Proportional representation is one of the most common electoral systems worldwide. The German mixed-member system in particular has gained such a strong reputation that some commentators have even referred to it as an “export hit”. The system has not been without its marked pathologies, however. One of these is an apportionment problem of so-called overhang seats which under specific circumstances implies negative voting weights for some voters. This was witnessed in the general elections of 2005 and 2009. The essence of negative voting weights is that it can be more beneficial not to vote; or if you do actually vote, your vote is harmful for the party you vote for. Clearly this introduces an element of opacity and unfairness into elections. Unsurprisingly negative voting weights were a bone of contention for politicians, constitutional lawyers, and scholars alike because it violates a very intuitive democratic principle of majoritarianism: that more support should not translate into less representation. In 2008, the German Federal Constitutional Court ruled that the apportionment procedure in the Federal Election Law was unconstitutional because the possibility of negative voting weights is a violation of basic principles of democratic fairness enshrined in the German Basic Law. As a consequence, the Election Law was amended in 2013 to solve the problems (at the cost of literal proportionality).

Yet, there is is another pathology of the German electoral system that has barely received any attention even though it is arguably even more fundamental and even more severe and cannot easily be eliminated as with the case of negative voting weights. It too violates the intuition that political representation should line up with degree of support. As with all proportional list systems, the German system is afflicted by a fundamental inconsistency known as the More-Preferred-Less-Seats-Paradox. This means that the seat apportionment can lead to a distribution of seats among parties that does not respect the aggregated social ordering of parties as generated by a pairwise comparison. This is known as the Condorcet method and in that technical language, the German mixed-member proportional representation system is not Condorcet-consistent. Although this has been known to be a theoretical possibility for a long time, it has never been demonstrated empirically for Germany. The difficulty of doing so lies with the necessity of having data on the preference rankings from a representative sample of
voters. Given that the proportionality is based on a plurality vote, voters are only permitted to select a single option on the ballot papers. Hence we do not have any direct information from the ballots about voter preference rankings over all parties. To tackle this problem we follow a method previously applied to studies of elections in Denmark and The Netherlands to Germany that reconstructs these preference rankings from opinion polling data. We use flash polls that contain “thermometer data” on party political preferences conducted in the week before polling day for the Federal Parliamentary Elections in 2005, 2009, 2013, and 2017. This permits the construction of Condorcet rankings for each of these elections.

The main finding is that each of the elections has been afflicted by the More-Preferred-Less-Seats-Paradox. This is consistent with the findings for both Denmark (1973–2005) and The Netherlands (1982–1994). Qualitatively speaking, it is arguable that the violation of Condorcet-consistency in 2005 and 2009 is relatively benign. But in 2013 and 2017 the violation took on a different quality. Firstly, in 2013 the liberal Freie Demokratische Partei (FDP) actually dropped out of parliament although being preferred over the left-wing party DIE LINKE, which was the so-called Condorcet-loser (or least-preferred party). DIE LINKE was the third largest faction in the Parliament and the official opposition party. Then in 2017, the populist right-wing party, Alternative für Deutschland (AFD), received the third largest seat share although, as with DIE LINKE in the previous election it was the Condorcet-loser yet it too has become the official opposition. This suggests that the current system of proportional representation has the potential to massively distort the representation of voter preferences as well as amplifying the extremities of the political spectrum that may not actually be present in the electorate. This amplification effect at the cost of smaller centre parties was also observed in the Denmark and The Netherlands studies.

We discuss the source of the paradox and the normative implications of these results by placing them in the context of representative and epistemic conceptions of democracy.