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**Electoral reform in Germany:
A positive twist to negative voting weights?**

Abstract of the presentation for the
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In the election to the German Bundestag, each voter marks two votes on the same ballot. The first vote is the *constituency vote*, and serves the election of a person in the voter's constituency, by plurality. The second vote, the *list vote*, is cast for the election of a party list, by proportionality. The law prescribes a seemingly innocuous combined evaluation of the two votes. The combination is obscured by the fact that each party submits sixteen separate lists, one in each of the German States.

It transpires that the combined evaluation of the two votes is flawed, in that more list votes in favor of a party may actually cause the party to be allocated fewer seats. This lack of monotonicity has come to be termed *negative voting weight*. It received a great deal of publicity during a 2005 by-election in the Dresden I constituency. In Dresden, undoubtedly thousands of voters deprived the CDU of their list votes for fear that it would cost the party of their choice a seat.

In a 3 July 2008 decision, the German Federal Constitutional Court declared the Federal Electoral Law to be unconstitutional, in so far as its clauses permit the occurrence of negative voting weights. The decision included an obligation for the legislature to amend the law no later than 30 June 2011. To date, there is no indication which options are being contemplated in the Bundestag to amend the law.

The talk will outline four options, how to do away with the negative voting weight while still maintaining the strong virtues of the German two-votes system. Option A builds on the direct-seat restricted divisor method with standard rounding. It is a variant of the classical divisor method with standard rounding (Webster/Sainte-Laguë), but imposes minimum restrictions that guarantee each party at least as many seats as they have won constituencies. The price for implementing an electoral system that combines the elections of persons (constituency votes) with a proportional representation of parties (list votes) is paid for by the second component, in that proportionality is subjected to side conditions.

Option B leaves the divisor method with standard rounding unaltered, and uses its apportionment results to cap the number of constituency seats a party can fill. Here the price is paid for by the first system component, in that candidates may attract the majority of votes in their constituency and yet be deprived a seat due to bad performance of their party.

Another option C respects the federal organization of the Federal Republic of Germany. In the middle of a legislative period, the seats of the Bundestag are allotted to the sixteen States in proportion to their population. Then the Bundestag elections are organized as sixteen elections in separate electoral districts, the States. A subdivision into sixteen separate districts avoids negative voting weights. However, it seems at odds with the unitary status of the Bundestag, and may encourage centrifugal political forces not strengthening the Bundestag's political standing.

The fourth option D is a split electoral system wherein half of the Bundestag seats are filled by pure plurality, while quite independently the other half is filled by pure proportionality. That is, the two votes are evaluated independently of each other. This option would deprive smaller parties of half of their parliamentary representation since their candidates have no chance of winning a constituency seat. Since the German parliamentary system is geared toward a consensus democracy, in that larger parties join forces with smaller parties to form a coalition government, an electoral system splitting into half plurality and half proportionality would seem to be more of an academic exercise than a practical solution.