

## **Examining the Related Institutional Factors of the Thoughts and Development of the “Requirement of a Specifically Enacted Statute”**

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This article aims at examining the related institutional factors of the formation and development of the “requirement of a specifically enacted statute” (“Vorbehalt des Gesetzes”), a concept that is originally from Germany. The focus of this paper is on how the constitutional structure and institutional factors affect the development, contents, and efficacy of the “requirement of a specifically enacted statute.” This article finds that the development of a constitutional state does not necessarily lead to the establishment of the “requirement of a specifically enacted statute.” Instead, it is the status and function of Parliament under the separation of powers system as well as the institutional construction of the distribution and control of the original rule-making power that contributes to this establishment. It is also closely intertwined with the framework of the constitutional rights protection. Emerging from the “requirement of an enacted statute for state’s interference” (“Eingriffsvorbehalt”), which was formed in early nineteenth century, to the “requirement of parliamentary approval” (“Parlamentsvorbehalt”), which is based on the essentiality theory, the development of the “principle of legal reservation” today owes to two institutional factors. One is, established by the Basic Law, the closed legality system composed of the parliamentary legislation and the highly restricted delegated legislation, and the other is the forming and the expansion of the theory of “basic rights as objective norms,” that makes statutes become an indispensable premise in shaping the basic rights. It appears that the

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constitutional structure and basic rights protection system in Taiwan at present are largely different from those in Germany in nature. This makes it hard for the development of “requirement of a specifically enacted statute,” which is based on constitution, jurisprudence, legitimacy and restriction, to emulate Germany directly. Therefore, this article argues that there is a need to restructure the foundation and the contents of the theory basis of the “requirement of a specifically enacted statute” in Taiwan.

**Keywords:** *Vorbehalt des Gesetzes/Gesetzesvorbehalt* (requirement of a specifically enacted statute), *Parlamentarvorbehalt* (requirement of parliamentary approval), theory of basic rights as objective norms, rule of law, *Rechtsstaat*, law-making power, legislative delegation, requirement of definiteness for delegation of legislative power