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Unconstitutional crisis in Germany?

Angela Merkel looks set to continue as chancellor, but quirks of the electoral system may blight the coalition she leads



Henning Meyer

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Bundestag. The seat of the German parliament. Photograph: Murdo Macleod

Germany will vote for a new federal government on Sunday and the polls predict a tight race between the red-red-green and centre-right camps. Given the parties' announcements about potential coalitions, however, there are only two possible governments: a centre-right one (preferred by the Christian Democrats/Christian Social Union (CDU/CSU) or another grand coalition. So in reality, it is hard to see how Angela Merkel could lose the chancellorship but there are still important issues to be resolved.

One of those is how a centre-right coalition might come about. There is a scenario under which there could be a change of government without the CDU/CSU and Free Democrats winning an overall majority. A peculiarity of the German electoral system, the so-called *ueberhangmandate*, could make this happen. So how would this work?

Basically, the German electoral system is a proportional representation (PR) system. Half the seats of the Bundestag are allocated according to party lists, but the other half are constituency MPs elected according to a first-past-the-post (FPTP) system with its bias in favour of big parties. The FPTP and the PR vote are adjusted but you can have a situation in which a party wins more constituencies in a particular state than it should have on the basis of its PR vote. If this happens additional seats are created and parliament grows bigger.

Political scientists are predicting up to 20 such additional seats for the CDU/CSU, so one scenario for Sunday evening is the conservatives and Free Democrats forming a new government with the help of this anomaly in the electoral system but without having an overall majority. This would not necessarily be problematic if it were not for one important fact: in 2008, the German constitutional court ruled that these additional seats were "partially unconstitutional" and instructed parliament to change the electoral law by mid-2011. In part because the Social Democrats bottled it, the law has not been changed to date.

So the result on Sunday could not just be a governing centre-right coalition without an overall majority, but also a government that is only in place because of an electoral system that has already been judged partially unconstitutional.

If this happened it would be a massive blow for the culture of German politics and create severe problems of legitimacy, according to some leading political scientists. Given the limited options possible, this would be the worst result on Sunday.

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