

# Public Servants in Parliament: Theory and Evidence on Its Determinants in Germany\*

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## Abstract

This paper addresses the personal linkages between the public service and the legislature that emerge because public servants pursue a political mandate. There are concerns that the strong representation of public servants in many Western parliaments compromises the constitutionally proposed political neutrality of the public service and generates a conflict of interest. We present a cost-benefit calculus and analyze specific legal provisions for the German Laender to understand the selection of public servants into parliaments. Based on a novel data set, we find that incompatibility rules decrease and abeyance compensation increases the fraction of public servants in Laender parliaments.

*Keywords:* Political selection, parliamentary election, public servants, incompatibility

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## I. Introduction

In order to restrict the abuse of sovereign authority, government functions are assigned to different bodies in a democracy (precept of the separation of powers). Though broadly applied in principle, the concrete personal separation is set differently based on specific institutions in every democracy. A major constitutional decision concerns the degree of compatibility of an employment in the public service and a mandate in the legislature. In the United States and in the United Kingdom there holds ineligibility; i.e., public servants have to withdraw from office even before they accept a candidacy and have no legal claim to reemployment in the former position after the mandate. In contrast, in countries like Austria and Germany there are weak and strong forms of incompatibility, but no ruling of ineligibility exists. In fact, a large proportion of parliamentarians in these countries is from the public service.<sup>1</sup> In 2007, 55.2% of the members of the first parliamentary chamber in Austria (*Nationalrat*) were public servants. The respective figure in Germany (*Bundestag*) was 40.2%.<sup>2</sup>

Even though the strong representation of public servants in parliaments has raised public concern it has not yet sparked much scientific research.<sup>3</sup> The existence of personal union and affiliations or the perk of guaranteed reemployment compromise the constitutionally proposed (party-)political neutrality of the public service and generate a conflict of interests. This is due to these parliamentarians' double role as agents in public service and as principals that supervise the public service in parliament. It might be hypothesized that, as a consequence, the public service enjoys substantial discretion, which prejudices the efficient execution of public services. On the contrary, there is a contrary rationale emphasizing that public servants present a reservoir of highly skilled and motivated people who benefit the system in drawing on their specialist knowledge in legislation and monitoring. A strong representation of public servants might then be expected to increase government performance. Independent of these two opposing

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<sup>1</sup> For Germany, the public service includes all employees that receive public pay and have a work contract under public law. Professionals from the public service typically represented come from professions in education (i.e., teachers or university professors), members of the armed forces, police officials, medical personnel of hospitals under public law, magistrates, ministers, political public servants, (senior-)officials in various fields of public administration, mayors and district administrators (*Landräte*) and employees of public enterprises. Thereby, privatizations are taken into account, e.g., the major privatizations in the 1990s of Deutsche Post and Deutsche Telekom. With a fraction of public servants in the working population of 13.3% (in 2005), the public service in Germany is relatively large, compared to, e.g., the United States or Switzerland.

<sup>2</sup> Information on the fraction of public servants in the national parliaments is from the parliamentary service ([www.parlinkom.gv.at](http://www.parlinkom.gv.at)) for Austria and from Kintz (2006) for Germany.

<sup>3</sup> The issue was taken up in some popular books in Germany (von Arnim 1991, 2001, Scheuch and Scheuch 1992). In contrast, a few public choice academics only commented on the phenomenon (e.g., Tullock 1965, Frey and Pommerehne 1982).

arguments, it might be argued that the electorate has chosen these representatives in the first place. However, citizens can only choose among fellow citizens who are willing to run for a parliamentary seat and who are supported by a major political party.<sup>4</sup> In order to understand who is selected into parliament, we need to take a step back and study such aspects as the incentives that motivate individuals to opt for a candidacy. In sum, a better understanding of the *consequences* of political selection for the outcomes of the political process (our final aim) first requires the study of some important institutional aspects underlying political selection.

In this paper, we analyze the way in which specific legal provisions offer public servants incentives to pursue a candidacy for a parliamentary mandate and quantify to what extent these affect their representation in the legislature.<sup>5</sup> This is a first step towards better understanding a phenomenon, termed pejoratively in German “*Verbeamtung der Parlamente*” (i.e., parliaments becoming dominated by people with public service status). However, the phenomenon is evident in other advanced democracies as well (see Best and Cotta 2004, chapter 13). We develop a general political-economic framework and complement it with specific institutional details for Germany and its *Laender* (as the federal states are called). The theoretical focus is on issues of incompatibility and a wide set of related institutions that determine in a comparative perspective the cost-benefit calculus of running for a seat in parliament (supply side). In particular, we investigate how, for example, the compensation for holding office in abeyance during parliamentary membership and subsequent automatic promotion affect the attractiveness of a political mandate. Moreover, we look at how aspects like local and temporal availability and specific political human capital favor or adversely affect the chances public servants face in the race for a seat compared to other professional groups. A set of empirically testable hypotheses is derived. The theoretical analysis is expanded with a short discussion of the role of public servants as voters (demand side) and of the expected behavior of public servants in parliament. In particular, some (potential) consequences for the outcomes of the political process are derived.

Based on a novel data set, some of the theoretically analyzed determinants are empirically tested. For all the German states, we compiled data on the fraction of public servants in parliament and on the legal restrictions and privileges applied to public servants over the last 60 years. As main

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<sup>4</sup> Citizens’ choice might be further restricted by electoral rules prescribing closed lists in proportional representation.

<sup>5</sup> Abstracting from differences in the legal status, the terms ‘public servant’ and ‘employee in the public service’ (*Beamter* or *Angestellter im öffentlichen Dienst*) will be used interchangeably. Within the German institutional context, the rules of civil service law are similar to those bearing on a large segment of employees in public service. Differences will be mentioned if it is important for the outlined arguments. In the Public Choice literature, the term ‘bureaucrat’ is often used for the analysis of public sector behavior. Although it is often pejorative in popular usage, the term bureaucrat is used by economists in a descriptive sense and has no inherently derogative connotation (see Tullock 1965 and Niskanen 1971).

results, we find that the granting of compensation for holding office in abeyance is statistically related to a larger fraction of public servants in parliament; whereas, the application of a strict as well as a soft incompatibility rule, signifying higher opportunity costs, is correlated with a smaller fraction of public servants in parliament.

We see our work as a novel contribution to comparative institutional analysis dealing with the specific issue of political selection. It links with several strands of literature in political science, political economics on selection and markets for politicians (e.g., Besley 2004, 2005, Chattopadhyay and Duflo 2004, Caselli and Morelli 2004, Eichenberger 2003, Gagliarducci and Nannicini 2009, Ferraz and Finan 2009, Mansbridge 2008, Serna 1995), disclosure rules for politicians (e.g., Niessen and Ruenzi 2008, van Aaken and Voigt 2008, Djankov et al. 2009), economic analysis of political careers (e.g., Mattozzi and Merlo 2008, Diermeier et al. 2005, Keane and Merlo 2007), and political recruitment and elite research (e.g., Best and Cotta 2004, Best 2007a, Norris 1997, 2004, Patzelt 1999). Another link is with work in administrative science and comparative constitutional law on issues of incompatibility (e.g., van Aaken 2005, von Arnim 2006). Closest to our study in the German context is the careful work by the political scientists Klatt (1976, 1980) and Schrode (1977), who discuss the potential causes and consequences of the representation of public servants in parliaments. However, they neither provide a systematic account of the determinants in one cohesive framework nor do they offer an empirical test on representation.

Section II, first, presents the theoretical framework capturing institutional incentives in the selection of public servants as candidates for political mandates. Second, the role of public servants as voters is briefly discussed. Third, the (potential) consequences of a high representation of public servants in parliament are addressed. In Section III, the empirical analysis is presented. A detailed description of the compiled database is followed by an econometric analysis of the partial correlations between institutional factors and the fraction of public servants in German Laender parliaments (*Landtage*). Section IV offers concluding remarks.

## **II. Theory: Public Servants as Candidates, Voters and Members of Parliament**

The conditions under which public servants are allowed to sit in the legislature and their situation once they are in it shape incentives to run for a seat and are reflected in the fraction of public servants in parliament. We briefly mention the basic trade-off between the separation of powers and political representation that is relevant in the decision on ineligibility and incompatibility of a position in the public service with a parliamentary mandate. A general illustration is provided by the national parliaments in Germany and Austria (subsection A). Pursuing a rational choice perspective, a detailed benefit and cost calculus is discussed based on the specific institutional

details in the German Laender (subsection B). The analysis is complemented with some thoughts on public servants as voters (subsection C) and a discussion of potential consequences of a large fraction of members of parliament with a public service background (subsection D).

*A. Ineligibility and incompatibility of public service with a parliamentary mandate*

Institutions governing the personal separation of powers in a democracy affect the basic trade-off between issues of agency and selection. Stricter personnel separation not only reduces agency problems arising from the intrapersonal conflict of interests but also limits the pool from which competent and honest people can be selected for a specific mandate. The more public servants are barred from taking up parliamentary mandates, the more difficult it is for citizens to elect candidates who have a high degree of expertise in public service issues and the necessary information to effectively monitor the government and its subordinate public service. The latter is important in order to attenuate the situation of asymmetric information between the legislator and the bureaucracy as emphasized in the work by Niskanen (1971). Whether public servants as legislators in fact care about the preferences of citizens and use their discretion accordingly depends on their motivations and the kind of incentives that can be applied to hold them accountable for their decisions.

Here, we focus on the aspect of selection and have to leave open the overall consequences of different institutional arrangements. We ask under which conditions public servants are more likely to stand for office. It is hypothesized that the institutionally determined leeway enabling the parallel pursuit of a career as public servant and as parliamentary member, along with specific provisions on remuneration and other privileges awarded once in office, determine the attractiveness for them to run for a seat in parliament.

(Intra-personal) interlinkages of interests and the attractiveness of a parliamentary mandate are most curtailed when public servants are not eligible to stand for parliamentary election and even have to resign before accepting a candidacy.<sup>6</sup> Ex-public servants may still feel an obligation towards public service but their interlinkages are reduced to informal ties. Much weaker restrictions constitute rules of incompatibility. With strict incompatibility, public servants have to hold their office in abeyance but may remain in office until they are elected for a mandate; they often have guaranteed reemployment subsequent to the termination of their mandate. With soft incompatibility, only some categories of public servants are restricted, whereas all other public servants can continue in their public service career, often with a guaranteed reduced work load.

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<sup>6</sup> This is the legal situation, e.g., in the United States in the congress or in the United Kingdom in the lower house. An overview of candidacy requirements for legislative elections in a set of countries is provided in Massicotte et al. (2004).

Rules of incompatibility are institutionalized in Germany and Austria for example.<sup>7</sup>

### **Incompatibility of public service with a parliamentary mandate in Germany**

In 1949, the Parliamentary Council, entrusted with the formulation of the German constitution (*Grundgesetz*), established Article 137, which authorized all levels of jurisdictions to impose incompatibility rules on public servants. Following the pressure of the occupying powers, the Parliamentary Council enacted an electoral law comprising strict incompatibility for the first federal elections. This law also included a guaranteed reemployment for all public servants running for the federal parliament.<sup>8</sup> The strict rule of incompatibility was absorbed in the first law on the legal status (*Rechtsstellungsgesetz*) of the members of the public service elected to the lower house of the German parliament (*Bundestag*) in 1951.<sup>9</sup> A compensation for holding office in abeyance (*Ruhegehalt*) was added in 1953.<sup>10</sup> Since the law for the members of the federal parliament (*Bundesabgeordnetengesetz*) entered into force in 1977, which extended the incompatibility to mayors and district administrators but abolished the compensation for holding office in abeyance (see subsection B), no major changes have taken place.<sup>11</sup>

### **The incompatibility of public service with a parliamentary mandate in Austria**

The Austrian law on incompatibility (1983) includes few restrictions for members of the public service willing to exercise an electoral mandate. Unless the responsible parliamentary commission rejects the compatibility in individual cases, most offices are compatible with a political mandate. The main incompatible offices are magistrates, public prosecutors, judicial officers, members of the armed forces and tax collectors. All of them have a right to reemployment. Those holding a compatible office are entitled to a reduced work load and have to accept a corresponding cut in pay (Bundesverfassungsgesetz Article 59 a).

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<sup>7</sup> The recent discussion in Germany focusing on institutional instruments to increase transparency and to decrease conflicts of interest in parliament is commented in van Aaken (2005).

<sup>8</sup> Mayors and district administrators being the only exemption, i.e., they were not subject to an incompatibility rule and had no guaranteed reemployment.

<sup>9</sup>BGBL. I p. 297.

<sup>10</sup>BGBL. I p. 777.

<sup>11</sup> For a detailed description of the historical evolution and a comparative constitutional law discussion of the incompatibility rule see Tsatsos (1970) and Sturm (1967).

## The fraction of public servants in the German and the Austrian parliaments

Figure 1 illustrates the development of the fraction of public servants (on or off duty) elected to the lower house of the German parliament (*Bundestag*) and the Austrian parliament (*Nationalrat*). For Germany, an upward trend is observed for the representation of public servants until the ninth legislative period (1981) from 26.1% up to 35.9%. The next three legislative periods show little variation. In 1995, the fraction of public servants sets in above 40%, which is partly due to a change in categorization (see the explanatory note in Figure 1).<sup>12</sup> In comparison, the fraction of public servants in the working population was 17.4% in 1970. It rose up to 19.4% in 1990 and declined to 13.3% in 2005 (Statistisches Bundesamt Deutschland 2005).

[Figure 1 about here]

In Austria, the strong representation of public servants is outstanding. In the first elected parliament after World War II, more than half of the members of parliament were recruited from the public service. The peak, with 61.7% was reached in 1971. Apart from the legislative period 1996-1999 with 49.2%, always at least half of the members of parliament had a public service background. An important reason for the high level of public service representation might be seen in the far-reaching compatibility and the favorable terms of partial leave of absence. Moreover, until 1983, the partial leave of absence did not cause a corresponding cut in pay (Schmidt 1970: 191).

These observations for Germany and Austria on the representation of public servants in parliament can serve as *prima facie* evidence that legal provisions affect political selection from specific groups of the electorate. A detailed analysis for the German Laender is presented in the remainder of this paper.

### B. The cost-benefit calculus of running for political office

The process of selecting public servants as legislators can be divided into at least three stages that are linked by institutions and the strategic considerations of the agents involved.<sup>13</sup> In a first stage, the focus is on what motivates a public servant's decision to run for office. In our main analysis, we analyze the cost-benefit calculus of a public servant to predict his or her entry decision. In the second stage, citizens decide on whom to vote for. We only touch

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<sup>12</sup> For a detailed discussion of the composition of the German federal parliaments starting with the National Assembly of 1848 see Best (2007b) and Weßels (1997).

<sup>13</sup> The three-step analysis follows the theoretical literature in the tradition of the so-called citizen-candidate model (see Besley and Coate 1997, Osborne and Slivinski 1996).

upon this aspect in subsection C. The third stage concerns elected politicians' policy decisions, referred to in subsection D. The latter includes the discretion of a mandate and feeds back to the attractiveness of a candidacy. A public servant is expected to run for office if this activity offers the highest expected utility among his or her available alternatives. In order to avoid being too abstract, we discuss the cost-benefit calculus regarding the specific legal provisions holding for the German Laender.

We have two comments at the outset. First, there are, of course, differences in initial incentives to run for a seat in parliament depending on the branch and position in the public sector. Some public servants might value, e.g., the expected gain in status and discretion and the utility derived from the position. Others might be driven more by ideology and various motives of rent extraction. However, the focus of our paper is less on these differences than on the institutional factors that are expected to provide incentives that affect the cost-benefit calculus of public servants in the same direction (when they consider running as candidates for a political mandate). Second, our analysis is conceived as being comparative. With additional privileges for public servants, a public mandate becomes relatively more attractive for them and relatively less attractive for potential candidates from all other sectors. It would be interesting to analyze more systematically the cost-benefit calculus for such other people, in particular for lobbyists (sponsored by trade unions, professional associations or large firms). Unfortunately, we have no specific institution in our newly generated data set that directly addresses variation in the attractiveness of a political mandate to lobbyists.

### **Pecuniary compensation for the political mandate**

The compensation of politicians is an important policy variable in an economic model of political selection (e.g., Besley 2004) and gets particular attention in empirical research on the benefits (and costs) of holding office (e.g., Di Tella and Fisman 2004). Depending on the specific institutions, compensation here includes the income from the mandate, fringe benefits, the lump-sum reimbursement of costs incurred in exercising the mandate (*Aufwandspauschale*) and the right to a pension as the main material benefits. In the German context, and specifically for public servants, there is an additional compensation for having to hold one's office in abeyance while sitting in parliament. These different forms of benefits will be discussed in turn.

*Base compensation.* For a member of a parliament in the German Laender the base compensation is between 4,000 and 6,200 euros per month in 2007, whereby there is variation towards a lower base compensation in city states. In addition, there are a number of fringe benefits that are rather non-transparent in aggregate. Whether the package for legislators is attractive to public servants, based on a simple compensation comparison, will depend on their individual position

in the salary and career scale, as well as their tenure. Political public servants in a ministry, mayors in bigger cities or chief public servants in larger agencies earn more in public service than they would from the scheduled compensation allocated to parliamentarians. This is different for public servants in the middle and even some upper grades of the civil service, like administrative officers, teachers, as well as mayors in smaller cities. The relative financial attractiveness of a mandate holds all the more subsequent to the increase in parliamentary allowances (*Diäten*) following the decision of the German constitutional court in 1975 (BVerfGE 40, 296 [296]).

*Privileges involving pension benefits, tenure, promotion and benefit offsetting.* Many specific provisions enacted for public servants sitting in Laender parliaments were based on the law covering the legal status (*Rechtsstellungsgesetz*) of the members of the public service elected to the federal parliament. The latter was mainly derived from civil service salary law, civil service career law, as well as public services law. While there is substantial variation in these provisions across the Laender (that we exploit in our statistical analysis), we describe some of them here to illustrate the issues involved.

First, when the Laender started introducing pensions for parliamentarians (around 1970), a calculation of claims was chosen that was advantageous to members with public service background; i.e., the years (incompatible) public servants spent in parliament were accounted twice.<sup>14</sup> The years were taken into account once in determining the pension entitlements from the mandate, and once again for the public service pension scheme. In the latter case, pension claims were accumulated although no services were rendered.

Second, the law in some Laender fully accounted the years during which a political mandate was held for the tenure in public office (*Besoldungsdienstalter*), which is the most relevant factor for determining a public servant's basic salary.

Third, in Bavaria and Bremen for some years, incompatible public servants were automatically promoted when they resumed their public service duties, as if they had been holding office in an exemplary manner.

Fourth, it was prohibited to offset income (pay or pension) from a public office against the parliamentary allowance or the parliamentary pension.

All four institutional provisions constitute particular benefits to public servants and render an elective office in parliament more attractive. Employees of large firms or representatives of trade

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<sup>14</sup> The requirements for a parliamentarian to be entitled to an old-age pension are usually a minimum age (between 55 and 65) as well as a minimum membership of 6 to 10 years. The pension is, in most cases, at least 35% of the base allowance and increases for each additional full year that a mandate is exercised by around 3% of the allowance but to no more than 70% in total (Braun et al. 2002: 207).

unions or professional associations may encounter similar or even more advantageous conditions but they have no legal claims, depend on the discretion of their superiors and may be bound to a direct equivalent in terms of interest representation.

In 1975, the German constitutional court declared these four promotive provisions to be unconstitutional and not in conformity with civil service law principles. The federal as well as the Laender parliaments had to answer to this adjudication by reforming the legal status of public servants elected to parliament. As a result, the years that public servants had spent in parliament can no longer be taken into account in the civil service pension scheme, and the provision of a automatic promotion has been suspended as well. In all Laender now, only 50% of the years spent in parliament are taken into account for the tenure in office. Moreover, parliamentary allowances and old-age pensions above a certain amount have to be offset against income (salary or pension) from the public office.

*Abeyance compensation.* A specific additional pecuniary benefit to public servants that increases the attractiveness of a political mandate is the compensation for having to hold one's office in abeyance (*Ruhegehalt*). Based on article 137 of the German constitution, many public servants have to leave their office vacant for the time they accept a mandate. Abeyance pay was introduced as a compensation for this ban on holding office.<sup>15</sup> Exceptions were the part-time parliament in Hamburg and the senate in Berlin. Public servants in these parliaments are put on leave without payments (Klatt 1976: 47-50). Abeyance compensation amounted to between 35% and 75% of the allowable salary (*ruhegehalttsfähige Dienstbezüge*) and was automatically increased after every legislative period (Dietrich 1976: 97). A further subtle, but financially attractive, benefit for public servants (but not for other employees of the public service) was the ongoing receipt of abeyance compensation after the termination of the mandate until commencement of the old-age pension (Arnim 1980). Public servants were able to resume their former office (or a comparable office in terms of pay) upon their own request. However, the awarding of a decent abeyance compensation created incentives to retire early. Following the decision of the German constitutional court in 1975, public servants have to request reemployment within three to six months after the termination of the mandate if they do not want to lose this claim. Furthermore, they generally face stricter requirements with respect to the resumption of their public office (Braun et al. 2002).

In contrast, when taking up a mandate employees in the private sector have no legal claim to (partial) continuation of payments if they stop working for their employer.

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<sup>15</sup> This was based on the law on the legal status of members of the public service elected to the German parliament of August 4, 1953 (BGBl. I p. 777). Given that an abeyance compensation is a payment for the public servant without fulfilling any public office duties, the abeyance compensation has never been in conformity with civil service law principles (Braun et al. 2002).

Finally, there is the possibility to go for a secondary income (e.g., honorariums from speeches, employment by a foundation, mandate in an international organization or some supervisory board, etc.). For public servants, this possibility is restricted when holding an office in public service but attractive when holding a mandate and put on leave; in particular, if the mandate is not very time-consuming. According to data from the 11<sup>th</sup> and 12<sup>th</sup> legislative period of the Landtag of North Rhine-Westphalia, roughly one fifth of public servants exercising a mandate generated additional income outside the parliamentary arena (Holthoff-Pförtner 2000: 85).

In sum, we hypothesize that these specific privileges make a parliamentary mandate relatively more attractive and increase the fraction of public servants in the parliaments of the German Laender.

### **Opportunity costs of a political mandate**

Whether a mandate is attractive for a potential candidate depends not only on the compensation but also on his or her opportunity costs; i.e., the lost income from an alternative occupational engagement as well as the loss in disposable time. For public servants, a mandate involves lower opportunity costs if it is legally compatible with their job in the public service. Independent of the profession, there are lower opportunity costs of time with a part-time parliament. However, as will be explained below, a parliament will differentially effect the attractiveness of a mandate when studied in interaction with other institutions depending on whether it has a part- or full-time organization.

A crucial but difficult issue is how a mandate depreciates or appreciates a person's human and social capital. For instance, one might query whether the opportunity costs of a mandate are generally positively correlated with marketable professional skills in the private sector (Gagliarducci et al. 2007). The advantages of gaining prominent status and contacts with a mandate might well be more valuable to a highly-skilled, private-sector person both while in office and even more so subsequent to it. In fact, Italian parliamentarians with a high previous income are much less often present in parliamentary voting sessions than their professionally less successful colleagues (Gagliarducci et al. 2007). Between sectors, a mandate might be relatively more attractive for public servants as their job-specific human capital is closer to government activity and thus less likely to depreciate.<sup>16</sup> Specific administrative knowledge as well as familiarity with legal issues facilitate the meeting of legislative requirements and decrease the costs of holding a

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<sup>16</sup> However, for representatives of professional associations, trade unions or for members of parliaments that receive a second income from large firms, social capital might also not depreciate and even increase with their additional insights into the political decision process and with their increased reputation.

mandate.<sup>17</sup>

Moreover, public servants might be more available (time, location) than employees in other sectors or self-employed people (with the exception of professional politicians). In addition, at the local level head officers, mayors and district administrators may be better known to the public than other professionals. Both, greater availability and publicity reduce public servants' costs of campaigning.

*Incompatibility.* In the German Laender, there are three different arrangements defining the compatibility between a position in public service and a political mandate: (i) compatibility, (ii) soft incompatibility restricted to specific positions in the public service (or alternatively defined in terms of specific compatible positions), and (iii) strict incompatibility involving employment in the public sector in general. While strict incompatibility increases the opportunity costs for all public servants, soft incompatibility increases them only for some public servants. Depending on the Land, certain public servants (e.g., senior officials, magistrates, prosecutors and mayors) as well as public servants employed on the same federal level as their parliamentary office (i.e., public servants at the Laender level) are incompatible with a mandate in the Laender parliament.

*Full-time parliament.* The organization of a parliament in being either a part- or full-time regime will largely determine the work schedule and time commitments of a mandate and the amount of time a parliamentarian has at his or her disposal. In the German Laender, there are full-time parliaments except for Baden-Württemberg (till 2011), Berlin, Bremen and Hamburg.<sup>18</sup> However, the transition from a part-time to a full-time parliament is not officially defined. We refer to specific legal provisions for identifying full-time parliaments. For many Laender, the introduction of the law on the members of parliament (*Abgeordnetengesetz*) following the decision of the German constitutional court in 1975 can be considered as initiating full-time parliamentarism. This law comprised often noticeably higher allowances, which were subject to income taxation for the first time, higher reimbursements for costs incurred in exercising the mandate, a right to an assistant, a disability-, health- and survivor insurance, as well as an end

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<sup>17</sup> Please note that there are substantial differences with respect to public servants' knowledge of administrative matters depending on the branch, function and position within the public service. We think, however, that all the members of parliament that were recruited from the public sector have at least some public service specific knowledge. First, this knowledge is with regard to the specific function they executed. Second, it is with regard to the general functioning of the public service as a whole. Of particular importance are the knowledge about the legal status of public servants, i.e., civil service salary law, civil service career law, public services law as well as the familiarity with the performance oversight executed by the public employer and ultimately by the parliament.

<sup>18</sup> Due to centralization on the federal and European level, the main remaining competencies of the German Laender are in the areas of education, cultural affairs, police and administration.

of service equivalent. Considering public servants who have offices compatible with a mandate, a part-time parliament involves lower opportunity costs because they are still able to partly fulfill their job in the public service. However, this also holds for other candidates. It might even be argued that a part-time parliament is particularly attractive to professional and self-employed individuals because they can still carry on some business or maintain major client contacts. In the situation where public servants are incompatible with a mandate, a full-time parliament is more attractive than a part-time parliament because the former pays its members a higher compensation for the mandate. Moreover, the status of the parliament also affects the extent to which a mandate depreciates a person's human and social capital. With a full-time parliament, self-employed people and other professionals are at a disadvantage compared to incompatible public servants who can spend more time on their parliamentary duties and on campaigning for reelection.

*Employment guarantee.* Opportunity costs in terms of reduced employability after a mandate are substantially reduced for public servants but not for candidates from other sectors. Public servants have a legal claim on resuming their former office (or a comparable office in terms of pay) after they resign from parliament or are not reelected. Other professions also enjoy dismissal protection granted by the principle of the independent mandate and incorporated in article 2 of the law on members of parliament. However, the dismissal protection holds only for one year following the termination of a mandate and can be suspended, given there is some "serious" reason (Braun et al. 2002: 60). The guaranteed and detailed legal right to reemployment for public servants provides them with a long-term advantage which increases their institutionally granted independence and reduces the risks associated with a political career. Another case in point is that former public servants retiring from their parliamentary mandate are regularly observed to pursue a career in the private sector (revolving door phenomenon). In fact, a political mandate might be particularly attractive to public servants who would like to leave the public service. On the one hand, a political mandate does not compromise a position held in the public service as it is guaranteed. On the other hand, a political mandate allows side jobs that were not possible while working for the public service. These jobs provide an ideal starting position for entering the private sector.<sup>19</sup>

*Campaign leave.* A peculiarity in earlier German civil service law was the entitlement of candidates to up to two months leave for the purpose of preparing the election campaign (*Wahlvorbereitungsurlaub*), notably with full compensation. This privilege reduced the opportunity costs

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<sup>19</sup> Moreover, a political mandate is often the last feasible possibility to climb the career ladder (even though it is, of course, not within the same hierarchy but in a related institution). Examples are senior teachers (*Oberstudienrat*), head teachers (*Schulrektor*), lord high commissioners (*Oberkommissar*) or mayors (for a general economic analysis of political careers, see Merlo et al. 2008, Mattozzi and Merlo 2008).

of public servants when running for a seat, a project not easily juggled with a career. The Laender (with the exception of Berlin) introduced this opportunity for paid leave based on the German constitutional law (Article 48) and abolished it following the decision of the German constitutional court in 1975.

In sum, we predict that soft and, even more so, strict incompatibility reduces the attractiveness of a political mandate for public servants. However, if a parliament is operated as a full-time organization rather than a part-time one, the effects of the incompatibility restrictions are expected to be (at least partly) offset. This compensating effect is expected to be larger for strict incompatibility than for soft incompatibility.<sup>20</sup> Moreover, we expect that the reemployment guarantee as well as the remunerated campaign leave increase the fraction of public servants in parliament.

### **Discretion in a political mandate**

Beside the direct material costs and benefits that determine the attractiveness of a political candidacy, there are important indirect material and/or non-material benefits (or in other words rents and intrinsic rewards). They are in particular due to the discretion of individual legislators in how they pursue their mandate. Awarding discretion to a mandate is a precondition for a productive delegation of competence. Discretion also necessarily emerges because the individual performance of legislators is only marginally observable. Here, the question is whether a mandate offers more discretion to public servants and whether the offered discretion is more attractive to public servants relative to (potential) candidates from the private sector. A clear prediction from a comparative perspective is theoretically difficult (see also the arguments in subsection D) and not feasible given our available information. We are not aware of institutional variation in the discretion offered to public servants in the parliaments of the German Laender over time.

#### *C. Public servants as voters*

So far, we have mainly discussed the institutional provisions promoting the supply of public servants as parliamentary candidates. In this subsection, we look at a complementary aspect in outlining the *demand* for public servants as legislators. We emphasize the role of public servants as voters, often organized in public trade unions, and analyse the attractiveness of

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<sup>20</sup> As argued above, in a regime where public servants are compatible, no unambiguous hypothesis can be formulated with regard to the organization of the parliament as part- or full-time and its relative attractiveness for public servants. In our sample of German Laender, we do not observe the association of compatibility with a full-time parliament and can therefore not empirically study the net effect.

public servants as candidates for political parties.

The bureau voting model of government growth hypothesizes that public servants are more likely to cast their votes in elections. This model assumes that public servants hold marked political opinions and therefore favor candidates advocating higher government spending (Garand et al. 1991). The high turnout of public servants has been documented in several studies (see, e.g., Bush and Denzau 1977, Frey and Pommerehne 1982, Moe 2006). In their research, the higher turnout rates for public servants compared to employees from other sectors are partly explained by characteristics specific to them as a group: on-average higher levels of education; greater union membership; and higher satisfaction and trust levels in the way democracy works. In addition, greater interest in politics is identified. This might be ascribed to their occupational interest as well as the lower costs of acquiring relevant information (Corey and Garand 2002). Concerning policy preferences, it has been shown that teachers tend to vote for more expenses on education (Frey and Pommerehne 1982) and public servants in general tend to favor center-left parties (Garand et al. 1991).

Public sector unions not only mobilize public servants as voters but also try to coordinate their voting behavior in favor of candidates that implement union member interests (Moe 2006). As no binding policy commitments are possible, public sector unions concentrate on their selection of candidates. In this way, public servants are likely to support their policy interests, either owing to professional identity or because they are personally positively affected by the union's preferred policies. This strategy is sustained when public servants vote for their peers, expecting similar policy preferences.

Public servants are also attractive candidates for political parties in general. While holding a political mandate, senior officials and mayors may use public service facilities to execute their parliamentary duties. This allows the party to reduce expenses by passing mandate-related work on to the public service. Given the time flexibility of public servants on (partial) leave while holding a mandate, parties are more likely to recruit them for a political career that requires them to tread the mill of innumerable mandates (*"Ochsentour"*). In Germany, for example, public servants were also eligible for up to two-months-paid leave in order to prepare the election campaign. This possibility was abused by parties. They nominated public servants for unwinnable positions on the party lists in order to get publicly subsidized campaign workers (Klatt 1980: 32). Given public servants' right to reemployment, the party does not have to care about a public servant's professional future on resigning or not being reelected.

However, the institutional provisions or office-related advantages render the public servant elected to parliament relatively independent of party leaders and party obligations. As a result, parties have to trade off the attractive characteristics of public servant candidates against the lower bargaining power they have once they hold office.

#### D. *Consequences of a high representation of public servants in parliament*

The representation of public servants in parliament is expected to create a conflict of interests. As members of parliament, they are simultaneously both principals requesting public services and agents expected to deliver these services efficiently (to the population). In particular, the private interests of public servants might lead to slack that is less forcefully counteracted by legislative control if pursued by committees that largely consist of public servants. Public servants are often observed to (self-) select into committees dealing with policy issues that affect them directly (if the mandate is compatible) or in the future, or that affect at least their former and possible future colleagues. For example, teachers and professors are often members of educational committees and many public servants assume positions in committees on matters of public service organization, etc. (*Innenausschuss* or *Ausschuss für Beamtenfragen*) (Schrode 1977). A case in point is their involvement in drafting and revising civil service law. This law also includes some of the privileges that are granted to public servants when they pursue a political career. The latter aspect also indicates the endogeneity of institutional restrictions and privileges.<sup>21</sup> Moreover, public servants are likely to have an information advantage with regard to the content of policy issues as well as with regard to legislative procedures. As a consequence, they have more leeway to manoeuvre; in particular, in policy areas they are professionally acquainted with such as administration, security, public finance or education. This constellation of incentives is expected to hold even if a job in public service is incompatible with a political mandate but where reemployment in the public service is guaranteed or the office is just held in abeyance. The conflict of interest is then inter-temporal.

This is not to say, that other members of parliament would not also pursue their own goals (and thus experience conflicts of interest). The argument of self-selection into committees also holds, e.g., for lawyers and entrepreneurs. However, for public servants a new dimension is added emphasizing that their conflict of interest in parliament involves a sovereign area of government activity. We see this conflict as immanent. The authority of the legislature or the legislative committees with regard to the duties of the public sector and the conditions governing public service are more concrete than for the private sector. Many aspects are more concretely and more comprehensively regulated than in any other strictly regulated market. While there are specific ordinances, e.g., regulating the business of pharmacies or the fees of attorneys, there are a multitude of laws and ordinances regulating the public service encompassing its internal

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<sup>21</sup> This also holds for our study. To the extent that the changes in our institutional variables are systematically related to the representation of public servants in parliament, the observed correlations might partly reflect reverse causation. We were unable to identify any clear exogenous events that could be enlisted as potential statistical instruments for having exclusively affected the privileges granted to public servants.

training, its pay and pension system, its legal status, etc.

Hypotheses about the consequences of the strong parliamentary representation of public servants also emerge with regard to policy choice. Cotta and Best (2004) provocatively characterize public servants' representation as being "distant from the productive sectors of the economy, the risks of the labour market, and the pressure of competition in achievement-oriented work environments" but as being specialized "in redistribution rather than in the creation of wealth" (p. 173).

In contrast to a rent-seeking view, the selection of public servants in the legislature could also serve as a check. If the information asymmetry between the public service and the legislature is severe, electing insiders into parliament (that become accountable to the electorate) might help to align interests between principals and agents. This is of particular relevance, if the elected public servants do not expect to return in their office, but intend to pursue a political career until retirement. Moreover, public servants in parliament could affect political outcomes simply owing to their ties with the state. The vocation of a career in public service might reflect particular loyalty to an organization set up to provide public services.<sup>22</sup> Such a public service motivation might carry over to the behavior in a political mandate and stabilize political bargaining in parliament.<sup>23</sup> Given the reemployment guarantee of public servants, such candidates might be considered relatively independent of outside pressure and free to dedicate themselves to parliamentary duties until the end of their mandate.

### III. Empirical Analysis

#### A. Data

The empirical analysis is based on a newly compiled dataset for the fraction of public servants in all the parliaments of the German Laender or city states as well as the specific legal provisions defining the attractiveness of a political mandate for public servants. Currently, there are sixteen German states or Laender. Up to the German reunification, there were eleven states, the so-called old German Laender. The empirical analysis covers the time period after the Second World War. Accordingly, the longitudinal data covers a period spanning between 62 years (Bavaria) and at least 14 years in the new German Laender.

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<sup>22</sup> Public servants are more likely to donate money and blood to charities or to volunteer than employees in the private sector (Houston 2006). Public sector employees are also more likely to report having a preference for a job that is useful to society (Luechinger et al. 2008).

<sup>23</sup> We are aware that an intrinsic motivation to participate in the political process is not equivalent to strong civic commitment or performance pledged to the public interest (see Frey 1997).

## Composition of parliaments in the German Laender (*Landtage*)

There is some literature in political science studying the occupational composition of the German Laender parliaments (see, e.g., Hess 1976, Holl 1989, and Handschell 2002). Mostly for single election periods, statistics were published in the journal entitled *Zeitschrift für Parlamentsfragen*. The main data sources are, however, the parliamentary handbooks (*Volkshandbücher*), which are published for every election period. They ideally contain information about the occupational composition of the parliament or, otherwise at least, sufficient information about the occupations held prior to entering parliament in short curricula vitae for the individual parliamentarians. Based on the latter information, we were able to code occupations and determine the professional composition (i.e., the fraction of members of parliament with a public service background). For example, the occupational composition of the 15<sup>th</sup> Bavarian legislature (2003-08) indicates that 70 representatives or 38.8 percent of the members of parliament were recruited from the public service. Out of these 70 members, 19 were employees of the public service and 51 had the status of public servants. They had previously held the following functions: educational professions (40%), administration (32.8%), judiciary (10%), municipal officials (10%), mayors (4.3%) and police and armed forces (2.9%). The remaining representatives' backgrounds were self-employment (i.e., lawyers, entrepreneurs or farmers/cultivators) (41.1%), employment in the private sector or in professional associations (15.5%), housekeeping (2.3%) and others (2.3%). A complete list of the data sources for the dependent variable is provided in table A.1 in the appendix.

Overall, there is information about the fraction of public servants in parliament for 177 legislative periods.<sup>24,25</sup> There is no information for some early legislative periods due to data unavailability

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<sup>24</sup> Regular terms last either four or five years. Due to constructive votes of no confidence and coalition instabilities, some legislative periods turned out shorter.

<sup>25</sup> For 114 legislative periods, we could adopt the fraction of public servants in parliament from sources that offer aggregate information on the composition of parliaments (see table A1 in the appendix). For another 14 legislative periods, we adjusted aggregate data for the category 'members and former members of the government' based on entries for single members of parliament. For these 128 legislative periods in total, the subcategorization of public servants elected to parliament varies strongly. In several Laender and years, there is no further categorization. In other Laender (and in particular in more recent years), there are separate categories for members of parliament that are from the judicial branch, the administration or the education sector. Besides, there are some parliamentary information services that group their members of parliament according to rank or federal level. Finally, for some Laender, there is a change in the usage of subcategories over time. Accordingly, we abstained from a differentiated data collection and generated aggregate data on the fraction of public servants. For the remaining 49 legislative periods, we coded individual level information from single entries in parliamentary handbooks.

and data incomparability (see the last paragraph of this subsection). On average, the fraction of public servants in our sample is 39.6%, whereby it was lowest in Lower Saxony in 1947 (10.6%) and highest in Baden-Württemberg in 1988 (61.6%). The descriptive statistics for each of the Laender are presented in table A.2 in the appendix.

Figure 2 presents the development of the fraction of public servants in parliament over time for the three largest Laender, i.e. North Rhine-Westphalia, Baden-Württemberg and Bavaria. The fraction in all the three Laender increases until the mid-1970s. In Baden-Württemberg and in Bavaria, the fraction reached a level above 50%. While the level in North Rhine-Westphalia was rather stable around 40% since the early-1980s, there is about a 10-percentage point decline in Bavaria up to the mid-1990s and a second peak in Baden-Württemberg around 1990. The profiles for the remaining Laender are included in figures A.1 to A.3 in the appendix.

[Figure 2 about here]

In collecting and compiling the data on the fractions of public servants in parliament, we encountered several theoretical and methodological challenges. First, existing statistics on the socio-economic composition of parliaments differ in their intended purpose. In contrast to our study, which concentrates on the last occupation before being elected to parliament, some studies focus on educational background, the occupation learned (Handscheil 2002), gender or race (Norris 1997, Norris and Lovenduski 1995). As a consequence, the distinction between the last occupation and the occupation learned often causes ambiguities. Second, for early legislative periods, occupational statistics either do not exist or are of poor quality because they are based on voluntary self-disclosure. Moreover, the way categories were formed sometimes changes within a time series causing structural breaks. As far as we observed such changes, we coded the members of parliament in question on the basis of their entries in the parliamentary handbooks. However, analyzing individual curricula vitae raises problems (mostly for early periods) in terms of unclear chronologies of apportionments. For the current analysis, we restrict our sample to legislative periods for which we were able to compile reliable data.

### **Institutional conditions for public servants as members of parliament**

A series of different laws include provisions that define relevant claims of public servants who either run for office or have a mandate. These are the law on the members of parliament (*Abgeordnetengesetz*) and its precursors (*Gesetz über die Rechtsstellung der Abgeordneten* or *Diätengesetz*), the civil service law, the electoral law and the incompatibility law. For some points of time, surveys for specific provisions in all the Laender were published in the journals entitled *Zeitschrift für Parlamentsfragen* and *Zeitschrift für Beamtenrecht*, in the series *Recht*

*und Organisation der Parlamente*, and in a few law dissertations (Sturm 1967 and Tsatsos 1970).

We coded information for seven important institutional characteristics relevant for public servants.<sup>26</sup> All the institutional variables are coded as dummy variables.

- *Strict incompatibility*: Strict incompatibility is given and coded 1 (0 otherwise) if all the public servants have to hold their office in abeyance while in parliament. The reference category captures compatibility; i.e., public servants elected to parliament do not face any incompatibility restrictions.

*Soft incompatibility*: Soft incompatibility is given and coded 1 (0 otherwise) if only some specific categories of public servants have to hold their office in abeyance while in parliament. The reference category is again compatibility.

- *Full-time parliament*: Laender parliaments are coded as either full-time parliaments (1) or part-time parliaments (0). As there are no Laender that simultaneously had a full-time parliament and compatibility, the correlation between full-time parliament and the fraction of public servants in parliament cannot be calculated *ceteris paribus*. Instead, we can only estimate the interaction effect in the two incompatibility regimes. Therefore, two interaction terms (taking the value 1) are included: one for “strict incompatibility x full-time parliament” and one for “soft incompatibility x full-time parliament”.
- *Pension benefit*: If for pension entitlements of public servants the years in parliament are accounted twice (i.e., not only for the pension from the mandate but also for the pension from the service in the administration), a pension benefit is given and coded 1 (0 otherwise).
- *Abeyance compensation*: If an extra compensation for holding one’s office in abeyance is granted, the variable takes value 1 (0 otherwise).
- *Automatic promotion*: The variable takes value 1 (0 otherwise) if public servants are automatically promoted when they reenter office.
- *Other privileges*: This variable integrates four factors that grant preferential treatment to public servants in parliament and that were abandoned following the decision of the German constitutional court in 1975. These factors are: (i) guaranteed two-month paid

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<sup>26</sup> There are, of course, additional factors that are relevant for the attractiveness of a mandate such as its remuneration. However, these factors apply for all the candidates. A specific benefit for public servants is their legal claim to reemployment after they resign from parliament. This entitlement has not been changed since the Laender parliaments were constituted. Accordingly, the effect of this factor on the relative attractiveness of a mandate for public servants cannot be isolated in our statistical analysis.

leave to prepare the election campaign, (ii) prohibition to offset income (pay or pension) from a public office against the parliamentary allowance or the parliamentary pension, (iii) right to continuation of payments of the compensation for holding office in abeyance after resigning from the mandate and until entry into the old-age pension or until a reappointment was requested by the public servant or imposed by the public employer (employees of the public service had no claim to this provision), and (iv) complete accounting of the years with a mandate for the tenure in office. Only if three of these four factors apply, substantial privileges are in place and the variable takes value 1 (0 otherwise).

Table A.3 in the appendix gives an overview of the institutional conditions holding in each state over time, and table A.4 reports their relative frequency in the data set. Five parliaments introduced a strong incompatibility ruling when they were constituted after the Second World War (Lower Saxony and North Rhine-Westphalia) or after the German reunification (Saxony-Anhalt, Brandenburg and Thuringia). Two Laender abolished compatibility and adopted strict incompatibility (Bavaria 1970 and Bremen 1967). Other Laender introduced a soft incompatibility and replaced it by a strict incompatibility rule in the seventies (e.g. Saar, Rhineland-Palatinate and Hesse). Baden-Württemberg (until 2011), Berlin and Hamburg as well as the new Laender, Saxony and Mecklenburg-Lower Pomerania, still know soft incompatibility for public servants.

Pension benefits due to double allowance for the years in parliament were granted for a relatively short time in most Laender; i.e., mainly between the late-1960s and the late-1970s with the exception of Hamburg and Berlin where this double allowance never applied. The compensation for holding one's office in abeyance was offered for some time in all the old Laender, except in the city states Hamburg and Berlin. Bavaria was the last Land to introduce it in 1970 and also one of the first to abandon it again in 1978 (together with Lower Saxony and Hesse). While the federal constitutional court declared this provision to be unconstitutional, some Laender simply labeled it differently and introduced an upper limit to it. Abeyance compensation (now called compensation amount, *Ausgleichsbetrag*) is still offered in Baden-Württemberg and Bremen.

All the parliaments in the old German Laender started as part-time parliaments. In the meantime, only four part-time parliaments are left (Baden-Württemberg, Bremen, Berlin and Hamburg). All the new German Laender started with full-time parliaments.

Automatic promotion only applied for a few legislative periods in Bavaria (1970-77) and Bremen (1967-1978). The specific privileges that we integrate in one variable, and that were criticized in the decision of the federal constitutional court in 1975, were introduced in almost all the Laender between 1950 and 1963 (Bavaria 1970 and Bremen 1967 being the exceptions) and abandoned in revisions of the law between 1977 and 1980.

For all institutional conditions studied in our analysis, there is no variation in the New German

Laender over time. Accordingly, we cannot use observations for the fraction of public servants in these Laender parliaments to identify the quantitative effect of the different legal provisions when we take Laender specific effects into account at the same time.

Regarding the collection of the institutional variables, some challenges had to be met. First, many provisions were laid down in the laws on the legal status of public servants elected to parliament. However, other relevant provisions had to be found in the civil service law, the electoral law or some other regulations. Second, in order to establish a chronological order of the provisions in force (especially for the early periods), specific commission protocols, plenary debate protocols and specific bills (law proposals and drafts) had to be studied. In the light of the difficult political and institutional circumstances in the late 1940s and early 1950s in some Laender, no corresponding provisions had been introduced.

### *B. Results*

The empirical analysis focuses on the partial correlations from multiple regressions between the institutional conditions for public servants as members of parliaments and their actual representation in them. We report the results for a series of estimation specifications in order to uncover as much information as possible about our data pool. Accordingly, the institutional effects are identified under different assumptions about unobserved factors in our time-series cross-section data.

The first set of results is based on the full sample, including observations from the old and the new German Laender. Panel I in table 1 reports the results of a pooled OLS estimation. Partial correlations for eight institutional variables are estimated. It is found that strict incompatibility is related to a lower share of public servants in a part-time parliament (the reference regime being “compatibility x part-time parliament”)<sup>27</sup>, while pension benefits, abeyance compensation and automatic promotion are related with a higher share. The existence of a full-time parliament offsets the negative effect of strict incompatibility on the representation of public servants. The set of other privileges summarized in a separate variable is related to a lower fraction of public servants in parliament, counter to our hypothesis. Together the factors account for 40.2% of the variation in the dependent variable and the F-test indicates that the explanatory variables are jointly statistically significant. With regard to the size of coefficients, e.g., in Laender and years

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<sup>27</sup> As there are no observations for Laender that simultaneously assume compatibility and maintain a full-time parliament, the pure effect of adopting a full-time parliament cannot be estimated. Instead, the effect for full-time parliament is always conditional on having an incompatibility regime. Accordingly, the effects for the variables full-time parliament are formulated as interaction terms. It follows that the coefficients for the two incompatibility variables (interpreted alone) hold for part-time parliaments.

with strict incompatibility, on average, the fraction of public servants in part-time parliaments is 13.4 percentage points lower than in part-time parliaments where a mandate is compatible with a position in the public service *ceteris paribus*.

[Table 1 about here]

However, results from pooled estimations might be statistically biased due to omitted variables. On the one hand, there might be socio-economic or institutional conditions in some Laender that are not captured with our variables but that systematically affect the attractiveness of political mandates for public servants (and are not orthogonal to our institutional variables). On the other hand, there might be unmeasured time-specific effects on the representation of public servants in the legislature that are correlated with some of the institutional variables. A factor mentioned in our theoretical framework is public servants as voters. As there exists no comparable data on public sector employment over the time range of our study, this determinant cannot be included directly. Instead, we take unobserved Laender- and time-specific variation into account, including Laender-fixed effects (panel II), decade-fixed effects (panel III), or both (panel IV) in our specifications.

The changes in the estimated partial correlations and the statistically significant Laender and decade effects indicate that the effects of our institutional variables cannot easily be separated from unobserved Laender characteristics and time effects.<sup>28</sup> The partial correlations show that strict incompatibility is related to a sizeably lower fraction of public servants in part-time parliaments (between -12.4 and -17.5 percentage points) independent of the inclusion of the fixed effects. With Laender and/or time-fixed effects there is also a negative correlation (between -7.0 and -10.2 percentage points) for soft incompatibility. The negative effect of strict incompatibility is estimated to be systematically lower in Laender with a full-time parliament. A less clear picture emerges for soft incompatibility in Laender with a full-time parliament. In specification IV, no compensatory effect is measured.<sup>29</sup> The variable capturing pension benefits has a small positive effect (around 2 percentage points, not statistically significant) on the fraction of public servants in parliament once time effects are taken into account. For abeyance compensation a positive effect is estimated that is around 4 percentage points in specification IV with the complete set of fixed effects. The estimated effects of automatic promotion are also positive. Whereby the inclusion of fixed effects reduces the effect size. The effect of the variable capturing

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<sup>28</sup> With regard to explanatory power, the inclusion of Laender-fixed effects alone shows an  $R^2$  of 32.6%. In comparison, the  $R^2$  in panel II including the explanatory variables and Laender-fixed effects is 45.6%.

<sup>29</sup> The finding is in line with the theoretical reasoning in section B.2 that the compensation effect of a full-time parliament is smaller in a soft incompatibility regime than in a strict incompatibility regime and that the net effect is inconclusive.

other privileges is negative, rather than positive as hypothesized, and amounts to -5 percentage points in the fourth specification. Overall, the choice of specification matters for the size of the estimated coefficients (but less so for the direction of the estimated correlations). Due to this sensitivity, we explore the data with additional specifications.

In table 2, we concentrate on the independence of observations in our sample. This is done based on the observations from the old German Laender, as with Laender-fixed effects: observations from the new German Laender do not contribute to the identification of the effects of the institutional variables. Estimations in table 1 are based on the assumption that all the unexplained parts of the fraction of public servants in parliament (i.e., the residuals) are independent across space and time. However, there are many reasons why a positive residual for a specific legislative term is positively correlated with the residual of the next term. In particular, due to the electoral advantage of incumbent members of parliament<sup>30</sup>, positive and negative “shocks” to the fraction of public servants in parliament carry over to the subsequent terms. The average length of stay in German parliaments is about two to two-and-a-half periods (see, e.g., Holl 1989 and Mielke and Reutter 2004). In fact, an inspection of the residuals shows significant autocorrelation. We take this aspect of the political process into account including the lagged dependent variable in our specification.<sup>31</sup> As lagged dependent variables are often used instead of time-fixed effects, we estimate one specification without decade effects (panel II) and one with decade effects (panel III). In order to allow a comparison with a specification not including the lagged dependent variable, panel I reports estimation results with Laender and time-fixed effects for the old German Laender. For the specifications including the lagged dependent variable, we calculate panel corrected standard errors taking into account panel heteroskedasticity. This is recommended judging from the differential variation of the residuals across Laender.<sup>32</sup>

[Table 2 about here]

The following empirical findings emerge from these refined estimations. As theoretically expected from the incumbency effect, the past level of public servants in parliament systematically and substantially affects the current level. According to specification III, a 10-percentage point increase in the past legislative term is related to a 5.1 percentage points higher fraction in the current legislature. Consistent with the hypothesis regarding opportunity costs, strict incompatibility is related to a substantially smaller fraction of public servants in Laender with a part-time

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<sup>30</sup> For a theoretical account of the incumbency advantage see, e.g., Ferejohn (1977).

<sup>31</sup> We follow Beck and Katz (1995) and give this specification priority over a time series approach specifying an AR(1).

<sup>32</sup> We started based on the assumption of homogeneity as our dependent variable is within a range. However, an analysis of residuals across Laender indicates Laender-specific (or panel) heteroskedasticity.

parliament, an effect that is robust across specifications in tables 1 and 2. It seems that this effect is smaller in full-time parliaments. However, the size of the offsetting effect is not precisely measured. The negative effect of soft incompatibility is smaller than for strict incompatibility in part-time parliaments. No effect of compensation is measured once the lagged dependent variable is taken into account. The theoretical predictions for the effect of various (pecuniary compensation) benefits on the selection of public servants are not rejected. Pension benefits, abeyance compensation and automatic promotion are all positively correlated with the fraction of public servants in parliament. Thereby, the largest coefficient is estimated for abeyance compensation, statistically significant at the 10% level. When public servants receive a compensation for holding their office in abeyance, their representation in parliament is 3.3 percentage points higher on average *ceteris paribus* (specification III). The variable capturing other privileges is no longer related to the fraction of public servants in parliament if the full set of controls and the lagged dependent variable are taken into account.

In sum, the empirical findings are in line with the predicted effects for the institutional variables. In particular, the major restriction of strict incompatibility and the main privilege of abeyance compensation are statistically systematically related to the fraction of public servants in parliament.

#### IV. Concluding Remarks

The separation of powers and a responsible government are major principles in a democracy that are sustained by a set of checks and balances. However, the implementation of these principles in a set of (formal and informal) institutions is solved differently in various democracies around the world. This situation has warranted the need for comparative institutional research to be carried out in order to identify the government structures that are most conducive to a political process that fulfills citizens' preferences. So far, most of this research has focused on the allocation of decision-making power between legal entities (i.e. the *functional* separation of powers). However, there is also the *personal* separation of powers (i.e. the idea that individual people are not selected for multiple offices). This selection might be (legally) strict or operate through incentives for self-selection to different offices.

In this paper, we laid out an analytical framework based on a cost-benefit calculus to explore the selection of public servants into legislatures. This is a first step to address the determinants and consequences of personal linkages between the public service and the legislature that emerge because public servants pursue a political mandate. In our empirical analysis for the German Laender based on a novel data set, we find that in many Laender and for many of the years a substantial fraction of the parliamentary mandates was represented by members of the public

service. In fact, in 17.5% of the legislative terms more than half of the mandates went to public servants. In 50.8% of the terms at least more than 40% of the elected politicians had a public service background. Moreover, we find that institutional restrictions in terms of incompatibility rules substantially reduce the selection of public servants into Laender parliaments. On the other hand, the privileges granted to public servants when pursuing a political career, in particular compensation for holding one's office in abeyance, increase the fraction of public servants in parliament. An important privilege for public servants is also that of guaranteed reemployment subsequent to resignation from parliament or non-reelection. However, this advantage in the political process could not be quantified as it holds throughout time and Laender. Based on our analysis, we think that the economic approach is well suited to account for the fraction of public servants in parliaments and that it can be productively applied to other specific institutional environments.

There are several avenues for further research and further discussions following our study and findings. First, the observation of a large fraction of public servants in Laender parliaments could be discussed from a political representation perspective (e.g., Mansbridge 2003, Pitkin 1967, Schwartz 1988). There is an obvious disproportionality in representation with respect to professional background (a dimension of *descriptive* representation following the categorization of Pitkin 1967). Accordingly, (work) life experiences of the representatives are expected to be systematically different from those of the represented. For instance, experiences on how to survive in the private market are represented less. Second, there is the question of *substantive* representation. To what extent do the elected politicians with a public service background represent and serve the interest of their constituents? The strong representation of public servants in the legislature is expected to systematically affect the political process, e.g., with regard to the parliamentary oversight of government activity and the outcomes of the political process. Of particular interest are consequences on the allocative efficiency of the public sector as well as its productivity. Third, while we pursue a comparative perspective within a federal state, a cross-country analysis could provide evidence on the selection effects of a wider set of institutions like, e.g., incompatibility and disclosure rules. Fourth, based on a better understanding of the selection effects of specific features of democratic institutions, it should become possible to understand policy outcomes as being more the result of political selection or more the result of holding politicians accountable. Thus again, in a next step the policy consequences of public servants' representation in parliament need to be carefully explored. This is necessary in order to assess the institutions that affect the selection of public servants into parliaments and to derive meaningful advice for constitutional choices.

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## Figures and Tables

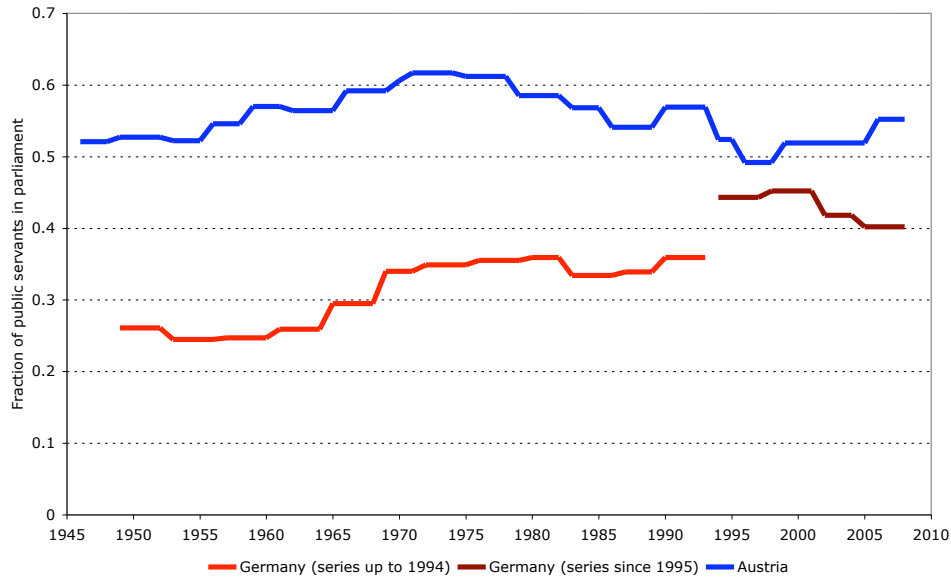


Figure 1: Fractions of public servants elected to the lower houses of the German parliament and the Austrian parliament

*Notes:* For the German data, there is a change in the categorization of the socio-economic composition of the parliament in 1994. The category members and former members of the government (10.1% in 1994) was eliminated. These members of parliament (mostly ministers and political public servants) are now classified according to their former occupation.

*Sources:* Data for Germany for the early legislative terms is from Schindler (1999), for the terms 13 to 15 from Deutsch and Schüttemeyer (2003), and for the 16<sup>th</sup> term from Kintz (2006). Data for Austria is retrieved from [www.parlinkom.gv.at](http://www.parlinkom.gv.at).

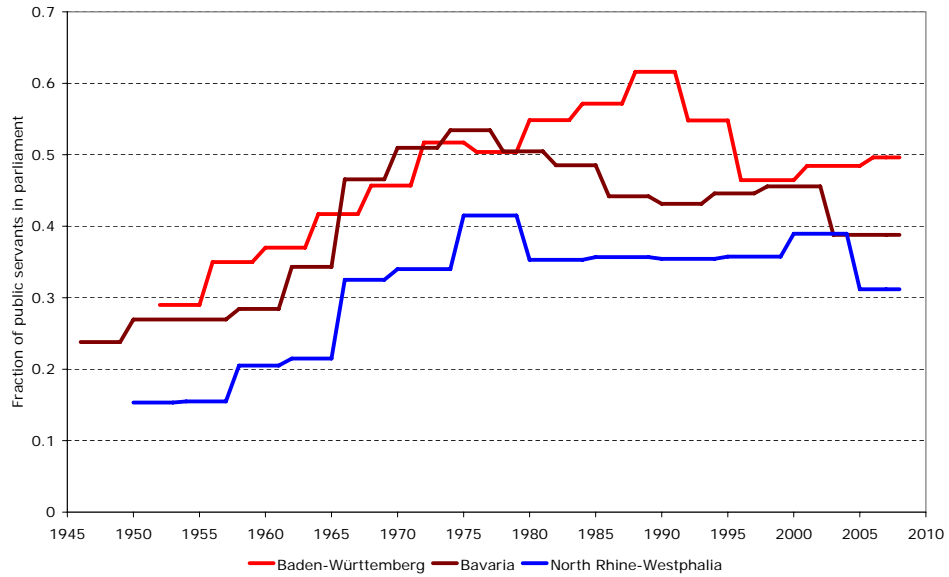


Figure 2: Fractions of public servants elected to the Laender parliaments of North Rhine-Westphalia, Baden-Württemberg and Bavaria between 1946 and 2008

*Sources:* Official parliamentary handbook series of the Laender parliaments (see also table A.1).

Table 1: Determinants of the Representation of Public Servants in German Laender Parliaments  
 Basic estimations for all Laender  
 Dependent variable: Fraction of public servants in parliament

	I	II	III	IV
Strict incompatibility	-0.134*** (0.033)	-0.124*** (0.034)	-0.175*** (0.032)	-0.125*** (0.029)
Soft incompatibility	0.008 (0.029)	-0.102*** (0.038)	-0.070** (0.033)	-0.094*** (0.031)
Strict inc. x full-time parliament	0.195*** (0.024)	0.199*** (0.025)	0.146*** (0.025)	0.069** (0.029)
Soft inc. x full-time parliament	0.043* (0.025)	0.073* (0.041)	0.036 (0.023)	-0.020 (0.037)
Pension benefit	0.099*** (0.023)	0.105*** (0.020)	0.022 (0.026)	0.026 (0.023)
Abeyance compensation	0.138*** (0.021)	0.130*** (0.024)	0.126*** (0.019)	0.044* (0.023)
Automatic promotion	0.126*** (0.042)	0.127*** (0.040)	0.050 (0.039)	0.069* (0.036)
Other privileges	-0.105*** (0.021)	-0.082*** (0.022)	-0.065** (0.027)	-0.050** (0.024)
Laender fixed effects	No	Yes	No	Yes
Decade fixed effects	No	No	Yes	Yes
<i>Prob. &gt; F</i>	0.000	0.000	0.000	0.000
<i>R</i> <sup>2</sup>	0.402	0.456	0.560	0.660
<i>N</i>	177	177	177	177

*Notes:* Partial correlations from OLS regressions. Standard errors in parentheses. Significance levels: \*  $.05 < p < .1$ , \*\*  $.01 < p < .05$ , \*\*\*  $p < .01$ .

*Sources:* Data compiled based on the sources listed in tables A.1 and A.3 in the appendix.

Table 2: Determinants of the Representation of Public Servants in German Laender Parliaments  
 Extended estimations for the old Laender  
 Dependent variable: Fraction of public servants in parliament

	I	II	III
Lagged fraction of public servants		0.690*** (0.076)	0.511*** (0.084)
Strict incompatibility	-0.125*** (0.029)	-0.119*** (0.033)	-0.123*** (0.030)
Soft incompatibility	-0.094*** (0.032)	-0.096*** (0.036)	-0.096*** (0.033)
Strict inc. x full-time parliament	0.069** (0.029)	0.063*** (0.022)	0.035 (0.023)
Soft inc. x full-time parliament	-0.020 (0.037)	0.014 (0.034)	-0.019 (0.034)
Pension benefit	0.026 (0.023)	0.051*** (0.016)	0.016 (0.020)
Abeyance compensation	0.044* (0.023)	0.063*** (0.020)	0.033* (0.020)
Automatic promotion	0.069* (0.036)	0.044 (0.037)	0.021 (0.033)
Other privileges	-0.050** (0.024)	-0.020 (0.019)	-0.006 (0.022)
Laender fixed effects	Yes	Yes	Yes
Decade fixed effects	Yes	No	Yes
<i>Prob. &gt; F/Chi<sup>2</sup></i>	0.000	0.000	0.000
<i>R<sup>2</sup></i>	0.677	0.791	0.829
<i>N</i>	156	145	145

*Notes:* Partial correlations from OLS regressions. Panel-corrected standard errors for estimations II and III taking into account panel heteroskedasticity. Significance levels: \*  $.05 < p < .1$ , \*\*  $.01 < p < .05$ , \*\*\*  $p < .01$ .

*Sources:* Data compiled based on the sources listed in tables A.1 and A.2 in the appendix.

## Appendix

### Data on public servants in German Laender parliaments

Information on the occupational background of the members of the German Laender parliaments is mainly collected from entries in the parliamentary handbooks. Entries for single members were coded and summed to determine the fraction of public servants in parliament. If available, summary statistics from parliamentary handbooks or other sources were considered. Table A.1 provides a detailed account of the sources by legislative period (LP).

Table A.1: Data sources for the fraction of public servants in German Laender parliaments

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#### *Baden-Württemberg*

LP 1-6: Occupational statistics from parliamentary handbooks.

LP 7-14: Occupational statistics from parliamentary handbooks, corrected for the category members and former members of the government based on entries for single members of parliament.

#### *Bavaria*

LP 1-6: Occupational statistics from parliamentary handbooks.

LP 7-8: Occupational statistics from parliamentary handbooks, corrected for mayors and district administrators.

LP 9-12: Occupational statistics from parliamentary handbooks, corrected for the category members and former members of the government based on entries for single members of parliament.

LP 13-15: Occupational statistics from parliamentary handbooks.

#### *Berlin*

LP 5: Nauber (1970).

LP 6-14: Own coding based on entries in the parliamentary handbooks for single members.

LP 15-16: Own coding based on the parliamentary online database containing individual entries.

#### *Bremen*

LP 4-7: Own coding based on entries in the parliamentary handbooks for single members.

LP 8: Hess (1976).

LP 9-16: Occupational statistics from parliamentary handbooks.

LP 17: Own coding based on the parliamentary online database containing individual entries.

#### *Hamburg*

LP 7-18: parliamentary handbooks.

LP 19: own coding based on the parliamentary online database containing individual entries.

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*Hesse*

LP 1-4: Schrode (1976).

LP 5: Holl (1989).

LP 6-10: Own coding based on entries in the parliamentary handbook (Lengemann 1987) for single members.

LP 11-16: Occupational statistics from parliamentary handbooks.

LP 17: Occupational statistics from the parliamentary online database.

*Lower Saxony*

LP 1-15: Occupational statistics from parliamentary handbooks.

LP 16: Occupational statistics from the parliamentary online database.

*North Rhine-Westphalia*

LP 2-14: Occupational statistics from parliamentary handbooks.

*Rhineland-Palatinate*

LP 1-3: Own coding based on entries in the parliamentary handbook (Landtag Rheinland-Pfalz 1987) for single members.

LP 4-6: Schrode (1977).

LP 7-15: Own coding based on entries in the parliamentary handbook (Landtag Rheinland-Pfalz 1987) for single members.

*Saar*

LP 1-12: Rütters (2003).

LP 13: Own coding based on entries in the parliamentary handbook for single members.

*Schleswig-Holstein*

LP 3-9: Occupational statistics from parliamentary handbooks.

LP 10: Own coding based on entries in the parliamentary handbook for single members.

LP 11-15: Occupational statistics from parliamentary handbooks.

LP 16: Own coding based on the parliamentary online database containing individual entries.

*Brandenburg*

LP 1-3: Lübker and Schüttemeyer (2004);

LP 4: Occupational statistics from parliamentary handbooks.

*Mecklenburg-Lower-Pomerania*

LP 2-5: Own coding based on entries in the parliamentary handbook for single members.

*Saxony*

LP 1-2: Patzelt (1997).

LP 3-5: Own coding based on entries in the parliamentary handbook for single members.

*Saxony-Anhalt*

LP 1-5: Own coding based on entries in the parliamentary handbook for single members.

*Thuringia*LP 1-4: Thüringer Landtag (2005).

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Table A.2: Descriptive statistics for the fraction of public servants elected to German Laender parliaments

	No. of LPs	Mean	Std. dev.	Min.	Max.
<i>Old Laender</i>					
Baden-Württemberg	14	47.39	9.10	29.00	61.60
Bavaria	15	40.45	9.91	23.80	53.43
Berlin	12	39.91	6.95	25.00	48.85
Bremen	14	38.29	7.35	30.12	55.00
Hamburg	13	33.49	4.93	23.14	41.66
Hesse	17	46.56	7.91	32.50	55.45
Lower Saxony	16	29.28	12.28	10.60	42.58
North Rhine-Westphalia	13	30.24	8.88	15.34	41.50
Rhineland-Palatinate	15	45.26	12.63	24.20	60.00
Saar	13	43.22	11.25	26.00	58.00
Schleswig-Holstein	14	43.34	8.25	24.60	58.10
<i>New Laender</i>					
Brandenburg	4	40.84	7.28	31.50	48.90
Meckl.-Lower-Pomerania	4	38.73	8.64	28.17	46.48
Saxony	4	44.45	6.48	35.48	50.80
Saxony-Anhalt	5	31.04	5.39	24.50	37.73
Thuringia	4	33.20	1.63	31.40	35.20
Sum old Laender	156	39.88	10.98	10.60	61.60
Sum new Laender	21	37.34	7.62	24.50	50.80
Sum all Laender	177	39.58	10.65	10.60	61.60

*Note:* LPs indicates the number of legislative periods.

*Sources:* See table A.1.

Table A.3: Institutions characterizing the legal status of public servants in the German Laender parliaments (part 1)

	Strict incompatibility	Soft incompatibility	Pension benefit	Abeyance compensation
Baden-Württemberg	LP 1 (1952)	as of LP 2 (1956)	LP 5-7 (1968-1980)	as of LP 2 (1956)
Bavaria	as of LP 7 (1970)	never applied	LP 7-8 (1970-1978)	LP 7-8 (1970-1978)
Berlin	never applied	never applied	never applied	never applied
Bremen	as of LP 7 (1967)	never applied	as of LP 10 (1979)	as of LP 7 (1967)
Hamburg	never applied	applies to all observed periods (as of 1970)	never applied	never applied
Hesse	as of LP 8 (1974)	LP 2-7 (1950-1974)	LP 7-8 (1970-1978)	LP 2-8 (1950-1978)
Lower Saxony	as of LP 1 (1947)	never applied	LP 7-8 (1970-1978)	LP 5-8 (1963-1978)
North Rhine-Westphalia	applies to all observed periods (as of 1950)	never applied	LP 6-8 (1966-1980)	LP 3-8 (1958-1980)
Rhineland-Palatinate	as of LP 8 (1975)	LP 2-7 (1951-1971)	LP 7-8 (1971-1979)	LP 2-11 (1951-1991)
Saar	LP 2-3 (1952-1959) and as of LP 7 (1975)	LP 1 (1947) and LP 4-6 (1960-1975)	LP 6-7 (1970-1980)	LP 2-10 (1952-1994)
Schleswig-Holstein	LP 8 (1975) and (re)introduction in 2006, which applies to election in 2010	LP 3-7 (1954-1975) and LP 9-16 (1979-2010)	LP 7-8 (1971-1979)	LP 4-12 (1958-1992)
Brandenburg	as of LP 1 (1990)	never applied	never applied	never applied

Mecklenburg-Lower-Pomerania	never applied	as of LP 1 (1990)	never applied	never applied
Saxony	never applied	as of LP 1 (1990)	never applied	never applied
Saxony-Anhalt	as of LP 1 (1990)	never applied	never applied	never applied
Thuringia	as of LP 1 (1990)	never applied	never applied	never applied

*Notes:* Listed are the legislative periods (LP) for which the specific rules were in force from the beginning of the terms.

Hesse: For the 1<sup>st</sup> legislative period (1946), we assume that there was no incompatibility rule in force because the first law concerning incompatibility was enacted in 1948 (GVBl. p. 101). Moreover, Mallmann (1953) notes the tendency towards compatibility in the newly formed Laender (except the Laender initially governed by the occupying power Great Britain (GB)).

Lower Saxony: The 1<sup>st</sup> legislative period (1947) is coded as strict incompatibility although the occupying power (GB) introduced an ineligibility rule, enacted in the first state election law. No separate variable for this stricter regulation is defined because it is unclear whether there was not still an implicit reemployment guarantee.

North Rhine-Westphalia: The 2<sup>nd</sup> legislative period (beginning in 1950), we coded as strict incompatibility although the occupying powers (GB) introduced an ineligibility rule, enacted in the first (1947) as well as in the second state election law in 1950 (GVBl. No. 13 p. 45). As it is unclear whether there was not still a reemployment guarantee, no separate variable is defined. The first law on the legal status of public servants elected to parliament in 1954 (GV. NW. p. 147) imposed an incompatibility rule for all public servants except teachers and university professors. This exception was in force until 1978. As teachers and university professors were the only exceptions, we coded a strict incompatibility.

Rhineland-Palatinate: For two reasons, we assume that there was no incompatibility rule in force for the 1<sup>st</sup> legislative period (1946). First, Kriegbaum (1967) refers to Article 95 of the first constitution (1947) of Rhineland-Palatinate which declares no need for a leave of absence while exercising a political mandate (VOBl. No. 14). Second, Eschenburg (1952) and Mallmann (1953) describe the tendency towards compatibility in the newly formed Laender. With regard to pension benefits, the law on the remuneration of members of parliaments, introduced in 1960, comprised some kind of an optional old-age pension. However, a binding old-age pension scheme for members of parliament was introduced only in 1969. The variable indicating twice accounted years for pension entitlements was consequently coded as 1 beginning with the 7<sup>th</sup> legislative period in 1971.

Saar: For the 1<sup>st</sup> legislative period (1947), a soft incompatibility rule is assumed for three reasons. First, the electoral law, introduced in 1952, comprised a soft incompatibility rule. Second, in the first state constitution (1947), no explicit incompatibility principles were laid down. Third, the occupying power France itself preferred some kind of soft incompatibility rule (Schmidt 1970: 188).

Table A.3: Institutions characterizing the legal status of public servants in the German Laender parliaments (part 2)

	Full-time parliament	Automatic promotion	Other privileges
Baden-Württemberg	never applied; introduction in 2011	never applied	LP 2-7 (1956-1980)
Bavaria	as of LP 9 (1978)	LP 7-8 (1970-1978)	LP 7-8 (1970-1978)
Berlin	never applied	never applied	never applied
Bremen	never applied	LP 7-9 (1967-1979)	LP 7-9 (1967-1979)
Hamburg	never applied	never applied	LP 7-8 (1970-1978)
Hesse	as of LP 9 (1978)	never applied	LP 2-8 (1950-1978)
Lower Saxony	as of LP 9 (1978)	never applied	LP 5-8 (1963-1978)
North Rhine-Westphalia	as of LP 9 (1980)	never applied	LP 3-8 (1954-1980)
Rhineland-Palatinate	as of LP 12 (1991)	never applied	LP 2-8 (1951-1979)
Saar	as of LP 8 (1980)	never applied	LP 2-7 (1952-1980)
Schleswig-Holstein	as of LP 8 (1979)	never applied	LP 4-8 (1958-1979)
Brandenburg	as of LP 1 (1990)	never applied	never applied
Mecklenburg-Lower-Pomerania	as of LP 1 (1990)	never applied	never applied
Saxony	as of LP 1 (1990)	never applied	never applied
Saxony-Anhalt	as of LP 1 (1990)	never applied	never applied
Thuringia	as of LP 1 (1990)	never applied	never applied

*Notes:* Listed are the legislative periods (LP) for which the specific rules were in force from the beginning of the terms.

Table A.4: Descriptive statistics for the prevalence of the different institutions

	Mean
Strict incompatibility	51.41
Soft incompatibility	42.37
Pension benefit	14.69
Abeyance compenstion	40.11
Full-time parliament	38.98
Automatic promotion	2.82
Other privileges	27.12
Strict incompatibility x full-time parliament	29.94
Soft incompatibility x full-time parliament	9.04

*Sources:* See table A.3.

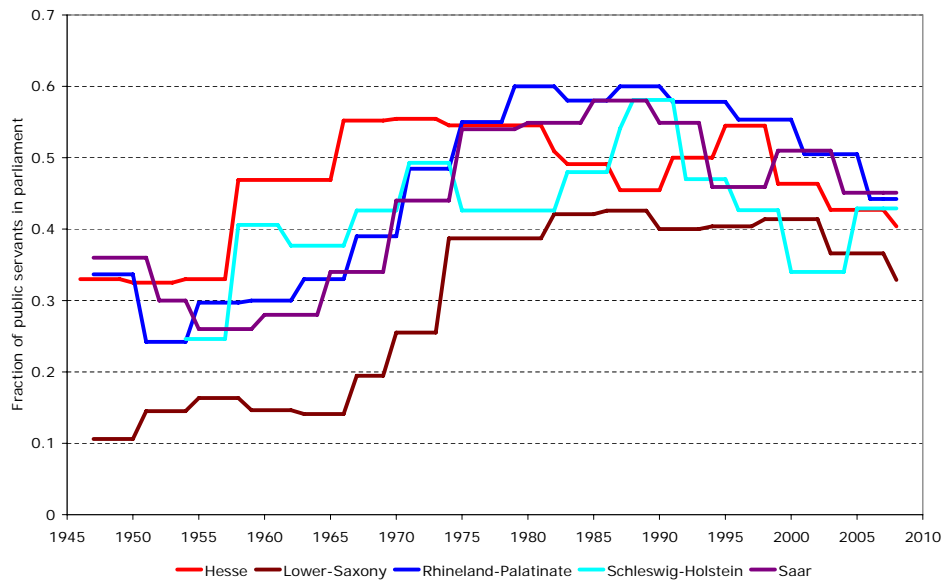


Figure A.1: Fraction of public servants elected to the Laender parliaments of Hesse, Lower Saxony, Rhineland-Palatinate, Schleswig-Holstein and Saar

Sources: See table A.1.

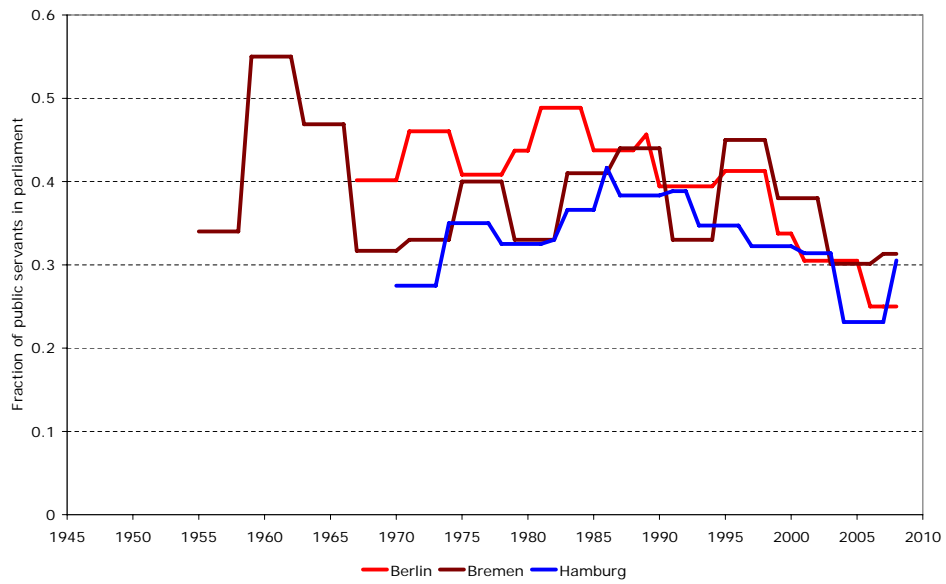


Figure A.2: Fraction of public servants elected to the parliaments of the city states Berlin, Bremen and Hamburg

Sources: See table A.1.

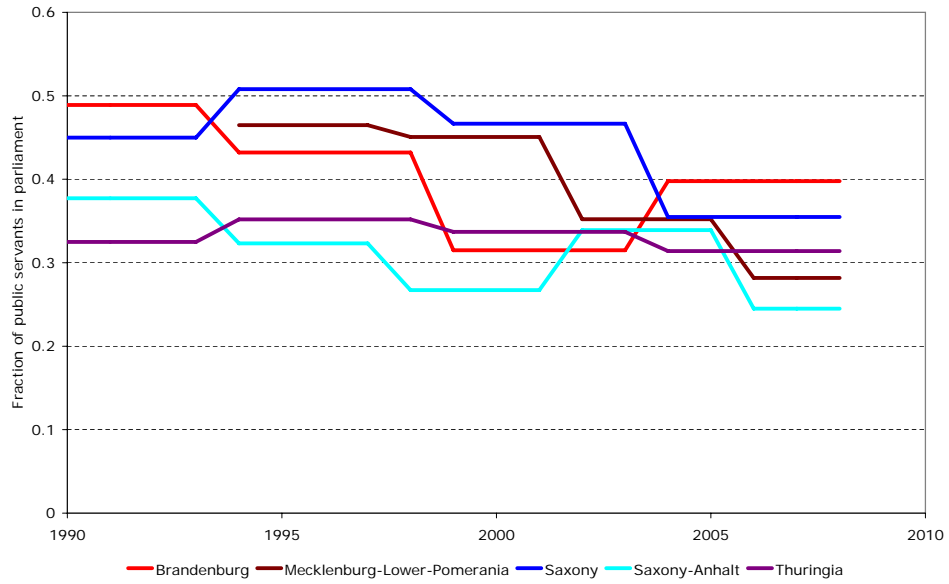


Figure A.3: Fraction of public servants elected to the parliaments of the new German Laender

Sources: See table A.1.