Comparison of the constitutions of selected Member States of the European Union

Rule of law and social state principle, economic model and obstacles to military intervention

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HOW RIGHTS SUFFERED A STROKE IN 1989 AND THE RECOVERY PROCESS

Preliminary remarks on a synopsis of national constitutions

The state, the class struggle and the formation of ideology

In 1989, the labour movement in many parts of the world suffered a kind of stroke. For our convalescence, the challenge is to find new creative ways to draw on the wisdom of the old and more recent classical theorists.

In the case of Louis Althusser, for example, his concept of ‘ideological state apparatuses’ may initially seem like an alien and stationary means of expressing the way in which, in the common structure of bourgeois rule, bourgeois forms of government and authority are etched on people’s consciousness in practice. Marx refers to history as the history of class struggles, but even before the 1989 stroke this perception had not dug a direct route into the subjective, into the formation of personality. The study of ideology per se is still in its youth, just as it was before 1989, as is the study of the culture of rights and of the devious routes by which the state reaches into the unconscious mind, as Freud defines the subconscious memories from childhood, in other words the parts of the mind unaffected by working life, and in the conscious existence of working people, whose personalities are marked by awareness of what Marx referred to as ‘class in itself’ or by what Lenin called ‘trade-unionist consciousness’. It was Lucien Sève in the mid-1970s who categorically integrated labour and authority are etched on people’s consciousness in practice. Marx refers to history as the history of class struggles, but even before the 1989 stroke this perception had not dug a direct route into the subjective, into the formation of personality. The study of ideology per se is still in its youth, just as it was before 1989, as is the study of the culture of rights and of the devious routes by which the state reaches into the unconscious mind, as Freud defines the subconscious memories from childhood, in other words the parts of the mind unaffected by working life, and in the conscious existence of working people, whose personalities are marked by awareness of what Marx referred to as ‘class in itself’ or by what Lenin called ‘trade-unionist consciousness’. It was Lucien Sève in the mid-1970s who categorically integrated labour into the psychology of personality in the theoretical battleground between the state and ideology.

The term ‘ideological state apparatuses’ as a descriptor of those eminently ideological markers that the state applies to working life from the cradle to the grave may seem somewhat too forceful a way to state applies to working life from the cradle to the grave may seem somewhat too forceful a way to state applies to working life from the cradle to the grave may seem somewhat too forceful a way to state applies to working life from the cradle to the grave may seem somewhat too forceful a way to define what Marx calls the prevailing conditions within which people make their history. Yet Althusser’s identification of the state hegemony over the intellectual life of workers prevents us from becoming bourgeois idolaters of free will; both he and Lucien Sève saw training for work as a time of life when the state engages in significant ‘shaping’. This is only logical, for in Marxist eyes, after all, a person’s work and the way in which his or her mind is metabolised by contact with the forces of production is more likely to determine the development of that individual’s personality than Freudian unconscious memories from early childhood.

From their reading of Marx, some Marxists had derived a form of determinism in which the perceived laws of history prompted them to recommend disregarding what writers such as György Lukács and Ágnes Heller regard as subjective and as the reflection and driving force of the various class struggles. In far too many cases, this simplified interpretation of the subject of history to laws has resulted in unreflecting re-education. The centralism of the vanguard, based on the premise that there was a historical process and that this process had been properly understood from the outset, became a paramilitary drill. Even those anti-Communists who had been converted away from Comintern dogma, such as Herbert Wehner and even some sections of the Communists’ successor parties, nevertheless held fast to the old methodology of dictatorial centralism.

Lucien Sève kindled a brief theoretical debate by extending the articulation of personality development and Marxism to include the subjective dimension. He did this with the concept of labour producing and defying logic and brought consciousness and ‘prevailing conditions’ into dialectical harmony. These, however, also included the prevailing legal conditions as factors that shape consciousness. Sève refers to Nicos Poulantzas’ quest for a democratic ‘culture of rights’, because the predominant conflicting ideologies of rights – that of the authoritarian state and that of liberation – are both impressed on the minds of working people, which also makes them significant factors of real social ferment and class struggle.

Linkage to existing rights

Anyone, then, who aspires to be an opinion leader, be it only on individual issues, in other words who strives for that elementary precondition of cultural hegemony posited by Antonio Gramsci, must address the prevailing body of law. And this brings us German Marxists to Wolfgang Abendroth, who, as a critical observer of the Basic Law, was foremost in identifying the dimension of the evolution of our Constitution and its application and legal culture from which social welfare standards and workers’ rights, and indeed the general reality of the rule of law as a fragile safeguard for the exploited, have been developed in detail. I would go so far as to assert that the modern German labour movement, even though it may no longer exist today or may not yet have re-created itself, would have been inconceivable and would now be undefinable without Abendroth.

All of these contributions, that is to say from Gramsci, Althusser, Poulantzas and Abendroth, are ultimately retraceable to the few recorded remarks on this subject from Marx and Engels (Marx died before he could write his projected fourth volume of Das Kapital, which was to deal with the state and the formation of monopolies). Among other things, they

1 “The history of all hitherto existing society is the history of class struggles”: Karl Marx and Friedrich Engels, Manifesto of the Communist Party, Chapter I.
and medium-sized enterprises, for example – may, with the aid of the labour movement and together with it, be able to restore its hegemony within the bourgeoisie in this transition, for instance in the context of campaigns for new individual laws.

In the present day, with its modern productive forces, this is unlikely to manifest itself in the same configuration in which the bourgeoisie secured its place in the history of hegemony on the backs of the working class in 1789. Today it may be assumed that a democratic dictatorship of the proletariat without sections of the bourgeoisie will long remain impossible and unthinkable. Nevertheless, the law will still be the battleground, because every collective agreement and every social standard must be enshrined in legislation. And in this respect the developed institutions of the EU simply lack the history, the critical legal awareness and the requisite organic growth that would make it in any way possible for Abendroth’s culture of the welfare state and Polulantzis’ culture of the rule of law to play a part in the formation of working-class opinion as described by Gramsci.

The quote from Engels also implies that the labour movement must compel the bourgeoisie to embrace its own democratic rule of law and its welfare-state principles for the sake of creating the conditions for the workers’ own struggle but also for the sake of cohesion and democracy in general, without which neither the dangers emanating from Islamist terrorism nor the potentially decivilising collateral damage from migratory movements would not even be addressable, let alone manageable. In this respect the struggle to democratise the EU institutions is not to be regarded as some kind of false beard affixed to the real class struggles but a struggle for improved elementary conditions for the labour movement and for its fight for social rights.

focus on a modern Socialist relationship with the bourgeoisie culture of rights.

When Rosa Luxemburg, at the founding Congress of the KPD, the Communist Party of Germany, in 1919, defended her minority position in favour of participation in the bourgeois national elections, she unexpectedly stated in the course of a discussion that the October Revolution had not taken only a few weeks but had actually lasted for twelve years. The revolutionary had thus seen that revolution as a lengthy process of transition, albeit retrospectively.

We must regard revolutions from the outset as a long transitional struggle.

Marx himself had celebrated the Ten Hours Bill, which culminated in the Factory Act 1847, limiting the working day for British factory workers, as the birth of Socialism. For Lenin, the German postal service was an elementary economic model for non-monopolistic – or post-monopolistic – democracy. The institutional starting points within the system of bourgeois rule for a workers’ democracy were therefore equally important in the eyes of our classical theorists as they have been to the younger philosophers and strategists who emerged after Gramsci. Without their ideas it is difficult to imagine, let alone produce, a generation of Socialists and of Socialism with a Western European flavour. The real jewel in the crown is a sentence written by Friedrich Engels in his introduction to Marx’s work The Class Struggles in France – 1848 to 1850, Berlin, 1895

"The irony of world history turns everything upside down. We, the revolutionaries, the rebels — we are thriving far better on legal methods than on illegal methods and revolt. The parties of order, as they call themselves, are perishing under the legal conditions created by themselves. They cry despairingly with Odilon Barrot: la légalité nous tue, legality is the death of us; whereas we, under this legality, get firm muscles and rosy cheeks and look like eternal life. And if we are not so crazy as to let ourselves be driven into street fighting in order to please them, then nothing else is finally left for them but themselves to break through this legality so fatal to them." Friedrich Engels, introduction to Karl Marx’s The Class Struggles in France – 1848 to 1850, Berlin, 1895
Welfare and pay standards as well as democratic checks and balances are legal guarantees derived from regional and national legislation. In other words, like the prohibition of wars of aggression and the corresponding parliamentary veto on military deployments, they are not in any way bestowed on us by the EU, the more so as this democratic legal standards of national constitutions depict a reply on the fascisms in each of this countries. As they figure the constellation of powers, which they reflect and complain. To challenge the economic superiority of those corporations and high street banks, that once financed with the Harzburger Front in Germany their Mussolinis, Hitlers, Francos and Salazars some national constitutions are receptive to a non-monopolistic alternative.

In Germany it is Art. 15 GG. It says: “Land, natural resources and means of production may for the purpose of socialisation be transferred to public ownership or other forms of public enterprise by a law that determines the nature and extent of compensation. With respect to such compensation the third and fourth sentences of paragraph (3) of Article 14 shall apply mutatis mutandis”

Paragraph 9 of the preamble of the French constitution formulates as follows: “All property and all enterprises that have or that may acquire the character of a public service or de facto monopoly shall become the property of society.”

Very broad statements are written down in the Italian constitution Article 41et seqq.: “The law shall provide for appropriate programmes and controls so that public and private-sector economic activity may be oriented and co-ordinated for social purposes.” (Art. 41 par. 3)

“For the purposes of the common good, the law may establish that an enterprise or a category thereof...”

3 “Though not in substance, yet in form, the struggle of the proletariat with the bourgeoisie is at first a national struggle. The proletariat of each country must, of course, first of all settle matters with its own bourgeoisie.” Karl Marx and Friedrich Engels, Manifesto of the Communist Party, Chapter I.
be, through a pre-emptive decision or compulsory purchase authority with provision of compensa-
tion, reserved to the Government, a public agency, a
workers’ or users’ association, provided that such
enterprise operates in the field of essential public
services, energy sources or monopolies and are of
general public interest.” (Art. 43)

“For the purpose of ensuring the rational use of land
and equitable social relationships, the law imposes
obligations and constraints on private ownership of
land; (...)” (Art 44 par. 1)

“The Republic encourages and safeguards savings in
all forms. It regulates, co-ordinates and oversees the
operation of credit. The Republic promotes house
and farm ownership and direct and indirect share-
holding in the main national enterprises through the
use of private savings.” (Art. 47)
The Portuguese constitution entails following sec-
tions regarding the option of socialisation:
Article 80: Fundamental principles:
Society and the economy shall be organised on the
basis of the following principles:

a. Economic power shall be subordinated to demo-
cratic political power;

b. When so required by the public interest, natural
resources and the means of production shall be
publicly owned;

Article 81: Primary duties of the state:
In the economic and social field the state shall be
under a primary duty:
h. To eliminate very large estates and restructure
small farms;

Article 83: Requirements for compulsory purchase:
The law shall lay down the means and forms of inter-
vention in relation to, and for the public compulsory
purchase of, means of production, together with the
criteria for setting the applicable compensation.

The Dutch constitution governs the socialisation under
specific circumstances, too: “Expropriation may
take place only in the public interest and on prior
assurance of full compensation, in accordance with
regulations laid down by or pursuant to Act of Parlia-
ment.” (Art. 14)

In the Greece constitution it is stated as follows:
“Property is under the protection of the State; rights
deriving therefrom, however, may not be exercised
contrary to the public interest. No one shall be depri-
vied of his property except for public benefit which
must be duly proven, when and as specified by statute
and always following full compensation correpon-
ding to the value of the expropriated property at the
time of the court hearing on the provisional determi-
nation of compensation. In cases in which a request
for the final determination of compensation is made,
the value at the time of the court hearing of the re-
quest shall be considered.” (Art. 17 par. 1 and 2)

As socialisation is no economic model in a narrow
sense (in Germany the Federal Constitutional Court
judged – valid until today – in accordance with Ar-
ticle 15 GG an entirely different economic model is
eligible), this synopsis didn’t ask for specific constitu-
tional rules on socialisation.

Surrendering hard-won national rights or achieve-
ments of the local and regional authorities is
tantamount to capitulation unless these rights have
been enshrined at the next-higher level. At the same
time, it is legitimate to apply the subsidiarity test to
establish whether some rights would not be easier
to oversee and shape if they were enshrined, or re-
We intend to attempt a synoptic comparison of the three main points of the post-fascism and anti-fascist elements of the Constitutions under examination. The subject areas in question are the welfare state, the democratic rule of law and separation of powers and the prohibition of wars of aggression and the corresponding right of parliaments to veto or approve decisions on military deployments.

We commend this synopsis for sympathetic critical reading in the hope that it will also imbue its readers with productive pride in the consciousness of their own condition, or what is commonly called self-awareness. It is fashionable today for contributors to Sunday supplements to hold forth on 'constantly reinventing ourselves'. Following the collective stroke of 1989 that blocked access to acquired knowledge, the more modest objective for the labour movement may well be simply to keep rediscovering ourselves.

Internationalism is built on national peculiarities

If our classical theorists were correct in their unanimous view that the various areas of the law are battlegrounds and that the battle itself spawns the growth of a legal culture on which Socialist aspirations can feed, then the legal conditions quite simply equate to the conditions for the struggle and the consciousness of the labour movement. It is on this basis that we present the following study, which my team and I have prepared jointly with the Research Services of the German Bundestag.

It is certainly amazing to observe in some cases how quickly those who were singing the praises of regional energy and material cycles only a few years ago have now taken to branding a return to regionalism as reactionary and, eo ipso, to lauding more Europe as the progressive option. Nevertheless, the battle for the soul of the EU must be waged. But it must be waged with all forces mobilised, that is to say with the hard-won national rights.
Introduction

The question asked is what rules do the constitutions of selected Member States of the European Union (EU) lay down with regard to the rule of law principle, the social state principle, economic model, and obstacles to military intervention? The text that follows attempts to answer this question by comparing the constitutions of the Federal Republic of Germany, the French Republic, the Kingdom of the Netherlands, the Italian Republic, the Kingdom of Spain, the Portuguese Republic and the Hellenic Republic (Greece). The document is a purely textual analysis of some of the main indicators of the principles and areas of law in question, as reflected in the various constitutions, rather than a comprehensive legal comparison.

Precedent

Presented as an overview, the text is based primarily and essentially on Verfassungen der EU-Mitgliedstaaten, by Professor Adolf Kimmel and Dr. iur. Christiane Kimmel. Up-to-date (German) versions of the constitutions quoted in their book can be found on the website Verfassungen der Welt. This English text quotes from authoritative versions of the various constitutions available online in English (see list of links at end of text).

Constitutional embodiment of the rule of law principle

2.1. Federal Republic of Germany

- Legal constraints on the power of the state
  (primacy of constitution and law)
  Art. 20 para. 3 Basic Law: "The legislature shall be
  bound by the constitutional order, the executive and
  the judiciary by law and justice."

- Basic rights binding upon the state
  Art. 1 para. 3 Basic Law: "The following basic rights
  shall bind the legislature, the executive and the judi-
  ciary as directly applicable law."

- Rules on the separation of powers between execu-
  tive, legislature and judiciary
  Art. 20 para. 2 Basic Law: "All state authority derives
  from the people. It shall be exercised by the people
  through elections and other votes and through speci-
  fic legislative, executive and judicial bodies."

- Independence of the judiciary and legal con-
  straints on the administration of justice
  Art. 97 para. 1 Basic Law: "Judges shall be indepen-
  dent and subject only to the law."

- Legal protection against public authority
  Art. 19 para. 4, 1st sentence Basic Law: "Should any
  person's rights be violated by public authority, he may
  have recourse to the courts."

- Principle of a fair hearing as a general procedural
  guarantee
  Art. 103 para. 1 Basic Law: "In the courts every
  person shall be entitled to a hearing in accordance
  with law."

- Guarantees under criminal procedural law
  Principle of legality
  Art. 103 para. 2 Basic Law: "An act may be punished
  only if it was defined by a law as a criminal offence
  before the act was committed."

Prohibition of double jeopardy
Art. 103 para. 3 Basic Law: "No person may be
punished for the same act more than once under the
general criminal laws."

Deprivation of liberty
Art. 104 para. 1, 1st sentence Basic Law: "Freedom of
the person may be restricted only pursuant to a for-
mal law and only in compliance with the procedures
prescribed therein."

2.2. French Republic

- Primacy of the Constitution
  Art. 5, 1st sentence: "The President of the Republic
  shall ensure due respect for the Constitution."
  Art. 62 para. 1: "A provision declared unconstitu-
tional on the basis of Article 61 shall be neither promul-
gated nor implemented."

- Secularism (laïcité)
  Art. 1 para. 1, 1st sentence: "France shall be an indivi-
sible, secular, democratic and social Republic."

- Basic rights binding upon the state
  The Constitution as such does not give a list of basic
  rights. The preamble, however, makes reference inter
alia to the 1789 Declaration of the Rights of Man
and of the Citizen, which the French Constitutional
Council ruled on 16 July 1971 to be at least consti-
tuent elements of the Constitution. Thus the French
Constitution too effectively includes a catalogue of
basic rights.

- Rules on the separation of powers
  Executive
  Art. 16, 1789 Declaration: "Any society in which no
  provision is made for guaranteeing rights or for the
  separation of powers, has no Constitution."
  Art. 20: "The Government shall determine and con-
duct the policy of the Nation. It shall have at its dis-
posal the civil service and the armed forces. It shall
be accountable to Parliament in accordance with the terms and procedures set out in Articles 49 and 50.

**Legislature**
Art. 34 para. 1, 1st sentence: “Statutes shall determine the rules [concerning...].”

**Judiciary**
Art. 61 para. 1: “Institutional Acts, before their promulgation, Private Members’ Bills mentioned in Article 11 before they are submitted to referendum, and the rules of procedure of the Houses of Parliament shall, before coming into force, be referred to the Constitutional Council, which shall rule on their conformity with the Constitution.”

- **Independence of the judiciary**
  Art. 64, 1st sentence: “The President of the Republic shall be the guarantor of the independence of the Judicial Authority.”

- **Guarantees under criminal procedural law**
  Art. 5, 1789 Declaration: “The Law has the right to forbid only those actions that are injurious to society. Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain.”

  **Deprivation of liberty**
  Art. 7, 1st sentence, 1789 Declaration: “No man may be accused, arrested or detained except in the cases determined by the Law, and following the procedure that it has prescribed.”

  **Principle of legality**
  Art. 8, 1789 Declaration: “The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offence is committed, and legally applied.”

  **Nulla poena sine culpa**
  Art. 9, 1789 Declaration: “As every man is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by Law.”

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2.3. Kingdom of the Netherlands

- **Rules on the separation of powers**
  **Executive**
  Art. 42 para. 1: “The Government shall comprise the King and the Ministers.”
  Art. 42 para. 2: “The Ministers, and not the King, shall be responsible for acts of government.”

  **Legislature**

  **Judiciary**
  Art. 112: “The adjudication of disputes involving rights under civil law and debts shall be the responsibility of the judiciary.”
  Art. 113: “The trial of offences shall also be the responsibility of the judiciary.”
  Art. 120: “The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.”

- **Guarantees under criminal procedural law**
  **Deprivation of liberty**
  Art. 15 para. 1: “Other than in the cases laid down by or pursuant to Act of Parliament, no one may be deprived of his liberty.”

  **Principle of legality**
  Art. 16: “No offence shall be punishable unless it was an offence under the law at the time it was committed.”

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2.4. Italian Republic

- **Primacy of constitution and law**
  Art. 1 para. 2: “Sovereignty belongs to the people and is exercised by the people in the forms and within the limits of the Constitution.”
  Art. 117 para. 1: “Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.”

- **Rules on the separation of powers**
  **Executive**
  Art. 92, 1st sentence: “The Government is made up of the President of the Council and the Ministers, who together form the Council of Ministers.”
  Art. 95, 1st sentence: “The President of the Council conducts and holds responsibility for the general policy of the Government. [He] ensures the coherence of political and administrative policies, by promoting and co-ordinating the activity of the Ministers.”

  **Legislature**
  Art. 70: “The legislative function is exercised collectively by both Houses.”
  Art. 76: “The exercise of the legislative function may not be delegated to the Government unless principles and criteria have been established and then only for a limited time and for specified purposes.”
  Art. 77, 1st sentence: “A Bill shall become an Act of Parliament once it has been passed by the States General [...].”

  **Judiciary**
  Art. 102, 1st sentence: “Judicial proceedings are exercised by ordinary magistrates.”
  Art. 134: “The Constitutional Court shall pass judgment on controversies on the constitutional legitimacy of laws and enactments having force of law issued by the State and Regions [...].”
• Legal constraints on the administration of justice
  Art. 101: "Justice is administered in the name of the people. Judges are subject only to the law."
  Art. 102, 1st sentence: "Judicial proceedings are exercised by ordinary magistrates empowered and regulated by the provisions concerning the Judiciary."

• Independence of the judiciary
  Art. 104, 1st sentence: "The Judiciary is a branch that is autonomous and independent of all other powers."
  Art. 108, 2nd sentence: "The law ensures the independence of judges of special courts, of state prosecutors of those courts, and of other persons participating in the administration of justice."

• Legal protection
  Art. 107, 1st sentence: "Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law."

• Guarantees under criminal procedural law
  Principle of legality
  Art. 25, 2nd sentence: "No punishment may be inflicted except by virtue of a law in force at the time the offence was committed."

  Nulla poena sine culpa
  Art. 27, 2nd sentence: "A defendant shall be considered not guilty until a final sentence has been passed."

  Deprivation of liberty
  Art. 13, 2nd sentence: "No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law."

2.5. Kingdom of Spain

• Basic commitment to the rule of law
  Section 1, 1st sentence: "Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system."

• Legal constraints on the power of the state
  (primacy of constitution and law)
  Section 9 para. 1: "Citizens and public authorities are bound by the Constitution and all other legal provisions."
  Section 97: "The Government shall conduct domestic and foreign policy, civil and military administration and the defence of the State. It exercises executive authority and the power of statutory regulation in accordance with the Constitution and the laws."

• Respect for the law as the basis of political order
  Section 10 para. 1: "The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace."

• Rules on the separation of powers
  Executive
  Section 97: "The Government shall conduct domestic and foreign policy, civil and military administration and the defence of the State. It exercises executive authority and the power of statutory regulation in accordance with the Constitution and the laws."

  Legislature
  Section 66 para. 2: "The Cortes Generales exercise the legislative power of the State and adopt its Budget, control the action of the Government and have the other competences assigned by the Constitution."
Principle of legality
Section 25 para. 1: “No one may be convicted or sentenced for actions or omissions which when committed did not constitute a criminal offence, misdemeanour or administrative offence under the law then in force.”

2.6. Portuguese Republic

• Legal constraints on the power of the state
(primacy of constitution and law)
Art. 3 para. 2: “The state is subject to the Constitution and is based on democratic legality.”
Art. 3 para. 3: “The validity of laws and other acts of the state, the autonomous regions, local government and any other public entities is dependent on their conformity with the Constitution.”

• Basic rights to be safeguarded
Art. 18 para. 1: “The constitutional precepts with regard to rights, freedoms and guarantees are directly applicable to and binding on public and private entities.”

• Rules on the separation of powers between executive, legislature and judiciary
Art. 2: “The Portuguese Republic is a democratic state based on the rule of law, the sovereignty of the people, plural democratic expression and political organisation, respect for and the guarantee of the effective implementation of the fundamental rights and freedoms, and the separation and interdependence of powers [...].”
Art. 11: “The entities that exercise sovereignty must respect the separation and independence laid down in the Constitution.”

• Independence of the judiciary and legal constraints on the administration of justice
Art. 203: “The courts are independent and subject only to the law.”

• Legal protection
Art. 20 para. 1: “Everyone is guaranteed access to the law and the courts in order to defend those of his rights and interests that are protected by law [...].”

• Guarantees under criminal procedural law
Deprivation of liberty
Art. 27 para. 2: “No one may be wholly or partially deprived of their freedom, except as a consequence of a judicial conviction and sentence imposed for the practice of an act that is legally punishable by a prison term or the judicial imposition of a security measure.”

Principle of legality
Art. 29 para. 1: “No one may be sentenced under the criminal law unless the action or omission in question is punishable under a pre-existing law [...].”
Art. 29 para. 3: “No sentence or security measure may be applied unless it is expressly sanctioned by a pre-existing law.”

Prohibition of double jeopardy
Art. 29 para. 5: “No one may be tried more than once for commission of the same crime.”

2.7. Hellenic Republic

• Primacy of the Constitution
Art. 1 para. 3: “All powers derive from the People and exist for the People and the Nation; they shall be exercised as specified by the Constitution.”

• Rules on the separation of powers between executive, legislature and judiciary
Art. 26 para. 1: “The legislative powers shall be exercised by the Parliament and the President of the Republic.”
Art. 26 para. 2: “The executive powers shall be exercised by the President of the Republic and the Government.”
Art. 26 para. 3: “The judicial powers shall be exercised by courts of law, the decisions of which shall be executed in the name of the Greek People.”

• Independence of the judiciary and legal constraints on the administration of justice
Art. 87 para. 1: “Justice shall be administered by courts composed of regular judges who shall enjoy functional and personal independence.”
Art. 87 para. 2: “In the discharge of their duties, judges shall be subject only to the Constitution and the laws; in no case whatsoever shall they be obliged to comply with provisions enacted in violation of the Constitution.”

• Legal protection
Art. 20 para. 2: “The right of a person to a prior hearing also applies in any administrative action or measure adopted at the expense of his rights or interests.”

• Guarantees under criminal procedural law
Deprivation of liberty
Art. 6 para. 1, 1st sentence: “No person shall be arrested or imprisoned without a reasoned judicial warrant which must be served at the moment of arrest or detention pending trial [...].”

Principle of legality
Art. 7 para. 1, 1st sentence: “There shall be no crime, nor shall punishment be inflicted unless specified by law in force prior to the perpetration of the act, defining the constitutive elements of the act.”
3. Constitutional embodiment of the social state principle

3.1. Federal Republic of Germany

- Social state principle
  Art. 20 para. 1 Basic Law: "The Federal Republic of Germany is a democratic and social federal state."
  Art. 28 para. 1, 1st sentence Basic Law: "The constitutional order in the Länder must conform to the principles of a republican, democratic and social state governed by the rule of law, within the meaning of this Basic Law."

- Guarantee of human dignity and a subsistence minimum
  Art. 1 para. 1 Basic Law: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority."

- Equality
  Art. 3 para. 1 Basic Law: "All persons shall be equal before the law."
  Art. 3 para. 3 Basic Law: "No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability."

- Further social principles
  Maternal protection and welfare
  Art. 6 para. 4 Basic Law: "Every mother shall be entitled to the protection and care of the community."

- Social obligations of property ownership
  Art. 14 para. 2 Basic Law: "Property entails obligations. Its use shall also serve the public good."

3.2. French Republic

- Social state principle
  Art. 1, 1st sentence: "France shall be an indivisible, secular, democratic and social Republic."

- Subsistence minimum for individuals and families
  Preamble to the 1946 Constitution: "The Nation shall provide the individual and the family with the conditions necessary to their development."

- Equality
  Art. 1 para. 1, 2nd sentence: "It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion."

- Further social principles of the Preamble to the 1946 Constitution:
  Employment
  Para. 5: "Each person has the duty to work and the right to employment."

  Health, security, rest and leisure
  Para. 11, 1st sentence: "[The Nation] shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure."

  Support for persons unable to work
  Para. 11, 2nd sentence: "All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have the right to receive suitable means of existence from society."

  Education
  Para. 13, 1st sentence: "The Nation guarantees equal access for children and adults to instruction, vocational training and culture."
3.3. Kingdom of the Netherlands

• Social state principle
The principle of the social state is not expressly enshrined in the Constitution.

• Guarantee of a subsistence minimum
Art. 20 para. 1: “It shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth.”

• Equality
Art. 1, 1st sentence: “All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.”

• Further basic social rights and principles:
  Social security/assistance
Art. 20 para. 2: “Rules concerning entitlement to social security shall be laid down by Act of Parliament.”
Art. 20 para. 3: “Dutch nationals resident in the Netherlands who are unable to provide for themselves shall have a right, to be regulated by Act of Parliament, to aid from the authorities.”

  Public health, housing and social development
Art. 22 para. 1: “The authorities shall take steps to promote the health of the population.”
Art. 22 para. 2: “It shall be the concern of the authorities to provide sufficient living accommodation.”
Art. 22 para. 3: “The authorities shall promote social and cultural development and leisure activities.”

Education
Art. 23 para. 1: “Education shall be the constant concern of the Government.”

3.4. Italian Republic

• Social state principle
The principle of the social state is not expressly enshrined in the Constitution.

• Social duty of the Republic
Art. 3, 2nd sentence: “It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country.”

• Guarantee of a dignified existence
Art. 36, 1st sentence: “Workers have the right to a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence.”

  Welfare
Art. 38, 1st & 2nd sentences: “Every citizen unable to work and without the necessary means of subsistence is entitled to welfare support. Workers have the right to be assured adequate means for their needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment.”

• Equality
Art. 3, 1st sentence: “All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.”

• Further basic social rights and principles:
  Right to work
Art. 4, 1st sentence: “The Republic recognises the right of all citizens to work and promotes those conditions which render this right effective.”

  Mother and child protection and welfare
Art. 31, 2nd sentence: “[The Republic] protects mothers, children and the young by adopting necessary provisions.”
Art. 37, 2nd sentence: “Working conditions must allow women to fulfill their essential role in the family and ensure appropriate protection for the mother and child.”

  Guarantee of free medical care
Art. 32, 1st sentence: “The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent.”

Education
Art. 34: “Schools are open to everyone. [...] Capable and deserving pupils, including those lacking financial resources, have the right to attain the highest levels of education. The Republic renders this right effective through scholarships, allowances to families and other benefits, which shall be assigned through competitive examinations.”

3.5. Kingdom of Spain

• Social state principle
Section 1 para. 1: “Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system.”

• Inviolability of the guaranteed subsistence minimum
Section 10 para. 1: “The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace.”

• Guarantee of social security
Section 41: “The public authorities shall maintain a public Social Security system for all citizens guaranteeing adequate social assistance and benefits in situations of hardship, especially in case of unemployment. Supplementary assistance and benefits shall be optional.”

• Equality
Section 14: “Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.”

• Further basic social rights and principles:
  Right to work and a living wage
Section 35 para. 1, 1st sentence: “All Spaniards have the duty to work and the right to work, to the free choice of profession or trade, to advancement through work, and to a sufficient remuneration for the satisfaction of their needs and those of their families.”

  Mother and child protection
Section 19 para. 2, 1st sentence: “The public authorities likewise ensure full protection of children, who are equal before the law, regardless of their parentage, and of mothers, whatever their marital status.”
Section 47 para. 1, 1st & 2nd sentences: "All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and establish appropriate standards in order to make this right effective [...]"

Section 50: "The public authorities shall guarantee, through adequate and periodically updated pensions, a sufficient income for citizens in old age. Likewise, and without prejudice to the obligations of the families, they shall promote their welfare through a system of social services that provides for their specific problems of health, housing, culture and leisure."

Art. 64 para. 2: "The right to the protection of health shall be fulfilled: a) By means of a universal and general national health service which, with particular regard to the economic and social conditions of the citizens who use it, shall tend to be free of charge [...]"

Housing
Art. 65 para. 1: "Everyone has the right for himself and his family to have an adequately sized dwelling that provides hygienic and comfortable conditions and preserves personal and family privacy."

Art. 68 para. 1: "In performing their irreplaceable role in relation to their children, [...] fathers and mothers have the right to protection by society and the state."

Art. 72 para. 1: "The elderly have the right to economic security and to conditions in terms of housing and family and community life that respect their personal autonomy and avoid and overcome isolation or social marginalisation."

Art. 74 para. 1: "Everyone has the right to education, with the guarantee of the right to equal opportunities in access to and success in schooling."

Art. 74 para. 2: "In implementing the education policy, the state is charged with: a) Ensuring universal, compulsory and free basic education: [...]"

Art. 21 para. 4: "The acquisition of a home by the needy is an object of special State care."

Housing
Art. 65 para. 1: "Everyone has the right for himself and his family to have an adequately sized dwelling that provides hygienic and comfortable conditions and preserves personal and family privacy."

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Art. 74 para. 1: "Everyone has the right to education, with the guarantee of the right to equal opportunities in access to and success in schooling."

Art. 74 para. 2: "In implementing the education policy, the state is charged with: a) Ensuring universal, compulsory and free basic education: [...]"

3.7. Hellenic Republic

Social state principle
Art. 25 para. 1, 1st sentence: "The rights of the human being as an individual and as a member of the society and the principle of the welfare state rule of law are guaranteed by the State."

Art. 2 para. 1: "Respect and protection of the value of the human being constitute the primary obligations of the State."

Art. 4 para. 1: "All Greeks are equal before the law."

Art. 5 para. 1: "All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs."

Further basic social rights and principles
Education
Art. 16 para. 4, 1st sentence: "All Greeks are entitled to free education on all levels at State educational institutions."

Care for persons in special need of protection
Art. 21 para. 2: "Families with many children, disabled war and peace-time veterans, war victims, widows and orphans, as well as persons suffering from incurable bodily or mental ailments are entitled to the special care of the State."

Healthcare
Art. 21 para. 3: "The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy."

Housing
Art. 21 para. 4: "The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care."

Right to work
Art. 22 para. 1: "Work constitutes a right and shall enjoy the protection of the State, which shall care for the creation of conditions of employment for all citizens and shall pursue the moral and material advancement of the rural and urban working population."
4. Constitutional specification of an economic model

4.1. Federal Republic of Germany

- Express stipulation of a specific economic order
  None, the Basic Law is "economically neutral". 7

- Indicators of a specific economic order
  Guarantee of a social market economy

  - Constitutional principles
    Especially the principle of the rule of law and the social state (see above).

  - Basic rights with economic significance:
    Free development including in the economic sphere
    Art. 2 para. 1 Basic Law: "Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law."

Occupational freedom
Art. 12 para. 1, 1st sentence Basic Law: "All Germans shall have the right freely to choose their occupation or profession, their place of work, and their place of training."

Property guarantee
Art. 14 para. 1, 1st sentence Basic Law: "Property and the right of inheritance shall be guaranteed."

Freedom of association
Art. 9 para. 3, 1st sentence Basic Law: "The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to every individual and to every occupation or profession."

4.2. French Republic

- Express stipulation of a specific economic order
  None.

- Indicators of a specific economic order
  Guarantee of a social market economy

  - Constitutional principles
    Especially the principle of the rule of law and the social state (see above).

  - Property guarantee
    Art. 17, 1789 Declaration: "Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid."

  - Economic principles in the Preamble to the 1946 Constitution
    Work
    Para. 5: "Each person has the duty to work […] ."

    Trade unions
    Para. 6: "All men may defend their rights and interests through union action and may belong to the union of their choice."

    Property
    Para. 9: "All property and all enterprises that have or that may acquire the character of a public service or de facto monopoly shall become the property of society."

7 Cf. BVerfG (Federal Constitutional Court) decisions 4, 7, 17f. (Investment Aid Act) and 50, 290, 338 (Co.determination Act).
4.3. Kingdom of the Netherlands
- Express stipulation of a specific economic order
  None.
- Indicators of a specific economic order
  Guarantee of a social market economy.
- Constitutional principles
  Especially the principle of the rule of law and the social state (see above).

4.4. Italian Republic
- Express stipulation of a specific economic order
  None.
- Indicators of a specific economic order
  Guarantee of a social market economy.
- Constitutional principles
  Especially the principle of the rule of law and the social state (see above) plus basic employment rights (Art. 35-40).
- Basic rights with economic significance
  Trade unions
  Art. 39, 1st sentence: “Trade unions may be freely established.”
  Free enterprise
  Art. 41, 1st sentence: “Private economic enterprise is free.”
  Property
  Art. 42, 3rd sentence: “Private property is recognised and guaranteed by the law [...]”
- Economic principles and objectives
  Pursuit of social objectives
  Art. 41, 3rd sentence: “The law shall provide for appropriate programmes and controls so that public and private-sector economic activity may be oriented and co-ordinated for social purposes.”
  Nationalisation
  Art. 43: “For the purposes of the common good, the law may establish that an enterprise or a category thereof be, through a pre-emptive decision or compulsory purchase authority with provision of compensation, reserved to the Government, a public agency, a workers’ or users’ association, provided that such enterprise operates in the field of essential public services, energy sources or monopolies and is of general public interest.”
  Restrictions on private land ownership
  Art. 44, 1st half-sentence: “For the purpose of ensuring the rational use of land and equitable social relationships, the law imposes obligations and constraints on private ownership of land: [...]”
  Wealth formation
  Art. 47: “The Republic encourages and safeguards savings in all forms. It regulates, co-ordinates and oversees the operation of credit. The Republic promotes house and farm ownership and direct and indirect shareholding in the main national enterprises through the use of private savings.”

4.5. Kingdom of Spain
- Express stipulation of a specific economic order
  The Constitution expressly mentions a market economy. Section 38, 1st sentence: “Free enterprise is recognised within the framework of a market economy.”
- Indicators of a specific economic order
  Guarantee of a social market economy.
- Constitutional principles
  Especially the principle of the rule of law and the social state (see above).
- Basic rights with economic significance
  Property
  Section 33 para. 1: “The right to private property and inheritance is recognised.”
  Choice of occupation
  Section 35 para. 1, 1st sentence: “All Spaniards have the duty to work and the right to work, to the free choice of profession or trade [...]”
  Trade unions
  Section 7: “Trade unions and employers’ associations contribute to the defence and promotion of the economic and social interests which they represent. Their creation and the exercise of their activities shall be free in so far as they respect the Constitution and the law. Their internal structure and their functioning must be democratic.”
  Section 28 para. 1, 1st sentence “All have the right to freely join a trade union.”
- Economic principles and objectives
  Pursuit of social objectives
  Art. 41, 3rd sentence: “The law shall provide for appropriate programmes and controls so that public and private-sector economic activity may be oriented and co-ordinated for social purposes.”
  Nationalisation
  Art. 43: “For the purposes of the common good, the law may establish that an enterprise or a category thereof be, through a pre-emptive decision or compulsory purchase authority with provision of compensation, reserved to the Government, a public agency, a workers’ or users’ association, provided that such enterprise operates in the field of essential public services, energy sources or monopolies and is of general public interest.”
  Restrictions on private land ownership
  Art. 44, 1st half-sentence: “For the purpose of ensuring the rational use of land and equitable social relationships, the law imposes obligations and constraints on private ownership of land: [...]”
  Wealth formation
  Art. 47: “The Republic encourages and safeguards savings in all forms. It regulates, co-ordinates and oversees the operation of credit. The Republic promotes house and farm ownership and direct and indirect shareholding in the main national enterprises through the use of private savings.”
- Fair distribution of income and full employment
  Section 40 para. 1: “The public authorities shall promote favourable conditions for social and economic progress and for a more equitable distribution of regional and personal income within the framework of a policy of economic stability. They shall in particular carry out a policy aimed at full employment.”
- Consumer protection
  Section 51 para. 1: “The public authorities shall guarantee the protection of consumers and users and shall, by means of effective measures, safeguard their safety, health and legitimate economic interests.”
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4.6. Portuguese Republic

• Express stipulation of a specific economic order
  None.

• Indicators of a specific economic order
  Guarantee of a social market economy.

  • Constitutional principles
    Especially the principle of the rule of law and the social state (see above).

  • Basic rights with economic significance
    Property
    Art. 62 para. 1: "Everyone is guaranteed the right to private property and to the transmission thereof in life or upon death, in accordance with the Constitution."

    Choice of occupation
    Art. 47 para. 1: "Everyone has the right to choose a profession or type of work freely, subject to the legal restrictions that are imposed in the collective interest or the restrictions that are inherent in a person’s own capabilities." a) The implementation of full-employment policies; [...]"

    Trade unions
    Art. 55 para. 2: "In exercising the freedom to form, belong to and operate trade unions, workers are particularly guaranteed the following, without any discrimination: a) The freedom to form trade unions at every level; [...]"

  • Economic principles and objectives
    Full employment
    Art. 58 para. 2: "In order to ensure the right to work, the state is charged with promoting: – a) The implementation of full-employment policies; [...]"

    Free enterprise
    Art. 80: "Society and the economy shall be organised on the basis of the following principles: [...] c) Freedom of entrepreneurial initiative and organisation, within the overall framework of a mixed economy; [...]"
5. Constitutional obstacles to military intervention

5.1. Federal Republic of Germany
• Express rules on military intervention
Art. 87a para. 2 Basic Law: "Apart from defence, the Armed Forces may be employed only to the extent expressly permitted by this Basic Law."

• Derived rules on military intervention
Art. 24 para. 2 Basic Law: "With a view to maintaining peace, the Federation may enter into a system of mutual collective security; in so doing it shall consent to such limitations upon its sovereign powers as will bring about and secure a lasting peace in Europe and among the nations of the world."

5.2. French Republic
• Express rules on military intervention
Art. 35 para. 1: "A declaration of war shall be authorised by Parliament."

Art. 35 para. 2, 1st sentence: "The Government shall inform Parliament of its decision to have the armed forces intervene abroad, at the latest three days after the beginning of said intervention."

Para. 14 Preamble to the 1946 Constitution: "The French Republic, faithful to its traditions, shall respect the rules of public international law. It shall undertake no war aimed at conquest, nor shall it ever employ force against the freedom of any people."

• Derived rules on military intervention
Para. 15 Preamble to the 1946 Constitution: "Subject to reciprocity, France shall consent to the limitations upon its sovereignty necessary to the organisation and preservation of peace."

5.3. Kingdom of the Netherlands
• Express rules on military intervention
Art. 96 para. 1: "A declaration that the Kingdom is in a state of war shall not be made without the prior approval of the States General."

• Derived rules on military intervention
Art. 97 para. 1: "There shall be armed forces for the defence and protection of the interests of the Kingdom, and in order to maintain and promote the international legal order."

5.4. Italian Republic
• Express rules on military intervention
Art. 78: "Parliament has the authority to declare a state of war and vest the necessary powers into the Government."

• Derived rules on military intervention
Art. 11: "Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes. Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends."

5.5. Kingdom of Spain
• Express rules on military intervention
Section 63 para. 3: "It is incumbent upon the King, following authorisation by the Cortes Generales, to declare war and to make peace."

• Derived rules on military intervention
Section 94 para. 1 b: "The giving of the consent of the State to enter any commitment by means of treaty or agreement, shall require prior authorisation of the Cortes Generales in the following cases: [... b] Trea- ties or agreements of a military nature; (...)."

Section 8 para. 1: "The mission of the Armed Forces, comprising the Army, the Navy and the Air Force, is to guarantee the sovereignty and independence of Spain and to defend its territorial integrity and the constitutional order."

5.6. Portuguese Republic
• Express rules on military intervention
Art. 135: "In international relations the President of the Republic has the competences: [...] c) Upon a proposal from the Government, after consulting the Council of State and subject to authorisation by the Assembly of the Republic, or, when the Assembly is not sitting and it is not possible to arrange for it to sit immediately, by its Standing Committee, to declare war in the case of effective or imminent aggression and to make peace."

• Derived rules on military intervention
Art. 7 para. 2: "Portugal advocates [...] the establishment of a collective security system, with a view to the creation of an international order that is capable of ensuring peace and justice in the relations between peoples."

5.7. Hellenic Republic
• Express rules on military intervention
Art. 36 para. 1: "The President of the Republic, com- plying absolutely with the provisions of Article 35 paragraph 1, shall represent the State internationally, declare war, [...]"

• Derived rules on military intervention
Art. 28 para. 2: "Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organisations, when this serves an important national interest and promotes cooperation with other States."
National constitutions in English translation
(all from government or parliamentary web sites)

France
France 1789 Declaration of the Rights of Man:
http://www.conseil-constitutionnel.fr/conseil-consti-
tutionnel/root/bank_mm/anglais/cst2.pdf
France Preamble to the 1946 Constitution:
http://www.conseil-constitutionnel.fr/conseil-consti-
tutionnel/root/bank_mm/anglais/cst3.pdf

Germany
https://www.bundestag.de/blob/284870/ce0d-
03414872b427e57fccb703634dcd/basic_law-data.pdf

Greece
http://www.hellenicparliament.gr/User-
Files/f3c70a23-7696-49db-9148-f24dce-
6a27c8/001-156%20aggliko.pdf

Netherlands
https://www.govemment.nl/documents/regulati-
ons/2012/10/18/the-constitution-of-the-kingdom-
of-the-netherlands-2008

Portugal
http://www.tribunalconstitucional.pt/tc/conteudo/
files/constitucioingles.pdf

Spain
http://www.lamoncloa.gob.es/documents/constituci-
on_inglescorregido.pdf