

Self-Inflicted Policy Traps and the Politics of Squaring the Circle

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- Working paper presented at the ECPR General Conference 2021 -

Abstract

In a recent article, McConnell (2020) introduced the metaphor of ‘policy traps’ to describe situations in which governments are “subject to varying pressures to address a policy problem but have limited capacity to do so”. This paper presents an analytical framework which helps to understand how policymakers end up in those policy traps and explains why those traps are often self-inflicted. I build on Herweg et al.’s (2015) extended multiple streams framework (EMSF) but argue that the connection between the two coupling processes, agenda and decision coupling, is more ambivalent than hitherto suggested. While successful agenda coupling is necessary for decision coupling, the former can at the same time undermine the latter if it helps to bring deficient policy proposals to the decision agenda. This is generally the case when electoral opportunism or ideological convictions trump technical and legal reservations at the agenda stage. As a result, the already challenging bargaining process at the decision stage is further complicated by the need to fulfill technical and legal requirements. Since the goals of securing public support, fostering legislative majorities and meeting technical and legal requirements are often hard to reconcile, policymaking at this point amounts to the invidious task of squaring the circle. The framework is illustrated using the example of the failed introduction of the road charge in Germany, one of the most prominent failures of German policymaking in recent years.

1. Introduction

In a recent article, McConnell (2020: 960) uses the novel metaphor of ‘policy trap’ to highlight the fact that governments “are often subject to varying pressures to address a policy problem but have limited capacity to do so”. The toughest challenges in this regard are complex problems that are high on the agenda without any viable solutions available (McConnell, 2020: 963). While McConnell indicates that policy traps originate from focusing events or ‘wicked problems’, I start from the observation that some of the strongest policy traps are self-inflicted. One case in point is the US Republicans’ relentless but in the end futile

effort to repeal and replace ‘Obamacare’ (Drew, 2017; Oberlander, 2017), another is the British Conservatives’ agonizing efforts to deliver the promised Brexit without sacrificing other goals (Kenny and Sheldon, 2020; McConnell and Tormey, 2020: 689–692). A less well-known example, which I will use to illustrate my argument, is the failure of the German road charge. In each case, policymakers provoked situations in which they would be confronted with the dilemma to achieve two or more incommensurate goals at the same time or, as often mentioned in relation to delivering Brexit, the invidious task of “squaring the circle” (Adam, 2019: 125–194; Fossum and Graver, 2018).

The main goal of this article is to present an analytical framework which helps to understand how policymakers end up in those self-inflicted policy traps and what kind of dilemmas they are actually facing in those situations. For this purpose, I build on Herweg et al.’s (2015) extended multiple streams framework (EMSF) which covers not only agenda setting but also decision making. The EMSF thus comprises two crucial stages of each policymaking process, the advancement of a policy to the decision agenda (‘agenda coupling’) and the political decision on policy adoption (‘decision coupling’). While Herweg et al. emphasize that successful agenda coupling is necessary for decision coupling, I argue that the connection is more ambivalent since the former can at the same time undermine the latter. This is the case if deficient policy proposals reach the decision stage. To explain why such proposals reach the decision agenda and what actually constitutes a deficient policy proposal, I draw on two central elements of the original MSF. On the one hand, the selection criteria located in the policy stream will help us clarify the nature of policy traps. On the other hand, different coupling logics serve to illuminate if policy traps are self-inflicted. Both elements are in need of some refinements to complete the analytical framework.

According to McConnell (2020: 961–963), basic characteristics of strong policy traps are high complexity of the problem and high expectations that the government will act but a low capacity by the government to actually address the problem. The first argument of this article is that these characteristics can be translated into political dilemmas which result from conflicting pressures in the policy stream. The EMSF, as well as the original MSF, supposes that policy proposals have to meet a number of technical and political ‘criteria of survival’ in the policy stream to advance to the decision agenda (Herweg et al., 2015: 442; Kingdon, 1995: 131–139). I will argue that those criteria are not independent of each other but that policymakers generally face trade-offs when trying to meet them. The crucial point is that trade-offs not dealt with at the stage of agenda coupling, e.g. trade-offs concerning the popularity, the technical feasibility and the costs of a proposal, can turn into outright political

dilemmas when the deficient proposal nevertheless moves on to the decision agenda. It is exactly at this point that policymaking turns into the Sisyphean task of squaring the circle.

The second argument of the article is that wicked problems are not the only cause of policy traps. Policy traps can also result from ideological fervor or electoral opportunism, in which cases policy traps are often self-inflicted. In terms of the MSF, policy traps can thus emerge from different kinds of agenda coupling: consequential, doctrinal and electoral coupling. This classification refines the dichotomy of consequential and doctrinal coupling prevalent in the literature (cf. Herweg et al., 2018: 27; Zahariadis, 1996: 405–408) by allowing for different motives for coupling the streams. The distinction of doctrinal and electoral coupling is derived from the literature on partisan politics and corresponds to the distinction between policy seeking and vote seeking (Bandau, 2015: 30–40; Wenzelburger and Zohlnhöfer, 2020). It is argued that ideological conviction and electoral considerations can help to trump technical and legal reservations at the agenda stage and thus help to advance non-viable proposals to the decision agenda. As a result, policymakers may find themselves in self-inflicted policy traps.

The article is structured as follows. First, the general framework is outlined. The framework builds on the EMSF but highlights the ambivalent relationship between the two coupling processes. Next, the refinements concerning the selection criteria and the different coupling logics are presented. The framework is then illustrated using the example of the failed introduction of the German road charge, as will be argued a clear case of opportunistic electoral coupling. The concluding section provides a short summary, suggests further avenues for research and points out why the framework might be particularly useful in the era of populism.

2. An Extended Multiple Streams Framework

The original MSF formulated by Kingdon (1995) deviates from the conventional view shared by rationalist and incrementalist approaches alike that problems trigger political decision making (see e.g. Lasswell, 1956; Lindblom, 1959, 1965). Based on the ‘garbage can model’ of organizational choice (Cohen et al., 1972), the MSF instead assumes that problems and policy ideas are independent of each other, at least until they are coupled by policy entrepreneurs. This view of policymaking as being more messy and anarchic than supposed by more conventional approaches provides, as we will see, a good starting point to account for the advancement of deficient policies to the government agenda. But since we are also

interested in the fate of those deficient proposals at the decision-making stage, an extended multiple streams framework that covers this latter stage is needed.

Public policy scholars have offered different proposals for applying the MSF to decision-making (e.g. Herweg et al., 2015; Howlett et al., 2015; Zahariadis, 2003). Zahariadis (2003) considers agenda setting and decision making as parts of the same process and thus extends the MSF to the latter stage without making substantial changes to the framework. Given the more limited analytical leverage of this approach, I instead follow Herweg et al. (2015) who argue that agenda setting and decision making follow different logics and thus have to be analyzed separately. As shown in Figure 1, the EMSF consists of two coupling processes which are connected via the policy stream (cf. Herweg et al., 2015: 444–446). In the remainder of this section, I will elaborate on the central elements of the EMSF as outlined by Herweg et al. For the two accentuated parts of the framework, the next section will then offer refinements which are needed to account for self-inflicted policy traps.

- Figure 1 -

The first coupling ('agenda coupling') largely corresponds to the coupling of the three streams described by Kingdon (1995: 172-179). The agenda window opens either in the problem stream, e.g. triggered by a focusing event, or in the political stream, e.g. as a result of elections (Herweg et al., 2015: 443; a more detailed account of the different coupling logics follows below). In each case, the likeliness of a policy proposal advancing to the decision agenda rises when the proposal fulfills the selection criteria in the policy stream: technical feasibility (including legality), value acceptability (by policy experts), financial viability, public acquiescence and receptivity among policymakers (Herweg et al., 2015: 442; Herweg et al., 2018: 23–24). Regarding the political stream, legislative majorities are not needed at the agenda-setting stage. Rather, the minimum requirement "to make the political stream ready for coupling is for a key policymaker [...] to actively support the idea in question" (Herweg et al., 2018: 26; see also Zohlnhöfer, 2016). To sum up, a policy proposal is likely to advance to the decision stage when a policy window opens, the selection criteria are met and a key political actor supports the proposal.

Successful agenda coupling opens a 'decision window', thus triggering a second coupling process at the decision-making stage ('decision coupling') (Herweg et al., 2015: 444–446). Decision coupling differs from agenda coupling in two important respects. First, the decision window opens in the policy stream in form of a worked-out proposal that appears on the

government's decision agenda. Second, since bargaining about the details of the proposal to generate parliamentary majorities is crucial at this stage, "the political stream is of prime importance for the decision coupling while the problem and policy streams are of minor importance" (Herweg et al., 2015: 445). Consequently, the analysis of decision coupling has to focus on the instruments available to political actors to generate political majorities, above all package deals, concessions and manipulation strategies (Herweg et al., 2015: 446; cf. also Kingdon, 1995: 159–162; Zahariadis, 2003: 156–157). In this context, Herweg et al. highlight the role of policy entrepreneurs which hold an elected leadership position, so-called 'political entrepreneurs' (Roberts and King, 1991: 152), in building the needed majorities.

The emphasis on political entrepreneurs points to the importance of political parties in the EMSF (Herweg et al., 2015: 436). Given the central role of parties in policymaking, especially in parliamentary systems¹, they are supposed to be decisive actors in both coupling processes. In the first coupling process, party policy experts will promote proposals that are popular among voters (vote seeking) or serve their ideological ends (policy seeking). If they succeed in agenda coupling, party leaders, generally in their role as party whip, cabinet minister or even prime minister, have to build parliamentary majorities to get the proposed policy adopted. This requires not only party discipline but often also concessions to other actors disposing over veto power, such as coalition partners.² In other words, parties provide the policy process with policy entrepreneurs at the agenda-setting stage and with political entrepreneurs at the decision-making stage.

Overall, the EMSF provides a powerful framework to analyze the advancement of policy proposals from the drawing board to the agenda and the subsequent decision stage to their final adoption. Accordingly, policy proposals advancing as far as the decision stage will generally be worked out and their prospects will mainly depend on legislative majorities: "The essential question during the decision window is whether policy-entrepreneurs succeed in gaining the majority needed in parliament" (Herweg et al., 2015: 445). While this may apply to many policymaking processes, the EMSF has difficulties to account for the advancement of deficient proposals to the decision stage and the related emergence of policy traps, as these cannot be reduced to mere bargaining problems. Rather, powering and bargaining in those instances becomes entangled with puzzling and problem solving (cf. Hecló, 1974), as the fulfillment of the selection criteria in the policy stream complements the

¹ The focus on parties follows from Herweg et al.'s aim to apply the MSF to parliamentary systems. Because of growing polarization and partisanship, the general considerations are supposed to be also applicable to the US presidential system.

² According to veto player theory, this task becomes more difficult with a rising number of veto players as well as a growing policy distance between them (Tsebelis 2002).

search for parliamentary majorities. To gain a better understanding of those cases, we have to rethink the connection between the two coupling processes.

3. The Politics of Squaring the Circle

The EMSF suggests that it is highly unlikely that deficient policy proposals, i.e. proposals which violate the selection criteria, reach the decision agenda (Herweg et al., 2015: 442; Kingdon, 1995: 131). In what follows, I will first outline what happens when proposals, despite substantial shortcomings concerning their viability, arrive at the decision agenda. In this case, the trade-offs which have usually to be dealt with in the policy stream at the agenda-setting stage can turn into outright dilemmas, resulting in policy traps. In a second step, I will then discuss different forms of agenda coupling and how they are connected to the advancement of deficient policy proposals to the decision agenda.

3.1 Selection Criteria and Potential Trade-offs

Kingdon identifies five selection criteria in the policy stream which have to be met by any policy proposal hoping for admission to the decision agenda: “technical feasibility, value acceptability within the policy community, tolerable cost, anticipated public acquiescence and a reasonable chance for receptivity among elected decision makers” (Kingdon, 1995: 131). What has been widely neglected in the literature are the trade-offs between those criteria. To analyze those trade-offs in detail, we first have to take a closer look at the criteria themselves.

The first criterion is the *technical feasibility* of a proposal. This means that policy proposals are supposed to work if actually enacted, in the sense that they do not collide with existing organizational structures, technical capabilities or legal restrictions. Concerning legal restrictions, policymakers have not only to take into account national constitutional rules but also supranational law, e.g. EU law in the case of EU membership (Zohlnhöfer and Huß, 2016). Correspondingly, proposals which are seen as unworkable by legal or other pivotal experts are supposed to be “sent back to the drawing board” (Kingdon, 1995: 131). Policy experts are also crucial in another respect, as policy proposals have to be compatible with the dominant values in the relevant policy community. The *value acceptability* of a proposal is especially important if the policy community is rather homogeneous, since ideologically deviating proposals will not be considered in this case. In addition, not least due to the rising influence of economists, proposals in general have to be cost efficient to be taken seriously (Kingdon, 1995: 136–137). This leads to the third criterion, the *financial viability* of a proposal (Kingdon, 1995: 138). This applies in particular to reform proposals which increase

public expenditure or lower public revenues. If this is the case, policy entrepreneurs have to anticipate the resistance of fiscal hawks and the ministry of finance, even more so in times of fiscal crisis.

In addition to those rather technical criteria, proposals also have to meet two criteria which are of a more political nature. The fourth criterion is about the anticipated reaction of the public, or what Kingdon terms *public acquiescence*. Since vote-seeking policymakers will in general shy away from policies that are highly unpopular with the electorate (Herweg et al., 2015: 438–441), policy entrepreneurs have to anticipate if proposals can be sold to the public. Given the politically contested nature of many proposals, the latter will not necessarily have to appeal to the whole electorate but first and foremost to the electorate of the political parties in power. Finally, policy proposals have to meet the test of *receptivity among decision makers*, i.e. policymakers must have an ideological or electoral interest in adopting them. Based on the assumptions that parties are major actors in the process and that party leaders pay close attention to the popularity of policies with their electorate, the two latter criteria can be conflated to the criterion of *political receptivity*. Notably, political actors or parties in support of certain proposals have not to command parliamentary majorities for a proposal to fulfill this criterion, since the creation of legislative majorities is part of the bargaining process in the political stream (cf. Herweg et al., 2018: 26).

Even on their own the outlined selection criteria pose substantial hurdles for policy proposals to reach the decision agenda. But things are further complicated by the fact that the individual criteria are not independent of each other but interconnected, often in the form of trade-offs which bedevil the coupling process. As shown in Figure 2a, the four criteria can entail up to six trade-offs which have to be balanced by policy entrepreneurs. Within the EMSF, this balancing act takes place during the agenda-setting stage. For example, adapting a proposal for tax reform to the demands of the electorate and vote-seeking policymakers (political receptivity) may increase the costs and thus reduce the proposal's financial viability. Attempts to compensate for tax reductions for low-income earners by raising taxes on high incomes and wealth may be rejected by influential supply-side economists (value acceptability) or run into material or even legal restrictions (technical feasibility). As a result of this balancing process, proposals which make it to the decision stage are generally expected to fulfill the selection criteria, including crucial legal and technical requirements. According to the EMSF, the selection criteria are supposed to be of minor importance at the decision stage, though aspects such as legal restrictions and budget constraints restrict political entrepreneurs' scope for building legislative majorities.

- Figure 2 -

3.2 From Balancing Act to Squaring the Circle

The policy-making process will look different when a proposal is not worked out, i.e., the trade-offs have not been seriously dealt with when the proposal reaches the decision agenda. Under those circumstances, the already difficult task to generate legislative majorities is complicated by the challenge to present a viable and workable solution to the supposed problem. While the normative acceptability of a proposal to the policy community moves to the background when the proposal has managed to reach the decision stage, unsolved trade-offs between the remaining criteria of survival will come to the surface and potentially turn into outright dilemmas. In the worst case, policymakers are faced with the political trilemma of fulfilling their promises to the electorate, forming legislative majorities and presenting a proposal that is technically viable, legally sound and fiscally responsible (see Fig. 2b). If the proposal does not get a parliamentary majority, it will not be enacted. If it gets a majority but violates legal rules, it will be struck down by the courts. And if the proposal passes both tests but breaks the promises made to the electorate, the proposal's authors may face electoral punishment.

The resulting dilemmas can now be analyzed in more detail. The first trade-off concerns public support and parliamentary majorities. If the party which brought the proposal to the decision agenda does not command a parliamentary majority, concessions to other partisan veto players will be needed to gain enough votes. Those concessions may, however, alter the original proposal in a way that is not acceptable to one's own constituencies. This first trade-off is the one most in line with theoretical considerations by Herweg et al. (2015: 445–446). The second trade-off concerns public support and technical feasibility, the latter including the financial viability of a proposal. Here, the public support for a proposal, or the support of one's own electorate, often dwindles if the proposal has to be adjusted to technical, financial and legal realities. In other words, a proposal may only be popular with voters in a form that is unworkable or even unconstitutional. The third and final trade-off concerns political majorities and technical feasibility. Since vote-seeking policymakers pay close attention to their voters, the second trade-off can be intensified by parliamentary resistance against technically and financially necessary but unpopular elements of a proposal. In addition, this trade-off can also encompass an ideological component. Thus, technical or financial fixes to a proposal may provoke the ire of ideological hardliners who consider such adjustments as a

betrayal of their party's principles. In each case, governments may be caught in a policy trap which is hard to escape.

3.3 Three Types of Agenda Coupling and the Emergence Policy Traps

Given the often painful nature of policy traps for governments, why do deficient proposals nevertheless advance to the decision agenda? In what follows, I will argue that policy traps can emerge in three different ways which are closely connected to different coupling logics: consequential, doctrinal and electoral coupling. This classification is based on the distinction between consequential and doctrinal coupling proposed by Zahariadis (1996) and additional theoretical considerations concerning the motives for coupling the streams.

The precondition for *consequential coupling* is the opening of a policy window in the problem stream which may result from some kind of focusing event or deteriorating indicators (Zahariadis, 1996: 407). As policymakers are confronted with a pressing problem, they are forced to engage in problem solving and thus “reach into the policy stream for an alternative that can reasonably be seen as a solution” (Kingdon, 1995: 174). Policy proposals have to address the problem at hand but they also have to fulfill the outlined selection criteria. Proposals which do not fulfill those criteria will generally not be considered as viable. As a result, the likeliness of non-viable proposals advancing to the decision agenda is rather low. So under which circumstances will consequential coupling nevertheless end in deficient proposals and policy traps? In general, this will be the case if governments lack the capacity to address a pressing policy problem. More specifically, such policy traps are supposed to arise when the problem is salient and complex and there is a high urgency to act but government capacities to address the issue are low (McConnell, 2020: 960–963). In other words, public pressure may bring governments to advance some kind of policy proposal, even though there are no proper solutions available.

The coupling process can also originate from the opening of a policy window in the political stream, e.g. due to a change of government. In this case, policy entrepreneurs will engage in ‘problem surfing’ (Boscarino, 2009) and “concentrate on finding or inventing a problem to an already existing solution” (Zahariadis, 1996: 407). What has thus far not gotten enough attention in the literature is that this search for problems can be driven by different motives which in turn affect the nature of policy traps.³ Given the central role ascribed to partisan policy entrepreneurs, I propose to focus on two motives emphasized in the literature

³ According to Kingdon, policy entrepreneurs are driven by “anticipated future gain in form of material, purposive, or solidary benefits” (Kingdon (1995: 179), while governments are interested in proposals “that will serve their reelection or other purposes” (Kingdon 1995: 174).

on partisan politics, namely policy seeking and vote seeking (Bandau, 2015: 30–40; Wenzelburger and Zohlnhöfer, 2020). If policymakers are driven by policy-seeking considerations the coupling takes the form of *doctrinal coupling*.⁴ A case in point is a newly elected government which searches for problems to justify the advancement of its ideological projects. In this context, deficient policy proposals may advance to the decision agenda if policymakers' ideological fervor trumps technical, financial or legal reservations. Self-inflicted policy traps will in this case result from radical policy proposals which collide with one or more of the selection criteria.

Electoral coupling also results from an opening of a policy window in the political stream. But in contrast to doctrinal coupling, it is not ideology but electoral opportunism that drives this kind of coupling. In general, this coupling logic unfolds if policymakers try to enact their election promises after coming to power, since “an electoral victory, however small it may be, is perceived by the incoming government as approval for enacting promised policies” (Zahariadis, 1996: 407; see also Keeler, 1993). A special situation arises if the electoral victory is perceived to be the result of a party's spectacular election promises. It is in this case that the danger of self-inflicted policy traps becomes eminent, as the incoming government will face an enormous public pressure to fulfill its promises. Under those circumstances, even clearly deficient proposals have a good chance of advancing to the decision agenda. But at the decision stage, legal, financial and other technical issues which have been willfully neglected at the agenda-setting stage can come to haunt policymakers who have created unrealistic expectations among their electorate. Self-inflicted policy traps can thus also result from opportunistic electoral coupling.⁵

As summarized in Table 1, all three coupling logics can lead to policy traps, but self-inflicted policy traps are mainly the result of either doctrinal or electoral coupling. The ideological or opportunistic motives by partisan policy entrepreneurs that are often crucial for bringing proposals to the decision agenda can exert a negative feedback on the actual decision-making process. The relationship between both stages is thus more ambivalent than outlined by Herweg et al. (2015). In contemporary politics driven by electoral considerations, policy traps resulting from electoral coupling are supposed to be more frequent than policy

⁴ Note, that Zahariadis (1996) uses this term for all coupling processes triggered by policy windows in the political stream, irrespective of the motives driving the process.

⁵ Opportunistic electoral coupling concurs with a political strategy often attributed to populists. Since blunt electoral opportunistic is not restricted to populists and other aspects have been determined as more central for the concept of populism (see e.g. Rovira Kaltwasser et al. 2017), I refrain from using the term ‘populist coupling’.

traps resulting from doctrinal coupling. For this reason, the subsequent empirical section will focus on an exemplary case of opportunistic electoral coupling.

- Table 1 -

4. An Illustration: The Failure of the German Road Charge

The Brexit law and the Republican failure to repeal Obamacare represent two spectacular cases of opportunistic electoral coupling and the resulting self-inflicted policy traps. To illustrate the outlined framework, I will focus on the less well-known policy failure of the German road charge. While the scientific attention to this reform has thus far mainly been limited to German public policy scholars (Bandelow and Vogeler, 2018; Dose and Lieblang, 2016),⁶ the reform provides an excellent illustration of opportunistic electoral coupling, its negative feedback effects and the resulting dilemmas at the decision stage. Following the proposed framework, this section first analyzes how the highly controversial proposal reached the decision agenda. The second part of the illustrative case study is then dedicated to the reform's rocky advancement and its ultimate failure.

- Table 2 -

4.1 Successful Electoral Coupling: From Bavarian Beer Tents to Coalition Agreement

The toll for light vehicles (*PKW-Maut*)⁷ was first proposed by the Christian Social Union (CSU), the Bavarian sister party of the German Christian Democrats (CDU), in the 2013 election campaign. While the agenda-setting stage lasted only a few months, the actual decision-making process took more than five years, at the end of which the reform was struck down by the European Court of Justice (ECJ) (see Tab. 2). The CSU's proposal which restricted the payment of user fees to foreign drivers was from the outset highly controversial. Though legal experts pointed out that such a road charge would discriminate against EU foreigners and could thus hardly be reconciled with EU law, the proposal was included in the 2013 coalition agreement. So how did the proposal, rejected by experts, political rivals and even powerful Chancellor Merkel, reach the decision agenda?

Starting with the problem stream, there are two problems which were highlighted by the CSU (cf. Bandelow and Vogeler, 2018: 539–540). The first problem, unanimously

⁶ Bandelow and Vogeler (2018) actually provide an application of the original MSF which is, however, mainly restricted to the agenda-setting stage.

⁷ A toll for goods vehicles (*LKW-Maut*) had been introduced in 2005.

acknowledged by transport experts, concerned the deterioration of the road system due to insufficient funding (Bodewig Commission, 2013, 2016; Daehre Commission, 2012). The bad condition of German roads was demonstrated by official indicators. In 2012, 16.5 percent of express highways (*Autobahnen*), 35.7 percent of federal roads (*Bundesstraßen*) and 46.8 percent of federal road bridges were in need of maintenance work (German Ministry of Transport 2014: 197-204). According to experts, the deterioration of the infrastructure resulted from growing traffic volume but especially from a chronic funding shortage due to financing via non-earmarked tax revenues (Bodewig Commission, 2013: 4–11; Daehre Commission, 2012: 14–19). The German Economic Institute (2014) estimated that an additional €40 billion would be needed for maintenance of the traffic infrastructure over the next ten years. The second problem, mainly stressed by the CSU, concerned the fairness of the existing financing system. According to the CSU, it was deeply unfair that foreigners did not have to pay for the usage of German roads, whereas Germans had to pay user fees in many neighboring countries (CSU, 2013: 6–7). Apart from those permanent ‘problems’, there was no focusing event which demanded the immediate introduction of a road charge.

Turning to the political stream, it is crucial that it was not so much the general problem of funding shortage but the more emotional fairness problem which helped lift the issue on the political agenda. Fighting to regain a parliamentary majority in the state election and to achieve a strong result in the federal election, the CSU campaigned on the promise to provide for “fairness on German roads” (A. Dobrindt quoted after German Bundestag, 2013: 31318). But instead of opting for a general toll which extended the toll for goods vehicles already in operation to light passenger cars, the CSU promised the introduction of a road charge restricted to non-residents. The proposal openly labeled as ‘road charge for foreigners’ (*Ausländermaut*) by Alexander Dobrindt, the CSU’s secretary general, proved to be very popular with the audiences in Bavarian beer tents, not least due to the fact that many Bavarians had just returned from their holidays in neighboring countries such as Austria and Italy where they had to pay highway user fees (Müller, 2016: 106–110). The polls also showed that two thirds of Bavarian voters were in favor of a road charge for foreigners, while voters rejected general road user fees (Baum et al., 2010: 9; Schultze, 2014: 344). The CSU’s proposal was thus in line with the national mood. The CSU nevertheless faced massive political resistance, since all other parties including the CDU as well as the ADAC, the influential German motoring association, openly rejected the idea. In the TV debate at the height of the election campaign, Chancellor Merkel even declared that there would be no road charge under her chancellorship.

Beside these political obstacles, the CSU's proposal was rejected by most experts in the policy stream, as it did neither fulfill the technical nor financial selection criteria (cf. Bandelow and Vogeler, 2018: 541–542). Concerning technical feasibility, legal experts warned that the proposed road charge would discriminate against EU foreigners and thus face resistance by the EU Commission. The assessment of the European Commissioner for Transport, Siim Kallas, was more cautious. Though Kallas did not rule out that the road charge was reconcilable with EU law, it was pointed out that the actual design of the reform was crucial (Kallas, 2013). In addition, traffic experts questioned the financial viability of the proposal. They not only challenged the estimated revenues of €700 million per year but also pointed out that disproportional operating costs would further reduce the actual revenues (Dose and Lieblang, 2016; Ratzenberger, 2014). Regarding value acceptability, many transport economists were on principle in support of an expansion of user financing but highly critical of the proposed design of the road charge (Sieg et al., 2014). Taken together, the reception of the CSU's proposal in the policy community was clearly negative. But given the popularity of the idea among voters, the warnings from policy experts were briskly brushed aside by the CSU leadership. Electoral considerations clearly trumped any technical objections.

The policy window opened in the political stream when the CSU's campaign proved highly successful, with the party regaining its absolute majority in Bavaria and winning almost 50 percent of the second vote in Bavaria at the federal election (Bandau, 2018: 93–94). In the coalition negotiations between CDU/CSU and SPD, CSU leader Horst Seehofer insisted on the inclusion of the road charge in the coalition agreement. Through bargaining – CDU and CSU conceded amongst others the introduction of the minimum wage to the SPD – Seehofer succeeded and the road charge for foreigners advanced against all odds to the decision agenda (Bandelow and Vogeler, 2018: 542–544). The approval of CDU and SPD came, however, with some qualifications, as the coalition agreement announced a “road charge in accordance with EU law that will make owners of cars not registered in Germany contribute to the financing of the highway network, without putting an additional burden on domestic car owners” (CDU/CSU and SPD, 2013: 9). In other words, CDU and especially SPD would only support a bill that would fulfill the conflicting criteria of generating substantial new revenues, conforming to EU law and sparing German car owners.

4.2 Caught in a Policy Trap: Failing to Square the Circle of Election Promises, Financial Needs and Legal Restrictions

Ironically, it was Dobrindt, the head of the CSU's election campaign, who had to square the circle as the newly appointed transport minister. In this case, squaring the circle meant to present a proposal that restricted the road charge to foreigners (to maintain public support) but was, at the same time, not in breach of EU law (technical feasibility). In addition, the restriction of user fees to foreigners also meant substantially lower revenues and thus endangered the parliamentary support by the CSU's coalition partners (legislative majority). As warnings about those trade-offs had been willfully neglected in the agenda-setting phase and there was no worked-out proposal available, the transport minister had to start from close to scratch in his efforts to solve those dilemmas and moderate the related conflicts.

The first proposal presented by the ministry of transport in June 2014 contained two provisions which were supposed to deal with the outlined problems (DW, 2014). First, the proposal envisaged that the road charge should apply to all drivers but that German residents should be compensated through a corresponding reduction of the car tax. This provision was supposed to spare German drivers from additional costs and, at the same time, placate the EU Commission. Second, given the first provision's negative effects on revenues, the road charge was supposed to cover all kinds of roads to generate sufficient revenues. It was this second provision which led to massive resistance from the coalition partners and even from CSU policymakers, who feared the negative economic effects of the proposal on border regions. Dobrindt reacted to this criticism by restricting the road charge to express highways. This revision was, however, not without problems, as it further reduced the estimated revenues and thus intensified the conflict about the financial plausibility of the reform (Ratzenberger, 2014; Schulz et al., 2014). The most prominent critic of the reform was Wolfgang Schäuble, the powerful finance minister. Leaked calculations from the ministry of finance showed that the administrative costs of the proposed vignette system could even exceed revenues and thus put the whole reform project into question. Even so, Schäuble was not able to block the reform, because Chancellor Merkel ultimately intervened on the side of Dobrindt to appease the CSU (Müller, 2016: 112–114).

The task to design the proposal in way that would close the proclaimed 'fairness gap' on German roads and at the same time not collide with EU law proved even more challenging. As mentioned, the solution proposed by the transport minister was to compensate German residents via reductions in the car tax. In other words, no German driver was supposed to face additional costs because of the road charge. Legal experts doubted that the proposed solution

was in accordance with EU law, an assessment that was shared by the Research Services of the German parliament (German Bundestag, 2014). Unsurprisingly, the link between the user fees for all drivers and tax rebates reserved to German residents was also criticized by the EU Commission for its discriminatory effects (Kallas, 2014). As a concession to the EU Commission, this link was loosened which implied that future increases in the road toll would not automatically be mirrored by reductions in the car tax. When the SPD threatened to block the bill for this very reason, the commitment to the link between future user fees and future tax rebates was restored (FAZ, 2014). This U-turn perfectly illustrates the dilemmas the transport minister faced in his efforts to draft a workable proposal. In this case, securing a parliamentary majority came at the cost of hardening the EU Commission's resistance against the German road charge.

With the passage of the bill in March 2015, the conflict moved from the national to the European arena. In June, the EU Commission demonstrated that it was indeed not convinced by the German government's efforts and started legal proceedings against the road charge due to discrimination against foreign drivers. Transport minister Dobrindt reacted by offering more concessions to the EU Commission, first and foremost cheaper short-term vignettes and revised tax rebates accounting for emissions and fuel efficiency (DW, 2016). The latter revision meant that for some German drivers the rebates would exceed the costs of the road charge. But since no German driver was supposed to incur financial losses, this also meant lower revenues. After those concessions had softened the EU Commission's resistance,⁸ it was an agreement between Commission President Jean-Claude Juncker and Chancellor Merkel which put a final halt to the EU Commission's legal action (Böll and Müller, 2016). Despite continuing criticism concerning the reform's plausibility, the revised bill passed the German parliament in March 2017. With the EU Commission out of the way, it was now the Austrian government, supported by the Dutch government, which started a legal action over the road charge, again citing discrimination of foreigners (DW, 2017).

The final blow to the German road charge came in June 2019 when the ECJ ruled that the reform was not reconcilable with EU law.⁹ The ECJ argued that the charge constituted an indirect discrimination on grounds of nationality and was in breach of the principles of free movement of goods and of the freedom to provide services:

⁸ To reach a deal with the EU Commission, Dobrindt had bypassed the European Commissioner for Transport, Violeta Bulc, who was highly critical of the road charge, and negotiated directly with Juncker's Chief of Staff, Martin Selmayr (Böll and Müller, 2016).

⁹ At that time, the ECJ's decision came as a surprise to Dobrindt's successor as transport minister, Andreas Scheuer (CSU), because the Advocate General had recommended dismissing Austria's complaint (Valentin 2019).

“As regards the prohibition of discrimination on grounds of nationality, the Court finds that the effect of the relief from motor vehicle tax enjoyed by the owners of vehicles registered in Germany is to offset entirely the infrastructure use charge paid by those persons, with the result that the economic burden of that charge falls, de facto, solely on the owners and drivers of vehicles registered in other Member States” (ECJ 2019).

This reasoning by the ECJ demonstrates that the road charge eventually failed due the irreconcilability of the promise that no German driver should be worse off because of the road charge on the one hand and legal restrictions concerning the prohibition of discrimination on grounds of nationality on the other. In terms of the MSF, the CSU failed to square the circle of guaranteeing the technical feasibility of the road charge without losing public support for the reform. While the failure of the road charge presented a painful defeat for the CSU in terms of policy, it also had substantial negative budgetary implications. Instead of anticipated revenues of up to €500 million per year, the German government faced compensation claims of €560 million by two private companies which had been awarded with the provision of the toll system (Knight 2019). The case of the German road charge thus demonstrates that opportunistic electoral coupling and self-inflicted policy traps can come with a high price tag for taxpayers.

In sum, the case of the German road charge illustrates how opportunistic electoral coupling by a single party can bring a proposal to the decision agenda, irrespective of all kinds of reservations in the policy stream. It further showed how the proposal can, due to its deficiencies, turn from electoral asset to political liability over the course of the policy process. The resulting policy trap was thus self-inflicted and became manifest in several dilemmas, the most serious dilemma being the promise to close the proclaimed ‘fairness gap’ on German roads to secure public support for the reform and to present a proposal that was reconcilable with EU law (a technically feasible proposal in terms of the MSF). In the end, the road charge failed because the CSU’s policy entrepreneurs were not able to solve those dilemmas. In short, despite all efforts the CSU failed to square the circle.

5. Conclusion

The article took up the metaphor of policy trap by McConnell (2020) and argued that those policy traps cannot only result from wicked problems and bad luck but are often self-inflicted. A refined version of the EMSF by Herweg et al. (2015) served as analytical framework. In general terms, the argument is that policymakers who push policy proposals for ideological or

electoral reasons and ignore technical, financial or legal restrictions will most likely be confronted with serious problems over the further course of the policy process. In terms of the EMSF, political entrepreneurs engaging in doctrinal or electoral coupling may lift proposals to the decision agenda, even if those proposals do not fulfill the selection criteria in the policy stream. At the decision stage, trade-offs between the selection criteria which have been willfully neglected at the agenda stage have the potential to turn into almost irresolvable political dilemmas. In this case, policymakers are confronted with the invidious task of keeping public support, fostering legislative majorities and guaranteeing the technical feasibility of the policy proposal. The framework was illustrated by the failure of the German road charge, a case of opportunistic electoral coupling.

From an analytical perspective, the article has shown that linking the elements of the MSF to the innovative concept of policy trap presents a useful theoretical synthesis. On the one hand, the connection to policy traps demonstrates the potential of the MSF in analyzing the failure of policies over the course of the policy process. In this regard, the EMSF presents a particularly useful refinement of the original MSF, as it allows public policy scholars to account for the different logics applicable to consecutive stages of the policy process. What has been highlighted in this study is that the same factors that are crucial in the advancement of a policy proposal from one stage to the other can at the same time undermine the prospects of the proposal at the later stage. On the other hand, the metaphor of policy trap benefits from its placement in the EMSF in two ways. First, the connection to the different coupling logics clarifies that policy traps can emerge in different ways and that they can be self-inflicted. Second, the refined EMSF offers an original perspective on the nature of policy traps by interpreting the “varying pressures to address a policy problem” and the government’s “limited capacity to do so” (McConnell, 2020: 960) as the dilemmas between public support, legislative majorities and technical feasibility which originate in the policy stream and complicate the decision coupling.

Given the analytical potential of the framework, I propose future research should focus on two aspects. First, more research is needed on the proposed links between the different coupling logics and the emergence of policy traps. As outlined at the beginning of the article, the framework should be applicable to other cases of opportunistic electoral coupling, such as US Republicans’ failure to repeal Obamacare (Drew, 2017; Oberlander, 2017). Those cases would have to be contrasted with cases where policy traps resulted from doctrinal or consequential coupling. An important question in this regard is what determines the ‘severity’ of policy traps. In this regard, McConnell (2020) considers the nature of the policy problem at

hand to be crucial. Following the theoretical considerations presented in this article, the severity of policy traps, at least of self-inflicted ones, should also depend on policymakers' electoral opportunism or ideological radicalism at the agenda stage. The case of the German road charge demonstrated that the collision of electoral promises and legal issues can prove fatal. In the case of doctrinal coupling, public pressure might be less pronounced but the collision of high expectations by party activists with technical and political realities could confront policymakers with other serious challenges.

Second, public policy scholars should analyze the attempts by political entrepreneurs to escape from policy traps as well as the potential results of those attempts. Based on a provisional classification, at least four kinds of outcomes are conceivable. The first outcome is the failure to square the circle and the resulting abandonment of the policy proposal. The German road charge falls into this category, just as US Republicans' failure to repeal Obamacare. In each case, the policy fiasco resulted in the public embarrassment of the responsible parties, though the CSU was able to avoid the electoral fallout suffered by many Republican Congress members in the 2018 midterms (Bussing et al., 2020). The second outcome is the opposite result, that is, political entrepreneurs are in the end successful in presenting a viable proposal and getting the policy adopted. In the case of the German road charge, this outcome would most likely have emerged if the ECJ had ruled in favor of Germany. The third outcome consists in the use of 'placebo policies' to escape from policy traps. Placebo policies are produced "partially or significantly 'for show' [...] to demonstrate that government is 'doing something' to tackle a tough policy problem" (McConnell, 2020: 958). While placebo policies may present an attractive escape route from self-inflicted policy traps, this option will not always be available to policymakers, as was obviously the case with the German road charge.

The final outcome is the most unconventional one, but also the one with the most far-reaching political implications. Thus, policymakers which engage in opportunistic electoral coupling might under certain conditions resort to rather aggressive measures when unable to solve the outlined dilemmas. For instance, when confronted with the choice of pleasing their voters or accepting the judicial authority of the courts, they may opt for ignoring or even openly attacking the courts instead of backing down. While this outcome appears to be unlikely in advanced democracies, the global surge of populist parties lends it plausibility. If we depict populism as a political strategy and populists as "power-seeking opportunists [...] who use policies primarily for instrumental purposes" and in this context do not shy away from enacting "bold, high-profile measures that lack careful preparation and fiscal

sustainability” (Weyland, 2021: 185, 187; for a summary of this concept of populism see Weyland, 2017), populists’ propensity for opportunistic electoral coupling becomes obvious. But given populists’ willingness to “weaken government institutions and bureaucracies” and to “constantly bend or break institutional checks and balances” (Weyland, 2021: 187) when in government, the broader implications of opportunistic electoral coupling become clear. In contrast to the CSU and the German government in the case of the road charge, populist leaders might not accept the existing rules but try to adjust those rules to their promises to the electorate. From this perspective, the outlined framework offers a fresh analytical lens to policymaking in the era of populism.

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Figures and Tables

Figure 1: The Extended Multiple Streams Framework as Delineated by Herweg et al. (2015)

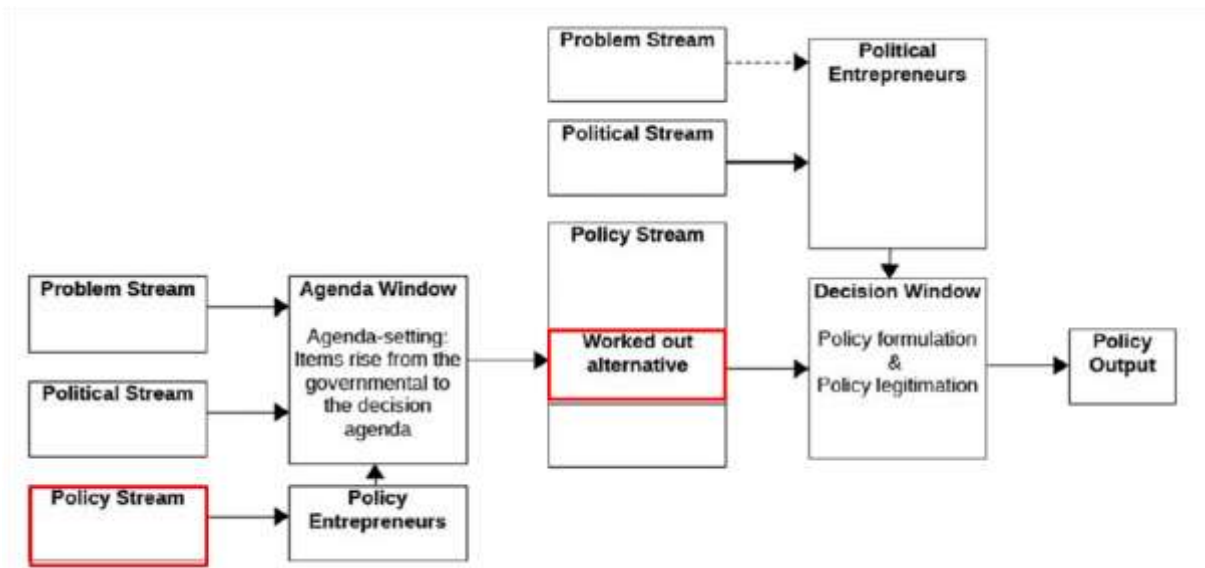


Figure 2: Potential Trade-offs at the Agenda Stage and the Decision Stage

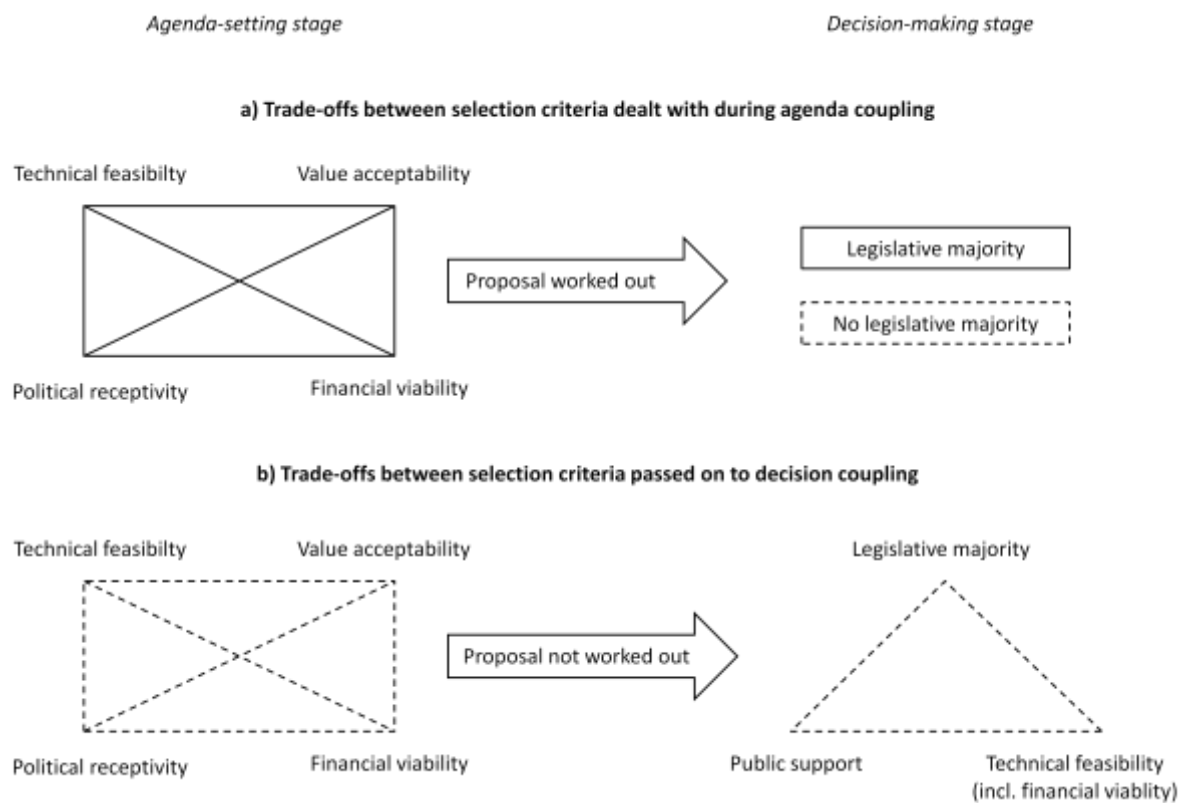


Table 1: Three Types of Agenda Coupling

	Consequential	Doctrinal	Electoral
Policy window	Problem stream	Political stream	Political stream
Logic	Finding a workable solution to a pressing problem (problem solving)	Finding or inventing a problem to a favored solution (policy seeking)	Presenting a popular solution to a (complex) problem (vote seeking)
Factors leading to non-viable proposals	<ul style="list-style-type: none"> • High complexity and saliency of the problem • High urgency to act • Low political capacities to address the issue 	<ul style="list-style-type: none"> • High complexity of the problem • Strong programmatic radicalism • Strong deviation from existing policy structures 	<ul style="list-style-type: none"> • High complexity of the problem • High degree of electoral opportunism • Strong public pressure to fulfill (unrealistic) electoral promises
Self-inflicted policy traps?	No	Yes	Yes

Table 2: Chronology of the German Road Charge's Failure

Date	Event
15.07.2013	The CSU includes the idea of a road charge for foreigners in its election manifesto and campaigns on this pledge.
15.09.2013	The CSU wins 47.7 percent of the vote in the Bavarian state election and thus regains a parliamentary majority.
22.09.2013	The CSU wins all electoral districts and 49.4 of the second vote in Bavaria in the federal election, which amounts to 7.4 percent of the total vote.
27.11.2013	The road charge is included in the coalition agreement between CDU, CSU and SPD.
01.04.2014	The Minister of Transport, Alexander Dobrindt (CSU), announces the start of the toll system for 1 st January 2016.
30.10.2014	Dobrindt presents the first draft of the bill.
29.12.2014	Start of the legislative process.
27.03.2015	The German <i>Bundestag</i> passes the bill. The <i>Bundesrat</i> passes the bill in May. It is signed into law by the Federal President in early June.
18.06.2015	The European Commission launches legal proceedings against Germany. The German government thereupon suspends the introduction of the road charge.
29.09.2016	The European Commission refers Germany to the European Court of Justice (ECJ).
01.12.2016	The European Commission stops legal action against Germany after settlement with German government.
24.03.2017	The German <i>Bundestag</i> passes the revised bill. It is signed into law in May.
12.10.2017	Austria, with support from the Netherlands, lodges a complaint at the ECJ. The Minister of Transport, Andreas Scheuer (CSU) nevertheless proceeds with plans for the toll system.
30.12.2018	Scheuer's ministry signs toll contracts with two private providers. The toll is supposed to start in October 2020.
18.06.2019	The ECJ rules that the German road charge was in breach of anti-discrimination laws and thus puts an end to the project. Scheuer immediately cancels the toll contracts with the providers which react with compensation claims of €560 million.