'Law Reform' in Germany. An Overview

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1. Introduction to the German legal system

In comparative law textbooks, the Federal Republic of Germany is generally described, alongside France, as a prototypical case among civil law jurisdictions[1]. In this respect, it should come as no surprise that in Germany mechanisms to revise existing legislation have developed along a distinctive pattern if compared with the better-known Anglo-Saxon models. The following contribution will provide a brief overview of the different tools used under German law over the decades, thereby pointing out under which circumstances they came into being, what was their purpose and to what extent they were successful in reaching their goals.

1.1. *Introduction to the German Parliamentary System*

Germany is a parliamentary Republic with a federal form of State. For the purposes of this commentary, two elements deserve mention.

First, Germany's parliamentarism is strongly rationalised, i.e. crucial aspects of the relationship between the legislative and the executive, including some aspects of the law-making process, are entrenched in the Basic Law (Title VII, Articles 76 *et seq.* of the Basic Law).

Second, German scholarship generally defines the *Bundestag* as (the only assembly of) a unicameral parliament. Still, German unicameralism is, to say the least, peculiar. Among the federal institutions, the *Bundesrat*, a constitutional organ composed of delegates of the *Länder* governments, also participates in the federal legislative process. Art. 50 of the Basic Law defines the *Bundesrat* as the federal organ through which «The *Länder* shall participate […] in the legislation and administration of the Federation and in matters concerning the European Union». As will be shown, the German parliamentary system of government and the concrete functioning of the law-making process, which is based upon it, play a distinctive role in ensuring that laws are well drafted and in keeping the laws under constant review. In this respect, besides the every-day work of the permanent committees of the *Bundestag*, which are allowed to require reports on current legislative projects from representatives of the relevant federal ministry and make recommendations, one has to mention the work of the Research Services (*Wissenschaftlicher Dienst*) of the *Bundestag*, whose findings and expert opinions are used as a basis for bringing about reforms both at a constitutional and a legislative level.

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[1] See e.g. J.H. Merryman & R. Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 3rd edition, Stanford University Press, Stanford, 2007, p. IX («[…] neither is a 'typical' civil law system. Indeed, they are in a sense the least typical of all. […] Elsewhere in the civil law world, however, there has been a strong tendency to receive and fuse both influences»).

Third, one cannot but stress the ordering role played by the German Federal Constitutional Court in ensuring legal certainty and law compliance by the Federal Parliament and state legislatures when charged with the task of amending provisions which have been declared null and void. In this respect, the self-identification of Germany as a constitutional democracy (*Verfassungsstaat*) is a landmark element to frame the overall system of 'law reform' in Germany[2].

1.2. *Introduction to German federalism*

Germany is a federal State including sixteen *Länder*. Intergovernmental relations and the distribution of legislative and administrative power and financial resources are regulated at the higher constitutional level (Title VII, Articles 70 *et seq.*).

Although federalism has been a defining feature of German constitutionalism throughout most of the constitutional history of Germany, with the significant exceptions of the Nazi regime and the German Democratic Republic (DDR, as the former East Germany was officially called), the current constitutional regulation of 'federal statehood' and the relations between the *Bund* and the *Länder* is a specific achievement of the Basic Law of 1949. In order to define it, Konrad Hesse, a leading public law scholar and former judge at the Federal Constitutional Court, coined the label 'unitary federal state' (*unitarischer Bundesstaat*): this can be defined as «a concentration of tasks at the level of the *Bund*, together with a situation of intertwining in the cooperative federal state»[3]. A distinctive feature of German federalism is 'executive federalism' (*Vollzugsföderalismus*), i.e. the relative weakness of legislatures in the *Länder* – further strengthened over the decades by a generous interpretation of the Necessity Clause of Art 72(2) GG[4] – is somehow counterbalanced by the dominant role of the *Länder* in the realm of administration and implementation of legislation. In 2006, in the aftermath of the reunification and in parallel with the rise of a 'competitive' understanding of federalism, the Basic Law was amended (*Föderalismusreform I*) to reduce the influence of the *Bundesrat* in federal law-making processes and to expand the legislative powers of the *Länder* (so-called divergent legislation, *Abweichungsgesetzgebung*)[5]. Because of the concomitant abolition of the power of the Federation to enact framework legislation (*Rahmengesetzgebung*), there was also a need to repeal those federal legal provisions, which found their legal basis in former Article 75 BL[6]. At the same time, considering the new competences in the field of nature protection acquired by the Federation (Article 72 (3) 3 BL), there was an analogous need to repeal regional legal provisions at *Land* level[7].

2. The German 'Law Reform' System

Before delving into the legal technicalities of the German 'Law Reform' System, some preliminary questions seem appropriate.

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[2] See J. Collings, *Democracy's Guardians: A History of the German Federal Constitutional Court*, Oxford University Press, Oxford, 2015 and M. Hailbronner, *Traditions and Transformations: The Rise of German Constitutionalism*, Oxford University Press, Oxford, 2015, chapter 3.

[3] S. Boysen, *Gleichheit im Bundesstaat*, Mohr Siebeck, Tübingen, 2005, p. 61.

[4] See G. Taylor, 'Germany: The subsidiarity principle', *International Journal of Constitutional Law*, Vol. 4, 2006, p. 115; G. Taylor, 'Germany: A slow death for subsidiarity', *International Journal of Constitutional Law*, Vol. 7, 2009, p. 139.

[5] See G. Taylor (2009), pp. 141-42.

[6] See, for instance, the Consolidation of Laws Act in the environmental field (*Rechtsbereinigungsgesetz – Umwelt- RGU*) vom 11.8.2009 (BGBl. I 2723).

[7] See, for instance, F. Freiherr von Stackelberg, *Die Abweichungsgesetzgebung der Länder im Naturschutzrecht*, Springer, Heidelberg, 2012, pp. 116-117.

In particular, one has first to ask oneself whether the German legal system, as briefly sketched out above, and its legal culture are familiar with concepts and tools of the likes of law reform. Germany being a civil law jurisdiction, functional comparative analysis is needed[8]: as such, law reform does not seem to be part of the legal culture of continental Europe. Does this mean that Germany is alien not only to law reform but also to the questions law reform is supposed to cope with? Such a conclusion does not seem correct, as shown by the circumstance that senior German judges have routinely participated in international conferences on law reform[9].

In this respect, the relevant research questions are (*i*) whether or not the issues which law reform typically deals with are perceived as urgent from a law and policy perspective or, at least, are considered constitutionally grounded, within the German legal system, (*ii*) how those issues are labelled and framed in practice and in legal doctrine, and, more precisely, (*iii*) which tools and which procedures are available in the German legal order for addressing those needs.

In the light of these methodological assumptions, the closest possible concept to the idea of law reform can be tracked down in the German term of *Rechtsbereinigung* (literally, 'law cleaning'), a well-established legal notion since the German *Reich* was founded in 1871[10]. According to a major German scholar in legislative studies, the challenge which *Rechtsbereinigung* is expected to face is a «need to clear out a stock of legal provisions which has grown chaotic, to eliminate laws which have become unnecessary and to collect legal provisions in force in a systematic compilation»[11]. This need has been felt as particularly urgent from time to time also in the light of the troubled constitutional history of Germany across both the 19th and the 20th centuries. In this regard, *Rechtsbereinigung* was also designed to serve purposes other than improving general accessibility of the statute book (*Gesetzesblatt*) to the common people, such as democratic renewal of public life: this was the case in the founding years of the Weimar Republic, when top bureaucrats and jurists like Arnold Brecht thought it urgent to clear up the statute book in order to foster and accelerate the adaptation of the legal system to the new republican and democratic constitutional framework[12].

In the early years of the Federal Republic, *Rechtsbereinigung* was deemed to find a specific constitutional basis in the *Rechtsstaat* principle (Art. 20(3) GG) and became necessary to take into account the implications of the coming into force of the Basic Law (*Grundgesetz*, GG). More precisely, Art. 123(1) GG states that «Law in force before the *Bundestag* first convenes shall remain in force insofar as it does not conflict with this Basic Law»[13]. Furthermore, Articles 124 and 125 GG contain provisions regarding the ongoing applicability of federal statute within the fields of exclusive and concurrent legislative powers. The first *Gesetz über die Sammlung des Bundesrechts*, a federal statute aimed at consolidating federal laws, was enacted in 1958 with the aim, as its title suggests, of collecting, ordering and publishing the, at the time, existing laws according to each field of reference. This first piece of legislation implied only partially a 'clearing out' in a material sense: in fact, the Federal Ministry of Justice, which drafted the federal statute in close partnership with the *Länder*

[8] R. Michaels, The Functional Method of Comparative Law, in M. Reimann & M. Zimmermann (Eds.), *The Oxford Handbook of Comparative Law*, Oxford University Press, Oxford, 2006, p. 339.

[9] See e.g. 'Law Reform', *Commonwealth Law Bulletin*, Vol. 7, 1981, p. 1334.

[10] H. Schneider, *Gesetzgebung. Ein Lehr- und Handbuch,* 3rd edn, C.F. Müller, Heidelberg, 2002, p. 372.

[11] *Ibidem*, 380.

[12] See H. Holste, Zwischen Reichsreform und 'Preußenschlag'. Ministerialbeamter im Dienst der Republik, in C.-D. Krohn & C.R. Unger (Eds.), *Arnold Brecht 1884-1977. Demokratischer Beamter und politischer Wissenschaftler in Berlin und New York,* Franz Steiner Verlag, Stuttgart, 2006, 55 (making reference to Arnold Brecht's plans for comprehensive law reform under the Weimar Republic).

[13] Art. 9 of the Unification Treaty (*Einigungsvertrag*) of 31 August 1990 dictates similar rules regarding the ongoing validity of laws in force in the German Democratic Republic.

administrations, sorted out only part of the old Nazi regime legal provisions – while so-called allied occupation law or *Besatzungsrecht* was repealed by means of four contemporary different federal statutes[14] which should have been considered as still being in force; at the same time, a general presumption in favour of their continuity at *Land* level prevailed. The 'clearing out' operation took, however, almost five years so that as many as 100 issues of the *Bundesgesetzblatt Teil III* (Third Part of the Federal Law Gazette) were released[15]. The end of this process was marked on December 28, 1968 by the adoption of a *Gesetz über den Abschluß der Sammlung des Bundesrechts*, a federal statute concluding the consolidation of federal laws. Alongside, in the 1950s and 60s many *Länder,* including Bavaria, the city-State of Bremen, Hesse, Lower-Saxony, North-Rhine-Westphalia and Rhineland-Palatinate, brought about a similar process and enacted different laws repealing old legal provisions which had become obsolete in the meantime.

More recently, at least since the 1980s, *Rechtsbereinigung* has become an instrument of simplification and deregulation[16] since it is aimed at reducing and/or removing the administrative and regulatory burden falling on business in order to speed up administrative procedures and foster individual enterprises. 'Law reforms', therefore, focused more on reducing inefficient legal provisions, speeding up administrative procedures as well as eradicating objectively unfounded and unjustified regulatory provisions from the point of view of the economic sphere. In this respect, one can therefore distinguish between a definition of the concept of reform in a narrower sense and a second definition in a broader sense, as also a recent report of the Research and Documentation Service of the German *Bundestag* clearly points out[17]. While the former deals with repealing temporary legal provisions or transitional rules which no longer apply to today's circumstances and partly also collecting/aggregating those which still apply, the latter provides for a more comprehensive process guided by different goals and which implies codification, consolidation, rewrite or revision. In particular, notwithstanding the strong 'Savigny's legacy' in modern Germany[18], codification has been brought forward in the 1970s and beyond, at a time when a great number of special laws belonging to the same subject area, especially in the fields of environmental law[19] and social law, but also in procedural administrative law (1976), required coordination[20].

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[14] Erstes und Zweites Gesetz vom 30.5.1956 (BGBl, I S. 437 and 446), Drittes Gesetz vom 23.7.1958 (BGBl, I S. 540), Viertes Gesetz vom 19.12.1960 (BGBl, I. S. 1015). As for the territory of West-Berlin, where military occupation only came to an end in 1990, the Allied Command retained the competence to enact *and repeal Besatzungsrecht* until that date (see H. Schneider, cit., 383).

[15] H. Schneider (2002), pp. 381-382 and T. Weber, *Die Ordnung der Rechtsberatung in Deutschland nach 1945*, Mohr Siebeck, Tübingen, 2010, pp. 67-68.

[16] B. Binder & G. Trauner, *Lehrbuch Öffentliches Recht – Grundlagen*, 4. Auflage, 2017, Rdn. 998.

[17] <https://www.bundestag.de/blob/510206/66b4d705508460972c1924582f0a3426/initiative-buerokratieabbau---rechtsbereinigung-data.pdf>.

[18] R. Zimmermann, 'Savigny's Legacy*: Legal History, Comparative Law, and the Emergence of a European Science*', Law Quarterly Review, 1996, pp. 576-605.

[19] On the failure of the long-standing attempt by the Federal Environmental Agency to pass an overarching code encompassing all statutes on environmental law (*Umweltgesetzbuch*) see: R. Weyland, *Das Umweltgesetzbuch: Neugeburt oder Scheitern eines Jahrhundertprojekts?*, Lit Verlag, Berlin, 2015 and before: H.D. Jarass, *Il codice dell'ambiente in Germania*, in D. De Carolis, E. Ferrari & A. Police (Eds.), *Ambiente, attività amministrativa e codificazione*, Giuffrè, Milano, 2006, p. 11 *et seq.*

[20] K.P. Sommermann, *Codifications: Examples and Limits*, in H. Siedentopf, C. Hausschild & K.P. Sommermann (Eds.), *Law Reform and Law Drafting*, Speyerer Forschungsberichte 129, 2nd edn., 1994, p. 47 *et seq.* On the Code of Procedural Administrative Law see: S. Miecke, *Regelmäßigkeiten der Entstehung einer Kodifikation des Verwaltungsverfahrensrechts in Deutschland und Österreich mit einem Ausblick auf die EU*, Peter Lang, Frankfurt, 2007.

2.1. *Tools and procedures*

Initiatives for 'law reform' are generally taken by the Federal Government and, more precisely, by the Federal Ministry of Justice and Consumer Protection. At the same time, all Federal Ministries are required to check and report to the Federal Cabinet which regulations can be lifted and which can be simplified. Besides, the whole federal legislation must be reviewed in order to identify the opportunity for streamlining legal provisions.

When Chancellor Helmut Kohl took office on 13 October 1982, after thirteen years of social-liberal government, he stated that small government (*der schlanke Staat*), cutting red tape (*Bürokratieabbau*), aimplification of law, and administrative simplification would be part of a complex effort to modernise the state[21]: more particularly, *Berenigung* was needed in construction law, commercial law and social law[22]. For this purpose, a number of ad-hoc 'law reform' bodies were established in the Federal Republic of Germany, first at State level and then at federal level, at the beginning of the 1980s. These bodies were committees of experts charged with the task of reducing the bureaucratic burden on business. In particular, one of them deserves mention, the so-called *Unabhängige Kommission zur Rechtsbereinigung und Verwaltungsvereinfachung.* This Committee, better known as *Waffenschmidt-Kommission* after the name of its Chair, was set up within the Federal Ministry of the Interior in 1983 and operated until 1998, when Chancellor Helmut Kohl stepped down. Its main outputs were recommendations and reports to draft new codifications, such as the Federal Building Code (*Baugesetzbuch*), as well as to repeal existing legislation in both the field of building and tax law (cf. the first three 'law reform' acts enacted in 1986, 1987, 1990), thereby supporting the Helmut Kohl Cabinet in its deregulative effort. Further efforts to abolish regulations, which were not in line with market-economy principles, followed in the early 1990s under the auspices of a so-called 'Deregulation Commission' (*Deregulierungskommmission*)[23]. The Deregulation Commission issued two final reports in 1990 and 1991, in which approximately 100 reform proposals were made. After that, a working group composed of six Christian Democratic and Liberal Democratic members of Parliament scrutinised the proposals of the Commission, and retained one third of them for consideration by the Federal Government. However, the subsequent implementation of those policy suggestions had only limited success.

A new political season of deregulation started in 2003 when the Federal Government launched the 'Initiative Reducing Bureaucracy' (*Initiative Bürokratieabbau*), which however followed a rather narrow approach, since it was mainly aimed at repealing outdated legal provisions or provisions grounded on outdated legal relationships. Within this context, following a proposal from the Federal Ministry of Justice and the Federal Ministry of the Interior, and with their technical support, as many as 13 'law reform' federal statutes (*Rechtsbereinigungsgesetze*) have been enacted by the German Parliament between 2006 and 2016. From a procedural perspective, it is worth mentioning that at federal level there is no body tasked with the responsibility of making 'law reform' proposals. Instead, individual Ministries are responsible for identifying the needs of 'law reforming' and proposing a corresponding

[21] See Chancellor Kohl's statements before Parliament (*Regierungserklärungen*) of 13 October 1982 and 4 May 1983.

[22] See P. Cacik, 'Zuviel Staat? – Die Institutionalisierung der "Bürokratie"-Kritik im 20 Jahrhundert', *Der Staat*, Vol. 56, 1, 2017, p. 28.

[23] J. Basedow, *Mehr Freiheit wagen: über Deregulierung und Wettbewerb*, Mohr Siebeck, Tübingen, 2002, p. 49 *et seq.* See also: W. Jann & G. Wewer, *Helmut Kohl und der schlanke Staat: eine verwaltungspolitische Bilanz*, in G. Wewer (Ed.), *Bilanz der Ära Kohl: Christlich-liberale Politik in Deutschland 1982–1998*, Leske und Budrich, Opladen, 1998, pp. 229, 235 *et seq.*

bill. Some of the aforementioned statutes can be described as law-repeal bills. Such is the case, for instance, of the *Gesetz über die Bereinigung von Übergangsrecht aus dem Einigungsvertrag* of 21 January 2013. Another piece of legislation of this kind has a similar function: the *Zweites Gesetz über die Bereinigung von Bundesrecht im Zuständigkeitsbereich des Bundesministeriums der Justiz* of 23 November 2007, in which further consequences of Allied Occupation and the special regime of Saarland before its incorporation into West Germany in 1957 are dealt with. The other 'law reform' federal statutes focused on repealing unnecessary legal provisions in the fields of labour and social affairs law, agriculture and consumer protection.

However, *Rechtsbereinigung* ultimately reached out to include unification and simplification of legislative regulations, as explained by the Research and Documentation Service of the German *Bundestag*[24]. This means that the Federal Government also pursued 'law reform' efforts according to a broad approach whose aim was to reduce bureaucratic and therefore transaction costs for economic operators. Currently, a new agenda called *A Better Regulation 2016*, adopted by the Federal Government, further aims at formulating laws in a more simple and understandable way, thus seeming to follow the rationalistic approach to law-making which inspired Montesquieu in his *The Spirit of the Laws* (Book 29, Chapter XVI)[25]. Within the context of this initiative for reducing bureaucracy, which was officially initiated by the II Gerhard Schröder Cabinet in 2003 and continued thereafter under the subsequent federal governments, a body which deserves to be mentioned is the National Regulatory Control Council (*Normenkontrollrat*, NKR). The NKR is an independent body composed of eight members appointed by the government, which was established by the CDU/CSU and SPD federal government in 2006. Its task is mainly reviewing federal draft bills and administrative regulations in order to assess the related bureaucratic costs[26].

Pursuant to § 45 of the Joint Rules of Procedures of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*, GGO) before a draft bill is submitted to the Federal Government for adoption, the lead Federal Ministry must involve both the Federal Ministries affected by the bill and the National Regulatory Control Council within the framework of its legal competence at an early stage for any preliminary work and the drafting of the bill. The Council shall check whether the Ministries gave details of the regulatory costs resulting from regulation to the public, industry, and public administration. If the National Regulatory Control Council gives an opinion on the bill, comments should be attached to the bill which is submitted to the *Bundestag* and the lead Federal Ministry is required to verify whether the Federal Government has been requested to comment on this opinion. The Council also submits a comprehensive report to the Chancellor once a year. Generally speaking, its mission is not directly related to 'law reform' (even if *Rechtsbereinigung* proposals may also be put forward by the Council), but, rather, to a prospective impact assessment of legislation and administrative measures.

3. Main research questions in the surveyed literature

As has been mentioned above, *Rechtsbereinigung* has been a permanent endeavour throughout the constitutional history of Germany since the beginning of the second half of the 19th century.

[24] <https://www.bundestag.de/blob/510206/66b4d705508460972c1924582f0a3426/initiative-buerokratieabbau---rechtsbereinigung-data.pdf>

[25] J. Schwabe, *Rechtsbereinigung zum Zweck rationeller Rechtsanwendung*, Zeitschrift für Rechtspolitik, Vol. 3, No. 10, 1970, pp. 225-226.

[26] B. Jantz, *The Nationaler Normenkontrollrat in Germany: How to Control the Regulators?*, paper presented at the conference '(Re)Regulation in the Wake of Neoliberalism, Consequences of Three Decades of Privatization and Market Liberalization', Utrecht, June 2008.

However, it should be stressed that in its most recent stage of evolution the effort to 'clear out' the legal system has been inspired by other purposes. This led to blurring the borders between *Rechtsbereinigung* and other tools and notions such as *Deregulierung*.

3.1. *Findings and theoretical debates*

This brief research showed the development of a deep academic interest for *Rechtsbereinigung* and its conceptual challenges by the West-German legal doctrine in the mid-1950s/beginning of the 1960s (Brandl, Meiser, Strauss), when the Federal Republic had to cope with the applicability of a number of legal provisions adopted under the Nazi regime, as well as with the law passed by Allied Occupation forces both at federal and at *Land* level. In the 1970s, due to the gradual rise of the 'social State' and the consequent proliferation of State regulatory tasks, codification started being thought about and used as a tool to ensure uniform and comprehensive regulation in the social and environmental field. In this respect, however, a major backlash in the German 'law reform' agenda was the failure of the project to create an Environmental Code in 2009, a project launched in the 1990s when Angela Merkel was Federal Minister for the Environment. After lengthy discussion, major disagreement between the Social Democratic Federal Minister of Environment and the Christian Social state government of Bavaria ultimately made it impossible to reach a compromise. Lawyers (Jarass, Weyland) perceived the code as being vital to collect together a great number of dispersed legal provisions pertaining, *inter alia*, to the field of nature protection, emission control, water pollution prevention and nuclear safety as well as a way to simplify administrative procedures. The reform which should have been brought about more easily after 2006 federal reform on grounds of the new federal legislative competence on nature protection and water failed through political resistance by the *Länder.*

A rather different trend can be traced down to the 1980s and beyond, when repealing – mostly of regulations – was deemed necessary to bring the German economy into line with the market-economy principle. The neo-liberal aim of cutting red tape and speeding up administrative procedures prevailed all through the 1990s. The establishment of the National Regulatory Control Council (NKR) in 2006 was still largely influenced by a widespread simplification and de-bureaucratization rhetoric, which has lasted until today.

3.2. *Conceptual problems and challenges*

One of the main conceptual challenges linked to this enquiry was to sort out the different tools for achieving 'law reform' in Germany, as well as to divide the history of the Federal Republic according to the different ages of 'law reform'. As for the tools, we believe that the German institutional evolution has been marked by a remarkable continuity in this respect: for all its complicated constitutional history, *Rechtsbereinigung* has been resorted to since the German unification in 1871. Still, the reasons underlying this typically German institutional practice have varied considerably throughout the German constitutional and legal evolution. By making reference to constitutional and legal evolution, we have in mind not only major turning points like the democratisation of the legal order after World War I, the advent of constitutional democracy after 1949, or the reunification in 1990. We also think of dramatic shifts in the dominant legislative public opinion[27], like the apparent peak in the expansion of big government in the 1970s and the subsequent wave of deregulation and simplification. All these events

[27] See A.V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century,* Routledge, Abingdon, 2017.

have affected the dominant understandings of the rationale of 'clearing out' endeavours in Germany. This is of the greatest relevance when it comes to comparing tools and procedures in functional terms: as mentioned above, the main objective of those efforts has somehow evolved over time. Still, it is possible to identify a distinctive purpose of *Rechtsbereinigung*, which can be summarised in terms of reordering and systematising legislative materials[28].

On the other hand, and leaving aside the propulsive role of the Federal Ministry of Justice, the institutional landscape has been far less stable. Consultative bodies like the Waffenschmidt Committee and the NKR are clearly associated with more specific tasks and a distinctive political atmosphere.

In practical terms, scholars (Kirchhof) have raised points about the effects of 'clearing out' laws. Again, there is some overlap of *Rechtsbereinigung*, simplification and deregulation: has *Rechtsbereinigung* made it possible to reduce the size of the stock of legislative provisions in force? The most plausible answers adopt a cautious approach: by virtue of *Rechtsbereinigung*, over a given time span approximately the same number of laws are repealed as are enacted by the legislature. The final outcome points to an increase in the size of the statute book[29].

[28] In retrospective assessment of the Kohl years, this makes it possible to trace a broad distinction between deregulation and proper Rechtsbereinigung. See G. Wewer (1998), p. 235.

[29] See G. Kirchhof, *Die Allgemeinheit des Gesetzes. Über einen notwendigen Garanten der Freiheit, der Gleichheit und der Demokratie*, Mohr Siebeck, Tübingen, 2009, pp. 43-44.

Literature review on 'Law Reform' in Germany

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1.1. The Parliament

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- P. Badura, 'Die parlamentarische Volksvertretung und die Aufgabe der Gesetzgebung', *Zeitschrift für Gesetzgebung*, Vol. 2, 1987, pp. 300-311.

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2.1. Parliamentary Procedures

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