



# New Ways for Gender Equality: Gender Quota for Political Participation

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# What is the problem?



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# No effective participation of women in political decision making (1918-2021)

- Symptomatical: Low percentage of women in German Parliaments since 1918/ 1949
  - 1918 *active and passive female suffrage* established („November Revolution“) = 1918 „the people“ completely became visible: women (51 %) and men (49 %) = sovereign „50/50“ = beginning of democracy in Germany (Art. 22 WRV 1919: „Men and women age of 20 years“)
  - 1933-1945 Nazi dictatorship, factual (not legal) *withdrawal of passive female suffrage*
  - 1949 West Germany, Federal Republic of Germany – Federal Constitution „GG“, representative democracy, Art. 20, Art. 38 (1) GG, equality of men and women, Art. 3 (2) GG – fundamental right and State’s commitment
  - 1990 German reunification: East and West Germany, Federal Republic of Germany
- Currently ca. 30 % women in state parliaments („Landtag“) and German Federal Parliament „Deutscher Bundestag“ (BT)
- Decrease of women in state parliaments at the moment: less than 30 %, „roll back“
  - Always less than 20 % women in state parliament of Baden-Württemberg until 2016, 2021: 29,2 %
- Decrease of women in local councils: Mayoress 8 %; Female district administrators 9,5 %
- No representative participation of women in parliaments and local councils
- Main reason: Structural discrimination of women in (traditional) political parties, de facto preference for men (80 %-men quota), refusal to nominate women

# Female Members of the German Bundestag 2017-2021

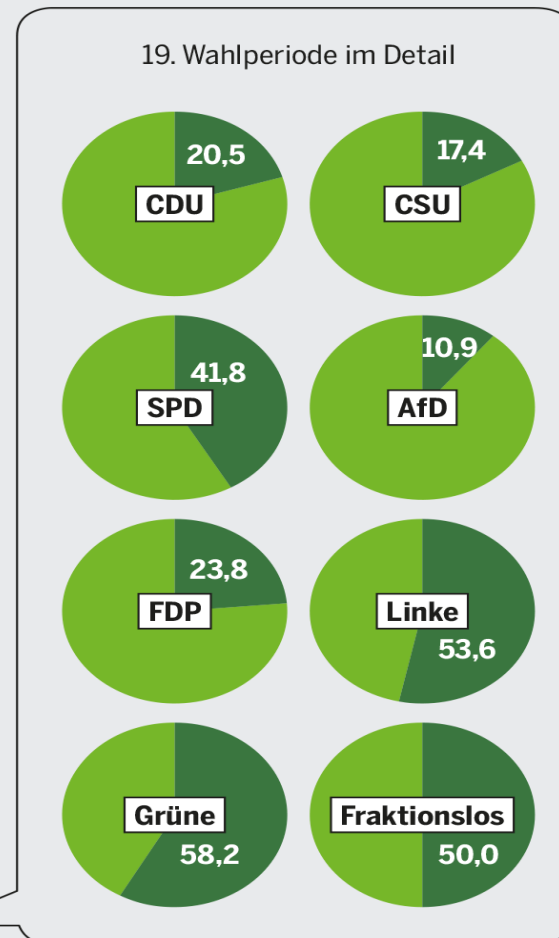
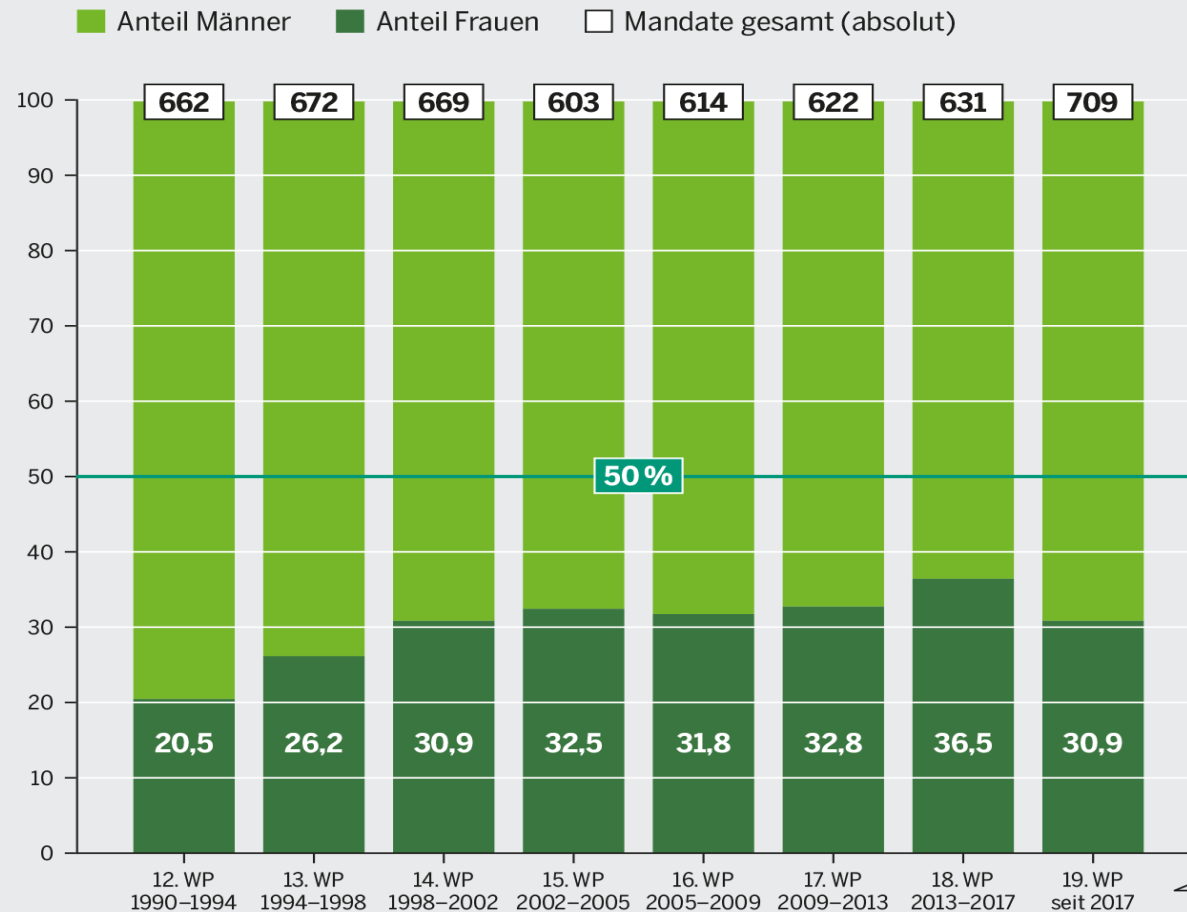
“Representative Democracy“ - Electoral law based on „personalized proportional representation“: complicated mix of electoral lists (list of candidates, at least 299 mandates) and direct mandates (299 constituencies), in total at present: 709 MPs (regular: 598 MPs)

## FRAUENANTEIL IM DEUTSCHEN BUNDESTAG (1990–2017)

in Prozent

zu Beginn der Wahlperiode (19. WP: Ende Oktober 2017)

Stand: Oktober 2017



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# Problem: Missing nomination of female candidates

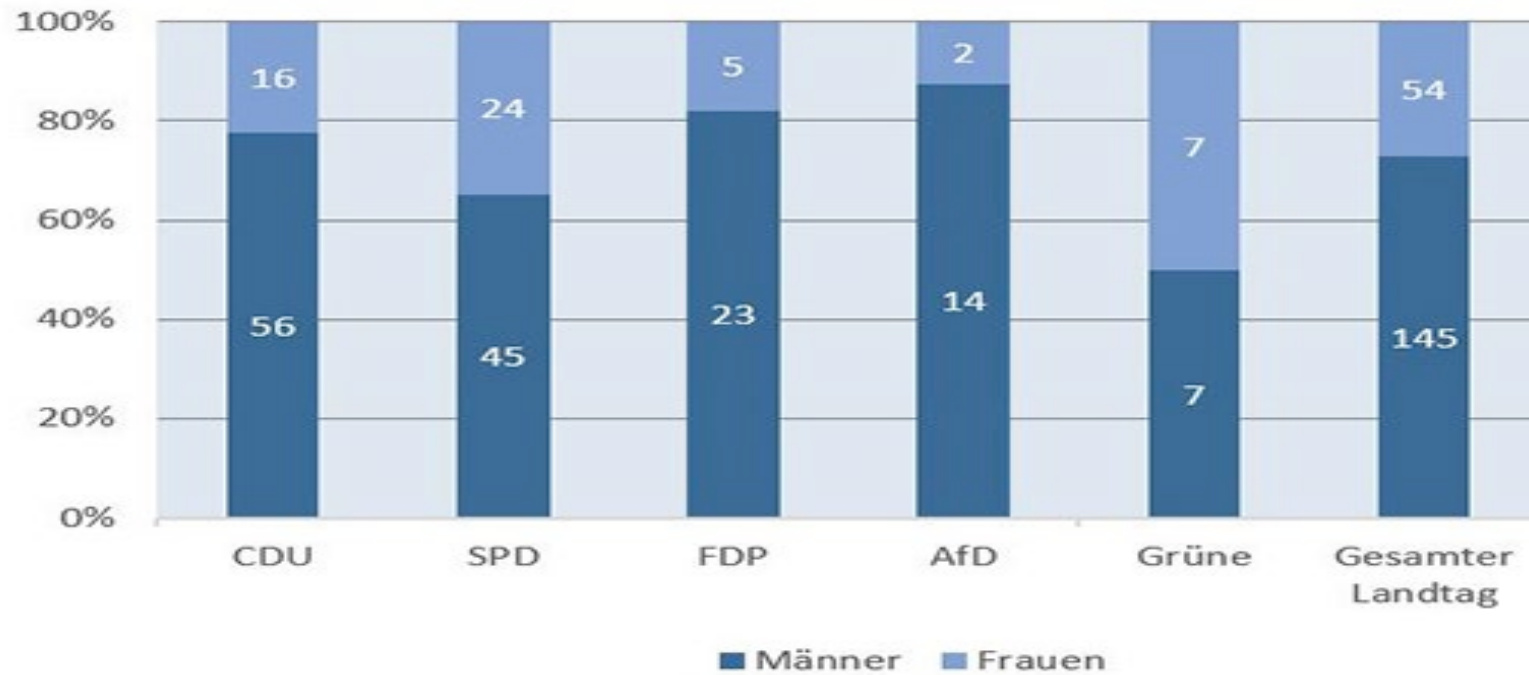
- E.g. Election for German Bundestag 2017 – Female candidates?
  - 29 % nominated women in the whole
  - 31,7 % nominated women on 272 electoral lists („Kandidatenlisten“)
  - 25 % nominated women in electoral districts („Wahlkreisen“), direct mandates („Direktmandate“)
  - *Statute regulation on base of parity by 3 political parties: B90/The Greens, The Left, Social Democratic Party Germany (SPD) – but only for electoral lists („voluntary self-regulation“)*
  - *No statute regulation on base of parity by any party for direct mandates*
  - *! Direct mandates/election campaign: a question of candidate's own money !*
    - All parties concerned, just the presupposed amount of money differs: 3.000, 20.000, 100.000 Euro
    - (Prospective) Female candidates = Women affected by pay discrimination, ca. 22 % = restricted access to sources of capital, need more private credits and/or sponsoring than men = „indirect discrimination“ (!)
    - Female candidates (potential female members of parliament) hardly nominated by CSU, CDU, FDP, AfD
    - Female candidates for direct mandates hardly nominated by all parties, incl. The Greens, The Left, SPD

# Female members of State Parliament North Rhine-Westphalia 2017-2022

27,6 % = 54 Women (light blue), 72,4 % = 145 Men; in total at present: 199 MPs (regular: 181 MPs)

„Representative Democracy“, Electoral law: „personalized proportional representation“: complicated mix of electoral lists (at least 53 mandates) and direct mandates (128 constituencies)

- CDU: 22 % (16) Women, 78 % (56) Men
- B90/Greens: 50% (7) Women, 50 % (7) Men
- SPD: 35 % (24) Women, 65 % (45) Men
- FDP: 18 % (5) Women, 82 % (23) Men
- AfD: 12,5 % (2) Women, 87,5 % (14) Men



# Female members of State Parliament Rheinland-Pfalz 2021-2026

SPD (39): 23 men = 59 %, 16 women = 41 %

- Electoral list: 11 = 4 men, 7 women

- 52 constituencies/ direct mandates: 28 = 20 men, 8 women

CDU (31): 24 Männer = 77,4 %, 7 Frauen = 22,6 %

- Liste: insg. 8, davon 6 Männer, 2 Frauen

- WK (52) direkt: insg. 23, davon 18 Männer, 5 Frauen

AfD (9): 8 Männer = 88,9 %, 1 Frauen = 11,1 % - nur Liste

FDP (6): 4 Männer = 66,7 %, 2 Frauen = 33,3 % - nur Liste

Grüne (10): 5 Männer = 50%, 5 Frauen = 50 %

- Liste: insg. 4, davon 5 Männer, 4 Frauen

- WK (52) direkt: 1 Frau

Freie Wähler (6): 5 Männer = 83,3 %, 1 Frau = 16,7 % - nur Liste

➤ 101 MPs.: 32 women = 31,7 %, 69 men = 68,3 %

➤ Electoral law: 101 MPs (fixed number) = 49 per List, 52 direct mandates/constituencies (fixed)

# Female members of State Parliament Saarland 2017-2022

CDU (24): 29,2% (7) women, 70,8% (17) men

SPD (17): 47 % (8) women, 53 % (9) men

The Left (7): 42,9 % (3) women, 57,1 % (4) men

AfD (2): 0 % (0) women, 100 % (2) men

- 51 MPs in total (fixed number): 35,3 % (18) women, 64,7 % (33) men
- „Representative Democracy“
- Electoral law: „proportional representation“, electoral lists (lists of candidates – „Wahlkreisliste“ and „Landesliste“) only



# Female members of State Parliament Baden-Württemberg 2016 -2021

FDP (12): 8,3 % (1) woman, 91,7 % (11) men

SPD (19): 10,5 % (2) women, 89,5 % (17) men

AFD (23): 13 % (3) women, 87 % (20) men

CDU (42): 16,7 % (7) women, 83,3 % (35) men

Grüne (47): 46,8 % (22) women, 53,2 % (25) men (nomination on basis of parity)

All in all 143 MPs at present (number not fixed), thereof

- 75,5 % (108) men
- 24,5 % (35) women (*until 2016: 18 % women*)
- Special Electoral Law: only direct mandates, no electoral lists! = 70 direct mandates/constituencies („first mandate“), supplemented by „second mandates“, complicated calculation

# Female members of State Parliament Baden-Württemberg 2021 - 2026

FDP (12): 8,3 % (1) Frau, 91,7 % (11) Männer

SPD (19): 10,5 % (2) Frauen, 89,5 % (17) Männer

AFD (23): 13 % (3) Frauen, 87 % (20) Männer

CDU (42): 16,7 % (7) Frauen, 83,3 % (35) Männer

Grüne (47): 46,8 % (22) Frauen, 53,2 % (25) Männer

- Special Electoral Law: only direct mandates, no electoral lists! = 70 direct mandates/constituencies („first mandate“), supplemented by „second mandates“, complicated calculation
- In total at present 154 MPs: 75,5 % = 109 Männer, 29,2 % = 45 Frauen!

„Die mangelnde Heranziehung von Frauen zu öffentlichen Ämtern und ihre geringe Beteiligung in den Parlamenten ist doch schlicht Verfassungsbruch in Permanenz.“

*„The lack of access of women to public functions and their low participation in Parliaments is nothing but permanent violation of the constitution“*

*Dr. jur. Elisabeth Selbert, 1981 - decisive for the incorporation of Art. 3 (2) S. 1 GG into the Constitution 1949:  
„Men and women are equal“.*

4 „Mothers“ of German Federal Constitution „Grundgesetz“, members of the Parliamentary Council  
„Parlamentarischer Rat“ 1948/49 = 61 men  
just 4 women, from the left:

- Friederike Nadig (SPD)
- Elisabeth Selbert (SPD),
- Helene Weber (CDU),
- Helene Wessel (Zentrum)



Photo: Bestand Erna Wagner-Hehmke, Haus der Geschichte, Bonn

# It's about ...

## equality and representative democracy

- Representative Democracy, Art. 20 German Basic Law (GG)
  - „principle of democracy, „people's sovereignty“, „right of democracy“ = „equal participation of female and male citizens“ (BVerfG 2009 „Lissabon“; 2017 „NPD“ Rn. 543)
- Equality of women (and men), Art. 3 (2) GG
  - Basic right and principle
  - State obligation to enforce the right everywhere in reality
    - Art. 3 (2) S. 2 GG since 1994;
    - Art. 3 (2) S. 1 GG, BVerfG jurisdiction since 1953 ..., 1991 („state's duty to protect“), 1992 („Nachtarbeitsverbot“, state's obligation to enforce gender equality in reality) ...
- Parties' freedom to nominate candidates, Art. 21 (1) GG
  - Restricted by „intern democratic structure“, Art. 21 (1) S. 3 GG !
  - Has to be in compliance with democratic rights of party members / candidates
- Passive right to vote of women („Passive Wahlgleichheit“), includes equal opportunities for female candidates which do not exist in reality, Art. 38 (1) GG („voting principles“), Art. 3 (2) GG

# Problem: No equal opportunities for women in politics

- No equal opportunities for female candidates in nomination procedure since 1918/1949
- Remember: 1918 active and passive female suffrage established („November Revolution“) = 1918 the complete sovereign („the people“) became visible: women (51 %) and men (49 %) = beginning of democracy in Germany (Art. 22 WRV 1919: „Men and women age of 20 years“)
- **Violation of the passive female suffrage, Art. 38 (1) GG, Art. 3 (2) GG: equal opportunities of all candidates, including female candidates:**
  - Structural, de facto disadvantages / discrimination against female candidates by political parties – violation of Art. 38 (1) GG, Art. 21 (1) S. 3 GG, Art. 20 (1), (2) GG, Art. 3 (2) S. 1, S. 2 GG
  - Structural, de facto privileg / preferential treatment of male candidates by („traditionally“) political parties, „de facto men´s quota of 80 %“ – violation of Art. 38 (1) GG, Art. 21 (1) S. 3 GG, Art. 20 (1), (2) GG, Art. 3 (2) S. 1, S. 2 GG
- **No individual problem of women – not too scared, too stupid, too ... – but a structural problem of political parties (male dominated internal structures, including decision-making bodies; nepotism among men)**
- BVerfG 2015 (2 BvR 3058/14) : „Structural disadvantages of female politician“ (recital 24, 8 – with reference to KG Berlin 2014, 4 W 55/14 )

# Problem: a well-known fact

Günther Verheugen, prominent male SPD/Ex-FDP politician, former EU Commissioner, 1980:

- „(...) das krasse Missverhältnis zwischen männlicher und weiblicher Repräsentanz in den Parlamenten ist ja nicht das Ergebnis einer entsprechenden Wahlentscheidung,
  - *„(...) the massive imbalance between male and female representation in Parliaments is not the result of the voter's choice*
- sondern es kommt daher, dass Frauen bei der Aufstellung von Wahlbewerbern bereits diskriminiert sind.
  - *but the result of discrimination against women in the nomination process*
- Das und die daraus resultierenden Folgen widersprechen dem Grundsatz der Gleichberechtigung und der Chancengleichheit.“
  - *This and the consequences resulting thereof contradict the principle of gender equality and equal opportunities.“*

# Problem: Existing election law

- Election law enables and promotes structural discrimination against female candidates
  - Intransparent nomination procedures: preferring men, discriminating against women
  - Women hardly nominated
- If women are not nominated they cannot be elected by „the people“
- „The people“ have no influence on the nomination procedure
- „The people“ have to vote mainly for men (since 1949), de facto men's quota of 80 % = limitation of freedom of choice, Art. 38 (1) GG
- Result: Female members of parliament are missing
- Result: Effective influence of „the people“ = of women (51 %) in parliament is missing (BVerfG, democracy)
- Result: female perspectives, experiences, interests („socialisation“) are missing in the discussion and political decision making in parliament
- Result: the „male perspective“ dominates political decision making

# Problem: a well-known fact

Heiner Geißler, male politician, jurist/lawyer and former minister, CDU, 1980:

- „die Benachteiligung der Frauen (...) ist das Resultat einer Politik,
- „the disadvantage of women (...) is the result of politics,
- die sich im Wesentlichen am Mann orientiert.“
- which is mainly focused on men.“

Dt. Frauenrat (Hrsg.), Mehr Frauen in die Parlamente, 1980, S. 15 f.

Jutta Limbach, female politician, jurist and former president of the BVerfG, SPD, 2016:

- „Frauen haben in der Politik immer noch Startnachteile. (...)
- Women still have to fight against initial disadvantages in the field of politics. (...)
- Die Wirklichkeit der Politik ist nach wie vor männlich geprägt.“
- The political reality is still determined by men.“

Limbach, Wahre Hyänen, 2016, S. 89.



# Consequence? – Lack of quality of political decisions

## ➤ Legislation

- „Male perspective“ dominates the discussion and decision making (> Verheugen/Geißler/Limbach)
- „Female perspective“ is missing
  - Different socialisation of men and women lead to different analyses of reality, different views and opinions, different role expectations

## ➤ Legislation is based on „male view“ and will affect men and women in a different way, often with an indirect discriminatory impact on women

- BVerfG 2008: Pension reduction („Versorgungsabschlag“) for civil servants in part-time „indirect discrimination against women“ Art. 3 (2) GG = unconstitutional (BVerfGE 121, 241)
- Contrary to duty - Legislator
  - Since 1949 gender pay discrimination: women earn less than men (Gender Pay Gap 22%), result: poverty in old age (Gender Pension Gap 60 %), esp. mothers; no effective law to enforce equal pay of women (EntgelttransparenzG 2017: „Paper tiger“)
  - Since 1949 missing protection of women and children against violence (state's duty: Art. 2 (2) GG) ... etc.
  - Since 2020 Corona-measures primarily benefit men: e.g. short-time allowance („Kurzarbeitergeld“), depends on net salary and taxation of married couples („Nettogehalt; Ehegattensplitting Kl 5 Männer/Kl 3 Frauen“)

# Consequence? – Lack of democratic legitimation of politics

- Core content of **democracy**, Art. 20 GG, is the **general principle of equality**, Art. 3 I GG,
- = leading principle of the liberal and democratic constitution anchored in GG which
- is concretised by **special principles of equality: gender equality in Art. 3 (2) GG and electoral principles in Art. 38 (1) GG** („free, equal, general, direct, secret“) – complementary – in order to
- ! Safe „free self-determination“ of all female and male citizens in equality = „people´s sovereignty“ (BVerfG „NPD“ 2017 Rn.542; 2014 „3 %-Klausel“; 2009 „Lissabon“ Rn. 208); necessary is „effective influence“ of the people „on state power (...) by elections“(BVerfGE 83, 60, 71; std. Rspr)
- ! Safe the „individual constitutional right“ of all female and male citizens to „democratic participation (Art. 20 I, II GG)“ (BVerfG „NPD“ 2017 Rn. 542; „Lissabon“ 2009 Rn. 210)
- ! **Safe the constitutional right to equal democratic participation and self-determination of women and men** (BVerfG, 12 July, 2017 (1 BvR 2222/12, 1 BvR 1106/13): “principle of democracy ... will of the people as a whole of female and male citizens“ (E 146, 64, 209)

# Understanding of Democracy in Germany?

Landtag Thüringen, Website bis 2017

- ★ „Thüringen – Kernland des deutschen Parlamentarismus“
- ★ „In Thüringen there was the first free elected „Representation of the people“ (VOLKSVERTRETUNG) in Germany: 2. Februar 1817, „Landtag Großherzogtum Sachsen-Weimar-Eisenach“
- „the People“? / „representaion of the People“ ?
  - ★ Wer wurde 1817 von wem gewählt / vertreten?: Männer von Männern, aber nicht „das Volk“, das zur Hälfte aus Frauen besteht
- Active and passive suffrage of women in Germany 1918 = start of democracy in Germany!
- „The people“ = Female and male citizens as a whole („complete representaion“)
- „Representation of the people“ in Germany 1919, first joint election of women and men (age of 20 years, Art. 22 WRV) on 19.1.1919

# Solution: Equal election law (Parité)

- Legal obligation of political parties to nominate the same number of female and male candidates
  - Wahlorganisationsrecht; BWahlG, BWahlO; LWahlG, LWahlO
- Electoral lists, alternating woman – man etc. (or the other way round)
  - Rejection of not quoted lists
    - Rejection not new, see § 26 I Nr. 2, § 28 I Nr. 2 BWahlG
- Constituencies (direct mandate), quoted nomination e.g. „constituency duo/team“ („Wahlkreisduos“)
  - Nomination of a female and male Candidate („Duo“) per constituency, the people elect both with one vote or two votes: one for a woman, one for a man
    - Reform of constituencies

# Permitted by Constitution (GG)?

Yes – in order to stop and correct an unconstitutional state > in line with

- Representative democracy, Art. 20 (1), (2) GG
  - „principle of representation as a whole“ of female and male citizens
- Equality of women and men in reality, Art. 3 (2) GG (BVerfG)
  - State obligation to enforce gender equality everywhere, including politics (Staatliches Durchsetzungsgebot, gerichtet auf tatsächliche Gleichberechtigung von Frauen (und Männern) in allen gesellschaftlichen und rechtlichen Bereichen, Art. 3 II S. 2 GG: seit 1994, Rspr. BVerfG (1. Senat); seit 1949 in Art. 3 II S. 1 GG „Männer und Frauen sind gleichberechtigt“, BVerfG (1. Senat) 1953; 1991, 1992, 1993 „Schutzpflicht“)
- Principle of electoral equality (Passive Wahlgleichheit), equal opportunities of female and male candidates, Art. 38 I GG in connection with Art. 3 (2) GG
- Right of political parties, freedom of nomination, Art. 21 (1), Art. 38 (1) GG
- Freedom of choice (Wahlfreiheit) of the people, Art. 38 (1) GG

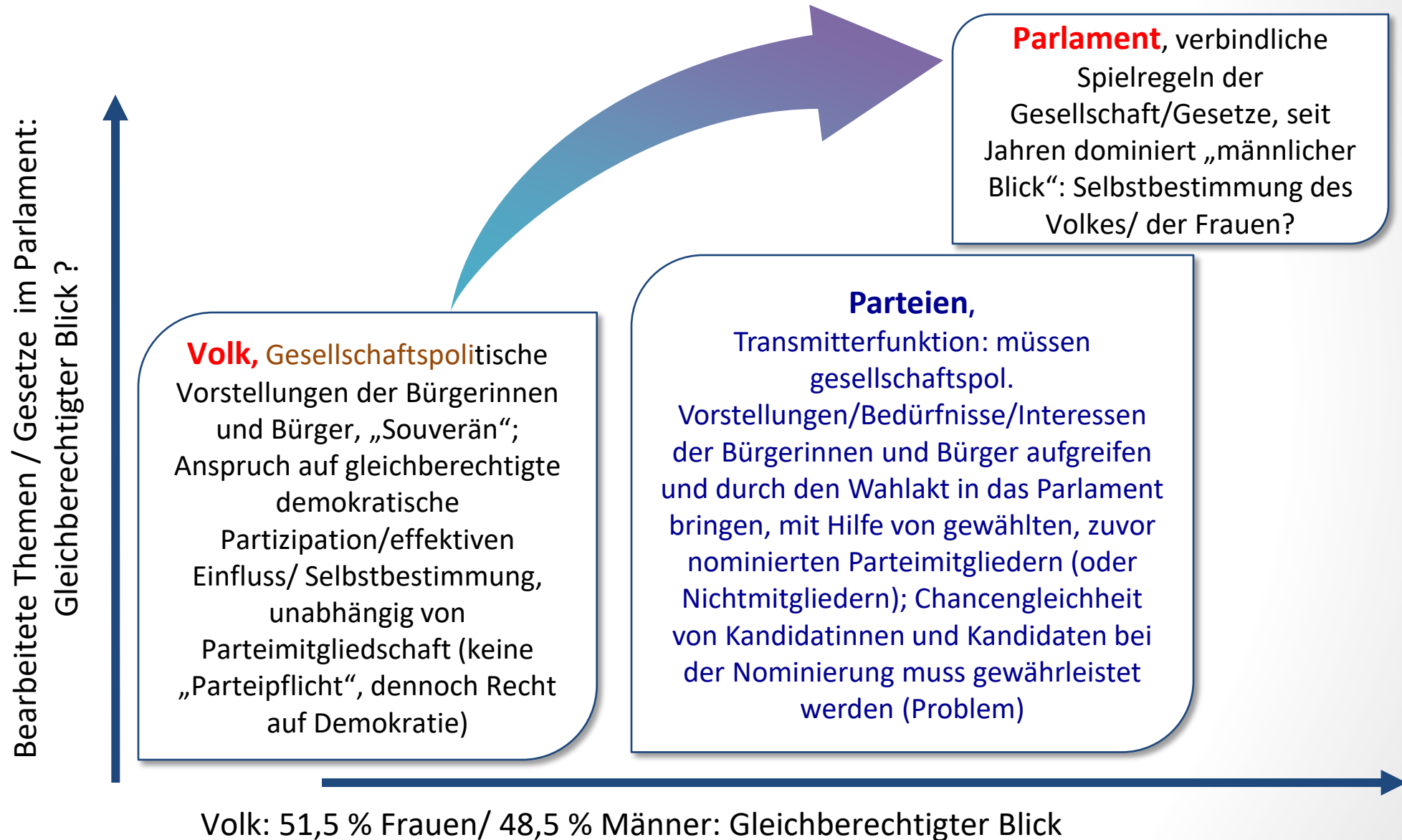
# Permitted by Constitution (GG)!

- No absolute prohibition to restrict rights of political parties, Art. 21 GG
- No absolute prohibition to restrict electoral principles („Differenzierungen“), Art. 38 I GG
- **Decisive: Justification by „constitutionally legitimized reasons“ „verfassungsrechtlich legitimierte Gründe“ (BVerfG 2014 „3 %“)**
  - Art. 38 (1), Art. 3 (2) GG: Enforcing equal opportunities of female candidates, protection against structural discrimination against women, enforcing electoral equality of women (passive Wahlgleichheit)
  - Art. 20 (1), (2), Art. 38 (1), Art. 3 (2) GG: enforce the right of female (and male) citizens of equal democratic participation and effective influence on decisions by parliaments
  - Art. 38 I GG: extension of freedom of choice of the people – omission of de facto men quota
- **Principle of proportionality / balancing conflicting constitutional interests – above mentioned reasons show: constitutional reasons pro parité, Art. 3 (2) GG, predominate**

# Parteienfreiheit, Art. 21 I GG?

- ParitéG, Ausgestaltung (Art. 21 I 3 GG „demokratische innere Ordnung“= verfassungsimmanente Begrenzung, BVerfG 1953) oder Eingriff in Nominierungsfreiheit? – Jedenfalls gerechtfertigt:
- Parteien sind „verfassungsrechtliche Institutionen“ (BVerfG 2018 Rn. 41f.)
- Verfassungsrechtl. Auftrag aus Art. 21 I GG: Mitwirkung an d. polit. Willensbildung des Volkes, insb. durch Wahlen – Parteien als Wahlvorbereitungsorganisationen
- Spezifische Vermittlerfunktion zw. Staat und Gesellschaft; wirken in den Bereich der institutionalisierten Staatlichkeit hinein, ohne ihm anzugehören
- Politische Handlungseinheiten, derer die Demokratie bedarf, um Wählerinnen und Wählern als politisch aktionsfähigen Gruppen „wirksamen Einfluss auf das staatliche Geschehen zu ermöglichen“; Parteien erfüllen keinen Selbstzweck, sie sind auch keine Privatunternehmen
- BVerfG 1952: „Parteien sind in die Verfassung eingebaut. (...) Sie stehen daher nicht wie andere soziale Gebilde nur in einer verfassungsmäßig gesicherten Position dem Staat gegenüber“.
- Erfüllung des Auftrag aus Art. 21 I 1 GG: Sicherung des Rechts auf gleichberechtigte demokr. Teilhabe der Bürgerinnen/Bürger (Art. 38 I, 20 GG) – umfasst Auftrag, Recht auf Chancengleichheit der Kandidatinnen (pass. Wahlgleichheit, Art. 38 I GG) zu sichern; betroffen ist die demokratische innerparteiliche Willensbildung (Nominierung) gem. Art. 21 I 3 GG

# Aufgabe / Verantwortung der Parteien, Art. 21 GG





# Necessary !

- BVerfG: „Maßgeblich für die Frage der weiteren Beibehaltung, Abschaffung oder Wiedereinführung einer Wahlregelung sind allein die aktuellen Verhältnisse“,
- „der Gesetzgeber (hat sich) bei seiner Einschätzung und Bewertung an der politischen Wirklichkeit zu orientieren“ (BVerfG 2014 „3 %-Klausel“ Rn. 57)
- Politische Wirklichkeit?
  - 103/72 Jahre „Parteien-Freiwilligkeit“ führt zu Verfestigung männlich dominierter Strukturen; Keine Änderungen zu erwarten
  - Nach 103/72 Jahren struktureller Diskriminierung von Kandidatinnen und fehlender gleichberechtigter Partizipation der Bürgerinnen ist Gesetz zur Herstellung verfassungsgemäßer Zustände geboten
- Gleichberechtigte demokratische Teilhabe und Einflussnahme von Frauen in der repräsentativen Demokratie, Art. 3 II S. 1, S. 2, Art. 20, Art. 38 I GG
  - Forderung seit 1911, 1918/1919 - Art. 22 WRV; 1948/49 PR Selbert (SPD), Nading (SPD), Wessel (Zentrum, später SPD), Weber (CDU) „parit. Wahlrechtsreform“ iVm Art. 3 II 1 GG; 1973-1980 (BT-Enquete 7./8. LP), 1991-1993 GVK Limbach „parit. Wahlrechtsreform“ iVm Art. 3 II 2 GG

# Discussion in Germany – Civil society



- Repeal: No adequate equal influence of women on state authorities, esp. Parliaments („no representation, no voice, no influence“)
- Repeal: Violation of women’s constitutional rights of equality and democracy:
  - Violates Bavarian Constitution in line with German Basic Law = Federal Constitution
  - Contrary to the „right of equal democratic participation“ according to the jurisdiction of the German Federal Constitutional Court (BVerfG)
  - Violates Art. 38 (1) – passive right to vote of women (no equal opportunities for women), Art. 20 (1) and (2) – principle of democracy, „people’s sovereignty“, Art. 3 (2) German Basic Law – equality between men and women, state obligation to enforce the right
  - Bavarian Constitutional Court 2018: Rejection of the lawsuit, no violation of constitutional rights, no real and legal problem (no discrimination against female candidates by parties, no equal representation is needed)
  - Constitutional complaint with the German Federal Constitutional Court against this decision (2 BvR 834/18)
  - **Parité in den Parlamenten e.V. München:** [www.parite.eu](http://www.parite.eu)  
Email: [info@parite.eu](mailto:info@parite.eu)

# Discussion in Germany – Legal opinions

- Legal discussion since the end of 2018/January 2019
- One opinion: “Unconstitutional“, „undemocratic“
  - No real problem, no structural discrimination against women
  - Even if - Conflict between equality and democracy, solution in favour of democracy
  - „Representative democracy“ does not mean equal representation of men and women or other groups of society
  - Men are able to represent women and their ideas and interests in parliament
  - Violation of parties’ right to nominate their candidates arbitrarily
- Second (my) opinion: “Constitutional and necessary“, further more in line with European Constitutional Law / EU Charta of Fundamental Rights
  - No contradiction between equality and democracy, equality of people is a core element of democracy which demands equal rights of people in reality, including equal rights of women and men = core groups of the people (ca. 50:50); lack of gender equality leads to a democratic deficit
  - Political parties are no ends in themselves, they have to serve the people and transport people’s ideas, needs, interests into the parliament by their nominated candidates; if they do not nominate women, the „masculine view“ dominates the politics
  - BVerfG 2015: „Structural disadvantage of female politicians“ - 2BvR 3058/14 (Rn. 8, 24), Bezug KG Berlin 2014, 4 W 55/14

# Democracy in Europe

- Parity composition of parliaments reflects the current understanding of European democracy
- Equal participation of women and men in political decision making in representative democracies is one of Europe's „essentialia negotii“

*„Gender equality is (...) a sine qua non of democracy“*

(European Council 2007, CM/Rec(2007)17)

*„(...) fundamental condition of democratic societies“*

(EU Commission 2013, Women and men in leadership positions in the EU)

- .....

- ....

# Democracy in Europe - EHCR

- European Court of Human Rights (EHCR), 2. Section, November 12, 2019 - Application no. 54893/18, Metka ZEVNIK and others against Slovenia:
- Article 3 of Protocol No. 1 not violated: min. 35% gender representation requirement, non-compliance result in the rejection of the entire lists of candidates
- *The lack of gender balance in politics is a threat to the legitimacy of democracy and a violation of the right of gender equality*
- *It is a legitimate aim of strengthening the legitimacy of democracy by ensuring a more balanced participation of women and men in political decision-making*
- The rejection of the lists of candidates for non-compliance with the gender quota requirement is proportionate to the legitimate aim pursued (see above)

# Democracy in Europe

- 10/2013 EU Commission demands measures from the member states to increase the share of women in political decision-making positions, including national parliaments, following the example set by the French Electoral Gender Quota Law  
(EU COM 2013, Women and men in leadership positions in the EU, p. 22, 27)
- Target: Materiel equality of women and men in all aspects of European society, article 23 ChFR; article 52 CHFR: ECHR = minimum standard of ChFR protection
- Standard: European concept of democracy, refers explicitly to **female (!)** and male citizens, article 2, 3 II, V, 9, 10, 11 TEU

# Art. 23 EU Charta of Fundamental Rights

- (1) Equality between women and men must be ensured in all areas, including employment, work and pay.
- (2) The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the underrepresented sex.

# Parity Electoral Law in EU countries

- Existing in 10 member states, elaborated in different ways
  - France (2001), Belgium (2000), Ireland, Poland, Portugal, Slovenia, Spain, Greece, Croatia
  - Italy, elections for some regional parliaments
  - [Germany, federal state Brandenburg and Thuringia (2019; lists for federal state election)]



# Thür. VerfGH, Urteil v. 15.7.2020 ?

- Irrelevant, Urteil (6:3) GG-widrig – 2 abweichende Sondervoten: Verfassungsgemäß
- **Verstoß gegen Art. 3 II GG (Rspr. BVerfG), Art. 20 III, Art. 1 III GG:**
  - Art. 3 II GG findet keine Anwendung, LV geht vor ; violates Art. 20 (3), Art. 3 (2) GG, Art. 1 (3) GG
  - Arg.: Rechtshistorische Gründe, die an subj. Willen (!) des histor. Landesverfassungsgebers/Thüringen von 1993 anknüpfen
- Verstoß gegen Art. 101 Abs. 1 GG (Entzug des gesetzl. Richters), da fehlende Divergenzvorlage an BVerfG gem. Art. 100 I oder III GG
- Verfassungsbeschwerde von 20 wahlberechtigten Thüringer Bürgerinnen und Bürger, z.T. Parteimitglieder (SPD, Die Linke) – Az.: 2 BvR 1470/20
- Bundesweit Beitritte zur Verfb durch Bürgerinnen und Bürger, ca. 500 Personen, Zahl steigt – Thür. Landesfrauenrat „I dissent !““ (Anlaufstelle)

# Bbg. VerfG, Urteile v. 23.10.2020 ?

- Irrelevant, da GG-widrig
- **Verstoß gegen Art. 3 II GG (Rspr. BVerfG), Art. 20 III, 1 III GG**
  - Gleichberechtigung von Frauen/Männern „wahlrechtsfremder Zweck“
  - Schon rechtshistorisch falsch, vgl. Protokoll Parlamentarischer Rat v. 18.1.1949: Gleichberechtigung von Frauen in allen Lebens- und Rechtsbereichen sowie Verwirklichungsgebot in heutigem Art. 3 II S. 1 GG „Männer und Frauen sind gleichberechtigt“ verankert; Lebens- und Rechtsbereich „demokratische Politik“ und Wahlrecht mit umfasst
- Verstoß gegen Art. 101 I GG (Entzug des gesetzl. Richters), da fehlende Divergenzvorlage an BVerfG gem. Art. 100 I o. III GG
- Verfassungsbeschwerde von 21 wahlberechtigten Bbg. Bürgerinnen und Bürger, z.T. Parteimitglieder (SPD, CDU) – Az.: 2 BvR 2074/20
- Beitritte zur Verfb durch Bürgerinnen und Bürger, „I dissent“

# BVerfG, Senatsbeschluss vom 15.12.2020 ?

## Wahlprüfbeschwerde gg.BT-Wahl 2017, Art. 41 II GG

1. Stufe: Einspruch BT 2017, vom BT zurückgewiesen 2019
2. Stufe: Beschwerde BVerfG 2019 (2 BvC 46/19)

BVerfG, Beschluss 2. Senat v. 15.12.2020: **Beschwerde als „inadmissible“ rejected / „unzulässig“** verworfen, aber 40 Seiten Begründung:

- Gesetzliche Regelungen zur paritätischen Ausgestaltung der Landeslisten und Wahlkreiskandidaturen mit GG vereinbar? – **Offen gelassen, darüber „hatte der Senat (...) nicht zu entscheiden“**
- Pflicht des Gesetzgebers zu paritätischer Ausgestaltung des Wahlvorschlagsrechts pol. Parteien? – Kann ausnahmsweise aus GG / Unionsrecht folgen; hier aber nicht hinreichend begründet
- BVerfG nimmt Rspr. d. LVerfG Weimar/Potsdam zur Kenntnis, folgt den Urteilen aber nicht
- **Bejaht Kompetenz d. Gesetzgebers zu paritätischen Gesetzgebung „in eigener Verantwortung“, Beachtung der betroffenen verfassungsrechtlichen Belange, Abwägung** (Rn. 133)
- **Open End , 2. complaint, election of German Bundestag in September 2021!**

Pro Parité

Thank you very much for your attention!