

The two waves of territorial reforms of local government in Germany

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## 0. *Introductory remarks*

For the discussion of territorial reforms of local government levels Germany should make for an interesting case, as the country has seen two waves of territorial reforms in different periods, first, in the “old” Federal Republic in the late 1960s and early 1970s and then, after German Unification, in East Germany since the early 1990s.

The article will proceed in four steps:

- First a nut-shell account will be given of the Germany’s intergovernmental setting in which territorial reforms were decided and put in place,
- Second, the reform wave in the “old” Federal Republic will be dealt with.
- Third, the territorial reforms in East Germany will be addressed.
- Finally, the accounts will be put in comparative (and also speculative) perspective.

In reporting on the two reform strands the attempt will be made to identify some of the factors that have driven them and to give an (evaluative) assessment of their effects (the scarce available empirical evidence permitting).

## 1. *Intergovernmental setting*

In order to put the account and analysis of the territorial reforms of local government in an appropriate perspective first some basic information on the intergovernmental context shall be given

### 1.1. *The intergovernmental status of local government*

Traditionally, German local government consists of two tiers, that is, the *counties* (*Kreise*) as the upper and the *municipalities* (*Gemeinden*) as the lower layer<sup>2</sup>. While most of the municipalities lie within counties (and are called in German “*kreisangehörige Gemeinden*” which can be translated as “municipalities within counties”), the larger towns and cities exercise the responsibilities and powers of both levels and are known in German as “*kreisfreie Städte*” = “county-free towns”. (Functional equivalents would be, for instance, the “county

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<sup>2</sup> In view of the terminological uncertainty, if not confusion that exists in the literature it should be pointed out that, with regard to the upper local government level, we prefer to speak „counties“ (instead of districts, as it sometimes said) and, pertaining to the lower level, we use „municipality“ (instead of „commune“) for what in

boroughs” or “county cities” in *Britain* and “city counties” in the USA) (see Norton 1994: 251).

In Germany’s (two layer) federal system which is made up of Federation (*Bund*) and the Federal States (*Länder*) the local government levels do not constitute a self-standing (third) federal structure, but are seen, by constitutional law and legal doctrine, as constituent parts of the *Länder*. They are, in a terminology used in the USA, “creatures” of the *Länder*.

On the one hand, from this it follows that all questions which pertain to regulation the territorial and institutional frame in which local government operates are decided by the *Länder*, that is, by the *Länder* parliaments through Land legislation. Hence, the municipal charters as well as the territorial boundaries of local governments are set by the *Länder*. The Federation has no say in these matters.

On the other hand, within the German constitutional tradition (different from the *ultra vires* doctrine of the British tradition) the local governments have been assigned a scope of autonomy and a presumption of local responsibilities the “core” and “essence” of which is seen being protected against and immune to infringement and abolition by federal or Land legislation.

Under the Federal Constitution of 1949 this legal protection of local government has been constitutionally respectively legally provided on two scores:

- In article 28 of the Federal Constitution (*Grundgesetz*, Basic Law) it is laid down that the municipalities (and, to a somewhat lesser degree, the counties) have the right to regulate “all matters of the local community (*örtliche Gemeinschaft*) in their own responsibility within the frame of the existing (federal and *Länder*) legislation”. In this “general competence” clause which historically dates back to the early 19<sup>th</sup> century stands the Federal Constitution, on the one hand, gives constitutional recognition to the special status of local government in the entire constitutional system and insofar also binds the *Länder*. On the other hand, the Constitution makes the qualification that the “right” of the municipalities (and counties) can only be exercised “with the frame of existing legislation”. This reservation has been a “door-opener” for legislation, particularly passed by the *Länder*, curbing local autonomy. Yet, article 28 of the Federal Constitution has

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German is called „Gemeinde“ as the generic term which, in turn, covers „cities, towns“ (Städte) as well localities

been interpreted by the Federal Constitutional Court and by the entire judiciary as well as by the legal doctrine unanimously as granting and ensuring an “institutional guarantee” to local government which makes it “core” and “essence” immune to encroachment by (federal as well as *Länder*) legislation. It should be added at this point that, the Constitutional Court and the legal doctrine again unanimously agree, article 28 of the Federal Constitution (and similar provisions in the *Länder* constitutions) do not provide any guarantee to individual municipalities (or counties) to remain unimpaired in its territorial boundaries, for instance by way of amalgamation through an act of Land legislation (see Stern 1981: 205). Through article 28 of the Federal Constitution individual municipalities are protected, however, against an legislative act of a Land parliament that violates basic postulates of “due process” in the Land’s dealing with the municipalities (we shall return to this later).

- Second, by federal legislation and (since 1969 by the Federal Constitution itself, article 93 section 1 letter 4b), any municipality (or county) that claims to have been violated in its rights under article 28 of the Federal Constitution may file a complaint to the constitutional court of the respective Land or to the Federal Constitutional Court. It should come as no surprise that such court proceedings were amply resorted to by municipalities in the conflicts about territorial reforms (this point, too, will be taken up later).

## 1.2. *Functional (and political) model of local government*

While, by constitutional law and by unanimous legal interpretation, not constituting a self-standing (third) layer of the federal system, but regarded as constituent parts of the *Länder*, the two-tier local governments have, in the German constitutional and administrative tradition, been characterized by a broad scope of tasks and responsibilities which, historically dating back to the 19<sup>th</sup> century, had an early focus on public utilities and (local) social policy. In giving the German local levels their profile of *multi-function and general purpose* local government in an all but “path-dependent” imprint and manner, two conceptual strands have converged and reinforced each other. First, it is the time-honored “general competence clause” which has been given constitutional recognition in article 28 of the Federal Constitution of 1949 that lies at the basis of the “general purpose” model encouraging and legitimating the municipalities and counties to take care of “all matters relevant to the local

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of village size (Dörfer). In using this terminology we largely follow Norton 1994.

community". Second, the counties and (to a lesser degree the municipalities) have been traditionally put in charge, besides and in addition to their local self-government matters, of carrying out public functions "delegated" to them by the State; by way of this "dual function" principle which is a peculiarity of the German-Austrian constitutional and administrative history (see Wollmann 2000a: 46, Marcou/Verebelyi 19993: 79), the local authorities have come to be administratively responsible for a gamut of public functions (such as the issuance of building permits, or car and drivers licence, civil registry and the like) which in other countries are often carried out by (single-purpose) local field offices of (central) State government. As a result, between 70 and 80 percent of the federal and *Länder* legal provisions are implemented and about two thirds of the public capital investments are carried out by the local authorities (Schmidt-Eichstaedt 1999).

This functional preponderance of the local authorities as *territory-based general purpose* local government in the coverage of public activities and functions on the local level has its correspondence in the limited array of *special purpose* (sectoral) administrative units of State (Land) administration (*Sonderbehörden*) in Germany's intergovernmental system. While the federal level is constitutionally denied to have administrative offices of its own on the sub-*Länder* level (except for a constitutionally enumerated minimal number of functions, such as customs and border police), the *Länder* have made use of (and further accentuated) the "dual function" model of local government by "delegating" administrative functions to the "general purpose" local authorities.

*Functional reforms* have discussed and pursued as a strategy to further (politically) *decentralize* or (administratively) *deconcentrate* the intergovernmental setting by transferring further public (administrative) functions from State (Land) agencies to the local authorities – with the traditional "dual function" model providing the conceptual basis and "peg" for such delegation.

### 1.3. Territorial format of the local government levels up to the 1960s

The second world war which, started by Hitler Germany and ending with Germany's unconditional surrender, disastrous destruction, military occupation and dismemberment (not to mention the catastrophic sacrifices in the countries around) has also resulted in redrawing

Germany's territorial boundaries in an unprecedented scale. One quarter of the German Reich's territories in Eastern provinces fell to Poland and the Soviet Union – with over 10 million Germans fleeing or being expelled to the West. The remaining Germany was divided in four Occupational Zones the borderlines of which followed political bargaining between the four Powers rather than historical entities. Within the three Western Occupational Zones on which territory the Federal Republic of Germany in 1949 was established, 10 (originally 12) new *Länder* were created whose boundaries were determined by the political will of the Occupational Forces than by the historical boundaries of the *Länder* in the (pre-Nazi) Weimar Republic.

Amidst and despite this unprecedented upheaval and redrawing of territorial boundaries in the international, national and sub-national scales the territorial boundaries of the counties and municipalities in post-war West Germany remained conspicuously unchanged. The massive efforts of reconstructing the devastated cities, of housing the millions of refugees and expellees and the “economic miracle” of phenomenally fast economic recovery, in which the local level had a decisive part, took place on a territorial basis of local government most of the boundaries of which dated by to the 19<sup>th</sup> century and beyond. The attempts that were undertaken after the first world war to have the historical boundaries of municipalities reform were limited and pertained to some major cities. For instance, in 1920 (Greater) Berlin was formed through amalgamation by a legislative *fiat* of parliament of Prussia.

So, despite the unprecedented political, economic as well as territorial changes which (West) Germany experiences after 1945 and in the immediate post-war years well into the 1960s, the territorial boundaries of the counties and municipalities continued to be the historically grown ones, made up of 24.000 municipalities (with an average population size of some 2.000 souls) and 425 counties (with an average of some 60.000 inhabitants).

## 2. *Territorial reforms of local government in the (“old”) Federal Republic in the 1960s and 1970s*

### 2.1. *Factors and discourses shaping the reform agenda*

In the late 1960s a debate on the need for having profound reforms of the historically inherited territorial structure of the local government levels emerged and quickly gained

moment. Particularly the following factors and discourses shall be highlighted as having given rise to and propelled this reform movement.

- *Massive shifts in the settlement structure.* After the war, under the impact of the rapid economic recovery and of influx of more than 10 million refugees and expellees from Germany's former Eastern provinces (which meant an increase of West Germany's former population by about a quarter!), West Germany underwent a process of large-scale urbanization and industrialization. The ensuing new demographic and industrial agglomerations cut across the old territorial boundaries of municipalities and counties and made them increasingly dysfunctional (Norton 1994: 37 ff.). In the rural regions this secular demographic and socio-economic restructuring of the country was accompanied by dramatic decline of agriculture and by an increasing economic and demographic thinning out of the settlement structure.
- *Rising debate on regional planning.* In face of these mounting demographic and socio-economic unbalances and disparities in the settlement structure, epitomized in the advancing agglomeration in urbanized areas and the progressing depletion in rural regions, a discourse among *regional planners* became salient which dwelt on a functionally differentiated system of "central localities" (*zentralörtliches System*) as the essential guideline for the future settlement structure. Falling in line with the "planning discussion" which became the dominant policy discourse of this period, the regional planners demanded that instruments of comprehensive "spatial planning" (*Raumordnung*) and *Land* as well as regional planning (*Landesplanung, Regionalplanung*) be put in place. In a similar vein, also in the wake of the ascendant "planning discussion", the professional discourse among public administration specialists increasingly addressed the issues of "reconstruction of public administration" (*Neubau der Verwaltung*, to quote the title of a then influential book written by a prominent public administration expert, *Frido Wagener* 1969). Reflecting the rationalistic and scientific mood (*zeitgeist*) of the time, the attempt was made to define the "optimal size" of counties and municipalities by (normative) criteria regarding the kind of services (schools, social services, recreational facilities etc.) which the different types of municipalities, according to their degree of "centrality", should provide. By the same token, bringing about a territorial coincidence of "planning space" and "administrative space" was a key tenet in this debate meant to replace the historically grown (and outdated) territorial boundaries of local government with ("rationally") planned ones (see Mattenklodt 1981: 161).

- *Expansive* (“*Social Democratic*”) *welfare state*. Still another powerful conceptual and policy push came from the expansion of the welfare and intervention state which, as in other West European countries, was embarked upon in the Federal Republic in the late 1960s and particularly, with Social Democratic handwriting, after 1969 when the Social Democrat-lead federal government under Chancellor *Willy Brandt* took office. In view of the salient role which the local authorities have, premised on the traditional *territory-based multi-functional model*, played in policy implementation and law application in Germany’s intergovernmental system, their administrative capacity now became crucial, when it came to administratively coping with, and translating in action the broad array of reform policies and new legislation which came out of this period of “reform policies” (in the fields of infrastructural, environmental, social policies etc.). Hence, territorial reforms of local government was an almost logical corollary in order to ensure and enhance the administrative capacity of the local authorities to put the new policies to practice and bring them to life.
- *Functional reform*. Finally, a further impulse came from a reform debate in which, in the context of a general “overhauling” of the Federal Republic’s intergovernmental system, further steps to (politically) decentralize and (administratively) deconcentrate the decision-making and administrative functions should be taken (see Seibel 2001: 79) In order to prepare the ground for *functional reforms* by way of transferring further public functions from State (Land) agencies to the (general purpose) local authorities territorial reforms of local government were seen mandatory (see Norton 1994: 253).

## 2.2. Reform debates and measures in the (West) German Länder

### *Processes and conflicts*

It should be reminded that, in the Federal Republic’s constitutional setting the power to fix the territorial boundaries and format of the local government units lies exclusively with the *Länder* whose parliaments decide by an act of legislation. In formal terms, under the existing regal provisions an explicit consent of the local population, say, by way of referendum, is not required. In the last resort, the *Länder* parliaments decide by legislative fiat.

In widely parallel activities, the *Länder* embarked upon the territorial reform process between 1965 and 1968 and completely between 1974 and 1979. On the average, it took them about 8 years to put the new territorial format of local government in place. The long duration of the



process reflects the political controversies which the territorial reforms aroused and probably also the caution with which the Land governments chose to proceed.

- Reflecting the rationalist and scientific *zeitgeist* of the period, in most *Länder* a reform commission was set up by the Land government or Land parliament (see Mattenklodt 1981: 166). Composed of practitioners as well as academic experts, the commissions were mandated to prepare the envisaged reforms. Their main challenge certainly was to find a balance between the (possibly tension-fraught) goals of enhancing the administrative capacity of the newly tailored municipalities and counties, on the one hand, and of retaining, if not enhancing their democratic potential. In their practical work, much attention was given to the future map of the counties and municipalities based on functional criteria and the system of “central localities” (*zentralörtliches System*). In Nordrhein-Westfalen, for instance, the optimal size of the (“unitary”) municipality was defined by the reform commission as lying around 8.000 inhabitants, which was seen as the minimum size to provide for a primary school with gymnasium and swimming pool for the students and an old people’s home and a pharmacy (see Norton 1994: 252).
- After the Land government put forward its concept and scheme of territorial reform proposed by it, in most *Länder* a so-called “voluntary phase” (*Freiwilligkeitsphase*) was entered upon which the Land government tried to get the municipalities and counties concerned to “voluntarily” go along with the government’s reform proposal, whereby the governmental “persuasion” was often backed up by financial incentives, for instance, by so-called “marriage bonuses” (*Eheprämien*) to sweeten the bitter pill of amalgamation.
- Yet, in many cases the amalgamation proposals and schemes of the Land governments encountered heavy resistance from local politicians as well as local residents. In fact, in most *Länder* less than half of municipalities “voluntarily” agreed<sup>3</sup>. Thus, at the end of the day, in most cases a legislative fiat, a “finalizing act” (*Schlussgesetz*), by the Land parliament was needed to put the territorial map of local government into binding legal force.
- In a good many cases the municipalities resorted to their right, laid down in the Federal Constitution<sup>4</sup> as well as in the *Länder* constitutions, to file a complaint with the constitutional court of the Land (or, in default, with the Federal Constitutional Court) on the claim that the constitutionally guaranteed status of the municipality was violated by the legislatively imposed amalgamation (see Stern 1981: 205 ff., Stüer 1978, Gunst 1990:

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<sup>3</sup> that is, 28 percent of the municipalities in Bayern, 30 percent in Baden-Württemberg and 64 percent in Hessen (see Schnabel 2001: 394 with reference).

<sup>4</sup> article 93 section 1 letter 4b Federal Constitution,

190 with references to such court cases). Yet, the constitutional courts (as well as the legal doctrine) have been unanimous in assuming that, while article 28 Federal Constitution contains a so-called “institutional guarantee” of local self-government, it does not afford any constitutional warrant for ensuring the existing territorial boundary and format of the individual municipality. So, in most cases the judicial complaints of municipalities have been dismissed by the constitutional courts. Only in a few instances the legislatively imposed amalgamation was nullified for procedural reasons.

### *Patterns of municipal territorial reforms*

For the re-organization of *municipal* local government essentially two strategies can be discerned in an “ideal-type” manner..

At one end of the spectrum stands the variant (“strategy I”) to redraw the boundaries of all existing municipalities by way of merging (amalgamating) them and forming (territorially and demographically enlarged) „unitary municipalities“ (*Einheitsgemeinden*).

At the other end is the variant (“strategy II”) in which all existing municipalities, even the small-sized ones, are retained as *political* local government units (with an elected local council and a, possibly part-time, mayor and exercising the political rights and responsibilities of local self-government), while a set of *joint authorities* is created of which the municipalities are members and which serve them as their *administrative* support unit. The *joint authorities* would typically be run by a board that is appointed by the councils of the member municipalities and would have (small) full-time administrative staffs and be headed by a director who is accountable to the board.

### **Nota bene: table 1 about here**

In the choice and the putting in place of the new territorial and organizational scheme and map for *municipal* local government the *Länder* have shown a remarkable degree of variance in which the afore-mentioned two “ideal-type” strategies have been translated into different “real-real mixes”. Among these particularly three groups and patterns can be distinguished.

- The “purest” realization of “strategy I” can be found in *Land Nordrhein-Westfalen* and *Land Hessen* where, without exception, new “unitary” municipalities (*Einheitsgemeinden*) were formed – brining the average population size to 14.000 in Hessen and to as high as of 45.000 in Nordrhein-Westfalen. Reasons for these “radical” amalgamation courses in

the two *Länder* probably lies, first, in their relatively urbanization rate (indicated by the population density, see table 1, column 2), which lessened the call and pressure for having *joint authorities* as an expedient for the survival of small municipalities. Second, a political motive can surmised in the fact that both *Länder* were run, in the crucial reform period, by a Social Democrat-led governments, whereby it should be noted that the Social Democrats on the federal, *Länder* as well as municipal levels were the political party which, more than the others, appeared to be ideologically and politically committed to wholesale administrative modernization as well as to the then dominant planning creed.

- By contrast, *Land Schleswig-Holstein* and *Land Rhein-Pfalz* have largely followed the opposite “strategy II”. Only about 20 percent of the municipalities have been disappeared by way of amalgamation, while over 90 percent have become members of *joint authorities* and just 10 percent continue to exist as “unitary” municipalities (*Einheitsgemeinden*). The reason for this reform trajectory can be plausibly seen, first, in the still comparatively distinct rural settlement pattern (indicated by a low population density rate). Furthermore, particularly in Schleswig-Holstein the reformers have drawn on (and have been bound by) the experience which this Land had already in the past with a *joint authority* variant (*Amt*).
- *Land Baden-Württemberg* and *Land Bayern* show a “mixed” picture in that they have gone ahead with reducing the number existing municipalities quite sizably by about two thirds through amalgamation (reaching an average size of 6.000 respectively 9.000 inhabitants), while a significant share of municipalities (in *Bayern* about 40 percent) formed “unitary municipalities” and more than half were linked up with *joint authorities*. This, as it were, “middle of the road” course is probably accounted for by the extended rural areas in these *Länder*, but also by the political constellation, as both *Länder* had Christian Democrat-led governments and majority parties which were sensitive to their traditional electorate in the rural areas and their small localities.

**nota bene: table 2 about here**

*Territorial reforms of county local government*

Different from their territorial reforms of the municipalities which, as was just shown, manifested a striking variance, the *Länder* proceeded quite uniformly when going about the territorial reforms of the *counties* (see table 2). By and large, the number of counties was reduced by about one half, bringing the average size of them to about 170.000 inhabitants.

### 2.3. *Functional reforms*

In most *Länder* the completion of the territorial reforms was followed by measures of *functional reforms* in which, as it was originally envisaged, the enhanced administrative capacity of the (territorially and organisationally enlarged) “unitary” local governments (*Einheitsgemeinden*) as well as of the *joint authorities* was seen as the viable basis for transferring further administrative tasks from State authorities to local authorities (see Mattenklodt 1981: 176 for the example of Nordrhein-Westfalen), thus further expanding and reinforcing the status and role of the *territory-based multi-function* model of local government in Germany’s intergovernmental setting and shrinking and curbing the realm of local-level single-purpose (sectoral) state agencies outside local government. Yet, the range of functional reforms has remained quite limited so far (Mattenklodt 1981: 181).

### 2.4. *The (“old”) Federal Republic’s territorial reforms of local government in international perspective*

Under comparative auspices it needs to be mentioned that in some other European countries, typically situated in “Northern Europe”, akin debates and activities on local territorial reforms got under way in the post-war period, particularly during the 1960s and 1970s. The lead was taken by *Sweden* where, in a sequence of reforms in 1952 and 1962, the number of municipalities was drastically reduced from 2.500 to 248 (with an average population of 29.300 inhabitants). Rooted, too, in the rationalist planning and state interventionist convictions of the period, these territorial reforms were guided by the idea of creating “growth centres perceived as the crucial element for a balanced economic and occupational development... The planners and Social Democrats won the day” (Kjellberg 1984, quoted from Norton 1994: 298 ff.). In the 1970s *Britain* followed suit with a “draconian reorganisation” (Norton 1994: 365) of its district and borough authorities (as the country’s basic local government level). In 1974 the some 1.300 district and borough authorities were replaced by 369, bringing the average size to the spectacular number of 127.000 inhabitants (Norton 1994: 40). By contrast, hardly any local territorial reforms were attempted, leave alone carried through in the

countries located in “Southern Europe”. In *France*, for instance, a cautious effort made in the early 1970s by the national government to have some territorial reform in the historically extremely small-sized local government structure (with some 35.000 municipalities having a average size of some 1.500 inhabitants) foundered conspicuously (see Wollmann 2000a: 42).

Putting the territorial reforms of municipalities and its variation between the *Länder* in a comparative perspective by referring to the “North European” pattern (embodied by the territorial reforms in *Britain* and *Sweden*) and the “South European” type (epitomized by *France*), the reform trajectory that was pursued in Germany, can, by and large, be qualified as a “middle of road” course between the resolute (if not, in the case of *Britain*, excessive) pace of amalgamation typical of the “North European” pattern and the abstention from amalgamation (characteristic of the “South European” type). Within the variance of the *Länder*, Nordrhein-Westfalen is the closed approximation to the “North European” profile, whereas Rheinland-Pfalz and Schleswig-Holstein, in their very restrained conduct of amalgamation, come closest to the “South European” group. .

### *2.5. A tentative “balance sheet” of the territorial reforms of the 1960s and 1970s in the “old” Federal Republic*

As a result of the territorial reforms, the map of public administration has, no doubt, been fundamentally redrawn (Seibel 2001: 80). Among the public sector reforms which were tackled during the 1960s and 1970s, the territorial reforms of the local government levels have certainly brought about the most far-reaching and most lasting effects on the politico-administrative structures, not least because of the crucial political and administrative role which local government plays in Germany’s intergovernmental system.

Taking that the territorial reforms were meant to attain (and hopefully optimize) two (potentially conflicting) goals, namely to enhance the administrative efficiency and the ensuring the democratic legitimacy of local government, it is not easy, however, to come up with an empirically informed balance sheet. Although quite a number of studies have been conducted, some of them with an (at least implicit) evaluation orientation (see Thieme/Prillwitz 1981)<sup>5</sup>, the available information and evidence is far from being conclusive.

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<sup>5</sup> see also the book series Oertzen/Thieme 1979-1989

On the one hand, it is widely agreed that the administrative performance of public administration has been significantly improved, particularly for the citizens in rural areas and in small localities, be it in enlarged “unitary” municipalities, be it through *joint authorities* that have been able to employ professional and specialized personnel.

On the other hand, there has been a loss in local representation (with the number of elected local councillors dropping from 280.000 to 150.000, see Norton 1994: 255). By the same token, the increase of service delivery and planning capacity has been seen at the expense of local autonomy (Gunlicks 1981). (We shall take up this argument in the concluding chapter)..

### *3. Territorial reforms of local government in East Germany since 1990*

#### *3.1. Local level administration in the German Democratic Republic’s Socialist State*

While organizationally linking up with Germany’s traditional two tier structure of local government consisting of the counties (*Kreise*) and the municipalities (*Gemeinden, Städte*)<sup>6</sup>, including the differentiation between “municipalities within counties” (*kreisangehörige Gemeiden*) and “county cities” (calling them *Stadtkreise*), East Germany’s communist regime, in building up its Socialist State tailored to the Stalinist blueprint of centralist Party rule, assigned to the counties and municipalities the function of operating as the local offices subservient and subordinated to the centralist State (see Wollmann 1996: 151 f.). In this organisational scheme, the counties were seen as relevant level particularly in running the locally oriented State Economy, while the municipalities were accorded hardly more than a residual function. When undertaking a major re-organisation of the Socialist State in 1952, the territorial boundaries of the counties were redrawn and their number was doubled (bringing them up to 189 with a population average of 60.000) in order to make them more suitable for the centralist State model. At the same time, the multitude of some 7.600 municipalities was left unchanged, the territorial boundaries of which mostly dated back to the 19<sup>th</sup> century, half of them being tiny localities with less than 500 inhabitants (see Wollmann 1997a: 282 f.).

#### *3.2. Factors factors shaping East Germany’s territorial reform agenda after 1990*

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<sup>6</sup> For the terminology see above footnote ....

Throughout the process of German Unification and in East Germany's institutional transformation from the centralist Socialist State to "old" Federal Republic's federal and decentral state model, the political and administrative rebuilding of the local authorities came played a key role. To appreciate this, it should be borne in mind that the local government level was the only institutional level that survived the political and institutional demise of the German Democratic Republic which, on October 3, 1990 ceased to exist – and with it disappeared its central government structures and a good deal of its once powerful regional administrative regional (meso) layer as well as most of its legal world, while, in the same "logical second" the constitutional and legal world of the "old" Federal Republic was transferred to East Germany (see Wollmann 1996b: 46 ff.). It should be added the local authorities, tailored to West Germany's democratic and multi-function model of local government, started to operate since May 1990 (when, nota bene, the democratically reformed GDR still existed), whereas the East German *Länder* were formally reestablished only following October 3, 1990 – with the new *Länder* parliaments being elected on October 14, 1990 and the new *Länder* governments and administration subsequently being built up virtually "from scratch" (see Wollmann 1997a, 2002b).

In view of the virtually "paradigmatic" shift the local authorities had to face in their transformation from being local "cogs" in a centralist State machinery to Germany's traditional autonomous and multi-functional model of local government and vis-a-vis the unprecedented socio-economic problems of East Germany's transformation which the local authorities were the first to cope with, the actors involved widely agreed from the outset that the territorial format which East Germany inherited from the Communist era (with the small-sized counties, averaging some 60.000 inhabitants, and the small, if not tiny municipalities, averaging some 2.000 inhabitants, half of them with less than 500 souls) was entirely inadequate for meeting this challenge. This view was particularly voiced by the West German expert who, coming "administrative aides" (*Verwaltungshelfer*) from West German *Länder* and local authorities, carried with them the experiences and criteria relating to the territorial reforms in West German *Länder* in the late 1960s and early 1970s.

Not surprisingly, the rapidly unfolding political debate on necessity of territorial reforms was, noticeably propelled by the "West German model" and criteria of territorial reforms and was, thus, "exogenously" influenced. At the same time, however, the reform concepts and

strategies which the East German actors elaborated and pursued were shaped by specific East German concerns and, hence, bore “endogenous” traces<sup>7</sup>.

### 3.3. *Municipal territorial reforms*

It is in their decisions on the territorial reforms of the *municipalities* that the East German *Länder* governments and parliaments (with the notable exception of Land Sachsen) conspicuously responded to the political and emotional circumstances of East Germany’s “peaceful revolution” in late 1989 and early 1990. Notwithstanding the great number of small (if not tiny) localities and in obvious defiance of expert advice (particularly referring to West German criteria and practice), the governments and parliaments of four East German *Länder* decided to do entirely without merging and amalgamating existing municipalities (which during the municipal territorial reforms in the “old” Federal Republic even the more cautiously proceeding *Länder* had not done in such “radical” abstention). While leaving the existing municipalities in their entirety territorially unchanged, the four *Länder* centered their strategy, as a kind of “soft” variant of territorial reforms, around the creation of *joint authorities* of which the municipalities were obliged to become members and which were to serve as *administrative* support units for them. While this strategy drew on West Germany’s past reform experience with such *joint authorities* (see table 1, column 7), the East German *Länder* made the municipalities resort to *joint authorities* at a rate of over 80 percent (and in the cases of Brandenburg and Mecklenburg-Vorpommern with nearly 100 percent), presumably as a reaction to and compensation of completely abstaining from having amalgamation).

As the political debates revealed, the complete restraint from abolishing municipalities by way of amalgamation was motivated by the political concern of governments and parliaments in these *Länder* that it would be politically and morally not tolerable to do away with the (even smallest) municipalities as local political and democratic arenas, hardly had they been revived and regained as a crucial political achievement of the “democratic revolution” which, in many ways, as a victory of basic democratic movements and round-tables not least in small localities (Wollmann 1997a). Apart from the respect paid to the political legacy of East Germany’s “political turn-around” (*Wende*) the restraint was also nourished by political pragmatism, as it was well known from the West German experience (and communicated and

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<sup>7</sup> For the „exogenous“/“endogenous“ juxtaposition in the transformation debate see Wollmann 1996a: 50 ff.



confirmed by West German experts and advisers) that carrying out municipal territorial reforms particularly in the form of amalgamation was prone to arouse serious political conflicts which it seemed advisable to avoid.

In the four East German *Länder* concerned the introduction of the *joint authorities* was prepared and decided parallel to the elaboration of the county reform and went into effect in December 1993 (in Brandenburg) and in June 1994 (in the other three *Länder*). Drawing on the pertinent institutional designs that had been put in place in West German *Länder* during their territorial reform wave of the 1960s and 1970s, the *joint authorities* (under the different labels of *Amt*, *Verwaltungsgemeinschaft* and *Verwaltungsgemeinde*) were meant to serve as the *administrative* support units and agencies for their member municipalities which continued to operate as the *political* entities of local self-government. The *joint authorities* are run by boards whose members are appointed by the elected councils of the member municipalities. Their administrative staffs are directed by an administrative head (in the case of an *Amt* by the *Amtsdirektor*) who is appointed by and accountable to the board.

#### *Land Sachsen's early course towards amalgamation and "unitary" municipalities*

Unlike the other four East German *Länder* *Sachsen's* new government decided from the very beginning to embark upon a municipal territorial reform strategy which focused on the creation of "unitary" municipalities (*Einheitsgemeinden*), while pushing the formation of *joint authorities* for the still remaining smaller municipalities. The reason for *Sachsen* seeking its particular strategy may be objectively seen in comparatively high degree of urbanization and industrialization of that Land (expressed in a relatively high population density, see table 3, column 2). Furthermore, an impulse probably came from the fact that Land *Sachsen*, in the crucial formative period, co-operated closely with the (West German) *Länder* *Bayern* and *Baden-Württemberg* which, as was already mentioned, in their own territorial reforms during the 1960s and 1970s, followed a "middle of the road" course in pushing for the creation of new "unitary municipalities" and, at the same time, promoting the employment of *joint authorities*. Evidently, West German advisers from these *Länder* were instrumental in persuading *Sachsen's* Land government to pursue a more determined course towards municipal territorial reforms the outset (see Wollmann 1997a: 293 with references). In a politically skillful mix of persuasion and financial incentives the Land government succeeded,

in the initial “voluntary” phase, in inducing as many as 75 percent the municipalities to go along with its proposed reform concept. For the rest, the Land parliament decided by legislative *fiat* which went into effect on January 1, 1999 (see Schnabel 2001: 394). As a result, the total number of municipalities was reduced from some 1.600 to 547, that is by two thirds, with 60 percent of the municipalities linked to, and administratively served by, *joint authorities* (see table 3).

**nota bene: table 4 about here**

### *3.4. County territorial reforms*

With regard to the *counties* there was complete agreement in all five new *Länder* from the very beginning that a territorial reform of the county boundaries was urgently needed that had been left by the GDR’s Socialist State. To enlarge the territorial basis of the counties which had an average population of some 60.000 people (compared to some 170.000 in the “old” Federal Republic as a result of the 1960/1970s reforms) was generally deemed indispensable for building up county administration capable of facing up to the new demanding “multi-purpose” model of local (county) government and to the problem-load of the transformation period. (see Wollmann 1997a: 289 ff. for details and references). In a fast sequence of steps working groups, with a heavy dose of West German expertise, were formed, concepts and guidelines for territorial county reform were put forward by the *Länder* governments and swiftly put through by the *Länder* parliaments. Local conflict and protest flared up on the issue which municipalities should be the seat of the new county’s administration rather than on the “if” of the merging of counties. The territorial county reforms were politically debated and decided, in the last resort by legislative *fiat* of the *Länder* parliaments, in a remarkably brief spell of time, if compared to the protracted conflicts in the West German *Länder* during the late 1960s and early 1970s. The territorial county reforms went into effect in December 1993 in Brandenburg and in June 1994 in the other four *Länder*.

In the restructuring of the counties two patterns can be discerned (see table 4).

- *Land Brandenburg* and *Land Mecklenburg-Vorpommern* went furthest in reducing the number of counties (by almost two thirds) and, thus, creating geographically large counties. As these two (comparatively thinly populated) *Länder* decided to do without

administrative districts (*Bezirksregierungen* - as administrative meso level between the Land government and the local government levels), the counties are seen to also play a “meso” role, in addition to their typical county functions.

- In the other three East German *Länder* the number of counties was approximately halved, whereby it should be noted that, with a population between 100.000 and 130.000, the counties in the East German *Länder* remain, ever after the territorial reform, significantly smaller than the counties in West Germany (with an average size of 170.000 inhabitants).

### 3.5. New round of municipal territorial reforms since the late 1990s

In recent years, the East German *Länder* which in the early 1990s decided to do without a more deep-reaching territorial reform of their municipalities have conspicuously changed their earlier strategy and have begun to now push for a significant reduction of the number of existing small municipalities and for having enlarged „unitary“ municipalities (*Einheitsgemeinden*) by way of amalgamation. A number of factors have been conducive for this policy shift.

- The East German *Länder* have, throughout the 1990s, seen a precarious economic development, with the unemployment rate jumping as high as 18 percent (compared to 9 percent in the “old” Federal Republic) and with a continuing out-migration particularly of the younger age-groups from rural areas to the East German urban centres and to West Germany. As the rural areas, thus, experience a creeping process of being “de-populated”, more and more shall localities are becoming shams of local self-governments. (It has been reported, for instance, that, in such small places, it has become increasingly difficult to find candidates to have proper local council elections). Thus, the erstwhile politically convincing argument that the multitude of small municipalities should be retained for the sake of “local democracy” has been losing legitimacy, just as the spell of the “democratic revolution” of late 1989 has been fading.
- The concept of *joint authorities* has come under growing criticism for a number of reasons. Due to the great number and small size of the member municipalities the *joint authorities* have been overburdened with minor technical matters which often prevents them addressing the relevant problems in their reach. By the same token, the coordination and communication problems between the many member municipalities and their respective *joint authority* have become galore, not to mention the political and personal

frictions between the (part time) mayors of the member municipalities and the director of the *joint authority* heading its professional staff.

- Criticism was also voiced that installing the *joint authorities* as a new institutional layer has resulted in an “institutional overcrowding” and an “over-institutionalization” where in fact a “simpler” institutional design would be needed and sufficient. In the case of *Land Sachsen-Anhalt* (which, with 2.4 million inhabitants, is among the demographically smallest *Länder*), for instance, the *joint authorities* constitute a fifth (!) institutional level within that organisational setting of the Land, in addition to the Land government, the administrative (meso) district, the county and the municipal levels.

In the meantime, in all four East German *Länder* concerned the political debate and the legislative process have gone under way and are heading for a significant reduction of the existing municipalities by way of amalgamation and the formation of “unitary” municipalities (*Einheitsgemeinden*)<sup>8</sup>. In Land Brandenburg, for instance, the government, July 11, 1990, has put forward concept and guideline pertaining to the future territorial design of the municipal level. The initial “voluntary phase” is meant to seek and find among as many possible municipalities the acceptance of the proposed reform scheme.. Already on February 28, 2001 the Land parliament passed a legislative act which practically finalizes the municipal territorial reform – against protests from the municipalities concerned and the municipal associations. Similarly, in the other East German *Länder* the discussion and legislation on municipal territorial reforms have gained momentum. The new round of municipal territorial reform is scheduled to completed at the latest by 2004, that is, at the date of the next local council elections.

### 3.6. *Functional reforms*

Falling in line with, and drawing on the pertinent concepts and experience in the „old“ Federal Republic, the territorial reforms of the local government levels the East German *Länder* have, from the outset, been geared to the idea that the pursuit of local level territorial reforms should accompanied and followed by *functional reforms* in terms of transferring further public tasks from state agencies to the local authorities. In fact, in East Germany’s institutional transformation and build-up the pursuit of functional reforms seems to be particularly relevant, because, right after Unification, in the initial phase of build-up of the *Länder* administration, a number of significant administrative functions and responsibilities (for instance in environmental protection) were put in the hands of (single purpose sectoral)

administrative units of Land administration, while, in most West German *Länder*, these responsibilities have been transferred (“delegated”), by way of *functional reforms*, to the “multi-purpose” competence of the local authorities. On this background, in the East German reform debates, local level territorial reforms have been seen as important step to prepare the ground to make the East German local authorities, as it were, administratively fitter to take on such additional “delegated” responsibilities and to further move towards the “normalcy” of the (West) German administrative world (see Wollmann 1997a: 294 ff., Wegrich et al. 1997: 43 ff. for further details on the functional reforms in the East German *Länder*).

#### 4. *Concluding remarks: Territorial reforms – a vehicle towards a “municipalization” of the administrative functions of the State?*

Germany has experienced two waves of territorial reforms of the local government levels – in the “old” Federal Republic during the late 1960s and early 1970s and, after German Unification, in East Germany during the 1990s. In internationally comparative terms, local level territorial reforms in Germany have, by and large (allowance made for significant variance between the *Länder*), have pursued a “middle of the road” strategy – between the relatively radical course of large-scale amalgamation (of the “North European” type, as conducted in *Sweden* in the early 1960s and most drastically in *Great Britain* in the mid-1970s), on the one pole, and the conversely radical option to not all redraw the municipal boundaries (of the “South European” pattern, such as in *France*), on the other (see Norton 1994: ).

Despite the, by and large, “middle of the road” approach to local level territorial reforms pursued by the German *Länder* (in the “old” Federal Republic as well as in East Germany) the impact on the country’s entire administrative world was incisive, if not fundamental. The reason for this lies in the key administrative role which the local authorities play in the entire intergovernmental setting of policy implementation, law application and service delivery. As was repeatedly highlighted in this article, this functional scope and salience of local government (which, in international comparison, seems to be wider than in most other countries) has its roots in the *territory-based multi-function and general purpose* model endemic to the German local government tradition. While the discharge of public tasks and responsibilities on the local level through *general purpose* local government has, thus, been the rule in the German administrative tradition, the conduct by *special purpose* (sectoral)

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<sup>8</sup> see Universität Potsdam, KWI, Newsletter Gebietsreform, March 2001, see focal issue of Die Neue

administrative units of State (Land) administration, operating on the local level outside local government) has been the exception. This functional prevalence of the *territory-based multi-function and general purpose* can be almost seen as “path-dependent” characteristic of Germany’s administrative system and probably also shows in what Frido Wagener once called “the historical orientation (of German administration) towards territory” (quoted from Fürst 1996: 120).

While the territorial enlargement of local level government has, no doubt, contributed to strengthen the administrative capacity of the local authorities, it may, however, have weakened the democratic legitimacy of local government and political allegiance of the citizen and their (emotional) identification with the local world. In the German case the number of elected councillors, for instance, has been significantly reduced as a result of amalgamation. Furthermore, local experience suggests that the emotional loss which local residents suffered when their locality lost its historically grown self-standing status and name is still vivid in the individual and collective memories even 30 years after this event. Yet, there are counter-indications. For instance, the voter turnout (if one accepts this as an indicator for political participation and “identification”) has remained remarkably high (also by international standards), been remarkably high (also by international standards) over the years, ranging between 60 and 70 percent in local council elections. It might be added that since the early 1990s, the *Länder* governments have, in a remarkable sequence of congruent legislative acts, introduced direct democratic procedures into local politics, to wit, the direct election of the mayors and (binding) local referendums (see Wollmann 2000b: 122 f.). Hence, it can plausibly be argued that the *political* profile of local government, not least in the perception and political participation of the citizens, has, by and large, been not weakened but more recently even strengthened.

This (tentative) assessment may allow to end this article with a fairly optimistic, albeit quite speculative outlook. On Germany’s (all but „path-dependent“) trajectory of local government hinging on a *territory-based multi-function* model territorial reforms have proven (and might increasingly prove in the future) to be an important precondition and vehicle for further functional reforms in terms of transferring public functions from (special purpose) State agencies to the (general purpose) local authorities. Such functional reforms might, in turn, usher in what has been called a progressing „municipalization” or the “communalization” of

the public (administrative) functions of the State (see Wollmann 1997b). As, at the same time, the advancement of citizen rights, including local referendums and the direct election of mayors, can be conducive to strengthen the *political* profile of local government and the political accountability of its (political as well as administrative) actors before the citizens. So the contours of a democratically vigorous and functionally strong local government model get in sight. In the internationally comparative perspective, similar trends can be identified in the Scandinavian countries. Anglo-Saxon countries, however, would seem quite remote – with local government being functionally beset and reduced by the expansion, encouraged by the central government, of single-purpose agencies and “quangos”, while being politically enfeebled by the detachment of local citizens (see Wollmann 2002a).

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Table 1

	1	2	3	4	5	6	7
data	population (total number, in Mio)	population density (per square km)	municipalities				
			1968 total number	1978 total number	reduction in percent	average population after reform	percentage of municipalities having joint authorities
<i>Länder</i>							
<b>Baden-Württemberg</b>	10,4	294	3.379	1.111	67,1	9.000	84
<b>Bayern</b>	12	173	7.077	2.052	71,0	6.000	62
<b>Hessen</b>	6	287	2.684	423	84,3	14.000	0



<b>Niedersachsen</b>	7,8	166	4.231	1.030	75,7	7.800	73
<b>Nordrhein-Westfalen</b>	18	528	2.277	396	82,6	45.000	0
<b>Rheinland-Pfalz</b>	4	203	2.905	2.320	20,1	1.700	95
<b>Schleswig-Holstein</b>	2,7	176	1.378	1.132	17,9	2.400	91
<b>(„old“) Fed. Republic</b>	60,9	230	24.282	8.518	64,9	7.000	75

Sources: Mattenklodt 1981: 156 f., Laux 1993: 140, own calculations.

Table 2

	1	2	3	4	5	6
data	population (total number, in Mio)	population density (per square km)	counties			
			1968 total number	1978 total number	reduction in percent	average population after reform
<i>Länder</i>						
<b>Baden-Württemberg</b>	10,4	294	63	35	44,7	
<b>Bayern</b>	12	173	134	71	50,3	
<b>Hessen</b>	6	287	39	20	48,7	
<b>Niedersachsen</b>	7,8	166	60	37	38,3	
<b>Nordrhein-Westfalen</b>	18	528	57	31	45,6	
<b>Rheinland-Pfalz</b>	4	203	39	24	38,5	
<b>Schleswig-Holstein</b>	2,7	176	17	11	35,3	
<b>(„old“) Fed. Republic</b>	60,9	230	425	235	44,7	170.000

Source: see table 1

table 3

	1	2	3	4	5	6	7
data	population (total number, in Mio)	population density (per square km)	municipalities				
			1990 total number	1998 total number	reduction in percent	average size	percentage of municipalities having joint authorities
<i>Länder</i>							
<b>Brandenburg</b>	2,5	88	1.739	1.739	0	1.500	96,8
<b>Meckl.-Vorp.</b>	1,7	77	1.149	1.149	0	1.560	95,4
<b>Sachsen</b>	4,4	241	1.626	547 <sup>9</sup>	66	8.100	62
<b>Sachsen- Anhalt</b>	2,6	129	1.270	1.270	0	2.000	83,5
<b>Thüringen</b>	2,4	151	1.025	1.025	0	2.300	85,7
<b>East Germany</b>			7.564			2.200	

Sources: Wollmann 1997: 291, Laux 1999, Schnabel 2001: 394 f

<sup>9</sup> As of 1.1.1999.

Table 4

	1	2	3	4	5	6
data	population (total number, in Mio)	population density (per square km)	counties			
			1990 total number	1998 total number	reduction in percent	average size after reform
<i>Länder</i>						
<b>Brandenburg</b>	2,5	88	38	14	65	143.000
<b>Meckl.-Vorp.</b>	1,7	77	31	12	61,3	103.000
<b>Sachsen</b>	4,4	241	48	23	52,1	138.000
<b>Sachsen- Anhalt</b>	2,6	129	37	21	43,3	102.000
<b>Thüringen</b>	2,4	151	35	17	51,5	116.000
<b>East Germany</b>			189	86		

Sources: see table 3



The study of the level of local government in Germany . Review the progress and outcome of the administrative reform of 1960 and the second wave of modernization in 1990. In the following two major waves of administrative reforms will be identified which Germany's public administration has experienced first in the 1960s and then since the 1990s. 2. Administrative reform wave since the 1960s: in the context of the advancing welfare State. In order to improve the territorial setting of the local authorities for fulfilling their expanded tasks the Länder turned, during the late 1960s and early 1970s, to territorially consolidate the municipalities and counties by way of large-scale amalgamation (see Wollmann 2004b for details and references).