DEVELOPMENTS

The Decision of the German Federal Constitutional Court of 25 August 2005 Regarding the Dissolution of the National Parliament

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A. Introduction: The Political and Historical Background of the Decision

Thanks to Chancellor Gerhard Schröder's decision to ask the German *Bundestag* (Federal Parliament) for a vote of confidence on 1 July 2005, and following on the Federal President's dissolution of the Parliament on 21 July 2005 in response thereto, the *Bundesverfassungsgericht* (BVerfG – Federal Constitutional Court) was pressed into service to finally decide whether federal elections should go forward nearly a year ahead of schedule. With the Court's affirmative decision of 25 August 2005,[1] Germany now finds itself in a turbulent national election campaign.

As intended, the Chancellor lost the vote of confidence in the Parliament, although he still had the backing of an overwhelming majority of his fellow Social Democrats and their coalition partner, the Green Party. In fact, most deputies cast their votes against their conscience in order to enable German President Horst Köhler to dissolve the *Bundestag*. Schröder thereby used the *Vertrauensfrage* provided for by Art. 68 of the *Grundgesetz* (GG – Basic Law or Constitution). The reason for this action (of possible political suicide) was a string of election losses for Schröder's party, the Social Democratic Party (SPD), the bigger partner in the governing center-left coalition. Schröder's announcement came within hours of the historic defeat of his party in the May state elections in North Rhine-Westphalia, Germany's largest state.[2] Not only had the Government's approval ratings steadily eroded to

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[1] BVerfG, 2 BvE 4/05 of Aug. 25, 2005, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

[2] *Id*. at paras. 9-13.

around 35%, but the Chancellor's parliamentary supporters had increasingly begun to voice their disapproval of the economic reform program "Agenda 2010," which has come to be seen as the cornerstone of Schröder's second term and the root cause of his Government's declining popularity.[3]

The *Vertrauensfrage* is a legal institution that can be properly understood only against the background of modern German history.[4] The Parliamentary Council, which drafted the Basic Law after World War II, intended to prevent a "Weimaresque" situation as regards the dissolution of Parliament.[5] During the years of the Weimar Republic the President had been allowed to dissolve Parliament without serious legal boundaries and this led to political instability.[6] Thus, under Art. 67 of the Basic Law, the Parliament can, on its own account, only pursue a "constructive vote of no confidence."[7] Parliament cannot deny the governing Chancellor its confidence without, at the same time, electing a new Chancellor.

Yet, while they were united in their desire to make the dissolution of Parliament more difficult, the framers of the Basic Law still had to confront the problem of what should happen if, on request of the Chancellor, the Parliament refused to support the Government in power without electing a new Chancellor at the same time. The solution was the "Vertrauensfrage" of Art. 68.[8] However, it is unclear

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[3] *See* Thomas Ubber, *Agenda 2010: Reform of German Labour Law: Impact on Hiring and Firing Staff*, 5 GERMAN LAW JOURNAL 135 (2004), *at* http://www.germanlawjournal.com/article.php?id=380.

[4] *See* NICLAUß, DER WEG ZUM GRUNDGESETZ 200-202 (1998).

[5] *See* Donald P. Kommers, *The Basic Law: A Fifty Years Assessment*, 53 SMU L. REV. 477, 480 (2000); Katharina Pistor, *The Demand for Constitutional Law*, 13 CONSTITUTIONAL POLITICAL ECONOMY 73, 80-81 (2002).

[6] *See* ZIPPELIUS, KLEINE DEUTSCHE VERFASSUNGSGESCHICHTE 137 (2002); Mary Lovik, *The Constitutional Court Reviews the Early Dissolution of the West German Parliament*, 7 HASTINGS INT'L & COMP. L. REV. 79, 85 (1983).

[7] Art. 67.1 GG reads:

> The Bundestag may express its lack of confidence in the Federal Chancellor only by electing a successor by the vote of a majority of its Members and requesting the Federal President to dismiss the Federal Chancellor. The Federal President must comply with the request and appoint the person elected.

[8] Art. 68.1 GG reads:

> If a motion of the Federal Chancellor for a vote of confidence is not supported by the majority of the Members of the Bundestag, the Federal President, upon the proposal of the

whether the German "founding fathers and mothers" meant to enable the Chancellor to deliberately lose the vote in order to achieve premature national elections.

Thus, it was foreseeable that not every member of the governing parties was content with this procedure. Indeed, two Members of Parliament, Jelena Hoffmann and Werner Schulz, challenged the dissolution proceedings at the Federal Constitutional Court.

The Basic Law allows one organ of the political body to file a lawsuit against another organ if the Basic Law provides the suing organ with certain specific rights. Under Art. 93 I (1), not only organs as a whole, but also constituent elements thereof have standing before the Federal Constitutional Court in such proceedings, provided that their rights as agents of the political organ have been violated.[9] On this basis the Federal Constitutional Court rejected, on 23 August 2005, a parallel action by two smaller parties which alleged that a premature election would severely hamper their chance to raise the required number of signatures to run.[10] The two plaintiffs, Hoffmann and Schulz, on the other hand, could argue that the premature dissolution of the Parliament was a severe infringement of their constitutional rights as representatives entitled to sit for a full term of four years, as provided by Art. 39 I (1) of the Basic Law.[11]

The infringement of the right of each Member of Parliament to serve a full term amounts to a breach of the Constitution unless justified by other provisions of the Basic Law. Article 68 I might satisfy this standard. It provides that the President may dissolve the Parliament if the Parliament fails to support the Chancellor in a vote of confidence. This is exactly what had happened in the present case. Still, the terms of the provision alone may not suffice to vindicate the procedure. In a 1983 decision, the Federal Constitutional Court added a "material condition" to the

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> Federal Chancellor, may dissolve the Bundestag within twenty-one days. The right of dissolution shall lapse as soon as the Bundestag elects another Federal Chancellor by the vote of a majority of its members.

[9] SCHLAICH/KORIOTH, DAS BUNDESVERFASSUNGSGERICHT 68-69 (2004).

[10] BVerfG, 2 BvE 5/05 of Aug. 23, 2005, *available at* http://www.bverfg.de/entscheidungen/es20050823_2bve000505.html.

[11] BVerfGE 62, 1 (32); BVerfG, 2 BvE 4/05 of Aug 25, 2005, para. 124, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

merely "formal" one provided by Art. 68 of the Basic Law.[12] In 1983, Chancellor Helmut Kohl had also used the *Vertrauensfrage* under Art. 68 I to pave the way for national elections, even though he had the support of the majority of the Parliament. The Federal Constitutional Court demanded a "materielle Auflösungslage,"[13] i.e. a situation of political crisis in which the Chancellor sees no chance to continue governing under the given circumstances, primarily a lost or insecure majority in Parliament. The Justices approved the concrete procedure in Kohl's case,[14] but the decision in 1983 remains dubious, especially in contrast to 1972 when Chancellor Willy Brandt used the Art. 68 procedure in an actual crisis of confidence in the Parliament. In 1983, Kohl's sole intention seems to have been to aggrandize his majority in the *Bundestag*.[15] This was much like the situation presented to the Constitutional Court in 2005 in regards to Schröder's use of the *Vertrauensfrage*.[16]

B. The Decision of the Majority

The majority of the Federal Constitutional Court first held that the three formal conditions of Art. 68 had been fulfilled. First, Schröder had asked the Members of Parliament for a vote demonstrating their confidence on 1 July 2005. Of the 595 voting Members of Parliament, only 151 answered in the affirmative. 296 Members of Parliament negated the question and 148 Members of Parliament abstained.[17] The Chancellor formally lost the *Vertrauensfrage*. The second condition, that the Chancellor request that German President Horst Köhler dissolve the Parliament, had also been fulfilled. Schröder did so immediately after he lost the *Vertrauensfrage* vote. Finally, the requirement that the President dissolve the Parliament within three weeks of the Chancellor's request had been satisfied. On 21 July 2005, President Köhler announced the dissolution of the Parliament in a speech on German television.

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[12] BVerfGE 62, 1. For general information about the decision and a substantiated critique, *see* MENZEL/RITGEN, VERFASSUNGSRECHTSPRECHUNG 338-343 (2000). For analysis in English, *see* Lovik, *supra* note 6.

[13] *See* RICHTER/SCHUPPERT/BUMKE, CASEBOOK VERFASSUNGSRECHT 407-409 (2001).

[14] The decision is hardly consistent. *See* IPSEN, STAATSRECHT I 140 (2003).

[15] *See* Lovik, *supra* note 6, at 81-85.

[16] BVerfG, 2 BvE 4/05 of Aug. 25, 2005, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

[17] Parliamentary Protocol of July 1, 2005, *available at* http://www.bundestag.de/bic/plenarprotokolle/plenarprotokolle/15185.html; BVerfG, 2 BvE 4/05 of Aug. 25, 2005, para. 73, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

The bigger problem for the Court was that, as already mentioned, the Federal Constitutional Court had, in its 1983 decision, found an unwritten "material condition" in the Basic Law regarding the Art. 68 process. The Court had declared that a Chancellor who aspired to dissolve the Parliament by making use of Art. 68 I of the Basic Law would only be allowed to do so if continuous governance was no longer politically assured. The political balance of power in the Parliament must have undermined the Chancellor's capacity to act in such a manner that he or she cannot reasonably pursue a policy supported by the majority of the Parliament.[18]

The majority explained that the reason for imposing a "material" condition is that the Basic Law does not provide the Parliament with a general right to self-dissolution. In contrast to Art. 25 of the Weimar Constitution, the President does not have an unlimited right to dissolve the Parliament. The provisions of Arts. 63 IV and 68 I allow for the dissolution of the Parliament only under the condition that the election of a Chancellor fails because no candidate gets the majority of the vote in Parliament. Otherwise dissolution of the *Bundestag* is not possible. It follows, the Court reasoned, that a situation of political instability is required.[19] In particular, it is unconstitutional for the Chancellor to pursue the *Vertrauensfrage* process only as a cover for his or her actual desire to effectuate a new election. Significantly, special difficulties in the current legislative period do not legitimate dissolution.[20]

Thus, a situation of political instability must be present. The important question is who gets to decide whether such a situation is present or not. The Federal Constitutional Court, in the 1983 case, held that the Chancellor must prove the existence of a situation that prevents him from pursuing a policy supported by the majority of the Parliament before he or she can pursue the *Vertrauensfrage* process. The President must apply the same standard in scrutinizing the Chancellor's dissolution request. However, the President is only allowed to prefer a different assessment of the situation if his or her assessment is obviously more adequate.[21] Likewise, the Federal Constitutional Court may only assess whether the Chancellor's assessment is obviously wrong.[22] This standard of review is comparable to the rational basis test in American 14th Amendment jurisprudence,

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[18] BVerfGE 62, 1 (44).

[19] *Id*. at 40.

[20] *Id*. at 42-44; BVerfG, 2 BvE 4/05 of Aug. 25, 2005, para. 201, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

[21] BVerfGE 62, 1 (50-51).

[22] *Id*. at 51.

which notoriously leaves the judiciary little room to contradict legislative and executive policy.

The reason for limiting the discretion and review of the President and the Court so significantly, the majority of the Court explained, is that the scenario raises a political question, which it is the Chancellor's constitutional prerogative to decide. It is not the task of the President or the Federal Constitutional Court to make such political decisions. The assessment that a government is still supported by the Parliament is objectively indeterminate and often bears the character of a judgement linked to personal ideas.[23] An additional reason for the bounded judgment of the Federal Constitutional Court is the fact that the Parliament, the Chancellor and the President are all participants in the process. The Basic Law and the Federal Constitutional Court are instinctively inclined to trust in the system of mutual political control established in Art. 68 I of the Basic Law.[24]

The Federal Constitutional Court listed several facts supporting Schröder's conclusion that a situation of political instability exists.[25] In the session of Parliament held on 1 July 2005, the Chancellor explained that the reforms of the German social system called "Agenda 2010" caused conflicts between the Social Democrats and their coalition partner, the Greens. There had also been grave conflicts inside the SPD. Some Social Democratic critics had even called for Schröder's resignation. Schröder expressed concern that, in the future, dissenting Members of Parliament might compromise his policies, especially the "Agenda 2010."

The Federal Constitutional Court identified, as another supporting fact, a comment by the chairman of the Social Democrats, Franz Müntefering, made on 1 July 2005. The two plaintiffs argued that Müntefering had said that the SPD Parliamentarians had "confidence" in Schröder, and that to help Schröder lose his motion was, "in reality" a vote of confidence.[26] However, the Federal Constitutional Court was of the opinion that this comment merely expressed the wish of the Members of

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[23] *Id*. at 50; BVerfG, 2 BvE 4/05 of Aug. 25, 2005, para. 149, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

[24] BVerfGE 62, 1 (39); BVerfG, 2 BvE 4/05 of Aug. 25, 2005, para. 155, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

[25] BVerfG, 2 BvE 4/05 of Aug. 25, 2005, para. 166, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

[26] For Müntefering's exact words, *see* BVerfG, 2 BvE 4/05 of Aug. 25, 2005, para. 57-59, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

Parliament to keep Schröder as Chancellor. The comment, in this view, refers only to the Chancellor's character and not his policies.[27]

The two complaining Members of Parliament also pointed out that, in the time between 22 May and 1 July 2005, some controversial laws had indeed been passed. In their opinion, this proved the viability of the government. The Federal Constitutional Court disagreed. The passage of these laws, the Court reasoned, proved nothing because none of these laws had been a touchstone of the government's policies. None of the leftist critics within the Chancellor's governing coalition, the Court explained, had reason to object to these laws.[28]

Finally, the majority held that the decision of the German President regarding the dissolution of the Parliament must serve as a legitimate check on the actions of the Chancellor. The President ensures that the procedure has been taken in conformity with the Constitution. If the procedure has been correct, the President must also decide, in his or her discretion, whether the dissolution of the Parliament, the shortening of the legislative period, and other political consequences are proportional and whether he or she is willing to take the responsibility for them.[29] In the present case, the Court summarily concluded that the President had not abused his discretion in approving the Chancellor's requested dissolution.[30]

For the majority of the Federal Constitutional Court, it followed from these conclusions that the dissolution of the Parliament was in accordance with the German Basic Law.

C. The Concurring and Dissenting Opinions

It appears therefore that the Court, as in 1983, tried to square the circle: Both times a Chancellor had apparently asked for a vote of confidence with the hope of losing, merely in order to free the way for premature elections; both times the Federal Constitutional Court held that the mere desire for new elections was not a sufficient basis for the dissolution, yet in both cases it approved of the dissolutions in question. Not surprisingly, this *realpolitik* decision found its critics – not only outside, but also inside the Court.

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[27] *Id*. at para. 180.

[28] *Id*. at para. 183.

[29] BVerfGE 62, 1 (50).

[30] BVerfG, 2 BvE 4/05 of Aug. 25, 2005, para. 185-186, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

Justices of the Federal Constitutional Court, due to § 30 II of the *Bundesverfassungsgerichtsgesetz* (BVerfGG – Federal Constitutional Court Act), have the right to issue dissenting or concurring opinions if they do not agree with the position of the Senate's majority. A so-called "Sondervotum" is attached to the published judgment but does not have any legal effect nor is it binding in any way. It is mainly a contribution to legal science in general and may be relied upon in future decisions dealing with similar cases when the Court is willing to change its jurisprudence.

The eight judges of the Second Senate of the Federal Constitutional Court were not unanimous; they ruled 7 to 1 concerning the result and 5 to 3 concerning the reasoning. There were two dissenting opinions, issued by Justices Hans-Joachim Jentsch and Gertrude Lübbe-Wolff. Each breaks the paradox in opposite directions – the concurring Justice by dispensing of the additional "material requirements," the dissenting Justice by taking them so seriously that they lead to the unconstitutionality of the present dissolution proceedings.

I. The Facade of Control

Justice Lübbe-Wolff agreed that the dissolution of the Parliament was constitutional,[31] but she was not convinced of the reasoning used by her fellow Justices. Rather, she regards the "material condition" invented by the Court in 1983 as the product of an improper interpretation of the law. In particular she turned her criticism against the "materielle Auflösungslage." Using her words, this additional requirement creates a mere "facade of control"[32] which the Court could never perform seriously. Using a metaphor, she compared the "desired" vote of confidence arranged by the Chancellor with the question raised to a bridal couple by the priest. Nobody, Justice Lübbe-Wolff explained, could answer it correctly but them.[33] And nobody can decide from the outside whether there is still confidence in the Chancellor; only the Parliament itself can answer this question. The truth of this answer is not reviewable, Justice Lübbe-Wolff argued, neither by the Federal

[31] Thus, her opinion could be seen as a concurrence. However, under German Constitutional Law, her opinion counts as a dissent. BVerfG, 2 BvE 4/05 of Aug. 25, 2005, para. 213-243, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html.

[32] BVerfG, 2 BvE 4/05 of Aug. 25, 2005, para. 242, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html ("Kontrollfassade").

[33] *Id.* at para. 213. The analogy is not unproblematic: even marriage vows can be held ineffective in the case of sham marriages.

President nor by the Federal Constitutional Court. It is an original and exclusive decision of Parliament, or of each of its members, and if the majority refuses to answer the question in the affirmative, there is no "confidence" in the Chancellor anymore. Following Justice Lübbe-Wolff's argument, the "material condition" constructed by the Federal Constitutional Court might even violate the right of independence of the representatives elected to Parliament, as secured by Art. 38 of the Basic Law,[34] especially if their articulated will (expressing a lack of confidence in the Chancellor) were to be overturned by the Federal Constitutional Court.[35]

In addition, Justice Lübbe-Wolff asserted that the "materielle Auflösungslage," as defined by the Court, leaves immense discretion for the evaluation of the situation in Parliament by the Chancellor. This discretion leaves almost no situation imaginable in which the Federal Constitutional Court must block the dissolution of the Parliament for material reasons.[36] As a consequence, this manner of reading the law would not avert "faked votes" of confidence, but rather encourage them.[37] The Constitution aims for stability of the legislature and the democratic culture in Germany. For these reasons Justice Lübbe-Wolff urged the abandonment of the criterion of the materielle Auflösungslage."

II. A Weak Parliament?

While Justice Lübbe-Wolff pushed the majority opinion to its logical conclusion while concurring in the majority's holding, Justice Jentsch issue a dissenting opinion as he opposed both the result and the majority's reasoning in support of the judgment. To his mind, the dissolution of the Parliament was unconstitutional for three reasons.

First, the Chancellor could not prove the loss of his majority in the Parliament: He never actually lost a vote before the vote of confidence.[38] The facts relied upon by the majority were not strong enough to support the view of the Chancellor as lacking the ability to govern. Justice Jentsch reasoned that a certain plurality of

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[34] Guaranteed in Art. 38 I GG.

[35] BVerfG, 2 BvE 4/05 of Aug. 25, 2005, para. 218, *available at* http://www.bverfg.de/entscheidungen/es20050825_2bve000405.html. Of course, the Federal Constitutional Court remains obliged to determine whether the formal conditions of Art. 68 I have been fulfilled.

[36] *Id*. at para. 220-221.

[37] *Id*. at para. 243.

[38] *Id*. at para. 193.

positions and opinions within Parliament is necessary for a democracy and not fatal to effective governance.[39]

Second, Justice Jentsch stated that a "constructed" expression of the Parliament's mistrust[40] has no foundation in the Basic Law.[41] He worried that such votes of confidence, exclusively aimed at new elections, might establish a *de facto* right to Parliamentary self-dissolution contrary to the "clear will" of the constitution.

And third, Justice Jentsch feared that the position of the Senate's majority might impair the status of Parliament in general. By means of Art. 68 I of the Basic Law, as interpreted by the majority, a Chancellor could bypass Parliament every time he sought affirmation of his or her policies by immediately asking the electorate *via* a new general election.[42]

D. Commentary

The decision of the Constitutional Court has found near-unanimous approval as regards its result: Germans are, in an overwhelming majority, eager to elect a new Parliament this fall. The political and legal commentators are also approving. Despite this widespread satisfaction with the turn of events, the first reactions to the majority's reasoning have been extremely critical.[43] As was the case in 1983, most of the public regard the circumstances of the dissolution of the Parliament as political theater that was deliberately staged by the Chancellor himself. Many consider this a violation of the "spirit" of the Basic Law. How solid is this kind of reasoning?

It is undeniably true that that the Federal Constitutional Court decision of 25 August 2005 marks yet another step away from the "parliamentary democracy" that the Germans have learned to cherish in the light of their Nazi past. Many experts are concerned that the Court did not dare to signal to the Executive that its *de facto* grip on the Parliament is limited. It is essential – in order to understand this concern thoroughly – to point out the difference between the relationship between

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[39] *Id*. at para. 196.

[40] *Id*. at para. 190 ("Konstruiertes Misstrauen")..

[41] *Id*. at para. 198.

[42] *Id*. at para. 207.

[43] *See, e.g.*, H. Prantl, *Ein Gericht steht Spalier*, SÜDDEUTSCHE ZEITUNG, 26 Aug 2005, at 4; B. Kohler, *Schrödersieg*, FRANKFURTER ALLGEMEINE ZEITUNG, 26 Aug 2005, at 1.

Congress and the President in the United States and the position of the German Parliament.

In Germany, the reigning concept is of a "parteienstaatlicher Machtverbund,"[44] i.e. a close inter-dependence between the Federal Government and its allies in Parliament, whereas the legislative branch in America is far more independent. Because of the relative weakness of the Parliament, any further step towards *Kanzlerdemokratie* (chancellor democracy) is widely viewed as problematic.

The invention of a dissolution-oriented vote of confidence in the above discussed decision can be interpreted as the acceptance of a political maneuver whose sole winner is the Chancellor, who has gained power to extort obedience from the governing parties in Parliament. He or she can threaten to dissolve the body instead of having to strive for the approval of controversial legislation. Yet, the decision does not so much weaken democracy as such. Rather it represents a shift from a representative democracy towards a plebiscitarian democracy.

Many have proposed amending the Constitution to create a Parliamentary right to self-dissolution.[45] Such a provision would not, as some in Germany argue, lead to political instability of the kind that plagued the Weimar Republic (1919-1933). In those years, it was the overly powerful President with his near-unrestricted right to dissolve Parliament,[46] and not the Parliament itself, that was responsible for structural instability.

Instead of creating a mere façade of judicial control, as Justice Lübbe-Wolff rightly stated, the Court could have been more honest: It could have declared unequivocally that the intention of Art. 68 is not to prevent a Parliamentary right to self-dissolution, but rather to prevent the President from arbitrarily dissolving the Parliament. The formal procedure the Basic Law specifies is distinct enough. It simply does not require further "material" control through the Federal Constitutional Court.

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[44] The concept of "Parteienstaat" was invented by former Justice Gerhard Leibholz. *See* IPSEN, *supra* note 14, at 86.

[45] *See, e.g.*, H. Kerscher/N. Fried, *Urteil stärkt das Amt des Kanzlers*, SÜDDEUTSCHE ZEITUNG, 26 Aug 2005, at 1. For similar debates in 1982, *see* Lovik, *supra* note 6, at 93-94.

[46] *See* BRACHER/FUNKE/JACOBSEN/BOLDT, DIE WEIMARER REPUBLIK 1918-1933 52-53 (1988); STOLLEIS, GESCHICHTE DES ÖFFENTLICHEN RECHTS IN DEUTSCHLAND – WEIMARER REPUBLIK UND NATIONALSOZIALISMUS 103-05, 114-16 (2002).

A different, equally reasonable way of strengthening the Parliament would be to admonish the Court, should it retain its review over the dissolution process, to decide in greater conformity with legal reasoning and less from a perspective of political opportunism. However, this solution appears unrealistic and not as well-founded as the former.

Yet, *de lege ferenda*, in order to avoid the next hypocritical political theater (which the majority opinion of the Court provokes), Germany should introduce an explicit right to Parliamentary self-dissolution, restricted by a high quorum. Such a procedure would give the formal right of initiative back to the Bundestag, even though, admittedly, the way of coping with that new right might prove that the prerogative of the Executive is insurmountable.

The Germans have reason to put more faith in the inherent stability of their political system: after all, the country has grown up.