

# Government Agenda-Setting and Bicameral Conflict Resolution

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## Abstract

We examine the extent to which governments consider the role of bicameral conflict resolution procedures in legislative agenda-setting. We argue that governments may use these institutions to promote policy change in the event of bicameral conflict, especially when facing uncertainty over bicameral policy preferences. We test our arguments using comprehensive original data on forty years of German legislation and find that bicameral conflict resolution committees play a more sophisticated role in governmental policy making than previously suspected.

## Keywords

bicameralism, agenda-setting, executive–legislative interactions, legislative institutions, German politics

Governments are responsible for policy change in parliamentary systems. They initiate most legislation, control informational resources, and monopolize legislative agenda-setting procedures. But governments may also face institutional hurdles and uncertainty when making policy. Previous research has emphasized the substantial obstacles governmental agenda-setters face under bicameral institutions, which systematically constrain policy change and require legislative compromise (Levmore 1992; Tsebelis and Money 1997). Governmental agenda-setting is more cumbersome when second chambers enjoy veto power and when the preferences of the two chambers are dissimilar (Binder 2003; Hammond and Miller 1987; König 2001; Tsebelis 2002). This has prompted researchers to argue that, in divided bicameral parliaments, political parties anticipate such effects and attempt to form government coalitions that safeguard bicameral majorities (Druckman, Martin, and Thies 2005; Druckman and Thies 2002; Proksch and Slapin 2006).

Considering the composition of the second chamber at the time of government formation may constitute an effective strategy when the policy preferences of parties in both chambers are known and do not change. While governmental preferences usually correspond with the preferences of the parliamentary majority in the first chamber, less is known about governmental agenda-setting when uncertainty exists about the distribution of policy preferences in the second chamber. This uncertainty may arise when the composition of the second chamber may be prone to change during a legislative term. In such situations, the level of bicameral conflict may change during the life of a government or even during the life of a legislative proposal. When the type and

level of bicameral conflict are uncertain, governmental agenda-setters face difficulties in anticipating the reaction of the second chamber and forming “optimal” coalitions for legislative proposals.

In this study, we investigate whether and how governments adapt their agenda-setting strategies under uncertain conditions. In situations where agenda-setters are fully informed about bicameral conflict and certain about the outcome of their proposals, extant research on bicameral policy making predicts that, as bicameral conflict increases, governments simply alter the content of their agenda to make it more appealing to the second chamber majority (Krehbiel 1998). This may include initiating policies that are closer to the ideal point of the second chamber or even refraining from policy initiation—strategies referred to as auto-limitation or self-censorship (Manow and Burkhart 2007; Vanberg 2001). This literature is silent, however, with regard to how governments respond to bicameral conflict under uncertain conditions.

Our analysis of these uncertain conditions emphasizes the role of institutions for bicameral conflict resolution and thereby expands our understanding of governmental agenda-setting in two regards. First, we take a closer look at institutions of bicameral conflict resolution, which are employed to break deadlock between the two chambers

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in many countries (Tsebelis and Money 1997) and show that these institutions do increase the probability of successful governmental agenda-setting. Second, we specify how such institutions condition the content of a governmental policy proposal under certain and uncertain conditions. We find that these institutions provide a kind of safety net for governmental agenda-setters that face a potential bicameral veto. This suggests that institutions of bicameral conflict resolution create an incentive for governments to propose policies closer to their own ideal point than the auto-limitation literature would predict, particularly when there is some uncertainty about the future composition of the second chamber. As a result, governments will insist upon their ideal point while drafting policy proposals and risk a conciliation procedure rather than auto-limit from the outset.

We test our expectations on governmental agenda-setting under uncertain conditions using a comprehensive original data set of all government proposals initiated in Germany from 1969 to 2009. We explain in detail why German bicameralism provides an ideal laboratory for testing our arguments below. Although our theoretical expectations and empirical tests are built upon the particular institutional structure of German bicameralism, which distinguishes between a procedure with symmetric and with asymmetric power distribution, the implications of our findings are applicable to a wide range of legislative (and more general bargaining) contexts (1) where there is uncertainty regarding the preferences of one or more veto players, and (2) where there are conflict resolution devices or other institutions that may alter the balance of power during the decision-making process.

The structure of the article is as follows. We first provide a brief discussion of bicameral research and discuss the need to examine conflict resolution committees and the role of uncertainty more closely. We then present our research design, theory, and hypotheses within the institutional context of German bicameralism and illustrate the intricacies of the German case with examples from our data. Our analysis shows that governmental agenda-setters do, in fact, consider institutions of bicameral conflict resolution as policy safety nets. This suggests that the German conflict resolution committee performs a more important role for policy change and agenda-setting than the current literature would predict. Finally, we discuss how our empirical results can inform our understanding of bicameral institutions and governmental agenda-setting more generally.

## **Bicameralism and the Governmental Policy Agenda**

Veto players theory argues that divided governments, especially governments with a bicameral legislature divided against itself, are less able to act decisively and

efficiently in policy making than unified governments (Tsebelis 2002). In their seminal work on bicameralism, Tsebelis and Money (1997) demonstrate that incongruent majorities between chambers should make it more difficult to agree on legislation but that specific institutional mechanisms exist to resolve bicameral conflict. These include the navette (shuttle system) and conference or conciliation committees. An important finding in this line of research is that the second chamber is able to influence governmental agenda-setting even when it lacks formal veto power. The rationale behind this is that the government is usually held accountable for policy results on election day and is therefore more likely to be impatient in the bicameral conflict resolution process. As a result, the second chamber may receive concessions from the government to prevent unnecessary delay. This is what a standard agenda-setting model would suggest.

Building on these insights, scholars have investigated the effects of bicameralism on coalition formation in parliamentary systems (Druckman, Martin, and Thies 2005; Druckman and Thies 2002; Proksch and Slapin 2006). These studies argue that political parties in parliamentary systems anticipate the potential for bicameral deadlock when forming government coalitions. Druckman, Martin, and Thies (2005) show that governments include additional parties into the coalition to stabilize bargaining between the chambers. Not only are such coalitions more likely to form but they also tend to last longer. One implication of this finding is that if governmental parties control or participate in majorities in both chambers, we should observe less bicameral conflict. Yet, anecdotally and empirically, as we will show below, this picture does not hold consistently. We still find incidents of bicameral conflict and we discuss what role institutions of bicameral conflict resolution play for the strategies of the governmental agenda-setter.

To understand the relationship between governmental agenda-setting and the patterns of bicameral conflict, we need to incorporate the role of uncertainty and the possibility for institutionalized conflict resolution. First, institutions of bicameral conflict resolution, such as a conciliation committee composed of representatives of both chambers, play an important role for finding compromise solutions in many countries. The existing literature emphasizes the bargaining effect of these committees and their power by making a take-it-or-leave-it proposal under closed rule (e.g., König et al. 2007; Tsebelis and Money 1997), while we argue that governments may rely on these committees to implement their ideal policies, in particular when its composition favors governmental parties. Furthermore, we need to include uncertainty regarding the preferences of the second chamber to understand the role of these institutions and their effect on governmental agenda-setting. This uncertainty arises because

the distribution of policy preferences in the second chamber may change during the course of the legislative process as a function of changes in policy salience, changes in the composition of the chamber, or other exogenous shocks.

We identify German bicameralism as an excellent case to evaluate our arguments because of its particular institutional structure. On the one hand, this structure includes multiple possibilities of changing majorities in the second chamber during a legislative term, allowing us to identify *explicit* changes in the composition of policy preferences and the resulting uncertainty in the policy-making process. On the other hand, we have the existence of a conciliation committee to resolve bicameral conflict, which may privilege the governmental agenda-setter. Note that of thirty-seven bicameral parliaments,<sup>1</sup> seventeen are home to a bicameral conflict resolution institution similar to Germany's (including the European Union and four of the five largest global economies) and another nine have procedures that would disrupt the expectations of most standard agenda-setting models when unaccounted for. We discuss the implications of the institutional structure of German bicameralism in detail below, before we derive specific hypotheses regarding the effect of preference uncertainty about the second chamber and the composition of the conciliation committee on the frequency of bicameral conflict.

## Research Design: German Bicameralism

Like many other bicameral systems, the German legislature is represented by two chambers that reflect the federal structure of the country. The first chamber, the *Bundestag*, elects the chancellor and is composed of MPs elected from party lists and single-member districts for a term of four years. The second chamber, the *Bundesrat*, is composed of representatives of the sixteen state governments.<sup>2</sup> These representatives of the *Bundesrat* are not directly elected, rather they are delegates of the state governments, most of which are coalitions.<sup>3</sup> Furthermore, each delegation receives a weighted vote, varying in size from three to six, as a function of the state's population size. The delegates of these states cast their votes en bloc and the governmental delegations typically abstain when the coalition partners in a state cannot come to consensus.

The German constitution provides for two legislative procedures that create a symmetric and an asymmetric power relationship between the two chambers. In the first legislative procedure, the *Bundesrat's* formal approval is required because the implementation of the federal law affects the states' organizational powers. In the second procedure, the *Bundesrat* possesses only a suspensive

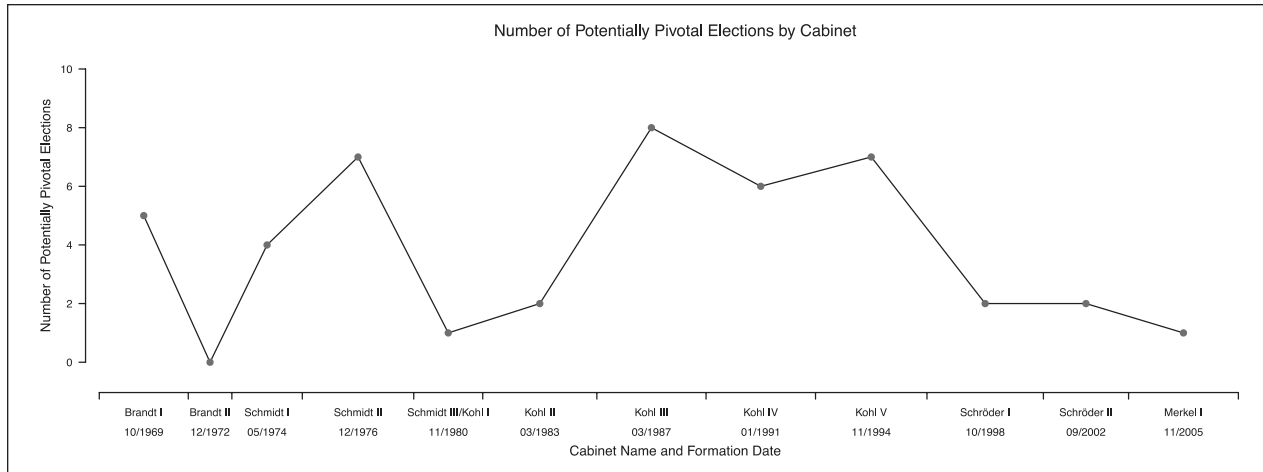
veto as implementation has no such effects.<sup>4</sup> This constitutionally mandated procedural distinction allows us to examine two sets of governmental legislation: one that needs the formal approval of the *Bundesrat* and one in which government does not need approval for final passage.

This distinction is important for our evaluation of the conciliation committee as the bicameral conflict resolution institution. In formal approval cases, the *Bundesrat* may dissent and immediately refer the bill to conciliation; in cases where formal approval is unnecessary, the *Bundesrat* may only issue an "objection" and ask for conciliation.<sup>5</sup> The scientific benefit of this arrangement for our purposes is that we can observe the *Bundesrat's* approval of *each* bill, whether it enjoys a veto or not. By simply comparing *Bundesrat* reactions on formal approval bills and nonformal approval bills, we can assess whether the government changes the content of its agenda to accommodate the *Bundesrat*.<sup>6</sup>

While these two procedures create (a)symmetries in the power relationship between the two chambers, this is not a sufficient condition for effectively distinguishing weak and strong bicameralism in Germany (Lijphart 1999). What we still need to consider is the level of partisan preference congruence in the composition of the two chambers (e.g., Bräuninger and König 1999; König 2001). Because the governmental delegates of the states are the relevant actors in the second chamber, we have to take a closer look at the composition of each governmental coalition and their respective weighted votes. As we will demonstrate below, the level of partisan congruence of the second chamber majority with the governmental agenda-setter has been, in fact, highly uncertain over the past forty years. This is similar to the history of other bicameral systems where divided government frequently results from midterm elections.

## Uncertainty: The Changing Composition of the *Bundesrat*

A characteristic feature of German bicameralism is that the composition of the *Bundesrat* may change several times during the legislative term of the *Bundestag*. Multiple state elections are held during a legislative term of the *Bundestag* that have the potential to change the composition of the *Bundesrat* due to newly formed governments (single party or coalitions) at the state level. Between 1969 and 2009, the period of our study, each federal government faced, on average, more than fifteen state elections. Nearly half of these state elections resulted in a new state government whose partisan makeup was different from the previous one, and thus, a new *Bundesrat* delegation. The relevance of this composition change



**Figure 1.** Number of state elections that could potentially change majorities in the *Bundesrat* (by cabinet).

becomes obvious once we take into account the average duration of a legislative proposal. German governmental bills take approximately half a year from initiation to final passage; thus, at least one change in bicameral composition can be expected over the life of a typical government bill. In our view, this uncertainty has not been sufficiently incorporated into the study of governmental agenda-setting in bicameral parliaments.

However, while state elections may bring a new delegation, they do not necessarily result in a new partisan majority in the *Bundesrat*. Therefore, our discussion of uncertainty will revolve around elections that were pivotal to the partisan disposition of the *Bundesrat* as a whole. The number of such potentially pivotal elections for each German government between 1969 and 2009 is summarized in Figure 1. The plot shows that each government had to deal with an average of about four potentially pivotal elections during its term. Almost no German government could rely on stable partisan majorities in the *Bundesrat*. Moreover, because voters in German state elections tend to favor federal opposition parties (Kedar 2006), the government is quite often forced to contend with a *Bundesrat* that is eventually controlled by opposition parties during its term. In fact, one can distinguish three types of partisan *Bundesrat* dispositions: accommodative, when the *Bundesrat* majority is under partisan control of governmental parties; hostile, that is, a *Bundesrat* majority in the hands of opposition parties; and mixed, where a coalition of parties from the governmental and opposition camps is pivotal in the *Bundesrat*. As we will show, each type of *Bundesrat* disposition has distinct effects for governmental agenda-setting under the two bicameral procedures, which establish a symmetric and asymmetric power distribution among the chambers.

### Bicameral Conflict Resolution: Benefits and Costs of Invoking Conciliation

Uncertainty regarding the partisan composition of the *Bundesrat* is not the only reason why German bicameralism offers an excellent case for testing the effects of uncertainty on governmental agenda-setting. Due to the combination of a symmetrical power relationship with incongruent partisan majorities, we can clearly determine whether and to what extent a government alters the agenda when it must contend with a hostile partisan majority in the second chamber under a strong bicameral setting. The existing literature would suggest that a perfectly informed government is more likely to self-censor its agenda when the preferences of the two chambers diverge. That is, because the governmental agenda-setter has incentives to self-censor or auto-limit when it requires *Bundesrat* approval, no such incentives exist when formal approval is not required. As a consequence, it should behave accordingly, and this lower likelihood of auto-limitation should manifest in lower rates of *Bundesrat* disapproval. As we will demonstrate below, our argument yields an alternative prediction due to the existence of a bicameral conciliation procedure.

When the two chambers disagree over policy, legislation does not necessarily fail. Institutions of bicameral conflict resolution such as conference or conciliation committees not only exist in many bicameral parliaments around the world but they are also highly effective in bicameral conflict resolution. In their survey of bicameral systems, Tsebelis and Money (1997) estimate that almost 40 percent of bicameral systems provide for the use of such committees at some point during the legislative process and our own extension of that survey shows many

more such systems exist. Given that bicameral institutions may lead to more stable and consensual outcomes, yet have verifiably led to diminished legislative efficiency, conflict-resolving institutions may play a significant role in facilitating policy change.

The German conciliation committee (*Vermittlungsausschuss*) is such an institution. The committee is a highly successful institution for bicameral conflict resolution as it has the power to halt squabbles in the review process by making a take-it-or-leave-it proposal to both chambers (Tsebelis and Money 1997). Bills that endure this procedure are awarded a closed-rule voting decision and are almost never aborted in the conflict resolution process, thus they are significantly more likely to promote policy change. Although this process only starts in the event of some bicameral conflict, bills that endure the conciliation process between 1969 and 2009 are approximately 10 percent more likely to be adopted ( $p < .001$ ) than bills that do not. The data suggest that the German conciliation committee is a highly effective institution of resolving conflict between the two chamber majorities.

The German conciliation committee is a standing committee with thirty-two seats, sixteen allocated to the parties in the *Bundestag* (proportionately to their seat share) and one of the remaining sixteen awarded to each state government delegation of the *Bundesrat*. Because each member has one vote, this setting effectively neutralizes any weighted voting advantage a state delegation enjoys as a function of its population size. The dispositions of the conciliation committee are prone to change over the life of a bill too. Because members of the committee vote independently, we can distinguish the same three partisan dispositions of the committee as the *Bundesrat*: accommodative for the governmental agenda-setter, hostile by opposition majority, and mixed, where the votes are divided equally between government and opposition parties. Importantly, the governmental agenda-setter may enjoy a majority in the conciliation committee even if it does not in the *Bundesrat* (Lehnert 2008; Lehnert and Linhart 2009).

We argue that this institution is not simply a bargaining tool for facilitating the final passage of bicameral legislation. In situations of uncertainty, we show that it may turn into a “safety net” for governmental agenda-setters in the bicameral policy game by substantially reducing the probability of a formal veto being realized. Because governments are responsible for policy making and attempt to avoid failure of their agenda, we find that conciliation committees may allow them to pursue a riskier strategy by offering policies closer to their ideal point than they would in the absence of this institution. As a consequence, we conclude that institutions of bicameral conflict resolution make governmental self-restraint less

likely. Moving ahead, we investigate whether governments not only anticipate the probability of the invoking of conciliation but also the probability of conciliation conditioned on potential changes to the *Bundesrat*'s partisan composition.

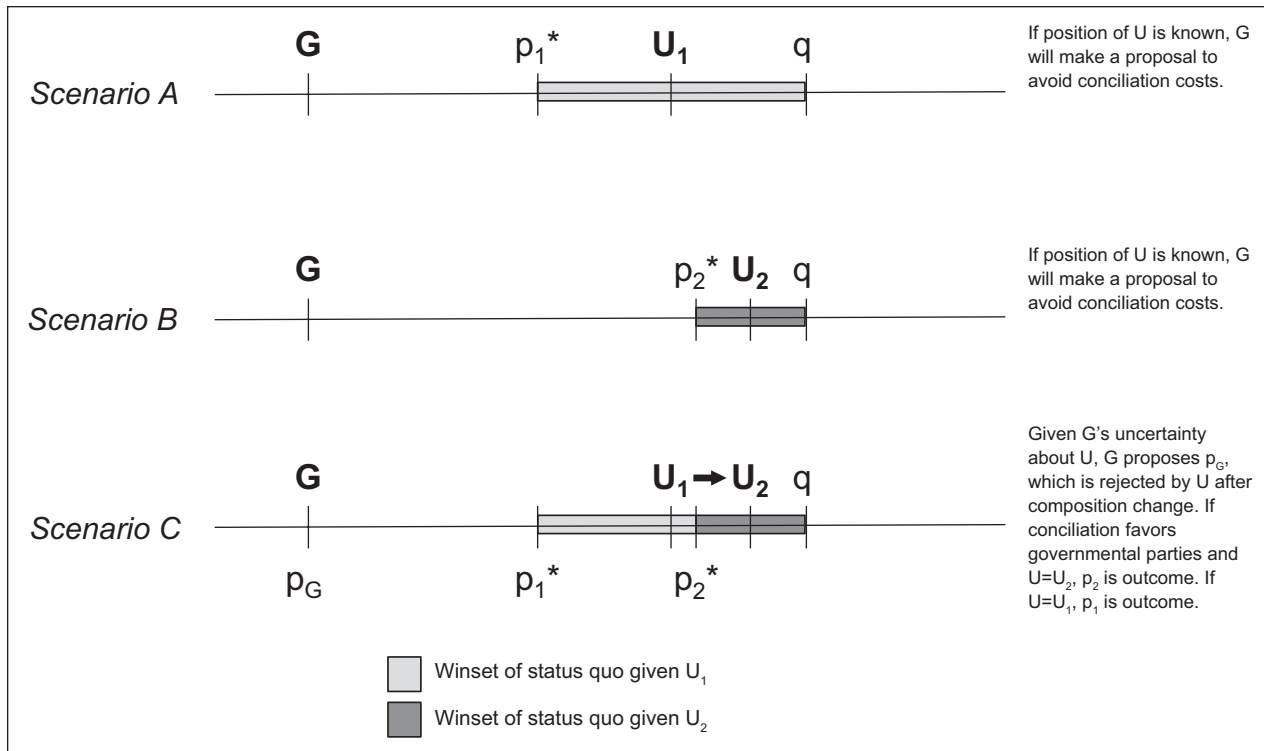
## Theory

Consider governmental agenda-setting in a bicameral legislature in the absence of a conciliation committee—a standard assumption in bicameral models with complete information (Krehbiel 1998; Tsebelis 2002). We start with a governmental proposal, ignoring how coalition parties eventually reached agreement within government (Müller and Strøm 2000; for an intragovernmental perspective, see Martin and Vanberg 2005). In this type of model, the government is responsible for agenda-setting and initiates a bill, which the second chamber may accept or veto. In the case of a veto, the status quo prevails but the government may pay an electoral cost for agenda failure, sometimes as high as dissolution. The expectation under these conditions is that the governmental agenda-setter would either “self-censor” or “auto-limit” the content of policy offering to avoid veto.<sup>8</sup>

Figure 2 illustrates this situation in Scenario A. The government (G), which is formed and supported by a majority in the first chamber, and the pivotal member in the second chamber ( $U_1$ ) have distinct policy positions in a one-dimensional bicameral bargaining space ( $G < U_1$ ). Furthermore, there is a status quo ( $q$ ), which is maintained if the government and second chamber do not come to an agreement. When we assume that only the second chamber has a status quo bias ( $q > U_1$ ), G is constrained simply by the policy preferences of the second chamber. Without conciliation, it will propose policy  $p_1$  that will make the second chamber slightly better off than the status quo. Consequently, we would not observe bicameral conflict. The perfectly informed governmental agenda-setter takes policy constraints into account through auto-limitation. This auto-limitation to  $p_1$  increases with policy divergence and proximity of the second chamber to the status quo.

Now, imagine an election midway that results in a more hostile second chamber. This situation is depicted in Scenario B. In the case of bicameral veto power and no conciliation, the governmental agenda-setter will have to make larger policy concessions to the second chamber. If the governmental agenda-setter correctly anticipates the outcome of the midterm election and its consequences for bicameral conflict, it can offer policy proposal  $p_2$ , sacrificing still more policy benefits to avoid a veto.

Auto-limitation is the strategic answer of complete information models on governmental agenda-setting to avoid the emergence of bicameral conflict and a possible



**Figure 2.** Bicameral agenda-setting with government (G) and upper house (U).

veto. The greater the dissimilarity between chambers, the greater the government's policy concessions. As governmental parties are usually held responsible for policy outcomes on election day, the downside of this strategy is that governmental voters may sanction the governmental agenda-setter for its acquiescence to the second chamber. Note that Scenarios A and B require that preferences are certain, the government is perfectly informed about the policy constraints in the second chamber, and no conciliation committee for bicameral conflict resolution exists.

Consider now the possibility of preference uncertainty. This situation is shown in Scenario C. Suppose the governmental agenda-setter proposes a bill to the second chamber, knowing at the time that the pivotal vote is located at  $U_1$ . As in the previous case, this results in a governmental proposal at  $p_1$ . After bill initiation, but before a second chamber decision is made, a midterm election takes place that is unfavorable to the governmental agenda-setter and creates a more hostile partisan majority in the second chamber at  $U_2$ . In this instance, once the second chamber actually reviews the governmental proposal, it will reject the bill, levying agenda failure costs on the government. In other words, uncertainty increases the risk of a formal disapproval by the second chamber when bicameral conflict increases during the legislative decision-making process.

Suppose now the existence of an institution of bicameral conflict resolution. With the addition of a conciliation committee, the governmental agenda-setter has three options to avoid failure costs under uncertainty. One strategy is to auto-limit its agenda even further at the time of initiation, making a proposal at  $p_2$ , the maximum it could extract from a potentially more hostile second chamber. A problem with this strategy is that if the midterm election does not result in a more hostile second chamber, the government would have made unnecessary policy concessions and therefore risk more sanctions by disappointed governmental voters on election day.

Alternatively, the government could moderate its agenda twice. It would first make a proposal at  $p_1$ , which would possibly be rejected by the more hostile chamber, and then compromise to  $p_2$  in conciliation. While this avoids unnecessary auto-limitation and results in optimal compromise in the end, it also means the governmental agenda-setter pays two sets of costs: one from the concessions of its initial offer and a second from the (perhaps very public) concessions during the conciliation process, which provides opposition parties an opportunity to make their viewpoints public. The government has deviated twice from its ideal point and, as a result, its voters are more likely to view it as too compromising or simply incompetent.

To avoid these additional costs, there is a third strategy that governments can employ: not to make any policy concessions at all (or at least very little) in their initial proposal. Rather than dealing with the uncertainty of the preferences of the second chamber at every step during the legislative process, the governmental agenda-setter could propose its ideal point  $p_G$  and deal with the outcome of the midterm election later. Should the outcome of the election confirm the more moderate second chamber, the government could compromise once in the conciliation committee and extract  $p_1$ . Alternatively, should the election result in a more hostile chamber, it could compromise to  $p_2$  by demanding conciliation if a formal veto appears imminent.<sup>9</sup> In any instance, the governmental agenda-setter has clear benefits: it can signal its ideal policy to its voters by proposing  $p_G$ , it only needs to moderate its policy *once* (rather than potentially twice), and it extracts the maximum from bicameral negotiations in light of changing preferences. Thus, it is preferable for the government to continue initiating policies at or close to its ideal point without auto-limitation.

This is not to say that governmental auto-limitation will never occur. When the government or a hostile second chamber is not willing to compromise at all, then the governmental agenda-setter can abstain from taking any action, a situation that could occur if the status quo and the position of the second chamber coincide. We also acknowledge that the conciliation process indeed bears some risks for the government when it will be faced with an overly hostile conciliation committee. Indeed, the benefit the government may extract from signaling its ideal point may be quickly diminished should the governmental proposal get publicly amended into oblivion in the conciliation process.

## Hypotheses

Suppose the governmental agenda-setter proposes its ideal policy. There are three feasible outcomes: (1) unconditional acceptance by the second chamber, (2) compromise via conciliation, and (3) a formal veto by the second chamber. Now suppose the government auto-limits and initiates a compromised bill. Again, there are the same three feasible outcomes. These six outcomes occur under the assumption that a policy must be initiated. We make another assumption that limits the set of viable outcomes. We assume that a formal veto is realized only in the event that conciliation is called for and refused by the government. Other hitches in the policy process may be written off by the government as evidence of the opposition's reckless obstruction of governance, but vetoes can potentially terminate cabinets. Given the potential costs of formal veto, we assume that the governmental agenda-setter strictly prefers conciliation to formal veto. Thus, a formal veto is very unlikely to be realized. This reduces our six

potential outcomes to four feasible outcomes. For simplification purposes, we assume that the utility of the government derived from an auto-limited policy is roughly equivalent to the utility derived from a policy arrived at via conciliation, but the governmental agenda-setter bears a cost for compromising via auto-limitation or conciliation. That is, we assume that the policy outcome is the same regardless of process when a compromised bill is passed, but the utility the government derives from the process as a whole may vary. Here, the government would prefer no compromise at all and when compromise is necessary, it would prefer to compromise once, rather than twice, when controlling for the eventual policy outcome.

Thus, we can establish the government's rank ordering of possible outcomes: (1) the unconditional passage of the government's most preferred agenda, (2) passage via conciliation of a proposal initiated at the government's ideal point or unconditional passage of an auto-limited policy, and (3) the passage of an auto-limited policy via the conciliation committee. Under this rank ordering, the government will always initiate its most preferred policy if the costs of conciliation are not too high. This leads to our first hypothesis:

*Hypothesis 1 (Bicameral Conflict):* As the preference dissimilarity of the two chambers increases, governmental bills are more likely to go into bicameral conciliation.

The above hypothesis pertains to the government's *willingness* to self-restrain. It assumes that the government is perfectly informed about the preferences of the second chamber and how to tailor its policy offerings accordingly. Uncertainty over the policy preferences of the second chamber substantially inhibits the government's *ability* to self-restrain. We predict that uncertainty will make the government even less likely to auto-limit. If the government decides to auto-limit, the realization of the second chamber may be such that the government has *overcensored*. Should such a bill be accepted, the government would suffer a larger loss than if it had offered its preferred policy and undergone conciliation. Thus the second hypothesis:

*Hypothesis 2 (Uncertainty over Bicameral Conflict):* As the government's uncertainty of the preferences of the second chamber increases, governmental bills are more likely to go into bicameral conciliation.

In the preceding paragraphs, we explained how the conciliation committee can alter bicameral interaction and thus, in general, significantly reduce the need for an auto-censorship strategy on behalf of the agenda-setter. This line of thought is simultaneously innovative—in that it

**Table 1.** Conciliation Occurrence and *Bundesrat* Disposition.

	<i>Bundesrat</i> disposition			Total
	Accommodative	Mixed	Hostile	
Formal approval bills submitted	309	456	472	1,237
Proportion sent to conciliation	0.04	0.21	0.25	0.19
Nonapproval bills submitted	325	401	419	1,145
Proportion sent to conciliation	0.02	0.12	0.22	0.13

presents a new take on bicameral interactions—and common sense. After all, auto-censorship theories are derived in the absence of such institutions and typically under the assumption of perfect information. But we believe that, even in the context of conflict resolution institutions like the conciliation committee and even in the face of uncertainty, the auto-censorship strategy is not uniformly dominated. That is, there are situations in which the government may find opportunity to pursue its ideal policy even more aggressively in the face of uncertainty.

A typical situation for such an aggressive strategy is a situation in which uncertainty exists about the pivotality of the conciliation committee but not about the second chamber. For example, the fifth Kohl cabinet (1994–1998) was dealing with a mixed *Bundesrat* and a conciliation committee controlled by the opposition in the shadow of the Berlin state election in the fall of 1995. Although this election did not have the ability to change the controlling majority in the *Bundesrat*, it did have the potential to eliminate the opposition majority on the conciliation committee. In such situations, where the government is operating in the shadow of elections that could bring about a more accommodative conciliation committee without altering the overall disposition of the *Bundesrat*, the government is even less likely to auto-censor because it can rely on conflict resolution in the conciliation committee and avoid compromising twice vis-à-vis the *Bundesrat*. In the worst case for the agenda-setter, the government must compromise once with the standing opposition conciliation committee. But should the election eliminate the opposition majority on the conciliation committee, the government may be able to avoid any compromise at all in conciliation.

*Hypothesis 3 (Accommodative Conciliation Committee):*

The government is less likely to auto-censor when the second chamber is hostile if it can take advantage of a favorable conciliation committee in the shadow of an election.

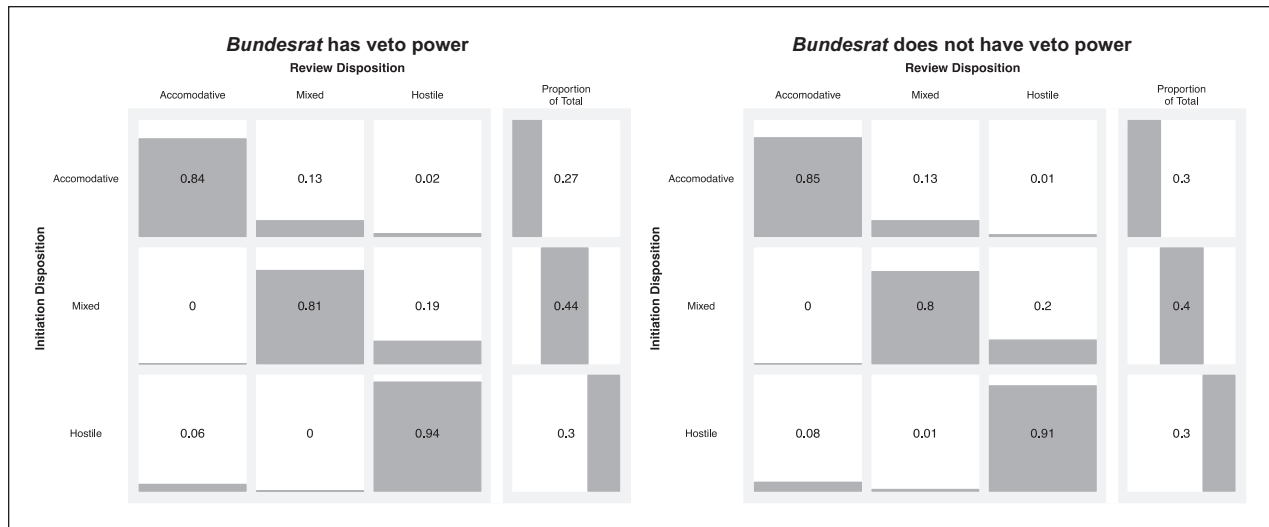
## Data: German Governmental Legislation (1969–2009)

To test the hypotheses, we use a data set of all government-initiated bills in Germany between 1969 and 2009, including the cabinets from Brandt I through Merkel I ( $n = 2,382$ ).<sup>10</sup> These data can be divided in terms of the partisan makeup of the second chamber. Above, we designated three possible dispositions of the second chamber: *accommodative*, in which delegations comprised solely of members of government parties may form a majority; *hostile*, in which delegations comprised solely of members of opposition parties may form a majority; and *mixed*, in which a majority may only be formed by delegations containing members of government and opposition parties.<sup>11</sup> This breakdown is shown in Table 1 along with the number of bills referred to conciliation.

As the table shows, most bills are reviewed by a hostile second chamber, followed by a mixed disposition chamber and then an accommodative one. This is true under either legislative procedure (second chamber veto or not). The table also shows the proportion of bills in each of the six categories that end up in the conciliation committee. Of all 2,382 government bills, around 16 percent (374 total bills) were referred to conciliation. Unsurprisingly, conciliation is most likely to occur when the government is forced to contend with an opposition majority in the second chamber, where almost every fourth bill ends up in the committee. This confirms that partisan preference incongruence between chambers causes the most conflict in bicameral legislatures (Tsebelis 2002; Tsebelis and Money 1997). Furthermore, we see a few instances in which bills are referred to conciliation even when the government controls the second chamber majority (around 4% when approval is required and 2% when it is not). These bills are useful for our analysis as they allow us to determine a baseline of a potential federal–regional conflict, which does not follow the pattern of partisan division. That is, the proportion of bills referred to conciliation by a government-controlled second chamber is indicative of the degree to which the interests of political parties at the federal level disagree with the interests of their state-level counterparts. This disconnect is salient to our substantive interpretation of our findings. Before starting our statistical analysis, however, we unfold our data further to provide insights into the level of uncertainty with which governments are confronted.

There are frequent instances in which the disposition of the second chamber changes during the life span of a bill. For instance, a bill that is initiated to a mixed second chamber may be referred to conciliation by a hostile majority following a state election. This potential for change is important, as it allows us leverage in estimating





**Figure 3.** *Bundesrat* disposition at bill initiation and review stage.

the effect of government uncertainty in the conciliation procedure. That is, to the degree that the government is willing to practice auto-limitation, its ability to properly self-restrain is inhibited by its uncertainty over the preferences of the second chamber. How can the government tailor its agenda to be more attractive to the *Bundesrat* majority, when it does not know what the majority will be when the bill comes up for a vote? Figure 3 provides a detailed breakdown of our data in this way by showing the distribution of bills according to the disposition of the second chamber at the time of initiation and the time of *Bundesrat* review.

The left panel in Figure 3 shows bills requiring second chamber approval, while the right panel illustrates bills that can be passed by the first chamber alone. The rows in each panel indicate the partisan disposition of the second chamber at the time of bill initiation and the columns show the disposition at the time of bill review in the second chamber. If the electoral cycle had no effect at all, then we would expect all bills to fall into the cells that indicate identical disposition (the diagonal). Yet, this is not the case. For example, for bills requiring formal approval of both chambers, 84 percent of those initiated facing an accommodative *Bundesrat* are actually reviewed by the same partisan configuration in the second chamber. Mixed or hostile majorities review the remainder of the bills. Similarly, only 81 percent of bills initiated to a mixed *Bundesrat* are actually reviewed by that disposition, while 94 percent of bills initiated to a hostile *Bundesrat* are eventually reviewed by one. In short, on average, 15 percent of all government legislation is reviewed by a *Bundesrat* with a partisan disposition *different* from the one at the time of bill initiation. These numbers are comparable for both types of

legislation. They suggest that there is a substantial amount of uncertainty during the life cycle of governmental bills. Note that this presentation shows “conservative” numbers for our argument because the structuring of the data underplays the level of potential variation by disregarding the substantial amount of possible change within dispositions, especially in the case of a mixed disposition.

## Results

Using the nine possible dispositions indicated by the cells in Figure 3, we rank order our theoretical expectations for conciliation likelihood by *Bundesrat* disposition in decreasing order: (1) accommodative or mixed to hostile, (2) hostile, (3) accommodative or hostile to mixed, (4) mixed, (5) hostile or mixed to accommodative, and (6) accommodative. This ranking reflects the assumption that auto-limitation is rare, mixed delegations are more similar to the government than hostile majorities, and mixed delegations are not necessarily located between the government and opposition. More specifically, a mixed disposition in the second chamber may be composed of delegations that are left and right of the government. For example, in the final year of her grand coalition between the CDU/CSU and SPD in 2009, Chancellor Merkel faced a mixed delegation *Bundesrat* majority, primarily composed of CDU-FDP delegations (to the right of her cabinet) and SPD-Green delegations (to the left of her cabinet). Therefore, the concessions she would make to the mixed delegation may have been directionally different than the concessions she would have made to a hostile disposition if one had emerged. In sum, building on our argument that auto-limitation is a function of willingness and ability, we predict that *Bundesrat* majorities

are more likely to disapprove of proposals as they get more ideologically distant from the government, and even more likely when the majority that reviews the bill is not the majority that the bill was proposed to.

We can establish similar predictions for the competing explanation of universal self-restraint. Assuming that conciliation occurs when the second chamber is offered a bill it finds unattractive, we would expect to observe very little variation in the amount of conciliation referral across these different configurations. Indeed, if governments practice perfect self-restraint, then conciliation should only occur to the extent that the governmental agenda-setter is uncertain of the *Bundesrat* preferences or there is substantial dissimilarity in the preferences of federal and state party caucuses. Thus, we would expect conciliation to be more prevalent than the baseline *only* when the composition of the second chamber changes after bill initiation. Because these predictions vary substantially from the expectations that our arguments yield, we can evaluate the fit of the two on their most basic differences with aggregate data examination.

Our argument predicts that conciliation will be more likely as the preferences of the two bodies diverge and more likely still when the controlling coalition of the second chamber changes during the bill's review phase. Conversely, the pure self-restraint argument predicts that the government will attempt to accommodate the second chamber when preferences are dissimilar to avoid policy conflict. A simple difference of means test reveals that, given bill submission, the likelihood of conciliation is approximately six times higher (with  $p < .001$ ) when the government faces a mixed or hostile disposition in the *Bundesrat* than when the governmental parties control the second chamber. This difference is pronounced and leads us to believe that our explanation provides better fit for government agenda formulation than auto-limitation.

Thus far we have not considered the composition of the conciliation committee itself. Recall from above that there are nine potential bicameral arrangements a bill may face—accommodative, mixed, hostile, and shifts between the three. When we factor in possible variations on the disposition of conciliation committee, the potential number of arrangements gets squared and jumps from nine to eighty-one. Importantly, there are instances in which the government may enjoy a majority in the conciliation committee, despite being in the minority in the *Bundesrat* and vice versa. This final layer of variation makes for an institutional configuration that is incredibly complex. While this complexity provides optimal testing grounds for our arguments regarding the effect of conciliation on governmental agenda-setting, it also challenges our empirical analysis. Even if our data provided the necessary variation (they do not), efficient estimation and

**Table 2.** Mixed Logit Model of Bicameral Conciliation.

Variable	Estimate	SE
Accommodative to hostile	1.209	0.836
Mixed to hostile	2.160	0.334
Hostile	1.764	0.321
Accommodative to mixed	1.647	0.403
Mixed	1.480	0.305
Negative conciliation disposition	0.535	0.159
Formal approval needed	0.287	0.121
Intercept	-3.561	0.279
Random effects (variance)		
Period (intercept)	0.052	0.227
Data break		
<i>n</i> (period)		11
<i>n</i> (bills)		2,382
Log (likelihood)		-910.219
AIC		1,838.439
$\chi^2$		$p < .001$

AIC = Akaike information criterion. Chi-square test compares to constant-only model.

subsequent interpretation of such a model would be onerous. We are thus left with the task of selecting the most reasonable of several model specifications. The first issue to consider is covariate correlation. As would be expected, *Bundesrat* disposition covaries significantly with conciliation committee disposition. This relationship hinders the efficiency of the estimation. To account for this, the nine possible realizations of conciliation committee disposition are folded into a single binary variable. The disposition is coded as negative (1) if the committee is more hostile vis-à-vis the government at the time it considers a bill than it was at initiation, or if the committee is consistently hostile throughout the bill's life. "Positive committees" (0) are committees that transition to a friendlier disposition between initiation and the time that the conciliation referral decision is made or are under government control for the duration of the bill. This decision makes for more efficient estimates as well as more simple interpretations of the estimates.<sup>12</sup>

We estimate a mixed logit model predicting whether the *Bundesrat* asked for conciliation. As independent variables, we include the disposition of the *Bundesrat*, the binary disposition of the conciliation committee, and whether the bill required formal approval. Because our data span several periods, with several different *Bundestag* compositions and several different cabinets, we allow for random intercepts at the level of each legislative period.

The model is presented in Table 2 and offers substantial support for our first two hypotheses.<sup>13</sup> The evidence from the statistical analysis suggests that conciliation is indeed more likely as the preferences between the chambers

**Table 3.** Predicted Probability of Conciliation.

	Accommodative	Mixed	Accommodative to mixed	Hostile	Mixed to hostile
Nonapproval probability	0.028 (0.016, 0.049)	0.125 (0.089, 0.174)	0.147 (0.076, 0.287)	0.165 (0.114, 0.243)	0.248 (0.161, 0.377)
Formal approval probability	0.038 (0.022, 0.065)	0.167 (0.120, 0.230)	0.197 (0.102, 0.384)	0.221 (0.154, 0.320)	0.330 (0.218, 0.495)

95% uncertainty interval indicated in parenthesis.

diverge. For an easier interpretation, we simulate predicted probabilities of conciliation for selected scenarios in Table 3. For a bill requiring second chamber approval, the predicted probability of conciliation with an accommodative *Bundesrat* is .04, whereas it increases to .17 or .22 when bills are initiated to a mixed or hostile *Bundesrat*, respectively. We interpret this increase in conciliation probability as reflective of the *Bundesrat's* discontent with the policy offer; evidence of a policy initiated at (or very near to) the government's ideal point.

The effects of preference dissimilarity, however, are not the only force driving agenda-setting decisions. The evidence suggests that the government is not unaffected by uncertainty in the policy-making environment, as changes to the *Bundesrat's* disposition (where data are sufficient to recover confident estimates) significantly increase the probability of conciliation. Indeed, our predicted rank order is nearly perfectly recovered and reflected in the predicted probabilities. Hostile majorities are more likely to ask for conciliation than accommodative and mixed majorities, and more likely still when the chamber transitions to hostile from mixed. The same can be said for mixed in reference to accommodative dispositions. The only coefficient that fails to enter the rank order correctly is that on situations where the *Bundesrat* transitions from accommodative to hostile. We believe that this is more indicative of data issues than theoretical shortcomings. There are very few bills that saw this configuration. Indeed, only thirteen bills in our sample experienced this particular change, far less than 1 percent of our sample. Apart from this, we find that the model presents strong evidence for our second hypothesis, "Uncertainty over Bicameral Conflict."

To evaluate our third hypothesis ("Accommodative Conciliation Committee"), we identify periods in advance of particular types of elections; elections that may bring a positive change in the disposition of the conciliation committee, but cannot alter the controlling majority of the *Bundesrat*. Once we have identified these periods, we use all bills initiated 100 days or less in advance of these elections, which we call "ACC bills."<sup>14</sup> By comparing ACC bills with their counterparts, we can evaluate the impact of this informational environment on the government's tendency to auto-censor. We predicted above that

the governmental agenda-setter would be less likely to auto-censor when it can safely assume that the conciliation committee will either remain constant or become more accommodative, and that the disposition of the *Bundesrat* will remain unchanged. Thus, ACC bills should be more likely to be referred to conciliation. A simple difference of means test shows that ACC bills are over 40 percent more likely to endure the conciliation process than their counterparts (.20 probability of conciliation referral for ACC bills compared with .14 for all others).<sup>15</sup> This suggests that governmental agenda-setters are less likely to pursue an auto-censorship strategy when they can rely on accommodative conciliation committees, providing robust support for our third hypothesis.

## Discussion and Conclusion

We have argued that bicameral institutions do not just affect how governments form but also how governments structure their legislative agenda. Governments are able to incorporate bicameral requirements in day-to-day policy making, in particular when there is great uncertainty about which parliamentary majorities will exist at the time of bill review. The design of bicameral parliaments is, in theory, meant to slow the policy-making process and constrain the set feasible alternatives to slow the rate of change in law. This design, however, is one that can be too effective. To avoid intervals of deadlock, institutional designers provided bicameral parliaments with conflict-resolving mechanisms. The conference or conciliation committee is one such institution. Empirically, these institutions are quite effective at resolving bicameral conflict and avoiding deadlock.

In addition to their effect for conflict resolution, conciliation committee may also function as a kind of policy safety net, insuring the governmental agenda-setter against the realization of a costly formal veto from the second chamber and liberating the governmental agenda-setter from the need to self-censor. This allows the government to make initial policy offerings at its ideal point, forcing the second chamber to accept its initial offer or refer the bill to conciliation to bargain over a compromise. This may be a palatable arrangement for the second chamber, in particular, in times of opposition majority.

After all, it allows a forum to not only bargain over policies where it has formal veto but also a forum to publicly dissent over policies the opposition finds particularly unattractive that it has no formal veto over.

This interpretation, however, would disregard the substantial advantages that the governmental agenda-setter enjoys in the conciliation process. First of all, over our sample, the government controls a majority of the conciliation committee the plurality of the time. Second, and perhaps equally important, the governmental agenda-setter enjoys substantial resource advantages over its bargaining partners in the second chamber. After all, in the conciliation process, *Bundestag* delegates are negotiating their own agenda whereas *Bundesrat* delegates must ensure that their own states are run properly before worrying about the federal agenda. Therefore, it seems as though an institution created to ameliorate conflict between the federal government and second chamber can often function as an outright advantage for the governmental agenda-setter. Indeed, the evidence we presented testing our third hypothesis suggests that when the government is responsive to other players with the content of its agenda, it is more likely to be responsive to conciliation committee itself rather than the *Bundesrat* directly.

Our findings have additional implications for the study of governmental accountability. We argued that governmental parties are held responsible for the implementation of policies on election day and that bicameral conciliation can be costly to the governmental agenda-setter because conciliation events are highly publicized showing that the government cannot completely implement its agenda. Although governmental accountability is widely accepted in the literature, additional research is necessary to study how voters hold governments responsible for policy implementation in case of conciliation. We would expect that dissatisfaction with governmental parties, in particular among supporters of governing parties, increases with incidents of conciliation during which the governmental agenda-setter had to compromise on its proposals.

For the more general audience, this study has demonstrated how important it is to consider the finer points of institutional arrangements when studying legislative behavior such as the formation of policy agendas. In a state of ignorance about institutions of bicameral conflict resolution, one would almost certainly expect the governmental agenda-setter to employ a strategy of universal self-censorship. Our findings present strong evidence that the governmental agenda-setter often chooses precisely the opposite strategy in the presence of conciliation, an institution that we demonstrated above to be quite common in bicameral parliaments. These institutions can exert a powerful influence over legislative outcomes that must be respected in the construction of our theoretical and empirical models.

Finally, we offered argument and evidence that consideration of uncertainty in the agenda-setting process is vital. Although we captured uncertainty in the most explicit manner possible, changes to the disposition of the second chamber, the underlying concept is ubiquitous. Changes in various issue salencies routinely alter the dynamics between two chambers, legislative and executive branches, and even parties within coalition cabinets. External shocks may suddenly and routinely change the location of the reference point for changing the status quo in parliaments. Thus, we believe that our argument and analysis are broadly generalizable to a variety of settings in which multiple veto players are present in the governing process.

### Authors' Note

Replication materials are available on the corresponding author's website: <http://www.davidfortunato.com/>.

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### Notes

1. These are the bicameral parliaments in systems we are comfortable referring to as democratic. A full accounting of these chambers and their conflict resolution rules can be found in the replication materials.
2. Until German unification in 1990, the *Bundesrat* was composed of eleven states, including Berlin, which did not participate in a vote.
3. All German states have parliamentary systems.
4. Most often, the government and *Bundesrat* agree on which bills fall into which procedure. In very extreme cases of disagreement, the matter may be referred to the Federal Constitutional Court (*Bundesverfassungsgericht*). However, this is a vanishingly rare occurrence.
5. Here, the government may overturn the objection with a corresponding *Bundestag* majority. If the *Bundesrat*

- objects by two-thirds majority, the *Bundestag* may override by two-thirds majority, and so on. Because the government always controls a majority of the *Bundestag* and oversized opposition majorities are nearly unheard of in the *Bundesrat*, the objection is, in most cases, a signaling exercise that allows the *Bundesrat* to publicly dissent, without really threatening the proposal.
6. An anonymous reviewer brought up the possibility that the *Bundesrat* could “hold hostage” bills that it does not necessarily find unappealing, but are salient to the government, for the purposes of extracting concessions on other bills that are more salient to the *Bundesrat*. We believe that it is unlikely and do not believe that this possibility presents a problem for our empirical design. The more the *Bundesrat* is willing to call for conciliation on bills that it is not ideologically opposed to, the more difficult it will be for us to recover support for our hypotheses. Another anonymous reviewer pointed out that the *Bundesrat* is not completely powerless in issues where it has no formal veto power. By publicly scrutinizing a bill, the *Bundesrat* may be, to a degree, able to win over public opinion, use the proposal as fodder for some state election, or otherwise degrade the image of the government. As the reviewer also notes, however, these are “soft and variable constraints” upon the government, and, as such, difficult to observe and measure, whereas formal veto or conciliation demand is a “hard constraint,” simple to observe and measure and explicit in nature. Therefore, the focus of our analysis will remain on explicit, “hard constraints.”
  8. This is similar to what Manow and Burkhart (2007) argue in their study of agenda-setting in Germany’s parliament.
  9. Both chambers have the ability to mandatory refer bills to conciliation; however, instances of the government begging the procedure are rare.
  10. These are all the cabinets whose agendas could be accessed in full via the German legislative database. We have culled this data set ( $n = 3,585$  in total) of three types of bills. First, we remove European Union directives as these bills are exogenous to the governmental agenda. We also remove treaties and other international accords. Finally, we remove all bills that were reintroduced to avoid “double-counting” issues. This culling leaves us with a total of  $n = 2,382$  government bills.
  11. It should be noted that the Federalism Reform of 2006 reallocated some legislative competencies between the federal and state legislatures. The end result of this reform, at the federal level, was to reduce the number of policy areas the *Bundesrat* enjoyed a formal veto over. While this changes the mix of mandatory consent legislation to nonmandatory consent legislation, it does not change the incentives of the actors or their choices. As such, our analyses are not altered by the exclusion of postreform bills.
  12. After the folding of this measure, the decision becomes whether to interact *Bundesrat* and conciliation dispositions with each other or with the veto power indicator when estimating the impact of these factors on the likelihood of conciliation. We choose to do neither. This choice is because the substantive change to the estimates is effectively zero and the lack of variation across those interactions most often resulted in nonsensitive coefficients. Because there are no substantive changes in the estimation, we see no benefit in presenting anything other than the simplest specification of our parameters of interest.
  13. Note that we dropped two kinds of cases from our model: cases in which the *Bundesrat* shifted from hostile to accommodative and cases in which it shifted from hostile to mixed. This is because these dispositions have insufficient variation. There are very few of these types of bills (fifty-four in total) and omission of these cases does not change the parameter estimates in any substantive manner. Finally, the coefficient on procedure, whether the bill required formal approval of the *Bundesrat* to become law, is positive and significant, indicating that these types of bills are more likely to be disapproved by the *Bundesrat*, the precise opposite of the universal auto-censorship thesis. This is also reflected in the positive and significant coefficient on the conciliation disposition parameter.
  14. One hundred days is the median number of days a bill spends in committee after initiation, but before a formal recommendation is made.
  15. This hypothesis stands up to more rigorous statistical tests. Hierarchical maximum likelihood estimation (MLE) results are available from the authors upon request.

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