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# *Social Rights, Fundamental to a Democracy – Systemic Differences Between France and Germany*

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## Abstract:

*This article examines the systemic differences between France and Germany regarding social rights and their impact on democratic structures. The study highlights the historical and ideological foundations that shape each country's approach to equality and social policy. In France, the principle of equality, deeply rooted in the revolutionary heritage, emphasizes a direct relationship between the individual and the nation, often leading to a preference for universalism over the recognition of specific social groups or territorial entities. This historical context is illustrated by the revolutionary rejection of intermediate bodies and the resistance to incorporating territorial or professional groups with normative powers into the national framework.*

*In contrast, Germany's historical evolution, marked by a gradual development rather than a revolutionary break, has led to a different integration of intermediate bodies within the social system. German federalism allows for significant legislative powers at the state level (Länder), leading to regional variations in educational and social policies that are generally accepted as a norm rather than a disruption. Additionally, Germany recognizes the normative power of social actors, such as trade unions and employer organizations, which negotiate working conditions and wages, a practice that contrasts with the more centralized regulatory approach in France. The German model, characterized by a balance between federal and regional powers and a strong role for social partners, provides a framework where legislative intervention is possible but not always necessary.*

*Overall, the article underscores how historical legacies and structural differences shape the practice and perception of social rights in each country, influencing their respective approaches to democracy and social justice. The analysis reveals how France's commitment to universalism and Germany's acceptance of regional and sectoral variations reflect broader ideological and practical divergences in their democratic frameworks.*

**Keywords:** *Social rights; Democracy; France; Germany; Federalism.*

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# Introduction:

A democracy worthy of the name can never be confined to the mere existence of formal procedures, such as legitimizing political decisions through voting or allowing for electoral alternation. For democracy to hold a deeper meaning—beyond the formal and superficial—the existence of such procedures must be accompanied by several other elements.

Among these elements are the rights of minorities, including political minorities, which must complement the majority's right to make decisions that suit it. Indeed, the principle of legitimization through majority voting inherently implies the recognition that today's minority could become tomorrow's majority. This possibility becomes real only if the minority can exist without fear, without persecution, if it can freely express itself and advocate for its ideas. It is only under these conditions that voting, as conducted by the representatives of the current majority, can be deemed legitimate.

The same applies to social rights. Social rights can be of two types. On one hand, they include rights that guarantee the existence of countervailing powers within society, which can defend themselves and sometimes impose their views on those in power, both politically and socially. This category includes union rights, the right of workers to be represented by elected officials within a company, and the right to strike.

On the other hand, there are rights that directly ensure a certain substance in the decisions that must be made: the right to housing (which has become enforceable against public authorities and thus can be invoked before a judge in France since the 2007 constitutional amendment, although this has had limited impact due to the extreme shortage of social or affordable housing), the right to a guaranteed minimum wage, and in some systems, the right to employment.

We will examine how the legal recognition of such rights can differ between systems, focusing on two major democracies of continental Europe: The French Republic and the Federal Republic of Germany.

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# I. Social Valuation of the Aspiration to Equality

In both French and German societies, fundamental legal norms reflect a certain social valuation of the commonly accepted aspiration to equality. However, this legal reflection does not place the value of equality at the same symbolic level, nor does it grant it the same strength. Additionally, the discourse of social forces, influential media, political parties, and the daily attitudes of citizens do not assign it the same importance.

Among the fundamental norms of French state law, the Declaration of the Rights of Man and Citizen of August 26, 1789 (which is part of the constitutional bloc as the preamble of the Fifth Republic's Constitution of October 4, 1958, refers to it) grants equality a strong symbolic position. Indeed, it stipulates in its first article that "Men are born and remain free and equal in rights. Social distinctions can only be based on common utility." While the first sentence can be interpreted as primarily guaranteeing legal equality (ensuring equal access to justice for all, the guarantee of a fair trial, etc.), the second sentence, which is attached to it, addresses social conditions. Legal equality is also explicitly guaranteed by Article VI: "The law (...) must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes (...)." Thus, it is evident that Article One, which cannot merely duplicate another more specific article, articulates a general objective with broader applications than just legal equality, extending also to living conditions.

The Constitution of the Fifth Republic itself, while primarily composed of rules regarding the organization of public powers, nevertheless assigns significant symbolic importance to this programmatic value of equality, stating in Article 2: "The motto of the Republic is 'Liberty, Equality, Fraternity'" (Paragraph 4). Equality before the law is specifically stated in Article One.

In comparison, the position of equality (as a general programmatic objective) is considerably weaker in the German constitutional text. The Basic Law (Grundgesetz) of May 23, 1949, first establishes the principle of legal equality in its Article 3: "All humans are equal before the law" (Paragraph 1). It adds the equality of rights between men and women

(Paragraph 2) [1] and a series of prohibitions against discrimination based on gender, origin, disability, etc. (Paragraph 3). However, this article of the constitutional text is not marked by a programmatic objective to achieve or strive towards a general equalization of social conditions.

Moreover, Article 72, Paragraph 2 of the same constitutional text sets forth the objective of "establishing equivalent living conditions throughout the federal territory" (Herstellung gleichwertiger Lebensverhältnisse im Bundesgebiet) [2]. However, this is not an article announcing a social programmatic objective but rather a fundamental norm concerning territorial planning. The purpose of Article 72 is to allow the federal state to legislate in areas where the states (Länder) are also authorized to legislate independently and to override the legislation of one or more states when it intervenes "to establish equivalent living conditions" across different parts of the federal territory. Even though some members of the public, journalists, and politicians infer that the federal state must thus be the guarantor of certain living conditions considered a baseline, one author notes: "Thus, the primary purpose of this article is to assign legislative competence, but it does not create an obligation for the federal state to concretely achieve 'living conditions of equal value'—whatever that may mean. Instead, it is an authorization that the federal state can use to justify its right to legislate exceptionally (note: the rule remains that the Länder adopt their own legislation in this matter[3])." Even though there is strong social pressure towards

[1] In French constitutional law, this principle is articulated in paragraph 3 of the preamble of the Constitution of the Fourth Republic of October 27, 1946, which is also included in the constitutional bloc.

[2] In its current formulation, in effect since 1994, the principle has changed. Previously, it was a question of "maintaining the unity of living conditions" (Wahrung der Einheitlichkeit der Lebensbedingungen) throughout the federal territory. However, due to significant differences in economic and social conditions observed respectively in the "old" Länder of the Federal Republic of Germany before 1990 and in the "new" states-regions that belonged to the German Democratic Republic (GDR) until 1990, this term no longer seemed quite appropriate. By the 1980s, there were already significant differences between northern and southern states-regions of the former Federal Republic of Germany, exacerbated by rising unemployment. But it was the unification of the former GDR regions into a single state that shattered the illusion of the currently existing "unity of living conditions"

[3] Eva BARLÖSIUS : « *Gleichwertig ist nicht gleich* », *Aus Politik und Zeitgeschichte* (APuZ) 37/2006, 11 septembre 2006, p. 16 (20).

equalization in this area[4], particularly regarding the differences in living conditions between states, notably between regions in the western and eastern parts of Germany, the Basic Law does not create an obligation for the state to implement it.

We can hypothesize that the significantly stronger symbolic valorization of equality in France is rooted in the revolutionary origins of the concept. During the French Revolution of 1789 and the following years, the aspiration to equality was the driving force behind the dismantling of old privileges and social hierarchies, which were largely based on birth, as well as the abolition of ancient customary laws across the provinces of the old monarchy. Such a revolutionary break did not occur in Germany's history; the introduction of parliamentary democracy and the modern welfare state took place gradually and mostly from above—except for the transition from monarchy to parliamentary republic at the end of 1918—and even externally in the case of the reestablishment of democracy through the defeat of Nazism. Social aspiration for equality rarely drove these changes; when it did, it was often co-opted by public authorities to introduce a measure of social security into legislation, as seen with Bismarck's social protection laws, without fundamentally challenging the inherently unequal social order of the Bismarck era.

Additionally, the post-war Federal Republic of Germany[5] saw strong opposition to communism. The ideological opposition to communism and socialism was reinforced by the immediate and contentious proximity of Soviet bloc countries, particularly the German Democratic Republic (GDR), which served as a counter-model for a significant portion of public opinion. The anti-communism propagated by public authorities and almost elevated to state doctrine[6] in the 1950s

[4] Cf. *ibid*., p. 19 : According to a survey conducted in 2003, "about two-thirds" of respondents believed that "social justice" meant "truly equal" or "rather equal" living conditions for all citizens. This does not directly address economic differences between socio-professional categories but rather between regions with different standards of living.

[5] The new federal state was established in 1949 by the adoption of the Basic Law, dated May 23 of that year.

[6] Unlike the French Communist Party, the Communist Party of Germany (KPD) was legally dissolved by a decision of the Federal Constitutional Court (Bundesverfassungsgericht) on August 17, 1956. However, it was reborn under a different name, the German Communist Party (DKP), at the end of 1968, without ever

reflected a widely shared societal viewpoint, including a substantial part of the working class. This opposition to *Gleichmacherei* (a pejorative term for forced egalitarianism) was instinctively embraced by significant segments of society and was further strengthened after 1989, following the failure of the administered economy in the former GDR and the desire of many GDR residents to escape their former system ("better to individually partake in wealth in the new system than collectively manage poverty"). Although this drive has somewhat weakened over time, particularly in parts of the former GDR where disappointment has taken hold, its impact remains significant.

Against this backdrop, the aspiration for equality, criticized as *Gleichmacherei*, was relatively undervalued among workers. This sentiment was further reinforced by the consistent wage growth that occurred during the "economic miracle" (Wirtschaftswunder) of the 1950s and, albeit at a slower pace, into the 1970s. During this period, it was rather *Leistung* (a multifaceted term that can refer to both physical effort and the results of labor) that was valued over equality, particularly because it promised material rewards. While this perspective was not universally shared and faced criticism from some of the emerging younger generations of the 1970s, it was widely accepted in society.

As a result, among other factors, there was no strong impetus for a substantial equalization of wage conditions, such as the establishment of a guaranteed minimum wage. Germany did not have an equivalent to the French SMIC (minimum wage), whereas in France, the existence of a legal minimum wage has the effect of clustering a significant portion of low wages around or just above this level. Historically, this was not seen as a necessity by German labor unions[7], particularly as wage differentiation for skilled workers[8] tended to be upward rather than

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regaining significant social anchorage. Even before its legal prohibition, apart from the immediate post-war period, this party had little impact on public opinion, appearing to the public as being closely controlled by the GDR regime.

[7] In addition to the fact that trade unions feared having to "delegate" part of their normative power exercised through collective bargaining, which is granted by the principle of "tariff autonomy" (Tarifautonomie; see below), to the legislator in the event of creating a legal instrument such as the establishment of a legally guaranteed minimum wage.

[8] While there was a career path that, in principle, allowed each worker, through vocational training (and not from a base of knowledge necessarily acquired in general

downward. Today, however, wage differentiation occurs in both directions, with a growing proportion of salaries being pushed downward, especially in certain regions of Eastern Germany[9].

Since around the year 2000, there has been a vigorous debate over the introduction of a legally guaranteed minimum wage in Germany, with some trade union federations occasionally opposing each other over this issue[10].

## II. The importance accorded to "intermediary bodies"

Beyond the unequal social valorization of the goal of striving for social equality in France and Germany, there exists another significant difference between the two national systems of social relations: the importance given to "intermediary bodies," that is, institutions or organizations with normative power that can exist between the Nation (with its general, abstract, and impersonal laws) and the individual.

In France, the initial idea that prevailed during the French Revolution was one of a direct relationship between the individual and the nation. Nothing was to exist between the two that could hinder the (free and equal) participation of each individual in the new political entity that emerged from the fall of the monarchy and the destruction of old privileges. This radical will was primarily driven by the historical

initial education), to access skilled positions. Cf. Marc MAURICE, F. SELLIER et J-J. SILVESTRE, op. cit., notamment p. 35 sq.

[9] The most extreme case is certainly that of Saxony, a region that borders both Poland and the Czech Republic, facilitating relocations and the use of "cheaper" labor to reduce the cost of work. In this eastern German state-region, there are conventional wages – thus paid by a company bound by a collective agreement and, therefore, not free to set its wages, which limits them downward – with the lowest being around three euros per hour of work. See the lowest conventional hourly wage for gardeners (Erwerbsgartenbau), which is 2.75 euros in Saxony, or for hairdressers (3.06 euros per hour, also in Saxony). – Figures from the WSI-Tarifarchiv (Archive of wage agreements at the Institute of Economic and Social Research, WSI, of the German Trade Union Confederation DGB) in Düsseldorf, March 2006

[10] Cf. Reinhard BISPINCK et Claus SCHÄFER : « *Niedriglöhne und Mindesteinkommen : Daten und Diskussionen in Deutschland* », in Reinhard BISPINCK, Claus SCHÄFER et Thorsten SCHULTEN : « *Mindestlöhne in Europa* », Hambourg 2006, p. 269 (290).

momentum aimed at dismantling the previous order, the old social hierarchies, and the customary orders and rights in which people were embedded under the Ancien Régime. Anything that obstructed access to the new stage of citizenship for everyone had to disappear. This was also the case for the old guilds and professional associations, through the famous Le Chapelier law of June 14 and 17, 1791.

From that point onward, this concept, which ignored social realities that were inherently unequal and would grow with the rise of industrial labor, had to accommodate exceptions. Thus, labor law gradually emerged, precisely based on the idea of collective actors intervening to counter the initial inequality between employer and employee[11]. However, almost every time a new specific rule recognizing the de facto existence of a group with specific interests within the nation (against the backdrop of pre-existing social inequality) was adopted, it was due to a concession wrested from the principle of abstract universalism in the relationship between nation and individual, which was maintained as a principle.

This was the case, most recently, with the adoption of the law of June 6, 2000, guaranteeing the objective of gender parity in politics. The proposed law faced strong objections from politicians and intellectuals, some of whom argued that this created a breach in the universalism of the Republic, which could not recognize particular groups "based on an innate criterion" (in this case, that of women) within its electorate[12]. Supporters of the parity law countered that this universalism was a pure abstraction[13], ignoring the real inequalities between members of the two

[11] This evolution is well traced in Patrick REMY, op. cit., p. 57 sq.

[12] Cf. On this point, the objections of Robert and Elisabeth Badinter (see Le Monde of January 28, 1999: "Mr. Badinter: 'Nothing is more precious than universalism'"; February 2, 1999: "Proponents of the project criticize the stance of Mr. and Mrs. Badinter"; February 18, 1999: "The Socialist Party leadership remains impervious to 'badinterism'"), Danièle Sallenave (see her contribution in Le Monde of January 21, 1999: "The Difficult Glory of Free Existence," or her ironic manifesto: "Manifeste," subtitled "Program for the Maintenance or Restoration of All Natural Differences," in Le Monde of February 11, 1999) or Dominique Schnapper (who notably writes: "We are all different, but as citizens, we are all the same... Parity would give an argument to all particularisms...," see. *L'Express* du 11 février 1999, dossier : « Oui à l'égalité, non à la parité »).

[13] Stany Grudzielski ironically argued in Le Monde (February 25, 1999): "It is strange that universalist republicans opposed to mandatory parity between men and women find nothing objectionable in the division of the territory into electoral constituencies. How

sexes (or genders) in French society and politics. Ultimately, the legislator was convinced by the recognition of the severe underrepresentation of women in elective political positions in France and the need to end it. However, we can conclude that the principle of republican universalism, built on a direct link between the individual as a political subject and the nation (not recognizing any differences among its citizens a priori), remains intact, with exceptions being made when an urgent or significant social need arises[14].

Another debate in French history, alongside the one about social categories that can exist within the nation, was the role of territories. The counter-revolutionary and anti-republican right, opposed to the very principle of equality among men (humans), repeatedly called for a return to historical provinces, endowed with broad autonomy that would allow them to adopt their own rules. Did not Charles Maurras advocate, in the first half of the 20th century, a return to "organic bodies" in the form of provinces or regions "rooted" in their specific history (instead of departments, created after the French Revolution), alongside the restoration of historical guilds? For him, this was both a necessary "rooting" that would allow the nation to take shape and a way to deny the relevance of republican universalism in favor of a vision in which the individual is necessarily embedded in a community, a history, an origin. Not only did the French Republic never adopt such a vision of nation-building, but it also never allowed territorial communities within the

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can they accept such an affront to the sacred principle of the indivisibility of the Republic..."

[14] See Also Joan Wallach SCOTT : « *French Universalis in the Nineties »*, revue *differences,* n° 15(2), 2004, p. 32 sq.: "The abstractions of the individual and the nation were the keys to a specifically French concept of universalism. (...) The abstract must always take into account the social (even if only to deny it a role) and, thus, becomes the site of struggles over what the limits of abstraction are and what these limits consist of." (p. 34, 35) "But there were also alterations in the doctrine of republican universalism (...). During the Third Republic, class (social) was recognized as a decisive force within the political body, and (...) the play of interests was admitted as a legitimate reason for choosing one's representatives. In other words, the social was now represented in the political sphere." (p. 36) The author considers that this experience also changed the terms of the debate concerning the representation of women.

nation to be endowed with autonomous legislative power that would allow them to adopt their own rules with the force of law.

Things are different when it comes to Germany. The history of this country unfolded differently, and there was no revolutionary break similar to that of France (see above); the acceptance of "intermediary bodies" between the level of the nation-state and that of the individual was never a source of great controversy. This is true for the recognition of states-regions (Länder) themselves endowed with autonomous legislative power, as well as for the recognition of normative power granted to collective social actors.

First, regarding the role of the states-regions (Länder), legislative power is recognized for them according to Articles 70 and following of the Basic Law (Grundgesetz). The principle is that of legislative competence attributed to the Länder (Article 70, paragraph 1). The exception (frequent in practice) is that of the legislative competence of the federal state. This can be "exclusive," removing legislative power from the states-regions, as defined in Articles 71 and 73, or it can fall under "concurrent" legislative competence, as defined in Articles 72 and 74. The latter allows the federal state to override legislation in force in a state-region if it decides to intervene and if the matter justifies it; as long as the federal state does not intervene, regional legislation will apply. The distribution is based on regulatory domains, with the respective matters listed in Articles 73 and 74; depending on the case, federal intervention must be justified by certain reasons or not.

Historically, until a few years ago, the sometimes-significant differences that could result from this were not really seen as shocking in Germany. Thus, things that would have seemed inconceivable in France, because they contradicted an aspiration to equality and/or the principles of national education, appeared entirely normal. This notably concerns the question of differences in the education sector. For example, the separation of students between those destined to take the baccalaureate and others, and their distribution across three different branches of the school system, takes place in some regions as early as age 10[15]. Meanwhile, in other regions, schools are free to decide whether to make this separation or to maintain a collective student body, at a level

[15] The "collège unique," established in France by the law of July 11, 1975, has no equivalent in Germany.

equivalent to middle school in France. Moreover, the differences between states-regions concerning the level of academic requirements were and are striking. Since there is no national baccalaureate, but rather each state-region defines its own conditions for obtaining the baccalaureate (through an exam organized either at the most decentralized level, that of the school, or at the regional level), the gaps in requirements between Länder known for their "easy baccalaureate" and others where the diploma is considered difficult to obtain can be enormous. However, since Germany achieved rather mediocre, if not poor, results in some areas during a ranking among several industrialized countries intended to evaluate their school systems in 2000, this state of affairs seems to be under review or at least the subject of debate.

In the realm of collective social actors, the recognition of "intermediary bodies" between the national legislature and the individual also distinguishes the situation in Germany compared to France.

In the French case, normative power is indeed recognized for the actors involved in collective bargaining, allowing them to adopt rules that govern the situation of all employees within the scope of the collective agreement or convention. However, this normative power does not truly hold an autonomous position relative to the power of the legislature. For instance, Article L. 132-4 of the French Labor Code (one of the manifestations of the "principle of favor" in labor law) excludes the provisions of the convention or collective agreement that would normally apply but are not "more favorable to employees" than the provisions of the law or regulation in force governing the same matter... except, of course, if the law itself allows for derogation in a not necessarily "more favorable" direction. Thus, a provision in a convention that stipulates a monthly wage lower than the legal minimum wage (which is currently the case for the majority of French branch conventions concerning their lowest wage coefficients) is, on this point, inapplicable.

However, once the qualification is obtained, regardless of the conditions under which it was achieved, it allows enrollment in higher education in any other state-region of the country (provided a study place has been secured).

The case of Germany is different in that there exists, first, a dual normative power that can produce its effects within the enterprise: on one side, the actors of wage negotiation; and on the other side, the elected

personnel representation together with the employer (who, in principle, are not endowed with this in the French model).

Furthermore, the legislature has—at least until now—factually left an area of autonomy to the actors of collective bargaining, in which it did not intervene. This space consists of matters for which the legislature left the task of setting the essential rules to the trade unions together with the employers' organizations. For example, there is no general wage legislation in Germany, such as a law setting a minimum wage across all sectors (as mentioned above), nor a genuine law on working hours. The responsibility for setting the rules in these matters is left to the "social partners," which presents a double advantage for the legislature itself, in the form of a "discharge and legitimization function." [16]

Public authorities are thereby relieved of the need to establish all the rules regarding economic and social conditions themselves, and they benefit from facilitated legitimization since the choices made in these matters do not appear as political decisions (against which protests and demonstrations could arise) but as unavoidable compromises between trade unions and employers' organizations, which the primary stakeholders can only contest vis-à-vis or within said organizations. As long as all major actors commit themselves to respecting the "great imperatives of economic stability," within the framework set by the public authorities, this system of social relations can achieve strong stability.

Its legal foundation lies in Article 9, paragraph 3 of the Basic Law, which guarantees "the right to form associations to preserve and promote labor and economic conditions, for everyone and for all professions." But this rule does not prohibit the legislator from intervening as well in the field of said "labor and economic conditions": if they decide to, they can validly enact, for example, a law establishing a German equivalent of the French minimum wage. If it has not done so until now, there is no prohibition against it doing so.

[16] Cf. Walther MÜLLER-JENTSCH : « Soziologie der Industriellen Beziehungen. Eine Einführung », Frankfurt/Main (Francfort) 1997, p. 204.