The OSCAR PUBLISHING Services
International Journal of Law And Criminology

VOLUME Vol.05 Issue05 2025
PAGE NO. 89-93
DOI 10.37547/ijlc/Volume05Issue05-14

Features of The Welfare State in Countries of The Romano-Germanic Legal System

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Received: 31 March 2025; **Accepted:** 29 April 2025; **Published:** 31 May 2025

Abstract: This article investigates the historical, theoretical, and methodological foundations of the welfare state in key countries of the Romano-Germanic (civil law) legal tradition, with a focus on Germany, France, Italy, and Spain. The main purpose is to identify common and distinctive features of welfare state formation in these countries and to understand the role of legal symbolism and doctrinal principles in shaping the social state in these jurisdictions. The analysis employs a comparative legal-historical methodology, addressing symbolic representations of law in the construction of the welfare state and highlighting methodological challenges in legal theory. The study is situated within the field of theory and history of state and law, and it draws on the history of legal doctrines to clarify the legal and theoretical approaches that underpin welfare state development in civil law traditions. The article contributes to a deeper understanding of how civil law doctrines and symbolic legal principles have guided the evolution of modern welfare states.

Keywords: Welfare state; romano-germanic legal system; civil law tradition; sozialstaat; solidarité; social rights; legal symbolism; comparative constitutional law; legal history; methodology.

Introduction: The welfare state is broadly understood as a model of governance in which the state assumes responsibility for protecting the social and economic well-being of its citizens through interventions in the economy, provision of social services, and guarantees of social rights. In countries of the Romano-Germanic legal family – i.e. the civil law tradition of continental Europe – the idea of the welfare state has been formally embedded in constitutional texts and legal doctrine since the mid-20th century. Indeed, in the decades following World War II, most continental European nations refounded their constitutional orders as social states, pledging state commitment to social justice, equality, and the material conditions of freedom. For example, the 1949 German Basic Law declares Germany to be a "democratic and social federal state," the French Constitution of 1958 proclaims France a "social Republic," and Spain's 1978 Constitution establishes a "social and democratic State, subject to the rule of law." These notions signal a dramatic shift from the 19th-century liberal laissez-faire state toward a modern paradigm in which state power is expected to be used to advance general welfare and reduce social inequalities.

The Romano-Germanic legal system, characterized by codified laws and rooted in Roman and Germanic traditions, provides a fertile context for the development of the welfare state. Civil law jurisdictions typically allow legislatures to enact comprehensive social legislation, and many have entrenched social principles at the constitutional level. This is in contrast to the common law tradition (exemplified by countries like the United States or United Kingdom) where, historically, constitutional recognition of socio-economic rights has been minimal or absent. Notably, the vast majority of national constitutions worldwide now include social rights or references to the social state, whereas the U.S. Constitution contains no such guarantees. The civil law world thus offers rich examples of how the welfare state can be given legal form and protection. At the same time, the civil law method – with its emphasis on legal codes, general principles, and scholarly "dogmatics" – poses unique questions for interpreting broad social concepts within a legal framework. As one comparativist observes, differences between common law and civil law are

largely methodological rather than substantive in matters of public law; Western democracies, regardless of legal family, converged in adopting welfare commitments after the Second World War. Still, the distinctive legal traditions and histories of countries like Germany, France, Italy, and Spain have shaped the particular features and doctrines of their welfare states.

However, there was a significant gap between recognition and enforceability. Weimar Germany vividly demonstrated the difficulty of translating social constitutional principles into judicially enforceable norms. German legal scholars and courts of the era largely treated the Weimar social provisions as "programmatic norms" – aspirational directives to the legislature rather than directly justiciable rights. In fact, Article 151 of the Weimar Constitution explicitly stated that its social rights were to be realized "on the basis of laws" (i.e. requiring legislative action), which courts interpreted as a bar to invoking them in litigation absent implementing statutes. For example, while Weimar's text spoke of a right to work, the courts did not compel the state to provide employment; such clauses were seen as political commitments dependent on future policy. This approach – viewing social rights as non-self-executing – was common in other countries as well. In France's brief 1848 experiment, as mentioned, social rights had been demoted to moral statements. In the interwar constitutions of Spain, Poland, etc., similar "directive principles" language was used. Thus, prior to World War II, even when social welfare ideals entered constitutional texts, they often carried symbolic or guiding force rather than immediate legal force. This limitation would resurface in later debates about how courts should handle welfare-related constitutional provisions.

The end of World War II and the fall of fascist regimes in Europe ushered in a second, more enduring constitutional revolution – one that firmly installed the welfare state as a core principle of government. The devastation of the war, the threat of communist expansion, and a broad popular consensus on the need for social justice led to the adoption of new constitutions explicitly defining states as social states. In Western Europe's post-1945 constitutions, one finds unequivocal acknowledgments of state responsibility for welfare. For instance, the French Constitution of 1946 (Fourth Republic) in its Preamble guaranteed a number of social rights: the right to work, to health protection, to social security, to education, and even stated that "the Nation assures to the individual and the family the conditions necessary to their development." When the Fifth Republic was established in 1958, it retained these commitments by incorporating the 1946 Preamble, and Article 1 of the 1958 Constitution pointedly declares: "France shall be an indivisible, secular, democratic, and social Republic." The inclusion of the word "social" in the very definition of the Republic signals that France embraces not only the values of liberty and equality from its revolutionary heritage but also the value of fraternity or solidarity as a fundamental constitutional principle.

In Spain, after the end of Franco's dictatorship, the 1978 Constitution similarly established the nation as a "social and democratic state governed by the rule of law" (Estado social y democrático de Derecho in Spanish). Article 1.1 of the Spanish Constitution proclaims this formula and underscores that social values like justice and equality are supreme values of the legal order. Furthermore, Spain's Constitution includes an extensive section (Chapter III of Title I) on the "Guiding Principles of Social and Economic Policy" (Art. 39–52), covering state duties in areas such as family protection, social security, public health, housing, culture, and environmental protection. While these provisions were intentionally placed in a category that the judiciary cannot enforce directly against the legislature (they are principles for lawmakers to follow), they unmistakably articulate the expectation that Spain is to be a welfare state in substance, not just in name.

Across these examples (Germany, France, Italy, Spain, and likewise Portugal, Belgium, the Netherlands, Greece, and others with civil law traditions), one finds by the late 20th century a broad consensus that the constitution should embody social statehood. The inclusion of social principles and rights in these fundamental laws represented the culmination of a historical trajectory: what began as tentative social legislation and moral rhetoric in the 19th century had evolved into formal constitutional commitments after 1945. The motivations were both principled and pragmatic. Principled, because the horrors of the Depression, totalitarianism, and war had reinforced the belief that only a state which actively furthers social welfare can safeguard human dignity and prevent the social despair that extremists exploit. Pragmatic, because the post-war elite understood that embedding social justice into the constitutional order would help integrate the working classes and undercut the appeal of Soviet-aligned communism in Western Europe. Indeed, many scholars note that Western European welfare states expanded in part as a strategy of "containment by co-optation," offering social rights as an antidote to revolutionary impulses during the Cold War.

By the 1960s and 1970s, the welfare state in Romano-Germanic countries had reached its high-water mark in

terms of scope and public support. Generous social insurance systems, expansive public services (education, healthcare, housing), and redistributive fiscal policies became fixtures of these societies. In legal terms, this period saw constitutional courts and legislatures working out the implications of the constitutional welfare principles. In countries like Italy and Germany, courts began to derive concrete obligations from the abstract mandates of social statehood. For example, the Italian Constitutional Court in the 1960s–1980s struck down legislation that grossly violated the constitutional principles of equality or solidarity – such as pensions laws that inadequately protected certain workers – thereby gradually "judicializing" some social rights that were once seen as purely programmatic. In Germany, the Federal Constitutional Court, while initially cautious, eventually recognized that human dignity (Article 1 GG) in conjunction with the Sozialstaat principle imposes an obligation on the state to guarantee everyone a "subsistence minimum" – the minimum material conditions for a life consistent with dignity.

A landmark decision came in 2010 (the Hartz IV case), when the Court invalidated government benefit levels as insufficient, emphasizing that the constitution requires the legislature to ensure a dignified minimum existence for those in need. The Court held that the general principle of the social state, together with the fundamental value of human dignity, gives rise to a basic right to such existential support, even if the Basic Law does not enumerate typical social rights like food, housing, or healthcare as individual rights. This jurisprudence illustrates how welfare state features, initially couched as broad principles, were progressively concretized through interpretation and implementation.

In Germany, for instance, the inclusion of the Sozialstaatsprinzip in the 1949 Basic Law – and further, its entrenchment in the eternity clause – had profound symbolic resonance. It was a deliberate break with the Weimar Constitution's failure to secure social peace and with the Nazi regime's contempt for individual welfare (despite Nazi rhetoric of community, their state ultimately pursued war and atrocity over citizen well-being). By making the social state principle unamendable, the West German founders sent a powerful message that social responsibility is a foundational, permanent aspect of the legitimate state. Yet, as discussed, the Basic Law provided few details on what being a "social" state entailed, leading some to conclude that its primary function was symbolic: it enshrined an ideal and a direction for policy, rather than a concrete rule. Legal scholar Hans M. Heinig argues that the welfare state principle in Germany finds its true meaning "beyond its doctrinal content, in its own distinct, symbolic substance". In other words, the Sozialstaat clause serves to remind political authorities and citizens alike that the German state is fundamentally committed to social justice, even if the specifics must be worked out over time. This symbolic role is not trivial; it has real effects in shaping political culture and discourse. For example, all major German political parties, even market-liberal ones, must affirm their dedication to the Sozialstaat to be seen as constitutionally faithful. The symbol helps maintain a consensus that certain core elements of the welfare system (like social insurance and aid for the needy) are beyond partisan debate – they are part of the constitutional identity of the state.

In this section, we examine and compare the concrete legal manifestations of the welfare state principle in four major Romano-Germanic jurisdictions: Germany, France, Italy, and Spain. Each of these countries exemplifies the civil law tradition yet has developed its own approach to constitutionalizing and implementing welfare commitments. We will explore each country in turn – looking at their constitutional texts, key legislation, and jurisprudence – and highlight points of convergence and divergence. This comparison will shed light on how the shared ideal of the welfare state is tailored by different legal cultures and historical contexts.

Germany's Basic Law (Grundgesetz, GG) provides one of the clearest and strongest constitutional endorsements of the welfare state. Article 20(1) GG establishes that "The Federal Republic of Germany is a democratic and social federal state." This Sozialstaatsprinzip (social state principle) is then shielded by Article 79(3) GG from any constitutional amendment. As discussed above, this places the social state on an equal plane with Germany's identity as a democracy and Rechtsstaat. The historical impetus for this was the Weimar experience and the post-war consensus that social stability must be constitutionally guaranteed to prevent a relapse into extremism. At the same time, the drafters provided few explicit social rights in the Basic Law (unlike, say, the Weimar Constitution which had many). The Basic Law's approach was to state the principle and rely on legislation to fulfill it. Some specific fundamental rights have social dimensions – for instance, Article 6 protects marriage and family (leading to extensive welfare benefits for families), and Article 14 allows expropriation for public good with compensation (enabling land reform or socialization of resources). But there is no list of enforceable social entitlements like housing or healthcare in the text.

In recent times, solidarity has also become a

constitutional buzzword in environmental and European contexts, via the Charter for the Environment 2004 (which mentions solidarity with future generations) and EU solidarity clauses. However, those are tangential to the welfare state as such. Within the welfare domain, solidarity in France particularly manifests in intergenerational contracts (e.g., the pay-as-you-go pension system relies on active workers financing retirees' pensions as an expression of solidarity between generations) and national pooling of risks (e.g., the health insurance system where the healthy subsidize the sick).

In summary, France's welfare state in legal terms is anchored by a constitutional commitment to solidarity and social justice, but the realization of these commitments is largely left to the political process and policy-making. The Constitutional Council plays a supporting role by maintaining a framework of equality and solidarity (preventing egregious failures or unfairness), rather than directly ordering positive measures. The French model underscores the idea that the welfare state is part of the social contract: it emerges from collective decision-making and expresses fraternity in concrete form. The French citizen's relationship to the state includes expectations of social support, and those expectations are rooted in constitutional soil, even if they bloom through ordinary statute.

Spain's 1978 Constitution, enacted during the transition from dictatorship to democracy, explicitly combines the notions of social welfare with those of democracy and rule of law. Article 1, as noted, declares Spain a "social and democratic State, subject to the rule of law" and elevates values like equality and justice as supreme guiding values. In many respects, Spain drew inspiration from the German and Italian models (indeed, several Spanish jurists of that era were influenced by German constitutional scholarship, and the phrase "Estado social y democrático de Derecho" mirrors the German sozialer Rechtsstaat concept and Italy's democratic, social state ideals).

In summary, Spain's constitutional system affirms the welfare state at a broad level – indeed making it part of the definition of the state – and enumerates numerous social goals, entrusting their implementation to the political branches under the Constitution's guidance. While not directly litigable as individual claims, these principles are far from meaningless: they shape legislation, inform court interpretations of other rights, and serve as a benchmark for judging the performance of public authorities. The public expectation in Spain is that the government is constitutionally bound to strive for full employment, comprehensive social security, public health, etc. – even if citizens cannot demand a specific job or house in court. As Spanish constitutional scholars often say, the social state principles together form a kind of "constitutional programme" for social democracy: a continuous mandate that legitimizes proactive social policies and limits neoliberal retreats.

Comparative Note: When we look across Germany, France, Italy, and Spain, we see a common core – all accept the state's responsibility to ensure certain social goods and reduce inequality, and all embed this commitment in constitutional or fundamental law. The differences lie in mechanisms and emphasis. Germany uses a broad principle backed by strong judicial review in specific extreme cases; France relies on political processes with a mild constitutional oversight on solidarity and equality grounds; Italy gives a plethora of concrete rights that are fairly judicially guarded; Spain spells out social aims clearly but channels enforcement through political accountability and indirect legal effects. Each model has its strengths and weaknesses. Germany's and Italy's allow more legal recourse for individuals (though Germany's is limited to the extreme of human dignity cases), which can ensure a minimum standard but also raise debates about judicial overreach or affordability. France's and Spain's deference to politics permit flexibility and democratic deliberation, but risk slower realization or retrenchment if political will wanes.

Interestingly, all four countries have had to navigate within broader frameworks like the European Union, which imposes some budgetary discipline, and the European Convention on Human Rights, which, while not containing classical social rights, has been interpreted to cover certain social-type rights (e.g. a right to housing under the rubric of right to privacy/home in some circumstances, or rights of persons with disabilities). These external regimes increasingly interact with national welfare states (for example, EU law affects how healthcare is managed, or how welfare benefits are given to EU migrants, etc.). But the detailed exploration of that is beyond our scope; suffice to say the national constitutions remain the primary reference for welfare state obligations, and they largely complement the European-level commitments (the EU Charter of Fundamental Rights now even includes some social rights, like access to social security and healthcare, though mostly as principles akin to Spain's Chapter III).

To conclude the comparative section, despite differences in form, countries of the Romano-Germanic legal system share an embedded notion of the welfare state as a fundamental aspect of their constitutional order. In each, the state is not a neutral night-watchman but a promoter of social well-being. This is realized through a combination of constitutional

norms, legislative programs, and judicial interpretations. The diversity in approach offers fertile ground for comparative legal study, illustrating how legal culture and historical context shape the implementation of a common ideal.

Dealing with Complexity and Volume of Material:

Welfare state law covers a vast terrain: labor law, social security law, health law, education law, tax law, etc., each of which in civil law countries is detailed and technical. A holistic study can be overwhelming. Methodologically, researchers might focus on paradigmatic sub-areas or emblematic cases to draw broader lessons. For instance, analyzing constitutional court decisions on pensions or social benefits might reveal the judicial approach to the social state principle. Or comparing one sector (like healthcare rights) across countries might be manageable and illustrative. The challenge is to ensure that such case studies genuinely reflect broader features and are not isolated. That's why combining methods – doctrinal, case study, comparative, statistical – is often needed to cross-verify conclusions.

these trends complicates research but is essential for up-to-date analysis.

CONCLUSION

In conclusion, the welfare state in civil law systems stands as a testament to an evolved understanding of the role of law and the state: it is an embodiment of the notion that true freedom and equality require more than formal rights – they require material conditions and collective effort. The legal features we have examined – from social rights clauses to solidarity principles and beyond – are instruments through which civil law jurisdictions seek to marry the power of the state with the needs of the people, under the rule of law. This grand experiment, born of the trials of history, remains an ongoing project, continually interpreted and reinterpreted in courts, parliaments, and public discourse. As social challenges continue to arise (be it economic crises, pandemics, or demographic shifts), the idea of the welfare state and its legal framework will undoubtedly be tested anew. The foundations laid in the constitutions and legal doctrines of Romano-Germanic countries, however, suggest that the commitment to a social rule of law state – one that strives to secure justice and dignity for all – is deeply entrenched and likely to endure as a defining feature of their legal and political identity.

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