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How to Compare Subnational Constitutional Change: Theories, Research Designs, and Methods

- First draft –

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All research on subnational constitutions is comparative.¹ Implicitly or explicitly, respective scholarship has to refer to differences or similarities between constitutional stipulations in substates and create at least some sort of “thick” description or taxonomies and classifications.² Obviously, such a statement covers research on constitutional change which is the topic this paper is focusing on. In methodological terms, to study constitutional change means either to relate or causally link older norms to more recent ones. Hence, when we look for reasons for and patterns of constitutional change we always consider at least two cases. Comparing is, therefore, unavoidable and mere routine when we study constitutional change.³ And it seems scientifically prolific. This method helps us to spot parochial regulations in a constitution, learn more about the norms we are supposed to comply with, or identify “best practices”.⁴ In addition, it might contribute to “testing” theories and developing general explanations of political phenomenon. The crucial question, then, is not whether we compare but how.

Nonetheless, even though the comparative method is an obtrusive tool in this kind of scholarship there are not many publications actually dealing with this issue in methodological terms. Of course, there are countless books and articles on methods or on how to design scientific research in general.⁵ As a matter of fact, I took over and embraced crucial ideas from this intriguing work. However, to my knowledge there is no study applying methodological reflections on the questions as to how often and why

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- 1 The research was funded by the *Deutsche Forschungsgemeinschaft*, the German Research Community (grant no. GZ: LO 1424/3-1; AOBJ: 604048). I am grateful to Astrid Lorenz for critical comments on earlier versions of this paper. Nonetheless, the responsibility for all mistakes, errors, and shortcomings is mine.
 - 2 See e.g. Robert F. Williams, *Teaching and Researching Comparative Subnational Constitutional Law*, in: *Penn State Law Review*, Vol 115, 2011, pp. 1109-1132; James A. Thomson, *State Constitutional Law: some Comparative Perspectives*, in: *Rutgers Law Journal*, Vol 20, pp. 1059-1092, here p. 1061; Tim Ginsburg / Eric A. Posner, *Subconstitutionalism*, in: *Stanford Law Review* 2009-2010, Vol. 62, pp. 1583-1628; Ivo D. Duchacek, *State Constitutional Law in Comparative Perspective*, *The Annals of the Academy of Political and Social Science*, March 1988, no. 496, pp. 128-139; John Dinan, *Patterns of Subnational Constitutionalism in Federal Countries*, in: *Rutgers Law Journal*, Vol 39, 2008, no. 4, pp- 837-863; G. Alan Tarr, *Understanding State Constitutions*, Princeton: PUP 2000; Astrid Lorenz/Werner Reutter, *Subconstitutionalism in a Multilayered System. A Comparative Analysis of Constitutional Politics in the German Länder*, in: *Perspectives on Federalism*, Vol. 4, no. 2, 2012, S. 141-170 (http://www.on-federalism.eu/attachments/141_download.pdf).
 - 3 C.f. also: Robert F. Williams: *Tentative Thoughts on Teaching and Researching Comparative Subnational Constitutional Law*, <http://www.juridicas.unam.mx/wcc/ponencias/5/88.pdf>; Robert F. Williams / G. Alan Tarr: *Subnational Constitutional Space: A View From the States, Provinces, Regions, Länder, and Cantons*, in: G. Alan Tarr / Robert F. Williams / Josef Marko (eds.), *Federalism, Subnational Constitutionalism, and Minority Rights*, Westport: Praeger
 - 4 Quoting Vicki Jackson Robert F. Williams suggested four goals of comparative constitutional study: "1) developing a better understanding of other systems; 2) enhancing the capacity for self-reflection on one's own system; 3) developing a normative understanding of best practices; and 4) responding to domestic questions that are comparative in nature"; R.F. Williams, *Teaching*, 2011, p. 1109; Vicki C. Jackson, *Methodological Challenges in Comparative Constitutional Law*, *Penn State International Law Review*, Vol. 28, 2010, no. 3, pp. 319-326.
 - 5 Just to mention two: Barbara Geddes: *Paradigms and Sand Castles: Theory Building and Research Design in Comparative Politics*, Ann Arbor: University of Michigan Press 2010; Gary King / Robert Keohane / Sidney Verba: *Designing Social Inquiry: Scientific Inference in Qualitative Research*, Princeton: Princeton University Press 1994.

subnational constitutional change occurs. And that is the issue I am going to address in this paper. Using findings from a research project on subnational constitutional change in Germany I will present and critically discuss methodological dimensions with regard to the topic at hand, i.e. to subnational constitutional change.

I will do this in three steps: Firstly, I will give an overview on theories on subnational constitutional change and on the kind of research strategies these theories imply.⁶ Even though the theories presented differ in many respects I will argue that from a methodological point of view they lean to just one research strategy. They focus on the variables causing constitutional amendments. They are – at least implicitly – inference oriented studies aiming at explaining constitutional change. I will point out that there is a second strategy taking a different stance on the issue at hand. It is not "forward-looking", i.e. "inference oriented", but "backward-looking". It rather focuses on causes than on effects. Secondly, I will use these research strategies in order to analyze subnational constitutional change in Germany. Overall, I will argue that there is a great need for more methodologically rigorous studies if we want to better understand the reasons and the patterns of constitutional change and to accumulate theoretical knowledge on this topic.

1. Comparing sub-national constitutional change: theories and research design

Asking for more studies on comparative constitutional law seems nothing but a truism. As pointed out, all pertinent scholarship always considers more than one constitution. Comparing is, hence, an inherent part of studies dealing with this subject. It is an often used method by lawyers and in jurisdiction, as well. Nonetheless, in 2005 Ran Hirschl still claimed that comparative constitutional law is "under theorized and lacks a coherent methodology".⁷ This statement does not include apply scholarship on national constitutional law to which Hirschl referred to but also studies on constitutional change in subnational units. This becomes evident when the theories on constitutional change are analyzed in more detail which I will do in a first step. In a second step I will embark on elaborating the research strategy these theories imply without actually unfolding it.

6 I will speak of "research strategy" when I refer to the two most basic methodological concepts, i.e. to x-centered or y-centered strategies. Research strategies fit with various "research designs" (e.g. "most similar system designs", case studies) and different methods (e.g. statistical analysis, interviews).

7 Ran Hirschl, *The Question of Case Selection in Comparative Constitutional Law*, in: *The American Journal of Comparative Law*, Vol. LIII, 2005, No. 1, pp. 125-155, here p. 125 (<http://ssrn.com/abstract=901700> [download: March 20, 2014]); cf.also: Robert. F. Williams, *Teaching and Researching*, 2011, p. 1109 (note 1).

1.1 Theories on constitutional change

Not only Ran Hirschl but Astrid Lorenz, too, spotted lacunae in the scholarship on constitutional change and criticized respective studies for lacking sound theoretical explanations.⁸ Still, Lorenz succeeded in reconstructing and identifying four theoretical concepts that address constitutional change (table 1).⁹ In a nutshell one might say, that these concepts claim that it is the constitution itself, cultural or structural causes, or political actors that determine scope, frequency, and content of constitutional amendments. Overall, I believe similar arguments can be found in the scholarship on subnational constitutional change. For example, Donald S. Lutz examined constitutional change in 50 American states and in 32 national constitutions in an institutionalist tradition and in a paradigmatic way.¹⁰ G. Alan Tarr on the other hand explains the frequency of state constitutional change since the 18th century in the American states not only by institutional factors but also by the political culture, national political forces, and group conflicts.¹¹ Hence, Tarr combines the different concepts Lorenz highlighted in her book on constitutional change. Table 1 which I gleaned from Lorenz compares the theories based on crucial dimensions each theory on constitutional change is supposed to consider. Added to the table is the concept Lorenz developed based on her critical discussion of existing theories.

It goes without saying that these theories would deserve a broader discussion than I am able to provide here. But I am less concerned with the details of these concepts. For me it is more important to bring two features of this debate to the fore. Firstly, the object of the research, i.e. constitutional change, seems to be a moving target depending on the theory. Institutional approaches focus on formal change. They understand the constitution as a written document. In consequence, they try to answer the question as to how often and in what sense the *text* of a constitution has been altered. Basically they hypothesize that the features of the constitution are to explain change. It is different with structuralist and culturalist approaches. To them the text of a constitution is only insofar relevant as it serves the basic function of this legal document. From this angle, constitutions either reflect the identity of a people or are a means to set up a political order. This means that the *content* and the *effect* of a constitution are crucial rather than the text itself. In actor-centered approaches constitutions establish rules of the game.

8 Astrid Lorenz, *Verfassungsänderungen in etablierten Demokratien. Motivlagen und Aushandlungsmuster*, Wiesbaden: VS 2008, p. 28.

9 Lorenz, *Verfassungsänderungen*, 2008, pp. 28 ff.

10 Donald S. Lutz, *Towards a Theory of Constitutional Amendment*, in: *American Political Science Review*, Vol. 88, 1994, no. 2, pp. 355–370.

11 G.A. Tarr, *Understanding 2000*.

Constitutions lack any normative goals going beyond this purpose. In this perspective it is hardly imaginable to conceive a constitution as a focal point for national or political integration. Obviously some of these theories are better to verify than others.

Table 1: Theories on Constitutional Change

	Institutionalist Theories	Culturalist Theories	Structuralist Theories	Public Policy and Rational Choice	Actor-centered approach
View on the Constitution	Constitution is a document	Constitution is a source of national identity and self-understanding	Constitution is a means to set up a legal order	Constitution sets up rules of the political game, it reduces risks and structures action	Constitution sets up rules of the political game, it reduces risks and structures action
Type of Constitutional Change	Piecemeal and revolutionary, mainly explicitly	Piecemeal, implicitly and explicitly	Piecemeal, only explicit changes	Mostly piecemeal changes, explicit	Piecemeal, explicit and implicit
Variables that explain constitutional change	The constitution itself (rigidity, length, age)	Cultural change, conflicting constitutional interpretations	Social conflicts, new cleavages, functional deficits	Actions of rational actors trying to maximize their benefits	Actions of rational collective actors trying to maximize their benefits
Testability	Good	Limited	Limited	Limited or good	Good
Focus of explanation	Effects of constitutional rules	Differences between constitutions	Context of constitutional change; historical contingencies	Preferences and motives of actors involved	Preferences and motives of actors involved

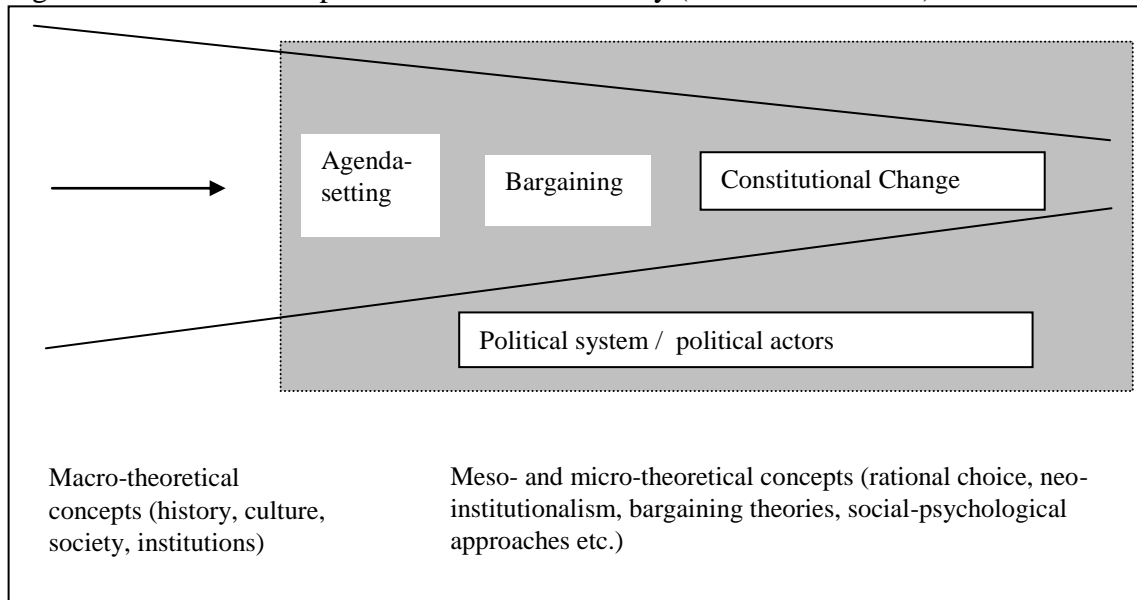
Source: based on A. Lorenz, Verfassungsänderungen, 2008, p. 29 (my adaptation and translation)

Secondly, all these theories are inference oriented or what has been coined "x-centered".¹² They focus on effects on a given variable. They want to find out whether a specific cause tends to trigger the same effects in different cases. For example, the length of a constitution, its rigidity, cultural shifts, new cleavages or a specific actor are to explain why and how often constitutional change happens. This logic of inference becomes obvious if we follow Lorenz' argument and combine the different theories to one comprehensive concept. Gleaning ideas from studies on electoral behavior Lorenz creates a "funnel of causality" (Kausalitätstrichter) in which macro-structural factors shape the political agenda which then trigger bargaining processes among relevant political actors. In this perspective, "objective structures" translate into political issues and make up preferences of actors that then have to find some sort of compromise (Fig.

12 Steffen Ganghof: Kausale Perspektiven in der vergleichenden Politikwissenschaft: x-zentrierte und y-zentrierte Forschungsdesigns, in: Sabine Kropp / Michael Minkenberg (eds.), *Vergleichen in der Politikwissenschaft*, Wiesbaden: VS 2005, pp. 76-93; Fritz W. Scharpf: *Interaktionsformen. Akteurzentrierter Institutionalismus in der Politikforschung*, Opladen: Leske + Budrich (utb) 2000, pp. 52 ff.; Thomas Gschwend / Frank Schimmelfennig: *Forschungsdesign in der Politikwissenschaft. Ein Dialog zwischen Theorie und Daten*, in: Thomas Gschwend / Frank Schimmelfennig (eds.), *Forschungsdesign in der Politikwissenschaft. Probleme, Strategien, Anwendungen*, Frankfurt/M: Campus 2007, pp. 13-35.

1). To be clear, this is not to develop an holistic approach embracing all factors and actors eventually causing constitutional change. On the contrary, this is just to make clear that the research strategy these theories have in common run from causes to effects.

Figure 1: Constitutional politics: funnel of causality (Kausalitätstrichter)



Source: A. Lorenz, *Verfassungsänderungen*, 2008, p. 34 (my translation).

As a matter of fact, it is not just pure chance that these standard theories tend to privilege the same research strategy. On the contrary, this research perspective dominates social sciences in general and comparative studies in particular. For example, pertinent books on scientific inquiry and research designs qualify the x-centered approach or inference oriented studies as the only one complying with scientific standards. They can produce “true” propositions by which arguments can be tested “so that the theories we propose and come to believe will have some lasting values.”¹³ Hence, we have to discuss this research strategy in more detail.

1.2 *Constitutional change and research strategies*

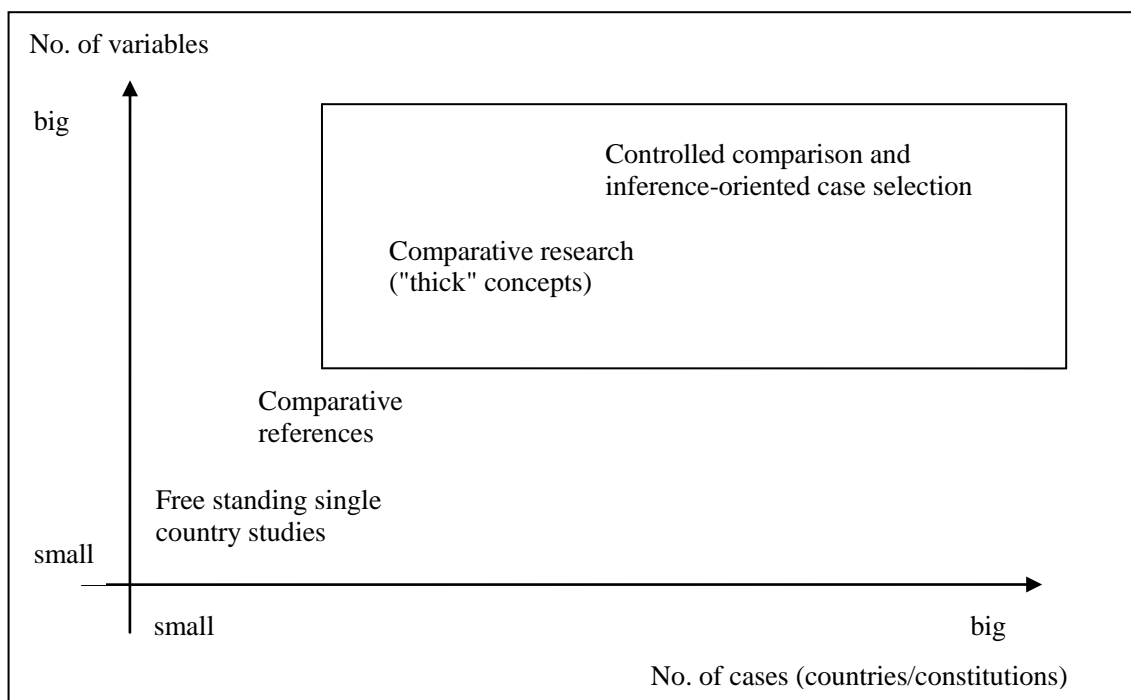
According to Ran Hirschl “comparative constitutional law scholarship produced by legal academics often overlooks (or is unaware of) basic methodological principles of controlled comparison, research design, and case selection.”¹⁴ Even though Hirschl only

13 Barbara Geddes: *Paradigms and Sand Castles. Theory Building and Reserch Design in Comparative Politics*. Ann Arbor: University of Michigan Press 2003, p.213; cf. also: Gary King / Robert Keohane / Sidney Verba: *Designing Social Inquiry: Scientific Inference and Qualitative Research*, Princeton: Princeton University Press 1994, pp. 12 ff.

14 R. Hirschl, *The Question*, p. 125; for a general discussion of the comparative method cf. also: Frank Aarebrot / Pal H. Bakka, *Die Vergleichende Methode in der Politikwissenschaft*, in: Dirk Berg-Schlosser / Manfred Müller-Rommel (eds.), *Vergleichende Politikwissenschaft*, Opladen: Leske + Budrich 1997, pp. 49-66; Detlef Jahn, *Fälle, Fallstricke und die komparative Methode in der vergleichenden Politikwissenschaft*, in: Sabine

refers to scholarship covering national constitutions the same can be said about studies on comparative subnational constitutional law. In this field we, too, find different types of inquiries which are more or less comparative (Fig. 2). There are “freestanding single country studies” that are “mistakenly characterized as comparative” because the author just writes about a country other than his or her own.¹⁵ A second type of comparative subnational law aims at “self-reflection through analogy, distinction, and contrast (...) [and] is very often derivative of jurists’ near permanent quest for what they deem the *right* or *just* solution for a given constitutional challenge”¹⁶ As a matter of fact, both types just mentioned cannot be qualified as “truly” comparative because they fail to address crucial methodological issues of comparative research. They neither make any reference on how they compare nor do they provide any information on case selection.¹⁷ In essence they lack what Hirschl coined “methodological coherence”.

Figure 2: Types of studies on comparative constitutional law



Based on: Ran Hirschl, *The Question* 2005.

According to Hirschl there are just two types of scholarship on constitutional law that actually comply with the requirements of comparative research: “thick” concepts and

Kropp / Michael Minkenberg (eds.), *Vergleichen in der Politikwissenschaft*, Wiesbaden: VS 2005, pp. 55-75; Giovanni Sartori: *Concept Misformation in Comparative Politics*, in: *American Political Science Review*, Vol. 64, 1970, No. 4, pp. 1033-1053; Arend Lijphart: *The comparable cases strategy in comparative research*, in: *Comparative Political Studies*, Vol. 8, 1975, No. 2, pp. 158-177.

15 R. Hirschl, *The Question*, 2005, p. 126 f.

16 R. Hirschl, *The Question*, 2005, p. 127

17 R. Hirschl, *The Question*, 2005, p. 128 f.

“controlled comparison”. The first lead to “concept formation through multiple description.”¹⁸ By studying various constitutional solutions to the same problem we might get a better and more detailed answer. For example in their article on “Subconstitutionalism” Tom Ginsburg and Eric A. Posner compare government structures, rights, and amendment rules in the American states and the member states of the EU.¹⁹ That is a good example of a “thick” description contributing “tremendously not only to the mapping and taxonomy of the new constitutionalism world, but also to the creation of pertinent conceptual framework for studying comparative constitutionalism.”²⁰ However, if you want to strive for the “the ultimate goal of social inquiry” you have to build theories through causal inference.²¹ As a matter of fact, this reflects the standard procedure in comparative politics which means that scientifically statements are only valid if they include hypotheses that can be confirmed or rejected empirically. Arend Lijphart, one of the leading comparative scholars, for example distinguished three types of research: the experimental, the statistical, and the comparative methods. All these methods

„(...) aim at scientific explanation, which consists of two basic elements: (1) the establishment of general empirical relationships among two or more variables, while (2) all other variables are controlled, that is, held constant. These two elements are inseparable: one cannot be sure that a relationship is a true one unless the influence of other variables is controlled. The *ceteris paribus* condition is vital to empirical generalizations.”²²

It goes without saying that there are various ways to satisfy this demand of inference oriented and verifiable arguments. I will limit the analysis to the best known design in comparative politics: the “most similar systems design” which goes back to John Stuart Mill’s attempt to define methods enabling us to make “true” statements about causal relationships. In his “System of Logic” Mill developed five of such methods but only one is relevant for our context: the “method of difference”.²³ This method has been adjusted to the needs of comparative politics by various scholars.

18 R. Hirschl, *The Question*, 2005, p. 129.

19 R. Ginsburg / E. A. Posner, *Subconstitutionalism*, 2010, pp. 1606 ff. and 1617 ff.

20 R. Hirschl, *The Question*, 2005, p. 131.

21 R. Hirschl, *The Question*, 2005, p. 131.

22 Arend Lijphart, *Comparative Politics and the Comparative Method*, in: *The American Political Science Review*, Vol. 65, No. 3 (1971), pp. 682-693, here p. 683. It has to be pointed out, however, that notably the distinction between statistical and comparative method has raised many questions and is hardly convincing; cf. also: Arend Lijphart, *The comparable cases strategy*, 1975; D. Jahn, *Fälle*, 2005, pp.58 ff.

23 John Stuart Mill: *A system of logic ratiocinative and inductive: being a connected view of the principles of evidence and the methods of scientific investigation* [1843]; London 1996: Longmans. Apart from the one method mentioned above Mill also refers to: the “method of agreement”, the “joint method of agreement and difference”, the method of concomitant variation” and the “method of residues”.

Table 2: “Most similar systems design” (MSSD)

Country	Independent Variable („Variables controlled“)	Intervening Variable („Experimental variables“)	Dependent Variable („Explanandum“)
	$x_1, x_2 \dots x_k$	$x_{k+1} \dots x_n$	Y
A	1, 1 ... 0	1 ... 1	1
B	1, 1 ... 0	0 ... 0	0
C	1, 1 ... 0	1 ... 1	1
D	1, 1 ... 0	1 ... 1	1
E	1, 1 ... 0	0 ... 0	0

Source: A. Przeworski/H. Teune, *The Logic*, 1970, p. 37.

As disciple of the nomological school in social sciences Przeworski/Teune developed two basic research designs for comparative studies: the "most similar cases design" (MSSD) and the "most different cases design".²⁴ Both show three features akin of research in social sciences: they are empirically grounded and comply with Karl Popper's critical rationalism,²⁵ they attempt to control as many variables as possible, and they underpin what has been called “forward looking” or interference oriented research. This becomes obvious if we examine the “most similar systems design” in more detail. A crucial aspect here is that this design prescribes strict rules for case selection. In order to come to valid conclusions you have to pick countries (cases) that are as similar as possible except in the dimension you believe causal for the phenomenon you want to explain. I take it for evident that experiments in natural sciences served as templates for this design. By varying the “experimental” variable you are supposed to get different effects, all else being equal. Apparently, such a design shows all the features mentioned above and can easily be categorized as a variation of an x-centered strategy being very good at confirming causal linkages between two variables. And I would readily agree that research on constitutional change is notably prone to this kind of logical inference and empirical research. Nonetheless, this strategy shows two downsides: On the one hand, controlling variables can be a tricky thing in the real world. As a matter of fact, I think it impossible to analyze countries in such a way as to be sure that they are identical in the respective dimensions. To put it simply: In social sciences we are not able to effectively and comprehensively control variables. On the other hand, you artificially reduce the number of variables to two. It is just the intervening and the dependent variables that are important in this design and that are supposed to explain the causal linkage.

With a y-centered research strategy you may avoid or circumvent these fallacies. As pointed out this research strategy starts with the outcome of the political process. It

24 Adam Przeworski/Henry Teune, *The Logic of Comparative Social Inquiry*, Malabar: Krieger Publishing 1970, p. 37

25 Karl R. Popper, *Die Logik der Forschung* [1934]. 11th ed., Tübingen: Mohr Siebeck 2005.

focuses on causes, and try to consider as many variables as necessary and possible. As a matter of fact, contrary to x-centered approaches this research strategy aims at including all variables relevant for a specific decision.²⁶ Typically this is an approach akin to policy-analysis. Here we do not expect verifications or falsifications of causal linkages between two variables. Rather we aim at reconstructing the reasons for a decision or at recommending a policy as a realistic option.²⁷ According to Fritz W. Scharpf this research strategy is far better in capturing the real world of politics because there is no need to reduce the number of variables for methodological reasons. This perspective leads, hence, to different questions, requires specific methods, and produces more comprehensive explanations for decisions than x-centered research strategies. The problem, however, is that by increasing the number of variables comparisons become far more difficult. In consequence, it might be impossible to generalize respective findings generated in case studies.²⁸ These differences can be brought to the fore when we apply the two research strategies to subnational constitutional change in Germany.

2. Subnational constitutional change in Germany

The research question I want to answer in this part of my paper is a simple one: Why have subnational constitutions been changed in Germany? Studies dealing with this question mostly use institutionalist theories, follow an x-centered research strategy, and use the "most similar systems design."²⁹ In a first step I will follow up on these studies and highlight the advantages and disadvantages of inference oriented studies about subnational constitutional change. However, there are also a few studies focusing on specific decisions. They follow a y-centered research strategy. In a second part I will, therefore, examine the reasons why some Länder did include debt limits into their constitutions.

26 Cf. Fritz W. Scharpf, *Interaktionsformen*, 2000, p. 57; S. Ganghoff, *Kausale Perspektiven*, 2005, pp. 88 ff.; T. Gschwend / F. Schimmelfennig, *Forschungsdesign*, 2007, pp. 21 ff.; Andrew Bennett / Alexand L. George, *Process Tracing in Case Study Research*. Paper presented at the MacArthur Foundation Workshop on Case Study Methods, October 17-19, 1997 (<http://users.polisci.wisc.edu/kritzer/teaching/ps816/ProcessTracing.htm>)

27 Fritz W. Scharpf, *Interaktionsformen. Akteurzentrierter Institutionalismus in der Politikforschung*, Opladen: Leske + Budrich 2000, p. 57.

28 R.W. Scharpf, *Interaktionsformen*, 2000, p. 60; S. Ganghof, *Kausale Perspektiven*, 2005, p. 88; T. Gschwend / F. Schimmelfennig, *Forschungsdesign*, 2007, pp. 24 ff.

29 Cf. A. Lorenz / W. Reutter, *Subconstitutionalism 2012*; Martina Flick, *Landesverfassungen und ihre Veränderbarkeit*, in: Markus Freitag / Adrian Vatter (eds.), *Die Demokratien der deutschen Bundesländer*, Opladen: Budrich 2008, pp. 221-236; Sven Hölscheidt, *Die Praxis der Verfassungsverabschiedung und der Verfassungsänderung in der Bundesrepublik*, in: *Zeitschrift für Parlamentsfragen*, 26. Jg., 1995, No. 1, pp. 58-84; Werner Reutter, *Verfassungsgebung und Verfassungsänderungen in den Ländern*, in: *Jahrbuch des Föderalismus 2008. Föderalismus, Subsidiarität und Regionen in Europa*, , Baden-Baden: Nomos 2008, pp. 239-253; Werner Reutter, *Föderalismus, Parlamentarismus und Demokratie*, Opladen: Barbara Budrich 2008, pp. 37-68.

2.1 *Subnational constitutional change and x-centered research strategies*

As pointed out, in order to answer the research question mentioned above in a methodologically valid way I have to clarify the theory the hypotheses are deduced from (a). Furthermore I have to explain the research design and the data (b) I will use for the empirical analysis (c).

(a) *Theory*: The theory I want to “test” is fairly simple. Its basic assumption is that the features of a constitution explain why and how often the very same legal document is amended. This is a classical institutionalist approach. This branch of theory claims that people behave according to formal or informal rules or structures. So, in order to explain social or political phenomenon you have to study the institutions which constrain actions and prescribe specific paths. This argument can easily be applied to constitutional change. In this perspective a constitution is nothing but an institution. It determines the rules of the political game, prescribes specific lines of action, and determines which majority you need in order to change the constitution. So you might pretty well conclude that you just have to study the constitution in order to find out why it is altered or amended. Neither the preferences of rational actors nor social structures have to be taken into account. In addition, constitutions contain politically salient issues, and they define the procedures how to change a constitution thus determining who has the right to initiate amendments and whose assent is necessary for a change.

The rationale of this concept seems straightforward, easy to grasp, and a fertile ground for developing hypothesis. I will just mention two. On the one hand it seems logical that the larger the majority required for an amendment the less likely it is that a change will occur, all else being equal.³⁰ The first hypothesis to be tested runs, hence, as follows: The more “rigid” a constitution is the fewer amendments we should find. As a matter of fact, Lutz was able to confirm this hypothesis in his seminal article.³¹ However, as far as national constitutions are concerned Lutz' findings have been challenged by other scholars. Referring to works from Lutz, Lijphart and others Lorenz concludes that in statistical terms the rigidity of a constitution is not very good at predicting the frequency of constitutional change. On the contrary, using data from 38 countries for the period between 1993 and 2002 Lorenz sees her assumption confirmed.³² So, it might be worthwhile to "test" this theory, once again.

30 Cf. Andrew Roberts, The politics of constitutional amendment in postcommunist Europe, in: *Constitutional Political Economy*, Vol. 20, 2009, no.1, pp. 99-117.

31 D. S. Lutz, *Toward a Theory*, 1994, p. 358 and 360 ff.

32 A.Lorenz, *Verfassungsänderungen*, 2008, pp 72 f.

On the other hand, if a constitution is longer and contains more controversial issues than another one it seems probable that these issues will be changed more often. Once again, it is due to the features of a constitution that is to explain amendments. According to Lutz the length of a constitution even „becomes a surrogate measure for all of these other pressures to amend and is a key variable.“³³ On first sight this is a convincing argument. Longer constitutions tend to cover more politically salient topics than shorter ones. In consequence, more social groups might have an incentive to embark on changing a constitution. Lutz found his assumption not only confirmed but his findings made him claim that the „relationship between the length of the a constitution and its amendment rate is the strongest and most consistent one found in the analysis of data drawn from American states.“³⁴ Other studies challenged these findings, however. Notably, Roberts was not able to confirm Lutz’ conclusions. Astrid Lorenz also did not find any statistically significant correlation between the length of constitutions and the number of amendments.³⁵ The second hypothesis to be verified is, hence: The longer a constitution the more often it is a amended.

(b) Research Design and Data: In order to verify whether there is a causal link between the features of a constitution and the amendment rate I need a research design which is a tool or a plan enabling me to study a scientific problem in an “objective” way which means that the research process is comprehensible to others and eventually reproducible. The research question and the theory suggest – or may I say: necessitate – a most similar systems design including 16 constitutions. The data for the research are provided mostly by public sources, thus easily accessible,³⁶ and reliable at least as far as the “experimental” and the “dependent” variables are concerned.

Each Land in Germany has its own constitution. Hence, there are 16 subnational constitutions adopted either before or shortly after the Basic Law had come into being in 1949 or after German unification in 1990. In Berlin (1995), Lower Saxony (1993) and in Schleswig-Holstein (1990) new constitutions have been drafted. It goes without saying that each constitution has been amended more or less frequently. The constitution of Saxony has been the last one to be altered in 2013. Overall, since 1946 Land parliaments passed 260 laws altering German subnational constitutions. These laws led to small amendments as well as to major revisions.

33 D. S. Lutz, *Towards*, 1995, p. 358.

34 D. S. Lutz, *Towards*, 1995, p. 358.

35 A. Roberts, *The politics*, 2008, pp. 105 f.; Astrid Lorenz, *Verfassungsänderungen*, 2008, p. 75.

36 If not indicated otherwise we gleaned data form the websites of the Land parliaments; in addition we referred to: <<http://www.verfassungen.de>>.

Table 3: Lengths of Land constitutions, year of adoption, and amendment rate

	Year when first constitution entered into force	Number of articles in the year of adoption	No. of articles (2013)	No. of amendments (until 2013) ^{a)}	Amendments per year	Rigidity ^{b)}
Basic Law	1949	146	192	59	0.91	--
Baden-Württemberg	1953	95	101	20	0.33	1.17
Bavaria	1946	189	196	12	0.18	1.33
Berlin	1950	102	103	39	0.62	1.33
Brandenburg	1992	118	119	8	0.37	1.33
Bremen	1947	156	158	27	0.41	1.33
Hamburg	1952	77	78	16	0.26	1.17
Hesse	1946	151	164	8	0.12	1.00
Lower Saxony	1951	78	82	18	0.19	1.33
Mecklenb.-W.Pomer.	1993	81	84	4	0.29	1.33
North Rhine-Westphalia	1950	93	97	20	0.31	1.33
Rhineland-Palatinate	1947	145	154	37	0.55	1.33
Saarland	1947	134	129	27	0.41	1.33
Saxony	1992	123	124	1	0.05	1.33
Saxony-Anhalt	1992	102	102	1	0.05	1.33
Schleswig-Holstein	1950	60	66	18	0.28	1.33
Thuringia	1992	107	108	4	0.20	1.33

a) The newly drafted constitutions of Berlin, Lower-Saxony and Schleswig-Holstein have been counted as amendment; b) I took the index from M. Flicks study; she calculated the rigidity by summing up respective majorities. For example the Landtag of Baden-Württemberg can only pass an amendment if the majority of the vote cast is in favor of the amendment and if at least two thirds of the members of the Landtag attended the vote. The sum of 1/2 and 2/3 equalizes to 7/6 which is 1.17.

Source: M. Flick, Landesverfassungen, 2008, p. 233; Websites of Land parliaments.

When looking at the data compiled in table 3 three features come to the fore. Firstly, in Germany subnational constitutions are being changed less frequently than the national Basic Law. On average just 0.3 amendments have been adopted per year and Land, while the national constitution has been altered almost each year.³⁷ Secondly, the size of Land constitutions varies significantly. While the constitution of Schleswig-Holstein just included 66 articles in 2013, the one of Bavaria had 196. Thirdly, the same is true for the number of constitutional amendments ranging from 0.05 per year to 0.62.³⁸ From a methodological point of view these variations are a necessary element. In order to "test" theories in a "most similar systems design" we have to have differences among dependent variables. But that is just one requirement the cases have to meet in such a design. In all other respects the cases have to be as similar as possible, too. And I think we can assume without actually providing the evidence that German Länder are more

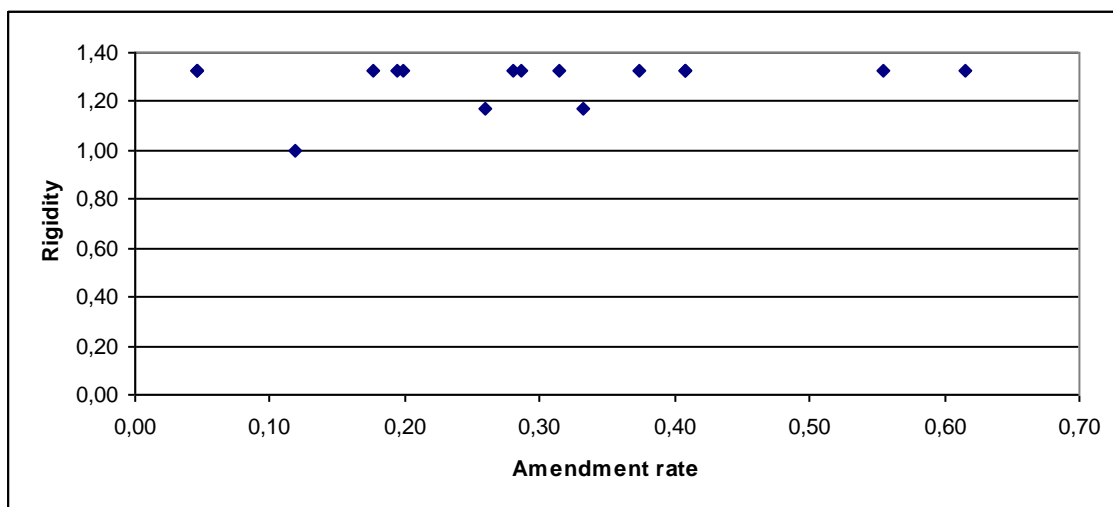
37 That seems to be different in the USA where state constitutions are altered more often than the national constitution.

38 Due to the varying longevity of the constitutions I calculated an amendment rate by dividing the number of amendments by the age of the constitution; cf. also D. S. Lutz, Toward 1994, p.

likely of being "equal" than subunits from different countries. Insofar comparing Land constitutions seems a very promising enterprise when we want to study whether constitutional stipulations might cause change.

(c) *Analysis:* The standard explanation on the frequency of subnational constitutional change in Germany is the assumption that the supermajority requested for amending Land constitutions is difficult to muster. As a matter of fact, there are differences between the Länder with regard to amendment rules. For example, until 1994 the constitution of Bremen could only be changed if all members of parliament voted in favor of the amendment granting each and every member of a parliament with the power to veto the bill. Or: in Baden-Württemberg amending the constitution requires fifty percent of all members, but a two-third majority of the votes actually cast. In addition two third of all MPs have to participate in the vote. Furthermore, in Bavaria and Hesse each constitutional change needs a popular referendum. Still, as indicated in table 3 constitutional rigidity does not show great variations.³⁹ So, what we should expect is that the amendment rate is similar in all Länder.

Figure 3: Constitutional Rigidity and Amendment Rate of German Subnational Constitutions



Source: my calculation, based on the data in table 3

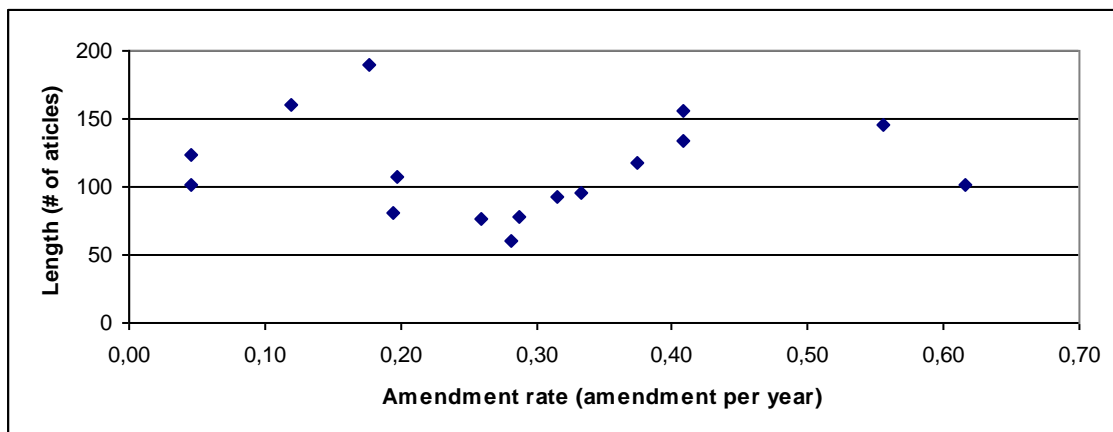
Contrary to our assumption figure 3 already illustrates that rigidity does not predict the amendment rate satisfactorily. Even though most Land constitutions have the same degree of rigidity they show great variations as far as the amendment rate is concerned. A simple linear regression analysis confirms this observation. Statistically the

39 For a critical discussion of the different indexes measuring rigidity cf. Astrid Lorenz, How to measure constitutional rigidity. Four concepts and two alternatives, in: Journal of Theoretical Politics, Vol. 17, 2005, No. 3, pp. 339-361.

relationship between these two variables is not significant ($p = 0.69$) and the variation cannot be explained ($R^2 = 0.05$).

The same conclusion is to be drawn when we analyze the second hypothesis claiming that the length of a constitution is a good predictor for the amendment rate. Or: The longer a constitution is the more often it is changed. Of course, respective findings depend on the way the length of a constitution is defined. Donald S. Lutz uses two indicators: the number of articles of a constitution and the number of words; Roberts measured the length of a constitution also with the number of words in the English language translation; Astrid Lorenz uses an index which relates to the length of constitutional sections.⁴⁰ I took the easiest indicator and equalized the length of a constitution with the number of articles the constitution had when adopted for the first time. Once again, the linear regression analysis does not show any causal links. The correlation is modestly significant ($p = 0.04$) but cannot explain the variations ($R^2 = 1.85$).

Figure 4: Length of a constitution and amendment rate



From this short analysis three conclusions can be drawn. Firstly, forward looking research strategies have some apparent strength. They correspond perfectly well to scientific standards and show a high degree of testability. This is probably one reason – rarely acknowledged, though - why many scholars pick this kind of research strategy. And they also fit perfectly well with most theories mentioned above. This strength is not challenged by the fact that respective studies using the same theories come to different conclusions. Secondly, what this requires are methodologically more rigorous studies including not only some sketchy concepts on vague links between variables but testable

40 D. Lutz, *Toward a Theory*, 1994, p. ??; Andrew Roberts, *The politics*, 2008, pp. 105 f.; Astrid Lorenz, *Verfassungsänderungen*, 2008, p. 75.

theories and well defined research designs. Only then it is possible to pick cases that fit with the research question and the data at hand. And only then do we produce “objective” results, i.e. studies that are intersubjectively comprehensible and reproducible. Thirdly, even though inference oriented research can claim to strive for the "ultimate goal of social inquiry"⁴¹ it includes some inherent limits. For methodological reasons such a research is forced to reduce the number of variables. In addition, the findings you get depend on the quality of the cases and the data. Or to put it differently: Even though you might come to "true" arguments with this kind of research strategy you might fail to catch the crucial causes that determine the real world of politics.

3.2 Backward-looking: Debt limit and constitutional politics in the German Länder

As already pointed out, a y-centered research strategy takes a different stance on the question why constitutions had been changed. It is less concerned with scientific rationality but with looking for the causes that triggered amendments. In order to highlight this approach I will very briefly examine how and why some Länder included a debt limit into their constitution and why others did not. This research question is quite intriguing as it addresses a controversial issue not only in Germany but also in European member states. The goal of this part is not at all to reconstruct in detail the different decision-making processes. On the contrary I just want to highlight the fact that if you take a different angle on the topic at hand you will ask different questions and you will come to different conclusions. I will start by describing the current constitutional situation that is the "y" in this context. And then I will provide some tentative answers.

The basic philosophy of the debt brake in Germany pretty much mimics the European stability and growth pact and is a sort of two-level regulatory system comprising federal and Länder rules.⁴² In 2009 the Basic Law (BL) established strict constraints on budgetary deficits for the federation and the Länder. Art. 109 par. 3 BL stipulates that in

41 R. Hirschl, *The Question*, 2005, p. 131.

42 Cf. Sarah Ciaglia / Friedrich Heinemann, *Debt Rule Federalism: The Case of Germany*. Centre for European Economic Research. Discussion Paper No. 12-067, Mannheim (download: <http://ftp-zew.de/pub/zew-docs/dp/dp-12067.pdf>); Roland Sturm, *Verfassungsrechtliche Schuldenbremsen im Föderalismus*, in: *Zeitschrift für Parlamentsfragen*, Vol. 41, 2011, no. 3, pp. 648-662; Ulrich Steinbach / Mandy Rönicke, *Umsetzung der Schuldenbremse in Rheinland-Pfalz – Vorreiter und Vorbild?*, in: *Jahrbuch für öffentliche Finanzen 2013*, ed. by. Martin Junkernheinrich et al., Berlin: Berliner Wissenschaftsverlag 2013, pp. 339-364; Uwe Berlitt, *Die Umsetzung der Schuldenbremse in den Ländern – erste Ansätze und erste Probleme*, in: *Jahrbuch für öffentliche Finanzen 2011*, ed. by. Martin Junkernheinrich et al., Berlin: Berliner Wissenschaftsverlag 2011, pp. 311-342; Daniel Buscher / Jan Fries, *Gestaltungsmöglichkeiten für der Bundesländer bei der Schuldenbremse*, in: *Jahrbuch für öffentliche Finanzen 2012*, ed. by. Martin Junkernheinrich et al., Berlin: Berliner Wissenschaftsverlag 2013, pp. 367-383.

“principle” the budgets of the Federation and the *Länder* „shall be balanced without revenue from credits“. From 2020 onwards *Länder* are supposed to neither take out any loan nor to produce and budget deficit. However, in the Basic Law there is no principle without exceptions. That is also true for the debt brake in the *Länder*. Because the *Länder* „may introduce rules intended to take into account (...) the effects of market developments that deviate from normal conditions, as well as exceptions for natural disasters or unusual emergency situations beyond governmental control and substantially harmful to the state’s financial capacity. For such exceptional regimes, a corresponding amortisation plan must be adopted“ (Art. 109 par 3 BL).⁴³

For the *Länder* this stipulation created two options as far as their constitutions were concerned: They could either abstain from amending the Land constitution. In this case the rules of the BL directly apply to the Land according to Art. 31 BL.⁴⁴ Or the *Länder* could adjust to the new situation by changing its constitution and / or the statutory law governing the budget rules. Hence, regardless of the constraints set by the BL there is some sub-national leeway which the *Länder* have used in different ways. Until March 2014 eight constitutions have been altered accordingly, eight remained as they used to be. The crucial point here is, however, that these questions less propose themselves due to the y-centered research strategy. By starting with the end of a decision-making process we cannot but take into account the multi-level system of which sub-national constitutions are a part of. As soon as we examine the constitutional amendments in the *Länder* we will refer to the federal level as a crucial structural factor.

But there is a second issue which presents itself. Why did some *Länder* voted for an amendment while others did not? This question refers to what already Robert F. Williams’ wondered about and that was whether constitutional politics are „outside the scope of ‘normal politics’?“⁴⁵ As a matter of fact, this is a question not that easy to answer. Because if you look at the different actor constellations you see that there are just two parties that stick to the same policy in all *Länder* that included a debt brake in the constitution. These two parties are the Left party and the FDP. While the Left always opposed a respective constitutional amendment – sometimes some of the members in parliament deviated from the party line, though – the FDP always was in

43 For the English translation I used an edition published by the Bundestag; <https://www.btg-bestellservice.de/pdf/80201000.pdf> (download: March 20, 2014)

44 Art. 31 Basic Law stipulates: „Federal law shall take precedence over *Land* law.“

45 Robert F. Williams, Comparative Subnational Constitutional Law: South Africa’s Provincial Constitutional Experiments, in: *South Texas Law Review*, Vol 40, 1999, pp. 625-660, here p. 639; cf. also G. Alan Tarr, *Understanding State Constitutions*, Princeton: Princeton University Press 2000, pp. 57 ff.

favor of a debt brake. The other parties sometimes supported respective bills, sometimes they did not.

Table : Debt Brakes – Introduced Bills in German Landparliaments

Land	term	Government	Bill introduced by	Date of Bill	Date of Law	parties supporting amendment	parties opposing amendment
BAV	16	CSU, FDP	CSU, FDP, SPD, Freie Wähler	10.12.2012	11.11.2013	CSU, FDP, SPD, Freie Wähler	Left party
	16	CSU, FDP	SPD	17.10.2012	Disapproval	–	–
BW	15	Green Party; SPD	CDU	29.09.2011	Disapproval	–	–
	15	Green Party; SPD	FDP	16.09.2011	Disapproval	–	–
	15	Green Party; SPD	FDP	15.03.2013	Disapproval	–	–
BER	–	–	–	–	Disapproval	–	–
BB	5	SPD, Left	CDU, FDP, GRÜNE/B90	23.09.2010	Disapproval	–	–
HB	17	SPD; Greens	CDU, FDP	11.06.2010	Disapproval	–	–
	18	SPD; Greens	CDU	05.06.2012	in process	–	–
	18	SPD; Greens	Greens	05.06.2012	in process	–	–
HH	20	SPD	CDU	09.05.2012	–	–	–
	20	SPD	CDU	30.03.2011	19.06.2012	SPD, GAL, FDP	CDU
HES	18	CDU, FDP	CDU, FDP	30.08.2010	29.04.2011	CDU, FDP,	Left Party
MV	5	SPD, CDU	SPD, CDU	02.03.2011	15.07.2011	CDU, SPD	Left Party
LS	17	SPD, Greens	CDU, FDP	05.03.2013	in process	–	–
	16	CDU, FDP	CDU, FDP	22.06.2011	Disapproval	–	–
	16	CDU, FDP	SPD	18.09.2012	Disapproval	–	–
NRW	15	SDP, Greens	CDU	17.01.2011	Disapproval	–	–
	14	CDU, FDP	Government	03.12.2009	Disapproval	–	–
RP	15	SPD	SPD, CDU, FDP	08.09.2010	23.12.2010	unanimously	
SLD	–	–	–	–	Disapproval	–	–
SAN	5	CDU, FDP	CDU, SPD, FDP, GRÜNE/B90	30.04.2013	11.07.2013	102	13
SAT	–	–	–	–	Disapproval	–	–
SH	17	CDU, FDP	CDU, FDP	14.01.2010	22.07.2010	CDU, SPD, FDP, Grüne, SSW	Linke
	17	CDU, FDP	SPD	13.01.2010	Disapproval	–	–
	16	SPD, Green, SSW	CDU	30.06.2009	Disapproval	–	–
	16	SPD, Green, SSW	Güne	04.06.2009	Disapproval	–	–
TH	5	CDU, SPD	FDP	17.10.2013	in process	–	–
	5	CDU, SPD	FDP	16.03.2011	Disapproval	–	–

Source: Websites of Land parliaments; my compilation.

There are two more features supporting the view that constitutional politics are least partly „inside normal politics”. On the one hand, with just one exception all bills have

been introduced by parties in parliament. This is quite unusual in parliamentary forms of government in which most bills adopted in parliament are initiated by the government. On the other hand, most bills have been introduced by parties in opposition. It goes without saying that normally these bills are dead on arrival. There is just one exception in Hamburg where the CDU started the legislative process that has been taken over by the other parties so that eventually the CDU voted against the amendment. However, all this indicates that the debt brake is a salient issue that can be used for party politics. Even though knowing that their bills would stand no chance of being accepted parties in opposition still start a legislative process in order to present themselves as an alternative.

Once again, the purpose of this part has not been to examine why and how Land constitutions have been amended. But the point here is rather a methodological one. By taking on a different perspective and by adopting a y-centered research strategy we will ask different questions and we will be forced to take more variables into account. It is due to the basic research strategy that we are “forced” to include the federal multilevel-system into our explanation. Furthermore, parties and party politics – the white elephant in the room – will necessarily enter the picture.

3. Conclusion

As a matter of fact, in Germany political scientists are rarely interested in subnational constitutional politics. In addition, the prevailing perspective on respective topics follows traditional scientific trajectories. Most studies fail to address methodological issues and provide little information on the crucial research questions. However, as Barbara Geddes pointed out, embarking on a research process means to make decisions on the cases, on the data, on the research design.

To be sure, this is not a plea for one or the other research strategy. On the contrary, both research strategies have their merits and their downsides. It all depends on what you want to find out. However, what I think is necessary, are studies that are methodologically more rigorous.