



RESEARCH NOTE

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## Free votes and the analysis of recorded votes: evidence from Germany (1949–2021)

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### ABSTRACT

The literature on legislative voting either explicitly excludes free votes from its analysis, does not distinguish them from other recorded votes, or analyses only topic-specific subsets of them. This research note shows all three approaches to be problematic, and argues for a reconsideration of how free votes are approached in the literature. Drawing on a dataset covering all recorded votes in the German Bundestag (1949–2021), and analysing the topics, initiators and voting behaviour on all free votes held, it is shown that free votes are frequent, address a broad range of issues, and display substantial variation in legislative behaviour. Most importantly, there is a strong indication that free votes are held on topics on which parties refrain from taking a position. The findings have substantial implications for the study of parliamentary floor voting.

**KEYWORDS** Free votes; issues of conscience; legislative voting; party unity; Bundestag

Free votes, that is, votes on which there is no official party line which MPs are expected to follow, are a widespread phenomenon in legislatures and pose a substantial challenge in terms of how they are dealt with. Three approaches are found, all of which are problematic. The first two approaches are exemplified by the literature seeking to explain unified party group behaviour (see, e.g. Willumsen 2017) or deviations from this unity (e.g. Sieberer and Ohmura 2021). In this research, free votes are either treated as any other vote (Carey 2007; Rehmert 2020) or identified and dropped from the data (Hohendorf *et al.* 2021; Slapin *et al.* 2018; Willumsen and Öhberg 2017). The first approach assumes that, although one would expect more variation in MP voting behaviour without an

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 Supplemental data for this article can be accessed online at: <https://doi.org/10.1080/01402382.2022.2114651>.

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official party line, free votes are rare enough that treating them like any other vote will not bias our overall understanding of the party-MP relationship. The second approach is based on the (implicit or explicit) argument that floor votes with no party line do not provide insights into the functioning of legislative parties.

The third approach to dealing with free votes in the literature is to study subsets of them, chosen either for their prominence (e.g. Cowley and Stuart 1997) or as a thematic subset, such as abortion (Baughman 2004; Baumann *et al.* 2015a; Overby *et al.* 1998), human fertilisation (Baumann 2018; Baumann *et al.* 2015b; Cowley and Stuart 2010), same-sex marriage (Kauder and Potrafke 2019; Overby *et al.* 2011; Plumb 2015), or stem-cell research (Raymond and Overby 2016). While such research has provided valuable insights into MPs' behaviour, by only studying specific free votes with an explicit moral connotation, the lack of systematic study prevents us from understanding the role played by free votes in legislative politics more generally.

In this research note, drawing on a dataset of all recorded votes in the German Federal Republic (1949–2021), we conduct the first systematic analysis of all free votes held in a legislature. We establish that all three approaches to the study of free votes are problematic. We show, firstly, that free votes are frequent enough to be responsible for a substantial share of variation in floor voting, necessitating their identification when studying floor votes. Secondly, we show that free votes cover a range of topics far beyond 'issues of conscience', meaning that simply focussing on prominent examples of such issues is problematic. Finally, we provide evidence that the decision to declare a free vote is endogenous to parties, and most likely is used to avoid public splits, meaning that free votes provide key insights into the relationship between MPs and their parties.

## Free votes, issues of conscience and legislator behaviour

A free vote is a vote in a legislature for which there is no official party line which MPs are expected to follow (Cowley 1998a). It thus contrasts with a 'normal' vote, where party groups have an explicit position on an issue (a 'party line'), and where failing to support this may result in negative consequences in terms of an MP's career or re-nomination prospects (Bowler *et al.* 1999; Sieberer 2006a).

Treating free votes as qualitatively different from 'normal' votes is usually based on a reference to their being held on so-called 'issues of conscience', to the extent that the two terms frequently are used interchangeably. However, not every 'free vote' deals with an 'issue of conscience' (Jones 1995), and while it is relatively easy to define a 'free vote', defining an 'issue of conscience' is fraught with difficulty. The classic

example of such an issue is one that has a morally charged content, such as questions of first principles or of life and death (Mooney 1999). Implicitly or explicitly, issues of conscience are given special treatment, as different behavioural expectations are argued to apply for such issues. The reason for this centres around the inalienability of one's own conscience as a fundamental prerequisite of any liberal democratic society (Mill 1861). This is not only addressed in philosophical debates, but, importantly for the study of legislative behaviour, is also often codified in constitutions. However, these do not define what is meant by an issue of conscience.

Following Richards' (1970) collection of case studies on issues of conscience Cowley (1998b) provides typical examples of such issues, naming the chapters of his book accordingly: 'Abortion', 'Homosexuality', 'Divorce' etc. Such a 'you know one, when you see one' approach has led many authors to list typical 'issues of conscience' while abstaining from defining them conclusively. The difficulty of actually creating such a definition leads Cowley (1998b: 3) to argue that 'it is impossible to define clearly what we mean by an issue of conscience or a moral issue', a statement with which we fully agree. While issues such as abortion, euthanasia and stem cell research are often understood as 'issues of conscience' and are routinely decided on using free votes, free votes have also been held on topics such as daylight saving time, road safety, and tobacco consumption laws (Lindsey 2008; McKeown and Lundie 2002).

Almost any political issue can be understood as being about morality or life-and-death. Consider healthcare funding: Some people will die that could have lived for any given level of funding – is this not a moral issue, or one of life-and-death? Yet it is not routinely discussed in these terms. At the same time, issues that are often referred to as being ones of conscience can easily be recast in a different light: Is permitting homosexual marriage not merely a question of not discriminating against people based on a characteristic that they cannot change?

Our main argument here is that free votes should not be understood as inextricably linked to 'issues of conscience', but rather as issues which do not integrate well into theories of economic or class interests, the cleavages by which most European parties align themselves. On issues that do not align with party cleavages, putting a topic on the agenda or taking any policy decision is unattractive to parties, which leads to policy stalemate (Green-Pedersen 2007). Voters dislike parties appearing disunited (Greene and Haber 2015), and such disunity is more likely on issues which parties do not compete on, compared to issues such as taxation policy, where parties have clear, long-standing positions and which MPs have based their self-selection into parties on. While parties' lack of positions on certain issues may be driven by their tendency to

be understood as concerning morality, for example abortion, it does not always follow that because a party is divided on an issue that issue is in fact one of 'conscience'.

On issues with substantially greater variety of preferences within a party, the cost of imposing unity on a parliamentary party can easily outweigh the benefits of doing so, in particular when an alternative exists: Claim that an issue is one of conscience, and call a free vote, which allows a party to credibly signal to voters that they are not, in fact, disunited. Since such issues are highly likely to be exactly the type of issue which parties do not compete on for votes, dodging the issue is not electorally costly, in particular for one-off issues which, once voted on in parliament, will no longer be subject to electoral debate. The 2017 free vote in the German Bundestag on marriage equality ('Ehe für Alle') is a good example of this: the CDU/CSU, which was deeply split on this issue, managed to make the issue disappear from the public debate prior to an election, without being perceived to be disunited by the public. While the vote indicated a serious rift in the party, this could be explained to the electorate by it being a free vote on an 'issue of conscience' – in other words, not a 'normal' issue where a split would make it unclear to voters what the party stands for.

Thus, there are strategic incentives for parties to refrain from initiating a discussion, declaring, or even forming a position on contentious issues. As Jones (1995) notes, this allows governments to evade shouldering responsibility for policy decisions being taken. Similarly, Cowley (1998a: 79) notes that '[free votes] allow controversial legislation to be enacted, for which no one takes responsibility'. While we make no claim to be the first to make this point, we provide the first systematic investigation into whether free votes are (primarily) on issues of conscience and whether parties use them to avoid accountability.

If, as we argue, free votes are to a large extent driven by an attempt by parties to avoid taking a stance that could split them or alienate voters, we would expect bills subject to free votes to differ from those decided by 'normal' votes. In particular, such bills would not be initiated by parties as a whole, as is generally the case, but rather by groups of backbenchers, in particular cross-party groups, who take up issues which the party leadership avoids.

Secondly, we expect that within free votes, voting behaviour will differ, with cross-party proposals and proposals originating from groups of individual MPs exhibiting much greater frequencies of votes against the party majority than those free votes held on government or opposition proposals. Thirdly, we expect that dissent is not limited to free votes which touch on 'issues of conscience'. Combined, confirming these expectations would indicate a strong strategic element in parties' decisions to call free votes.

## Free votes in the German Bundestag

We test these expectations using data from the German Bundestag. Articles 21 and 38 of the German Basic Law illustrate the tension between the role of the party in forming the political will and the inalienability of the MP's own conscience. In practice this has led to a rejection of unity through coercion ('Fraktionszwang'), while unity through self-restraint ('Fraktionsdisziplin') is widely accepted as essential to the functioning of parties within parliament (Patzelt 2003). Hence, MPs can act according to their conscience only with the agreement of their party. Free votes in the German Bundestag thus occur when a party does not hold a vote within the party group to determine a common policy position, or when a party was unable to agree on a common position (Bailer 2018).

In the Bundestag, bills can be introduced either by the government, by a parliamentary party group, the majority of the Bundesrat, or a group of MPs comprising at least five percent of MPs (Sieberer 2006b). The more extensive individual legislative rights were reduced in 1969 and 1980 to strengthen party groups and increase efficiency, leading to a parliament with very strong party groups, but, unlike the UK, without a strongly privileged position for the government regarding bill introduction (Ismayr 2001; Sieberer 2006b).

In the history of the German Bundestag 2,424 recorded votes have been held (1949–September 2021).<sup>1</sup> These are, however, only a subset of all the votes held in the Bundestag – only in around five percent of final passage votes are individual voting decisions recorded, with parliamentary party groups and groups consisting of five percent of MPs being able to request such a vote (Sieberer *et al.* 2020). Since requesting such a vote is a political decision, often used to either raise the cost of dissent within a party or to highlight a split in another party, the subset of votes that are recorded is potentially unrepresentative of all votes held, which can lead to biased findings (Hug 2010). While the recorded votes may have higher salience than average,<sup>2</sup> the very fact that they are both more prominent than non-recorded votes and are a function of party competition in the Bundestag makes them a relevant object of study, independently of how representative they are of the population of votes (Bergmann *et al.* 2016).

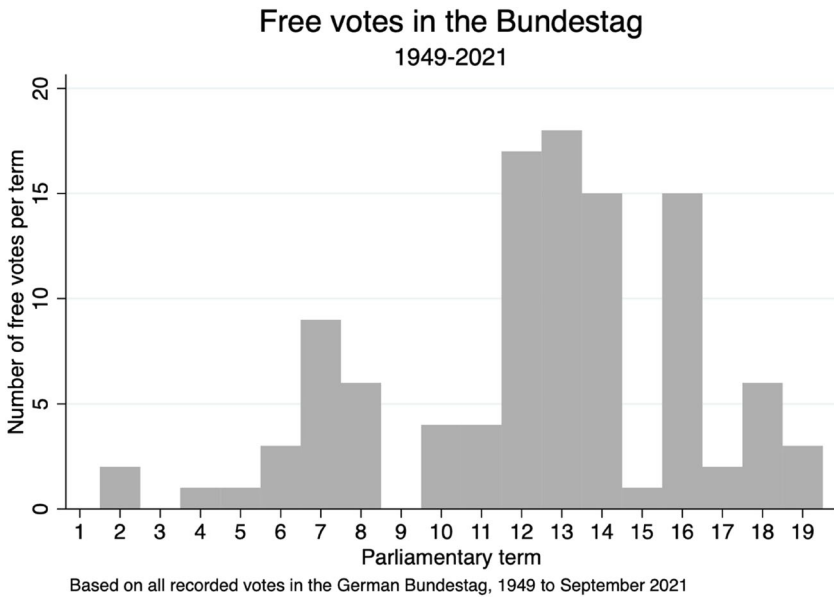
Amongst these recorded votes we have identified 107 free votes.<sup>3</sup> Due to the constitutionally guaranteed free mandate<sup>4</sup> which prevents the use of certain terminology by party leaders, such as 'discipline' ('Disziplin'), it is not possible to identify free votes solely from parliamentary protocols.<sup>5</sup> In some instances, it is mentioned in the plenary that a vote will

be held as an issue of conscience ('Gewissensentscheidung') and there is therefore no party line. Such a statement by politicians, of course, does not mean that the topic to be voted on is, in fact, on an issue that is generally understood to be an issue of conscience, as we show below. In other instances, we identified free votes through media reports. We only coded votes as free votes where at least one government party openly declared to the press or in parliament that there was no party line, and/or that MPs were free to vote their conscience.<sup>6</sup> This does not include a number of instances when small opposition parties (usually the Greens or the Left) argued that a vote should be held as a free vote, but this demand was ignored by government parties.<sup>7</sup> Overall, by coding a vote as free for all parties as long as we identified one government party doing so, we thus took a relatively expansive view of what constitutes a free vote, in order to minimise the risk of failing to identify free votes.<sup>8</sup> As such, our findings are, if anything, conservative, as any vote coded as free for a party where this was not the case would understate the difference between free and 'normal' votes.

### ***Frequency of free votes***

The decision to ignore free votes is based on the assumption that they are rare enough not to bias overall findings, even if behaviour on them differs from 'normal' votes. As a first step, we explore the frequency with which free votes have been held in the German Bundestag. Here, we distinguish between free votes as such, and votes on the deployment of the German military abroad. Worth noting is the number of votes on this latter topic; while no such votes were held before the 12th Bundestag (1990–1994),<sup>9</sup> from 1990 onwards, a substantial number of recorded votes (230 in total, equal to 15.5% of all recorded votes in the period) have been held on this topic. Consistently holding free votes on the deployment of armed forces abroad is a feature specific to the German system which does not apply to other legislatures. As such, we identified all votes relating to military deployments, and do not further analyse them as part of the free vote dataset.

Figure 1 shows the number of free votes held in the German Bundestag from 1949 to September 2021. Up to the 1990s there were no or only a handful of free votes per legislative period and the topics were very diverse, spanning from foreign affairs, such as the bill on the legal status of the Saarland or the ratification of the Treaty concerning the basis of relations between the Federal Republic of Germany and the German Democratic Republic ('Ostverträge'), to matters of criminal law (abolishing the statute of limitations on genocide) and labour policy (paid maternity leave).



**Figure 1.** Frequency of free votes (1949–2021).

From the 12th Bundestag (1990–1994) on, there was a surge in ‘free votes’, several of which were a consequence of German reunification due to laws of the former West Germany and East Germany being incompatible and needing harmonisation, most prominently the laws on abortion. Overall, 2194 recorded votes (excluding the votes on deploying the Bundeswehr abroad) were held in the period covered by our data, of which 107 (5%) were free votes. This indicates that it is problematic to simply ignore free votes; we further show below that free votes account for over a third of all votes cast against the party majority.

### ***Topics addressed in free votes***

For each free vote, we coded the primary topic being voted on according to the classification of the Comparative Agendas Project (see Breunig and Schnatterer 2020 for details of the German case).

Free votes are held on a wide range of policy topics, with fourteen different policy fields being represented (see Table 1). The wide variety of topics covered suggests that the free votes held were not solely on so-called ‘issues of conscience.’ While many of the votes coded as health-care deal with issues such as abortion, stem cell research, and pre-implantation diagnostics, often conceived of as issues of conscience, for a large share of the issues voted on, this is not the case. Renovating the Bundestag building, participation in the 1980 Olympics, restaurant

**Table 1.** Policy areas of free votes in the German Bundestag 1949–2021.

Primary policy area	Frequency	Percent
Foreign trade	6	5.61
Banking, finance, and domestic commerce	2	1.87
Civil rights, minority issues, and civil liberties	4	3.74
Constitutional amendments	3	2.80
Defence	1	0.93
Government operations	10	9.35
Healthcare	27	25.23
International affairs and foreign aid	5	4.67
Labour, employment, and immigration	2	1.87
Law, crime, and family issues	32	29.91
Macroeconomics (including budget)	3	2.80
Other, miscellaneous, and human interest	7	6.54
Reunification [property rights]	1	0.93
Social welfare	4	3.74
Total	107	100.00

licencing, and tax reform are not issues traditionally understood as dealing with matters of conscience (see Tables A-1 and A-2 in the online appendix for a full list of topics dealt with in free votes in the Bundestag).<sup>10</sup> Legislation on these topics was contentious within party groups rather than matters dealing with morality issues. For example, voting behaviour in the decision to move the German capital from Bonn to Berlin can be largely explained with geographical indicators, with MPs from the West and the South favouring remaining in Bonn, while MPs from the North and the East supported the move to Berlin (Wengst 1991).

### Origins of and voting behaviour on free votes

Having established that free votes are frequent and cover a range of topics which goes beyond so-called ‘issues of conscience’, we turn to where bills subject to free votes originate. If free votes deal with topics which parties would prefer not to position themselves on, we would expect them to be disproportionately held on bills which are introduced by backbench MPs, and in particular cross-party groups of backbench MPs. To do so, we compare the origins of bills which were subject to free votes, that is, the frequency of introduction by different initiating actors (the government, opposition parties or individual MPs), with that of the population of all recorded votes.

After this, we explore MPs’ voting behaviour on free votes. If the share of votes against the party majority on free votes is significantly higher, this would show that simply including such votes in the analysis of floor voting would lead to biased results, and, if such behaviour takes place on bills introduced by backbench MPs, indicate that free votes are used by the party leadership to avoid appearing unable to establish a party line.

## Origins of free votes

We first compare the source of the bills on which free votes were held to that of the population of all recorded votes. Table 2 lists the number and percentage of bills from each initiating body for all recorded votes, split into ‘normal’ and free votes. The first pattern that emerges is a stark difference in the role for government and opposition parties on ‘normal’ and free votes. While governing parties initiate 31% of all legislation on which a ‘normal’ recorded vote is held, they are only responsible for introducing 19.6% of the bills on which a free vote was held. The difference is even more pronounced for opposition parties, which collectively initiate over half of all bills on which the vote is recorded, but only just under 18% of bills that result in a free vote. Bills introduced jointly by both government and opposition parties are responsible for just over 2% of all ‘normal’ bills subject to a recorded vote, but three times that share for free votes.

Bills introduced by individual MPs from the same party account for less than 2% of all ‘normal’ legislation on which a recorded vote is held, but 12% of the free vote bills. An even more striking difference can be found amongst the votes initiated by cross-party groups of individual MPs. These are responsible for less than half a percent of ‘normal’ bills with a recorded vote, but one-third of all free votes. Overall, groups of individual MPs are responsible for over 45% of legislation where free votes are held, but only 2% of all ‘normal’ legislation where votes are recorded.

In summary, government as well as opposition parties play a dominant role for ‘normal’ legislation, but a much smaller role in legislation subject to free votes, with the latter often dealing with issues by which parties do not traditionally align themselves (see Tables A-1 and A-2 in the online appendix). Groups of individual MPs, which are often formed across parties, rarely initiate ‘normal’ bills but play a key role in introducing bills which are decided by a free vote.

**Table 2.** Origins of recorded votes (1949–2021).

Bill initiator	Number of votes (excluding free votes)	% of all votes (excluding free votes)	Number of free votes	% of free votes
Government	650	31.15	21	19.63
Opposition parties	1130	54.14	19	17.76
Government & opposition parties	46	2.20	7	6.54
Individual MPs (single party)	38	1.82	13	12.15
Individual MPs (cross-party)	8	0.38	36	33.64
Other*	215	10.30	11	10.28
Total votes	2087	100.00	107	100.00

\*Other initiators of legislation are committees, the Chancellor, the President of the Bundestag, the Bundesrat, the Minister of Finance, and the Council of Elders.  
Pearson’s  $\chi$ -squared(5): 646.27,  $p = 0.000$ .

### ***Voting behaviour on free votes***

We next explore MPs' floor voting behaviour. A vote was coded as a defection when an MP voted 'yea', and the majority of her party group voted 'nay' and vice versa, or if an MP voted either yea or nay and the majority of the party group abstained. In the rare cases where there was only a relative majority due to many abstentions, the party line was coded as the voting behaviour of the party group leadership.<sup>11</sup>

As would be expected, deviation rates are substantially higher on free votes than on votes with a party line (Table 3). In free votes, MPs defect from the party group line almost 12% of the time, while defection rates on all other votes are much smaller (1.2%). To put it another way, 37% of all votes against the party line occurs on free votes, even though these represent less than 5% of all recorded votes. Abstention rates are twice as high in free votes compared to 'normal' votes (1.2% vs. 0.6%), with just over 10% of all abstentions against the party line occurring on free votes.<sup>12</sup>

Difference of means tests show that differences in voting patterns for 'not free' versus free votes are significant for all three types of voting behaviour (see Table A-4 in the online appendix for details).<sup>13</sup> This confirms the importance of identifying free votes and treating them as a specific subset of recorded votes when analysing legislative voting behaviour. If these are not identified, a significant share of the variation in behaviour we seek to explain will stem from these special cases.

Building on the previous findings on bill initiation and the notion that government parties may seek to avoid responsibility on these issues, we next look at defection rates by the initiator of the bill subject to a free vote (Table 4).

For free votes on bills introduced by the government or by opposition parties, defection rates are around three (government parties) and two-and-a-half (opposition parties) times higher when compared with behaviour on 'normal' bills. Defection rates for joint government and opposition bills are over seven-and-a-half times higher on free votes than

**Table 3.** Defection and abstention rates on all recorded votes (1949–2021).

Voting behaviour	Number of votes cast (excluding free votes)	% of all votes cast (excluding free votes)	Number of votes cast in free votes	% of all votes cast in free votes
Party line	1046358	98.19	51943	87.01
Abstention	7131	0.63	807	1.20
Defection	12569	1.18	7374	11.80
Total individual votes cast	1066058	100	60124	100

Note: Differences between free votes and normal votes is significant at the 0.001 level for all three behaviours.

**Table 4.** Voting behaviour on free votes.

Voting behaviour	% of votes cast on government bills	% of votes cast on opposition bills	% of votes cast on government & opposition bills	% of votes cast on individual MP (single party) bills	% of votes cast on individual MP (cross-party) bills
Party line	95.16	96.15	89.12	86.02	77.15
Abstention	1.11	1.01	1.92	2.34	1.03
Defection	3.72	2.84	8.96	11.64	21.82
Total	100	100	100	100	100

the average for ‘normal’ bills. Defection rates on free vote bills initiated by groups of individual members have an overall defection rate that is three times higher than free votes on bills initiated by governing parties for single-party bills (ten times higher than on ‘normal’ bills), and almost six times higher for bills initiated by cross-party groups of MPs (eighteen-and-a-half times that on ‘normal’ bills). Abstention rates are much more similar across the different type of bill initiators, although the abstention rate is over twice as high for bills initiated by MPs from a single party compared to the rate for bills introduced by the government or the opposition. One-way ANOVA tests indicates that for both voting the party line and defection, there is a statistically highly significant ( $p < .001$ ) difference in behaviour depending on which actor initiated a bill subject to a free vote. For abstention, we find no significant difference (see Table A-6 in the online appendix for details).

Finally, we conduct difference-of-means tests for voting behaviour on free votes on topics broadly considered issues of conscience compared to those issues not broadly seen as issues of conscience (recall that no clear definition of such issues exists). We find that MPs are significantly less likely to vote the party line ( $p < .05$ ) and significantly more likely to both abstain ( $p < .01$ ) and defect ( $p = .069$ ) in free votes on issues not traditionally understood as issues of conscience (see Table A-7 in the online appendix for details).

This indicates, firstly, that parties are willing to introduce bills on issues that are likely to become free votes when large divisions within the parties are unlikely to emerge, as evidenced by over 95% of MPs voting the party line in free votes on bills introduced by either the government or by opposition parties. Secondly, in contrast, the votes introduced by groups of individual MPs are on issues that are most likely to split party groups, in particular when the individual MPs come from different parties, as evidenced by the much higher rates of dissent on these bills. Thirdly, MPs are less likely to vote with the party majority on free votes where their conscience would not be expected to play a major role. All three findings indicate that free votes are used strategically by parties: When certain of near-unanimity, parties use free votes to

allow low-level dissent without having to impose sanctions on MPs who vote against the majority position; when divided, parties avoid the topic and when bills are introduced by individual MPs (sometimes across parties), they use free votes to avoid appearing divided, explaining away disunity as MPs voting their conscience, even on issues where there is no moral dimension.

## Conclusion

This research note aimed to draw attention to the treatment of free votes when analysing legislative voting behaviour. The current practices of ignoring or excluding them from the analysis are unsatisfactory. As a substantial share of variation in voting behaviour stems from free votes, including them in an analysis without further specification will bias results and lead us to overestimate non-party oriented voting behaviour.

Excluding free votes from our analyses ignores that declaring a vote free is a tactical decision by the party leadership, taken when the enforcement of a party line is unlikely to be successful, and occurring on a range of topics which goes far beyond 'issues of conscience'. As such, excluding free votes will bias any analysis of legislative voting behaviour.

This research note contends that systematically identifying and studying free votes will contribute to research on legislative voting behaviour. While this is beyond the scope of this Research Note, future work doing so in detail will not only improve our understanding of the functioning of decision-making in parliaments but will also extend the focus to include a more comprehensive understanding of the accountability of parties vis-à-vis their voters.

This research note presents a number of findings which underline these recommendations. Firstly, the number of free votes has increased over the past decades, and we are likely to see a continuation of this trend as technological innovations generate new issues that need regulation. Secondly, it showed that parties (unsurprisingly) take a rather passive role in bill introduction on issues that may lead to internal divisions. We therefore should seek to understand the role of individual MPs in bill initiation and question how this may affect accountability of (government) parties towards their voters. Thirdly, bills introduced by groups of individual MPs exhibit a high rate of cross-party voting. Studying specifically these bills will allow us to better understand parliamentary decision-making, going beyond the notion of parties as unitary actors.

Finally, while the research note focussed empirically on free votes in the German Bundestag, there is little reason to believe that the points

raised only apply there. Anecdotally, free votes are a general phenomenon, found in a large number of representative democracies; for example, the UK House of Commons Library has identified two hundred instances where a free vote was held since the start of the 1979–1983 parliamentary term,<sup>14</sup> many on highly contentious issues. Only by systematically studying free votes both at the country-level and comparatively can we begin to properly understand them and through this obtain a better understanding of legislative behaviour and representative democracy.

## Notes

1. For the period 1949–2013, we rely on the Bergmann *et al.* (2018a, 2018b) datasets (see also Sieberer *et al.* 2020); for the period 2013–2021, we collected the recorded votes from the Bundestag website. Two recorded votes on calls to order ('Ordnungsruf') on 17 May 2018, and 20 May 2021, were dropped, as these did not pertain to normal legislative business.
2. Of course, as we do not observe the non-recorded votes, this is to some extent unknowable.
3. While it is theoretically possible not to record a free vote (preventing subsequent analysis of it), the purpose of recoding a vote is to allow voters and the party leadership to observe how individual MPs voted. Not recording a vote, therefore, makes removing the party group's voting recommendation irrelevant.
4. 'Members of the German Bundestag [are] ... not bound by orders and instructions and subject only to their conscience' (Basic Law for the Federal Republic of Germany, 2019, Art. 38(1)).
5. For example, on 30 June 2017, the President of the Bundestag, Norbert Lammert, explicitly stated in the plenary that only the individual MPs decide on how they vote, and on what constitutes an issue of conscience.
6. Future work should consider whether variation in how many parties are openly observed announcing a free vote is related to variation in behavioural patterns.
7. There have been very few instances when a larger opposition party declared a free vote and demanded the same from government parties. For example, in 2013 a free vote was demanded on legislation on women's quotas in managerial positions by the Social Democrats and members of the Christian Democrats. The government (CDU/CSU and FDP) did not free the vote, and by the time of the vote, almost all members fell in line with their party group, even MPs who had previously openly stated that they would not vote for their own party's bill. In this case, the vote was not coded as a free vote.
8. While we are quite confident that we have identified all such votes, we cannot be certain of this.
9. See Figure A-1 in the online appendix for distribution of votes on military deployment across parliamentary terms.
10. As noted above, no clear-cut definition of an issue of conscience exists. However, to illustrate our argument that free votes are not (near-) universally held on 'issues of conscience', a coding of each vote along these

lines was necessary. We do not claim that our coding decisions here reflects a settled approach and are aware that not every reader will fully agree. Our data and analysis files are available on request, allowing readers to replicate our analyses using their own coding decisions.

11. If the party leadership did not vote in this case, the observation was dropped.
12. The findings are almost identical if votes on sending the Bundeswehr abroad are included as 'normal' votes; see Table A-3 in the online appendix for details.
13. Table A-5 shows the difference of means tests including the votes on sending the Bundeswehr abroad. The substantive findings remain unchanged.
14. <https://commonslibrary.parliament.uk/research-briefings/sn04793/>

## Acknowledgements

We thank the anonymous reviewers as well as one of the editors of *West European Politics*, Wolfgang C. Müller, for their helpful and constructive comments. Previous versions of this work were presented at the 2012 ECPR Standing Group on Parliaments Conference (Dublin), the 2013 ECPR General Conference (Glasgow), and at the 2020 ECPR General Conference (virtual). We thank the participants, in particular Stefanie Reher, for helpful comments. We also thank Max Würfel for research assistance. Any remaining errors are our own.

## Disclosure statement

No potential conflict of interest was reported by the authors.

## Notes on contributors

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