy Stick: Why the Government Gets What It Wants in Multiparty Parliaments', *American Journal of Political Science* 45/4 (2001), pp.780–98.
10. Ulrich Sieberer, 'Agenda Setting in the German Bundestag: A Weak Government in a Consensus Democracy', *German Politics* 15/1 (2006), pp.49–72.
11. Thomas Saalfeld, 'Members of Parliament and Governments in Western Europe: Agency Relations and Problems of Oversight', *European Journal of Political Research* 37/3 (2000), pp.353–76; Thomas Saalfeld, 'Determinanten der Fraktionsdisziplin. Deutschland im internationalen Vergleich', in Steffen Ganghof and Philip Manow (eds.), *Mechanismen der Politik. Strategische Interaktion im deutschen Regierungssystem* (Frankfurt am Main: Campus, 2005), pp.35–71.
12. Döring, 'Worauf gründet sich die Agenda-Setzer Macht der Regierung?'
13. Thomas König, 'Regieren im Föderalismus', *Aus Politik und Zeitgeschichte* 35/13 (1999), pp.24–36. Much depends here on assumptions about perfect information and political transaction costs. A perfectly informed government would simply introduce a bill which makes the opposition indifferent between accepting and rejecting without the conference committee ever having to be involved, see Matthias Lehnert and Eric Linhart, 'Der Einfluss der Mehrheitsverhältnisse im Vermittlungsausschuss auf

- die deutsche Gesetzgebung', in Joachim Behnke, Thomas Bräuninger and Susumu Shikano (eds.), *Jahrbuch für Handlungs- und Entscheidungstheorie* (forthcoming).
14. Otto Bryde, 'Das Gesetzgebungsverfahren. Stationen, Entscheidungen und Beteiligte im Gesetzgebungsverfahren', in Hans-Peter Schneider and Wolfgang Zeh (eds.), *Parlamentsrecht und Parlamentspraxis* (Berlin/New York: De Gruyter, 1989), pp.859–81.
  15. König and Bräuninger, *Gesetzgebung im Föderalismus*, p.64ff.
  16. Manow and Burkhart, 'Government's Legislative Self-Restraint under Divided Government'.
  17. Peter Schindler, *Datenhandbuch zur Geschichte des Deutschen Bundestages 1949–1999* (Baden-Baden: Nomos, 1999). For a comprehensive discussion about the operationalisation of party political majorities in the second chamber see Sven Leunig: "'AB(C)" oder "ROM"? Anmerkungen zur Operationalisierung von Mehrheitsverhältnissen im Bundesrat', *Zeitschrift für Parlamentsfragen* 34/2 (2006), pp.402–20.
  18. Wolfgang Müller, 'Die Relevanz von Institutionen für Koalitionstreue: Theoretische Überlegungen und Beobachtungen zur Bundesrepublik Deutschland', in Steffen Ganghof and Philip Manow (eds.), *Mechanismen der Politik. Strategische Interaktion im deutschen Regierungssystem* (Frankfurt am Main: Campus, 2005), pp.73–107.
  19. Helmuth Schulze-Fielitz, *Theorie und Praxis parlamentarischer Gesetzgebung – besonders des 9. Deutschen Bundestages (1980–1983)* (Berlin: Duncker & Humblot, 1988).
  20. Otto Bryde, 'Das Gesetzgebungsverfahren. Stationen, Entscheidungen und Beteiligte im Gesetzgebungsverfahren', in Hans-Peter Schneider and Wolfgang Zeh (eds.), *Parlamentsrecht und Parlamentspraxis* (Berlin/New York: De Gruyter, 1989), pp.859–81.
  21. Of course, the average length of the legislative process is – in all probability – not independent from the majority constellations between parliament and second chamber, as they develop over time. There is no straightforward solution to this endogeneity problem. By including controls for legislative terms we expose our hypotheses to the stricter test as compared to the exclusion of term dummies.
  22. Manow and Burkhart, 'Government's Legislative Self-Restraint under Divided Government'.
  23. Ibid.; Burkhart and Manow, 'Kompromiss und Konflikt im parteipolitisierten Föderalismus der Bundesrepublik'.
  24. The fact that the coefficients here are not statistically significant is probably due to our rather simple coding of the majority relations, which fails to do justice fully to the complexity of strategic calculations on the part of the political actors. See Manow and Burkhart, 'Government's Legislative Self-Restraint under Divided Government'.