The failure of a Nazi "killer" amendment

Andreas Kleiner and Benny Moldovanu*

July 12, 2019

Abstract

We describe a remarkable instance of a motion-proposing and agenda-setting strategy by the Nazi party, NSDAP, during the Weimar Republic. Their purpose was to kill a motion of toleration of the new 1928 government, that would have allowed the government to continue in office without expressing confidence in it. The Nazi party was supported by their fiercest enemies on the far left, the communist party, but the combined killer strategy ultimately failed because of another agenda-setting counter-move undertaken by the Reichstag's president. In order to understand and analyze that case we also briefly study killer amendments under various informational regimes and postulated voter behavior. In particular, the chances of success of killer amendments are shown to differ across several well-known binary, sequential voting procedures and across legislative agendas.

1 Introduction

A *successful killer amendment* causes a bill that would otherwise pass to fail (Enelow and Koehler 1980; Riker 1986). The concept itself, and the entire

*Kleiner: Department of Economics, Arizona State University, andreas.kleiner@asu.edu; Moldovanu: Department of Economics, University of Bonn, mold@uni-bonn.de.

literature about it, are intimately connected to the *amendment procedure*, the sequential binary voting method utilized in the Anglo-Saxon world, in parts of Scandinavia and in Switzerland.[1] In that procedure, motions - that usually represent a new bill, various amendments to that bill and a status quo - are voted upon two-by-two according to a given order, until one version is singled out and formally selected. In that procedure all motions are put to vote at least once.

In contrast to most of the literature, we describe and analyze here the case of a parliament - the Reichstag of the Weimar Republic - that used the successive procedure, a sequential binary procedure that is employed in most of continental Europe. Under that procedure, motions usually represent stand-alone alternative bills, and voting proceeds sequentially, one-by-one, until one motion gains a majority and is selected (in which case the remaining motions are not considered anymore).

Assuming a one-dimensional policy space, only amendments that propose to strengthen a bill theoretically qualify as potential killers: they kill by transforming a proposed new bill into one that is too extreme for its moderate supporters. But, in the standard model of strategic voting with complete information, killer amendments should never be successful if the amendment procedure is used: the proponents of the original bill, who presumably have a majority (otherwise the amendment cannot be said to "kill" the original) can foresee that the amended bill will lose against the status quo and, hence, they should vote against it in the first place, leading to its defeat and to the subsequent adoption of the original bill.

Indeed, clear empirical evidence documenting successful killer amendments is scant (see Wilkerson 1999; Jenkins and Munger 2003; Finocchiaro and Jenkins

[1] Pedersen (2014) contains a rare case from outside the United States. The Danish parliament described there also uses an amendment procedure.

2008; Groseclose and Mylio 2010). Jenkins and Munger (2003) note that most such cases are special because the proponents of the original bill do not want or cannot vote against the killer amendment (even if they do understand the strategic implications) because of the "wrong" signal doing so sends to their constituents. Such behavior is related of course to the phenomenon of "home style".[2]

We first offer several theoretical insights into the role of agendas in determining the killer amendments' likelihood of success. The purpose is to understand the rather puzzling nature of a sophisticated motion-proposing and agenda-setting strategy employed in 1928 by the Nazi Party, NSDAP, during the (still) democratically governed Weimar Republic. Its purpose was to "kill" a motion of toleration that would have allowed the new coalition government to continue in office without expressing confidence in it. The extreme right-wing Nazis were supported in their endeavor by their fiercest enemies on the extreme left, the much larger Communist Party (KPD). The NSDAP introduced a killer amendment to significantly strengthen the toleration motion proposed by the governing parties. The NSDAP's motion declared full confidence in the government, and it was obvious to all that the NSDAP was going to vote against its own proposal!

Since the Weimar Reichstag used the successive procedure with a very specific, standard agenda-setting process whereby the more extreme motion is put to vote first, our theoretical insights clearly suggest, at least at first sight, that the NSDAP's move was completely futile. We prove that such an agenda theoretically protects against killer amendments even in environments with considerable uncertainty about preferences (and, hence, substantial uncertainty about the final outcome of the vote).[3]

[2]See, for example, Fenno (1978) and Denzau, Riker and Shepsle (1985).

[3]Since procedural rules in many European countries lead to similar agendas, our insight provides an additional rationale for the empirical rarity of killer amendments in those coun-

Even more puzzling is NSDAP's support for the Reichstag's standard agenda (which they proposed themselves in the case at hand), while their opponents in the government coalition were in favor of a different agenda - one that, at least theoretically, leads to positive chances of success for killer amendments. If the original, more moderate proposal rather than the amendment is put to vote first (as suggested by the coalition opposing the NSDAP) then its rejection leads to a second-stage vote between the killer motion and the status quo. Under such an agenda we show that killer amendments **can** be successful even if legislators vote **sincerely**.

In addition, we show that successful killer amendments can occur in both successive voting and amendment procedures if legislators vote strategically, and if information is incomplete about others' preferences: if the original proposal is put to vote first in a successive voting procedure, the second-stage vote between the killer motion and status quo induces, from the point of view of incompletely informed agents, an uncertain outcome that might be preferred by both proponents of the killer amendment and proponents of the status quo. Thus, a coalition of legislators from opposite ideological extremes, proponents of the status quo and proponents of the killer motion, can together defeat the original proposal.[4]

In order to explain the above puzzles and, in particular, to understand why the Nazi motion posed a significant threat nonetheless, we highlight an underlying ambiguity in the Weimar constitution. The potential killer motion ultimately failed because of another sophisticated counter-move pertaining to the agenda, undertaken by the social democratic Reichstag president. The fascinating series of moves and counter-moves and the associated debate provide an excellent illustration of Riker's (1986) famous "heresthetics".

tries.

[4]It is worth recalling here that Poole and Rosenthal (1997) actually test for the occurrence of such coalitions as a proxy for political "manipulations" involving insincere voting.

Finally, we would like to stress that both our theoretical and empirical analysis assume single-peaked preferences, wherein a Condorcet winner always exists. Thus, we are not relying on the presence of a Condorcet paradox, whose well-known difficulties often have been associated with the analysis of strategic manipulations in voting situations, including killer amendments.

2 Agenda formation in the Reichstag

The German Reichstag inherited successive voting as its standard decision-making procedure from the revolutionary French National Assembly. The main level of strategic interaction in the Nazi amendment case studied below pertained to the rules of agenda formation. It was well known from regional German parliaments (such as the important Prussian one) that agenda formation - the order in which alternatives are put to vote - is of crucial importance, and that some orders are "better" than others (see, for example, the lucid, early treatments in Trendelenburg 1850[5]and Tecklenburg 1914, along with the modern legal review by Thiele 2008). Agenda formation nominally fell under the jurisdiction of the parliament's president, who consulted with the Elders' Council. The main principle guiding agenda formation was

The farthest − reaching alternative first,

where distance is measured from an agreed-upon status quo. In cases of strong objections, the agenda itself sometimes was subjected to a majority vote in the plenum, as we shall see below.

Note that the above rule is not purely procedural: the political contents of

[5]Adolf Trendelenburg, 1802-1872, was a well known philosopher, member of the parliament of Prussia and of the American Academy of Arts and Sciences. His lecture is the oldest essay specifically dealing with agenda formation in the successive voting procedure. It precedes the slightly better known work by Hecksher (1892).

the motions must be taken into account. In addition, the rule implicitly assumes a one-dimensional issue space along which the alternatives can be ordered linearly and "distances" measured. This principle suggests, in particular, that if an amendment strengthens a bill, the amendment should be voted upon **before** the bill itself.

Other legislatures use procedural agenda formation rules under which the contents of motions play a minor role. For example, a common use of the amendment procedure requires all proposals and amendments to be considered before the status quo, which is kept for a final vote against the unique other alternative that prevailed in the binary votes up to that step. Although both the successive procedure with an agenda, such as the one used by the Reichstag, and the standard amendment procedure keep the status quo last, they nevertheless may yield quite different strategic incentives. In order to understand their consequences for the potential success of killer amendments, we now turn to a brief theoretical review.

3 Agendas, information and killer amendments

We consider a situation with three alternatives, a status quo **S**, a proposal **P** and, potentially, an amendment, **A**, to **P**. We call **A** a *killer amendment* if it is proposed by a voter (or group of voters) valuing it **less** than the other alternatives: its only purpose is to increase the chances that a more preferred alternative from the proposers' point of view is selected. We say that a killer amendment is *successful* if it changes the outcome of the vote to an alternative that is preferred by the proposer of the killer amendment.

We order the alternatives from left to right as[6]

$$\mathbf{S} - \mathbf{P} - \mathbf{A}$$

We assume that each voter has single-peaked preferences over that order, and that every feasible single-peaked preference profile according to that order has, a-priori, a strictly positive probability. Note that the ordering and its equivalent reverse one are the only relevant ones for the purpose of our study: proposal **P** is relatively centrist, and the killer motion **A** strengthens it in a way that may make it too extreme for **P**'s moderate supporters. Those supporters ultimately may prefer the status quo over the extreme bill. The opposite move, weakening a bill by bringing it closer to the status quo (yielding, say, the order $\mathbf{S} - \mathbf{A} - \mathbf{P}$) makes it actually less likely that the status quo prevails and, hence, cannot serve as a killer amendment to proposal **P**.

Let us now discuss specific settings wherein we vary the informational setting, the voting procedure, the agenda or the behavioral assumption.

3.1 Sophisticated voting under complete information

In a binary, sequential procedure each vote is taken by (a possibly qualified) majority among two or more, not necessarily disjoint, subsets of alternatives. In the benchmark complete information case, the associated extensive form voting games can be solved by backward induction: at each stage voters foresee the alternative that will be finally selected (this is the so-called "sophisticated equivalent"), thus reducing each decision to a vote between two alternatives. If a simple majority is used at each stage, then, whenever it exists, a Condorcet winner is selected by sophisticated voters independently of the particular structure of the sequential binary voting tree, and independently of the agenda. If a Con-

[6] The reverse order is logically equivalent.

dorcet winner does not exist, then a member of the Condorcet cycle is selected. See Farquharson (1969), Miller (1977), McKelvey and Niemi (1978) and Moulin (1979), among others, for important contributions.[7] Thus, as long as a Condorcet winner exists, under complete information standard equilibrium theory **cannot** differentiate among different voting procedures and different agendas, and it cannot explain why particular agendas are used more often than others. In particular, it cannot explain the prevalent use of the "farthest-reaching alternative first" rule used by the Reichstag.

Since we assume single-peaked preferences, a Condorcet winner exists and it will be selected under sophisticated voting with complete information. After the introduction of amendment **A**, the Condorcet winner will either remain unchanged, **P** or **S**, in which case **A** has no effect, or **A** becomes the Condorcet winner, in which case it does not benefit the proponents of **S**.[8] Therefore, strengthening **A** would never be proposed by a proponent of status quo **S**, and **A** thus cannot be a killer amendment.[9]

3.2 Sincere voting

Another important behavioral assumption that has attracted much attention in the literature (and which is very different from backwards-induction based, sophisticated voting) is *sincere* voting. Sincere voting in the amendment procedure calls for an agent to vote in favor of the alternative that is the more preferred of two that are put to vote at each stage. Sincere voting in the successive procedure calls for an agent to vote in favor of a proposal if and only if it is the most preferred of all remaining options. Voting sincerely is completely myopic and therefore does not require making assumptions about the information

[7]

[8] Note that with single-peaked preferences, a voter with peak on **S** ranks **A** last.

[9] More generally, even if preferences are not single-peaked, Enelow and Koehler (1980) showed that killer amendments can never be successful under sophisticated voting with complete information.

or the preferences held by other agents.

Assume then that voting is sincere and consider first the amendment procedure. Two cases are possible: (1) A majority of agents' preferences are peaked on **A**. Then **A** wins even against the status quo, and it is not a killer amendment; (2) If no such majority exists, **A** must lose against the more moderate alternative **P** and, hence, the amendment cannot be successful. In either case, it cannot be beneficial for an opponent of **P** to propose **A**. To conclude, in the amendment procedure with single-peaked preferences, a killer amendment **cannot** be successful even if voting is sincere.[10]

In marked contrast, we show below an example wherein the killer motion in a successive procedure splits the votes of the supporters of a new bill and may therefore succeed.

Example 1 (Successful killer amendment in a successive procedure with sincere voting)**.** *Suppose that three voters have the following preference realization:*

$$\textit{Voter 1: } \mathbf{S} \succ \mathbf{P} \succ \mathbf{A}$$

$$\textit{Voter 2: } \mathbf{P} \succ \mathbf{S} \succ \mathbf{A}$$

$$\textit{Voter 3: } \mathbf{A} \succ \mathbf{P} \succ \mathbf{S}.$$

The profiles are single-peaked with respect to the assumed order $\mathbf{S} - \mathbf{P} - \mathbf{A}$*. Given those preferences, sincere voting in a binary vote between* $\boldsymbol{S}$ *and* $\boldsymbol{P}$ *leads to* $\boldsymbol{P}$ *being selected. Suppose now that voter 1 proposes amendment* $\boldsymbol{A}$*, which she ranks lowest. Consider the successive procedure shown in Figure 1, wherein the first vote is whether to select* $\boldsymbol{P}$ *and the second is whether to select* $\boldsymbol{A}$**.** *That particular agenda does not satisfy the principle "the farthest-reaching alternative*

[10]The conclusion also follows more generally form Proposition 1 in Miller (1977): similarly to sophisticated voting, sincere voting in the amendment procedure always selects an element in the Condorcet set (which contains a unique element in our setting with single-peaked preferences).

first" (used, for example, by the Reichstag) since the moderate alternative ***P*** *(in the order reflecting single-peakedness) is put to vote before the more extreme amendment. Under sincere voting,* ***P*** *is rejected because voters 1 and 3 sincerely vote against it. The status quo* ***S*** *then prevails at the second stage because voters 1 and 2 vote against* ***A****. Hence, if we assume sincere voting,* ***A*** *is here a successful killer amendment: it changes the outcome from* ***P*** *to* ***S*** *and that is beneficial to voter 1 who proposed it. Note that sincere behavior is* ***not*** *a complete information equilibrium here, i.e., it is not sophisticated: if voter 3 changes her vote at the first stage and votes in favor of* ***P,*** *then that alternative gets selected, voting stops, and the outcome is preferred to* ***A*** *from the point of view of voter 3.*

Figure 1 around here.

3.3 Sophisticated voting under incomplete information

Kleiner and Moldovanu (2017) introduced incomplete information to the study of binary sequential procedures when agents have single-peaked preferences.[11] They generally assume that agents know their own preferences, but do **not** know others' preferences. An *equilibrium* is a responsive, perfect Bayesian equilibrium.[12]

Kleiner and Moldovanu identified an important set of agendas, called *convex,* such that the sophisticated equilibrium under incomplete information turns out to be sincere voting! Under incomplete information, sophisticated equivalents and backward induction cannot be used in a straightforward manner:

[11] The article represented a significant generalization with respect to the standard literature on binary sequential voting that almost invariably assumes complete information. Important previous studies assuming incomplete information are Ordeshook and Palfrey (1988) and Gershkov et al. (2017).

[12] Responsiveness is a very mild equilibrium refinement whose main role is to rule out equilibria where other strategies become optimal because they do not actually matter, for example, because all other voters always vote for the first motion.

equilibrium behavior is determined by a combination of Bayesian inference and pivotality considerations.

Convexity says that each of the Yes/No votes in the sequence of binary choices must be between two sets of alternatives such that each of them covers a well-defined, coherent segment of positions (i.e., without holes) in the respective ideological spectrum. Formally, if two alternatives a and c belong to the left (right) subset of alternatives voted upon at a given node, then any alternative b such that $a < b < c$ (in the order reflecting single-peakedness) also belongs to the left (right) subset.

An agenda for the amendment procedure will satisfy convexity if the pairing at each stage is such that the most "extreme" alternatives (among those not yet rejected) compete against each other at each round of voting. An agenda for the successive procedure will satisfy convexity if, at each stage, the considered alternative is one of the two most extreme remaining ones. Thus, the Reichstag's rule, which calls for voting on the farthest-reaching alternative first, clearly satisfies convexity!

Kleiner and Moldovanu showed that sincere voting constitutes an ex-post perfect equilibrium in any voting game derived from a sequential, binary voting tree with any convex agenda. In other words, sophisticated voting invariably coincides in that case with sincere voting, and voters cannot gain by manipulating their selections, regardless of their beliefs about others' preferences and of the information disclosure policy along the voting sequence. An important corollary is that, if simple majority is used at each stage in the voting tree, the equilibrium outcome of the incomplete information game induced by any binary, sequential voting procedure, by any convex agenda and by any information disclosure policy always is the Condorcet winner. If the agenda is convex, we obtain immediately that:

Proposition 1. *A killer motion is never successful in the equilibrium of a successive or amendment voting procedure with a convex agenda.*

Proof. Theorem 1 in Kleiner and Moldovanu (2017) implies that sincere voting is the equilibrium and that the Condorcet winner always is selected in equilibrium. However, either (i) **S** or **P** is the Condorcet winner, in which case the amendment **A** will be rejected and proposing **A** does not change the outcome of the vote; or (ii) **A** is the Condorcet winner, in which case it will be selected even though it is preferred the least by the proponents of **S**. Therefore, in either case proposing the killer motion does not change the outcome of the vote to an alternative that is preferred by a proponent of **S**. □

That result applies directly to the agenda formation rule used by the Reichstag. Also, Proposition 1 implies that if the first vote in an amendment procedure is between **S** and **A** (the two extremes), the killer amendment cannot be successful.

In contrast, non-convex agendas drive a wedge between sincerity and sophistication, which is a source of institutional instability since parliamentarians then need to choose between "voting according to their consciences" and exploiting strategic opportunities (the latter may be difficult to explain to constituents).

We show below that killer amendments can be successful in equilibrium under asymmetric private information if the agenda is not convex. Thus, incomplete information opens a door for killer amendments even if preferences are single-peaked!

Example 2 (A successful killer amendment for successive procedure under incomplete information and sophisticated voting)**.** *Consider again the example above using the successive procedure shown in Figure 1b, but assume now that each voter values his most preferred alternative by 1, his least preferred alter-*

native by 0, and his second-ranked alternative by $0 \leq v \leq 1$.[13] *Recall that sincere voting was not an equilibrium under complete information and that a killer amendment could be successful in a successive procedure with sincere voting. Interestingly enough, we show that under incomplete information sincere voting constitutes a (sophisticated) equilibrium if* v*, the value voters assign to their second best alternative, is small enough. Suppose that the ex-ante distribution of preferences is independent and is such that each voter has a peak at* $\boldsymbol{S}$ *(*$\boldsymbol{A}$*) with probability* $p_{\mathbf{S}}$ *(*$p_{\mathbf{A}}$*), has preference* $\mathbf{P} \succ \mathbf{S} \succ \mathbf{A}$ *with probability* $p_{\mathbf{PS}}$ *and preference* $\mathbf{P} \succ \mathbf{A} \succ \mathbf{S}$ *with probability* $p_{\mathbf{PA}}$*.*

We now show that sincere voting is an equilibrium. Voting sincerely at the second stage, when only two alternatives remain, clearly is optimal. Consider then the first stage, and recall that, under sincere voting, each voter votes for $\boldsymbol{P}$ *at the first stage if and only if that is her most preferred alternative. Conditional on being pivotal, the expected utility of a voter with peak on* $\boldsymbol{S}$ *who votes for* $\boldsymbol{P}$ *is* v*, while his conditional expected utility from voting against* $\boldsymbol{P}$ *equals the probability of* $\boldsymbol{S}$ *winning against* $\boldsymbol{A}$ *conditional on exactly one voter having a peak on* $\boldsymbol{P}$*. That probability equals* $c_1 = \frac{p_{\mathbf{S}}}{p_{\mathbf{S}}+p_{\mathbf{A}}} + (1 - \frac{p_{\mathbf{S}}}{p_{\mathbf{S}}+p_{\mathbf{A}}})\frac{p_{\mathbf{PS}}}{p_{\mathbf{PS}}+p_{\mathbf{PA}}}$*. If* $v \leq c_1$ *sincere voting is a best response for a voter with peak on* $\boldsymbol{S}$*. Clearly, it also is a best response for a voter with peak on* $\boldsymbol{P}$ *to vote for* $\boldsymbol{P}$*. Finally, conditional on being pivotal, the expected utility for a voter with peak on* $\boldsymbol{A}$ *when he votes for* $\boldsymbol{P}$ *equals* v*. Voting against* $\boldsymbol{P}$ *instead yields* $c_2 = \frac{p_{\mathbf{A}}}{p_{\mathbf{A}}+p_{\mathbf{S}}} + (1 - \frac{p_{\mathbf{A}}}{p_{\mathbf{A}}+p_{\mathbf{S}}})\frac{p_{\mathbf{PA}}}{P_{\mathbf{PA}}+p_{\mathbf{PS}}}$*. To conclude, if* $v \leq \min\{c_1, c_2\}$ *sincere voting is indeed an equilibrium and, hence, the killer amendment can succeed.*

It is common for legislatures that use the amendment procedure to keep the status quo for the last stage. Such a practice, wherein the first vote would be between $\mathbf{P}$ and $\mathbf{A}$, yields a non-convex agenda and makes the amendment

[13] Some cardinalization is needed here because, under incomplete information, lotteries among alternatives also must be considered in some cases.

procedure potentially susceptible to successful killer motions, as illustrated in the following example.

Example 3 (A successful killer amendment under incomplete information and sophisticated voting)**.** *We continue to assume that preferences are single-peaked with respect to the order* $\mathbf{S}-\mathbf{P}-\mathbf{A}$ *and that voters assign a value to their most-preferred alternative of 1, their least-preferred alternative of 0, and their middle-ranked alternative of* v*. Suppose that preferences are distributed identically and independently across voters and each preference has strictly positive probability.*

Consider an amendment procedure in which the first vote is between $\boldsymbol{P}$ *and* $\boldsymbol{A}$*, as illustrated in Figure 2. Suppose that the following strategies are played: voters with a peak on* $\boldsymbol{P}$ *vote for* $\boldsymbol{P}$ *in the first vote, while voters with a peak on* $\boldsymbol{S}$ *or* $\boldsymbol{A}$ *vote for* $\boldsymbol{A}$*; in the second vote, every voter votes sincerely. Suppose* $\boldsymbol{P}$ *is the Condorcet winner, but less than half the voters have a peak on* $\boldsymbol{P}$*. Clearly,* $\boldsymbol{P}$ *would get selected in a binary vote against* $\boldsymbol{S}$*. However, under the proposed strategies* $\boldsymbol{A}$ *will win in the first vote and the killer amendment will be successful whenever* $\boldsymbol{S}$ *wins against* $\boldsymbol{A}$*.*

We argue that the proposed strategies form an equilibrium whenever v *is small enough. Voting for* $\boldsymbol{P}$ *clearly is a best response for voters with peak on* $\boldsymbol{P}$*: conditional on being pivotal, a majority has a peak on* $\boldsymbol{P}$*, which therefore will be selected in the second vote. Also, note that the chances of* $\boldsymbol{S}$ *winning against* $\boldsymbol{A}$ *are strictly higher than the chances of* $\boldsymbol{S}$ *winning against* $\boldsymbol{P}$*; therefore, a voter with peak on* $\boldsymbol{S}$ *prefers a second stage vote of* $\boldsymbol{S}$ *against* $\boldsymbol{A}$ *if his valuation of* $\boldsymbol{P}$ *is close enough to zero. The argument for a voter with peak on* $\boldsymbol{A}$ *is analogous and the strategies indeed form an equilibrium.*

Figure 2 around here.

Let us conclude this Section with the main lessons that are relevant for our case study:

1. Convex agendas always protect from killer amendments if preferences are single-peaked, no matter what the underlying informational and behavioral assumptions are.

2. Non-convex agendas open the door to potentially successful killer amendments if:

   a) agents vote sincerely in a successive procedure, or if

   b) incompletely informed agents vote according to a (sophisticated) strategic equilibrium in either the successive or the amendment procedure.

4 The vote of confidence on the Müller II cabinet[14]

We are now ready to analyze our case study. The Reichstag elections on May 20, 1928, led to a weakening of the center/conservative parties that formed the previous government, and to increases in the representation of the left-leaning social democrats (SPD) and communists (KPD). The Nazi Party (NSDAP) was represented, but was not of significant size.

Table 1 around here.

Given the extremely fragmented electoral result, coalition formation in order to govern proved to be very difficult. Finally, a rather reluctant "grand" coalition commanding a theoretical majority of 301 seats formed under Chancellor Müller (SPD). Several parties in that coalition (and factions within other parties) were not prepared to take full governing responsibility, nor to award the new government a full vote of confidence. That state of affairs led to a complex voting conundrum, which we describe below.

[14] Müller already served as Chancellor in the past, explaining the suffix "II".

4.1 The constitutional setting

Article 54 of the Weimar Constitution proclaims:

> The Chancellor and the Ministers need the confidence of the Parliament in order to perform their duties.[15] Each one of them must resign if the Parliament withdraws its confidence by an explicit decision.

The second phrase of that article is relatively unambiguous, but the first is not: is confidence assumed to exist until explicitly withdrawn, or does it need to be positively affirmed at the inauguration of a new government?

The initial interpretation of the Article 54 during the Constitutional National Assembly of 1919 was that each new government must obtain an affirmative parliamentary vote of confidence. But the political reality soon forced a new interpretation: if a government could not achieve a majority for a motion of confidence, it instead proposed weaker motions of tolerance. For example, already after the elections for the first regular parliament of the Weimar Republic, the largest party, the SPD, was neither willing to participate in the government nor to award it confidence. The Fehrenbach Cabinet was therefore installed on July 2, 1920, on the basis of an affirmative majority vote on the following motion:

> The Parliament took notice of the Government's declarations made on June 28, 1920. It expects the Government to conduct its policy according to these declarations, in particular concerning the coming negotiations in Spa.[16]

[15] It is a peculiarity of the Weimar constitution that non-confidence motions also could be brought against individual ministers.

[16] Spa is a well-known Belgian resort with thermal springs.

Unfortunately, that pattern became the norm: many other Weimar governments were either minority ones, or were supported by coalitions of many parties divided by deep conflicts.[17] Various factions in those governments were willing to allow the government to continue in office, but not to declare their confidence in an explicit way: governments thus were installed on the basis of various semantic weakenings, similar to the one above. The initial interpretation nevertheless was reaffirmed when the ruling coalition was solid enough: for example, the first Stresemann Cabinet was approved by an unambiguous vote of confidence in 1923.

4.2 The motions

Opposition parties from the far-left (KPD) and from the far-right (DNPV) brought two identical motions of non-confidence. The parties in the newly formed coalition put forward a fairly weak motion of toleration, modeled on examples from the past. Given the coalition's strength (301 out of 491 seats), it was expected that the toleration motion would pass.

Then, the Nazis (NSDAP) brought a motion calling for the Reichstag to express **full** confidence in the Government! It was obvious to all, and even explicitly acknowledged by Dr. Wilhelm Frick, the NSDAP's parliamentary leader, that the motion was not "in good faith", i.e., the NSDAP was not going to vote in favor of its own proposal.

Such manipulation was not unprecedented: in 1924, the *Elders' Council*, a group of experienced members representing all major parties and responsible for the procedural management of the Reichstag, voted by majority not to even consider a similar NSDAP motion. But in 1928, the Reichstag's president Paul Löbe (SPD) allowed the NSDAP's motion to be submitted to the Council, which

[17] The Weimar Republic had 20 cabinets (and 13 chancellors) in less than 14 years. Ten of these governments had no majority support in parliament. See, for example, Winkler (1993).

could not find constitutional or legal reasons to exclude it. Thus, on July 5, 1928, the Reichstag was confronted with the following 4 proposals:

1. Motion 148: "The Government does **not have the confidence** of the Reichstag" (**NC1**). The motion originated from the opposition (far) left Communist Party (KPD).

2. Motion 155: "The Government does **not have the confidence** of the Reichstag" (**NC2**). This proposal, identical to the previous one, came from the (far) right-conservative DNVP, the biggest party in opposition.

3. Motion 159: "The Reichstag approves the Government's declarations and tables all other motions" (**T**). That was s the weak form of **toleration**, proposed by the parties forming the new governing coalition, led by the SPD.

4. Motion 175: "By tabling all other motions, the Reichstag expresses its **confidence** in the Government" (**C**). The proposal was submitted by the NSDAP.

Motion **C** is a killer motion: it strengthens motion **T** in a direction that was considered, but ultimately considered unachievable by the coalition, and it arguably was the worst alternative for the NSDAP, which proposed it and which wanted to topple the government.

As we shall see below, the duplication of the non-confidence motions coming from the far-left and from the far-right did not play a role in the sequel, and, for simplicity, we shall combine them in what follows into one non-confidence motion, called **NC.**

While we cannot "prove" assertions about the private preferences of the Reichstag's members, the historical evidence clearly indicates that the members of the leading faction in the government, the SPD, had the preference ranking

C≻T≻NC, while other, more conservative members of the coalition had a preference ranking with **T** in the first place, but with some uncertainty about the relative order of **C** and **NC** below **T**. Finally, the opposition parties from the far left and the far right, maybe with the exception of the Wirtschaftspartei (WP), had the preference ranking **NC≻T≻C**.[18] Note that all such preferences are single-peaked according to the order **C - T - NC** or it reverse.

4.3 The NSDAP's agenda proposal

As mentioned above, if a motion strengthens a bill, the Weimar agenda formation rules called for that motion to be voted upon **before** the bill itself. Since **C** obviously strengthened **T**, out of the six possible orderings of three alternatives, only four are consistent with the "farthest-alternative first principle", which simply means here that **T** cannot be voted upon first:

A1: NC-T-C

A2: NC-C-T

A3: C-T-NC

A4: C-NC-T

Since everyone agreed that **NC** should be voted upon last,[19] the unique remaining agenda consistent with the farthest-alternative first principle was

A3: **C-T-NC**.

With impeccable logic following the standard principle of agenda formation,

[18] The Wirtschaftspartei (WP) mainly focused on economic interests of landlords. Its members abstained in all relevant decisions pertaining to the case being considered.

[19] The logic is not completely transparent here. President Löbe argued that both **C** and **T** contain the tabling of other motions and thus needed to be voted on before **NC**.

Dr. Frick (NSDAP) indeed presented a motion to adopt agenda **A3**. In the ensuing procedural debate, his motion was supported strongly by the speakers of the other extreme parties on the far-left and on the far-right, the KPD and the DNVP, respectively. Both of those parties actually submitted motions of no confidence!

Recall that convex agendas such as **A3 always** block killer amendments, no matter what the underlying informational or behavioral assumptions are. In contrast, non-convex agendas open the door to potentially successful killer amendments. Why did then the NSDAP then bother to introduce a killer amendment in conjunction with a convex agenda that is immune to it?

For an explanation we have to consider carefully the institutional background. In a normal voting situation according to the successive procedure with agenda **A3**, a defeat of **C** simply would lead to a vote between **T** and **NC.** Here, however, a negative vote on the confidence motion could be interpreted as an expression of no-confidence and could have led, with substantial probability, to an imminent fall of the government. Given the ambiguity in the Constitution itself, contemporary legal opinion did not *de jure* equate the defeat of a confidence motion to the acceptance of a motion of no-confidence. While the government might have had no legal duty to resign after the defeat of a confidence motion, *de facto* a scenario wherein the government's fall was likely.[20] Indeed, in a similar case from 1923, the second Stresemann Cabinet did not survive the defeat of a confidence motion: at least at that time, the defeat was seen as the "equivalent to a vote of non-confidence" (see Huber 1981, p. 334).

Thus, by combining a strategic motion not in good faith with a proposal

[20] According to the post-National-Assembly interpretation of Article 54, a cabinet nominated by the republic's president (after consultations with the parties) has parliament's confidence until "factually" proven otherwise (see Huber 1981, p. 333); the question was whether defeat of a motion of confidence constituted factual proof or not.

for a very specific agenda (which otherwise was consistent with the standard procedure!) the NSDAP found a way to transform the situation from an initial binary vote between **T** and **NC** (expected to be won by **T**) into a vote between **C** and a future, uncertain alternative containing a probable component equivalent to **NC**. Even if **C** had been adopted, such an outcome would count as a major embarrassment for the reluctant parties in the coalition who would the be hard-pressed to explain to their supporters what happened. And would those parties actually vote for **T** and save the government after a formal and public rejection of **C**?

The foregoing is the classic logic of a killer amendment: the uncertain outcome induced by the NSDAP's move was, in any case, worse than **T** from the point of view of the governmental coalition.

4.4 The countermove

Our theoretical analysis of killer motions in successive voting procedures with convex agendas (see Proposition 3.3), which suggests that a killer amendment cannot be successful, does not apply here because the situation described above violated an important principle underlying that voting procedure: normally alternatives are seen as mutually exclusive, and the defeat of one proposal does not affect the feasibility of all other alternatives. In the present case, the scenario was different: the killer motion was seen as potentially dangerous since it affected the feasibility of alternative **T**.

Our analysis suggests that the coalition led by the SPD had to do something in order to save **T**. That logic did not escape Reichstag President Löbe (SPD), who, probably after consulting the Elders' Council during the intervening night, proposed a different voting agenda:

Agenda **B**: **T-C-NC**

It is important to note that the president's agenda, wherein the more moderate motion **T** was voted on **before** the two extremes, is **not** convex and, thus, it also was not consistent with the Reichstag's traditional principle of agenda formation "farthest-reaching motion first". Moreover, such an agenda is, at least theoretically, susceptible to attacks by killer motions.

Protests by the NSDAP, KPD and DNVP against that - in their opinion - blatant breach of tradition were countered by Löbe, who noted dryly that the Reichstag's Standing Orders (i.e., formal rules of procedure) did not explicitly mention a specific agenda formation rule; hence, the house was free to select its agenda on an ad-hoc basis.

The anticipated outcome of a vote according to Agenda **B** was, of course, the acceptance by the governing coalition of **T** at its first step, the tabling of the other motions, and the installment of the new government. Thus, Löbe countered the potentially fatal killer amendment by another surprising move that necessitated the strategic abandonment of a relatively long-standing and eminently sensible tradition of agenda formation.

4.5 The vote's outcome

The first vote was procedural, on the agenda itself: the Reichstag was called to vote on the NSDAP's proposal **A3**. In case of rejection, agenda **B,** suggested by the Reichstag's president, was to be used.[21] Thus, the procedural binary

[21] Austen-Smith (1987) looks at a sequential agenda formation game when the agenda is built sequentially while motions are being proposed. Here, motions also were sequentially presented, but a vote to choose among different agendas was undertaken only after all motions had been presented. See also Dutta et. al (2004) and Barbera and Gerber (2017) for other games of endogenous agenda formation.

vote was between:

Agenda **A3**: **C-T-NC**

Agenda **B**: **T-C-NC**

The predictions based on the previous analysis should be clear: The coalition parties should oppose the NSDAP's agenda **A3**, while the extreme parties on the left and on the right, who were interested in bringing the government down (or, at least, to embarrass and further split the coalition) should vote in its favor.

Agenda **A3** was defeated by 266 No votes to 131 Yes votes (with 24 abstentions), and the Reichstag moved to the substantial vote of confidence according to Agenda **B**.

Again, the predictions are clear: The coalition parties should approve motion **T**, while the extreme parties on the left and on the right should vote against it.

The toleration motion **T** was approved by 261 Yes votes versus 134 No votes (with 28 abstentions), which also implied that voting on further motions was suspended. The individual voting patterns are available to us in disaggregated form: Table 2 presents the voting of the main parties (**coalitions in bold**). It is plain to see that the data fully agree with our theoretical predictions.

Table 2 around here.

Note, in particular, the identical voting profiles from the extreme left (KPD, the Communist Party) and the right/extreme right parties, including the Nazi party (NSDAP).

5 Discussion

The case study examined herein illustrates a more general pattern observed earlier in the literature. Although killer amendments produce interesting strategic situations, legislative majority leaders typically have at their disposal agenda setting tools that neutralize their effects. In addition, parliamentary rules evolve over time and ambiguities that may be used to facilitate behavior "not in good faith" get resolved. An attempt to correct the core ambiguity in Article 54 of the Weimar Constitution - one of the main causes underlying the strategic wrangling described in the present paper - was made before (see Bilfinger 1931). The Standing Orders governing the functioning of the Reichstag were modified to include:

> A motion to determine whether the Chancellor, the Government or single Ministers have the confidence demanded by Article 54 or not, may only be brought as "The Reichstag withdraws its confidence in the Chancellor (Government, Minister)"

Under the new rule (interpreting Article 54 in a specific way) it became clear that the defeat of a positive motion of confidence is **not equivalent** to the passing of a motion of no-confidence - the latter, and **only** the latter, could bring the government down.

The new constitution of the German Federal Republic (BRD) went one step further. A major change to the Weimar Constitution concerned the article regulating motions of no-confidence. While the old Weimar Article 54 enabled "destructive" motions whereby the government can be toppled by "unholy" alliances of both extremes of the political spectrum (such as the one seen at work in our case), who were neither willing nor able to form together a government, the newly relevant Article 67 tightly connects a motion of no-confidence to the

necessary election of a new chancellor/government, and thus to the implied existence of a working majority supporting a new cabinet. It says:

> The Parliament can express non-confidence in the Chancellor only by a majority vote on a successor, and by asking the President to fire the old Chancellor. The President must accept this request, and nominate the newly elected person.

The two modern German houses of parliament, the Bundestag and the Bundesrat, remain free to choose their agendas, but the farthest-reaching alternative first principle now is mentioned explicitly in the Standing Orders of the Bundesrat and is indeed employed in both houses in most relevant cases (see Kleiner and Moldovanu 2017, for several illustrations). In addition, overruling an agenda proposed by the Elders' Council now requires a two-thirds supermajority.

6 Epilogue

Most NSDAP members of the Weimar Reichstag became important figures in the later Nazi regime. Wilhelm Frick, their parliamentary leader and mastermind behind the just described strategic manipulation, became Hitler's minister of interior. He was hanged in 1946, following the Nürnberg trials. Josef Goebbels, Hitler's propaganda minister, committed suicide with his wife, after taking the lives of their six children, in Hitler's Berlin bunker. Hermann Göring, Hitler's head of the Air Force, committed suicide after the Nürnberg trials, avoiding the already imposed death sentence by hanging.

The communist members of the Reichstag surely came to regret their opportunistic alliance with the Nazis with the purpose of destabilizing the government and the young Republic. Both Walter Stoecker and Ernst Thälmann, their parliamentary leaders before and after 1929, respectively, died in the Buchenwald

concentration camp. A similar fate awaited a majority of their colleagues, while some others managed to escape to the Soviet Union - only to be later murdered there during the Stalinist purges.[22]

The social-democratic Reichstag president Paul Löbe opposed the Nazi regime and was imprisoned several times (including being sentenced to the Groß-Rosen concentration camp until 1945). Nevertheless, following the personal intervention of Hitler, he continued to obtain a government pension until the end of the war.

The chronic instability of governments during the Weimar Republic contributed to its fall, and to the subsequent horrors of the Nazi dictatorship and WWII. Some of the lessons of the past have been learned. It remains to be seen how well the modern institutions will work within a fragmented political spectrum.

Acknowledgements

We wish to thank Mimoza Beciri and Udo di Fabio for very detailed and helpful legal remarks, and to Harald Uhlig for his comments.

7 Appendix: The parties in the Weimar parliament

KPD: Kommunistische Partei Deutschlands, the communist party on the far left, in opposition.

SPD: Sozialdemokratische Partei Deutschlands, the social democrats on the moderate left; the biggest and most influential party in the coalition.

DDP: Deutsche Demokratische Partei, a centrist party in the coaliiton.

[22] A few surviving communist members of the Reichstag, such as Walter Ulbricht, became top political figures in the post-WWII German Democratic Republic.

Z: Zentrum, another centrist party in the coalition.

BVP: Bayersiche Volkspartei, a regional Bavarian center-right party in the coalition.

DVP: Deutsche Volkspartei, a conservative party on the right, also in the coalition

WP: Wirtschaftspartei, a conservative opposition party, mainly representing urban landlord interests.

DNVP: Deutschnationale Volkspartei, a nationalistic, right wing party leading the opposition.

CNBL: Christlich-Nationale Bauern- und Landvolkpartei, a right wing party in opposition, mainly representing agricultural/rural interests.

NSDAP: Nationalsozialistische Deutsche Arbeiterpartei, the Nazis, an extreme right wing party in opposition.

References

[1987] Austen-Smith, D. (1987). Sophisticated sincerity: voting over endogenous agendas, *American Journal of Political Science* **36**: 68–95.

[2017] Barbera, S. and Gerber, A. (2017). Sequential voting and agenda manipulation, *Theoretical Economics* **12** : 211–247

[1931] Bilfinger, C. (1931). Die Geschäftsordnung der Reichstags und die Grenzen der parlamentarischen Systems, *ZaöRV* **2***: 439-454*

[1985] Denzau, A., Riker, W. and Shepsle, K. (1985). Farquharson and Fenno: sophisticated voting and home style, *The American Political Science Review* **79**: 1117–1134.

[2004] Dutta, B., Jackson, M. O., and Le Breton, M. (2004). Equilibrium agenda formation, *Social Choice and Welfare* **23**: 21–57.

[1980] Enelow, J. and Koehler, D. (1980): The amendment in legislative strategy: sophisticated voting in the U.S. Congress, *Journal of Politics* **42**, 396-413

[1969] Farquharson, R. (1969), *The theory of voting*, Yale University Press, New Haven, U.S.A.

[1978] Fenno, R. F. (1978). *Home style*, Little Brown, Boston.

[2008] Finocchiaro, C. J. and Jenkins, J. A. (2008). In search of killer amendments in the modern U.S. House, *Legislative Studies Quarterly* **33**(2), 263-294.

[2017] Gershkov, A., Moldovanu, B. and Shi, X. (2017). Optimal voting rules, *Review of Economic Studies* **84** (2): 688-717.

[2010] Groseclose, T. and Milyo, J. (2010). Sincere versus sophisticated voting in Congress: theory and evidence, *The Journal of Politics*, **72**(1), 60-73.

[1981] Huber, E. R. (1981). *Deutsche Verfassungsgeschichte seit 1789*, Volume 7, Kohlhammer, Stuttgart.

[2003] Jenkins, J. A. and.Munger, M. C. (2003). Investigating the incidence of killer amendments in Congress, *Journal of Politics* **65**, 498-517.

[2017] Kleiner, A. and Moldovanu, B. (2017). Content-based agendas and qualified majorities in sequential, binary voting, *American Economic Review* **107** (6): 1477-1506.

[1977] Miller, N. R. (1977). Graph-theoretical approaches to the theory of voting, *American Journal of Political Science* **21** (4): 769–803.

[1978] McKelvey, R. D. and Niemi, R. G. (1978). A multi-stage game representation of sophisticated voting for binary procedures, *Journal of Economic Theory* **18**: 1–22.

[1979] Moulin, H. (1979). Dominance solvable voting schemes, *Econometrica* **47**: 1337–1351.

[1988] Ordeshook, P. C. and Palfrey, T. R. (1988). Agendas, strategic voting, and signaling with incomplete information, *American Journal of Political Science* **32**(2): 441–463.

[2014] Pedersen, M. N. (2014). A Danish killer amendment - When judicial review was banned from the 1849 Constitution, *Public Choice* **158**: 513-523

[1997] Poole, K. T. and Rosenthal, H. (1997). *Congress: A political and economic history of roll call voting*, Oxford University Press, New York.

[1919] Protocols of the Weimar National Assembly, Sessions 5-6, July 4-5 1928, in *Verhandlungen des Reichtages*, Band **443**: 1928-1929, digitalized by the Bavarian National Library

[1986] Riker, W. (1986). *The art of political manipulation,* New Haven: Yale University Press

[1914] Tecklenburg, A. (1914). Die parlamentarische Beschlussfassung, *Jahrbuch für öffentliches Recht* **8**, 75-99.

[1850] Trendelenburg, A. (1850). *Über die Methode bei Abstimmungen*, Berlin: Gustav Bethge.

[1990] Wilkerson, J. D. (1990). Killer amendments in Congress, *American Political Science Review* **93**, 535-552.

[1993] Winkler, H. A. (1993). *Weimar 1918 - 1933*, München: C. H. Beck.

Party	KPD	**SPD**	**DDP**	**Z**	**BVP**	**DVP**	WP	DNVP	CNBL	NSDAP
Seats	54	**153**	**25**	**61**	**17**	**45**	23	73	9	12

Table 1: The division of the **491** seats, approximately following the left-right political spectrum. The coalition parties are printed in bold.[23]

[23]We omit here 19 seats divided among other four very small parties. Given their long names, it is customary - also today - to denote German parties by their initials. The full names are provided in the Appendix.

Party	KPD	**SPD**	**DDP**	**Z**	**BVP**	**DVP**	WP	DNVP	CNBL	NSDAP
Profile	Y,N	**N,Y**	**N,Y**	**N,Y**	**N,Y**	**N,Y**	Abs., Abs.	Y,N	Y,N	Y,N
Number	48	**136**	**21**	**52**	**16**	**39**	20	65	8	8

Table 2: Vote profiles: first vote on using **A3: C-T-NC**; second vote on motion **T**[24]

[24]In addition there were 6 (No, Abstain) profiles, 4 (Abstain, No) profiles and 2 (Yes, Abstain) profiles, mostly form the very small parties.

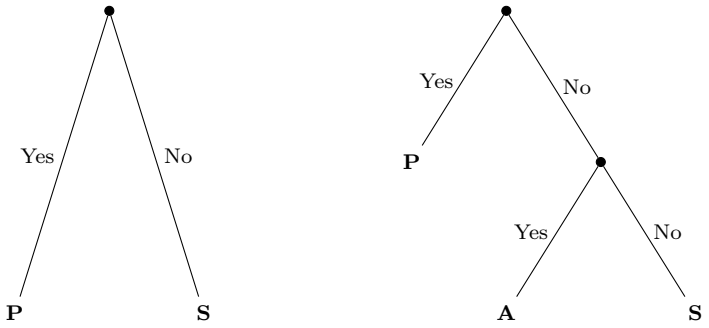

Figure 1: Comparing (a) a simple binary vote between a proposal **P** and status quo **S** with (b) a successive voting procedure in the presence of a killer motion **A**.

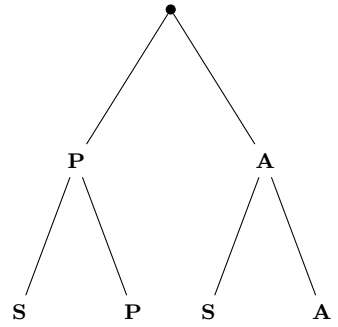

Figure 2: Amendment procedure