

# **Core Values of the German Basic Law: A Source of Core Concepts of Civic Education**

## **1. Introduction**

I would like to introduce a specific approach to the concepts of civic education. My suggestion is to use the constitution as a source of these concepts. As a German I am referring to the Basic Law, that is the name of our constitution. The Basic Law lays the foundation for a *democratic constitutional state*, or as the Americans call it *constitutional democracy*. For two reasons the democratic constitutional state is a significant resource of concepts.

First of all, it may perhaps be called the most important political invention of mankind. A lot of important political experience made its way into the democratic constitutional state. It provides a convincing answer to the question how to organize politics and how to guarantee safety, freedom, and democracy.

Secondly, Germany by being a democratic constitutional state stands in the tradition of western constitutional thinking. This thinking represents the highest form of reflection about a good political order.

Compared to other constitutional documents the German Basic Law is very extensive. It consists of 194 articles, which is an enormous contrast to the American constitution. How can one derive concepts from 194 articles? I propose deducing the core values implied in the articles.

From this perspective those articles dealing with details of federalism, administration, and financial affairs are irrelevant. On the other hand, the articles relating to basic rights and organization of polity are important, since these articles make up a democratic constitutional state.

Values are of central significance if they determine the essence of various of the above mentioned important articles and are – therefore – meaningful. In this case the core values may serve as a basis for concepts of civic education.

## **2. Constitutional Layers of the German Basic Law**

The German Basic Law contains articles concerning different layers or aspects of a democratic constitutional state.

First of all, the Basic Law forms the constitution of a body politic or as we call it a *state*. A state holds the monopoly of power. Theorists like Jean Bodin and Thomas Hobbes recognized the importance of the monopoly of power. The purpose of the monopoly of power is providing for the citizen's *lives* as well as *domestic security*.

Secondly, the Basic Law is the constitution of a *secular state*. Such a state is limited to the secular sector. The secular state does not decide about truth of religion. *Religious and ideological neutrality* is a result of the secularity of the state.

Thirdly, the Basic Law is the constitution of a *constitutional state*. The constitutional state keeps public authorities under legal control. Public authorities therefore are organized by separation of powers combined with checks and balances. Public authorities are only allowed to act within the limits of assigned competences. The most prominent theorist of the constitutional state is John Locke. Protection of *individual freedom* and *private property* are the most important goals of the constitutional state.

Fourthly, the Basic Law is the constitution of a *democratic constitutional state*. Democracy means universal suffrage and the chance of full participation for all citizens. Universal suffrage leads to a representation in parliament even of the lower social classes and therefore the representation of their interests in the law making process. Consequently, the democratic constitutional state takes care of social balance and social security of its citizens. It tends to establish more and more factual equality. The democratic constitutional state is committed to the values of *equality*, *social justice*, and *political participation*.

The layers of the Basic Law just mentioned and their inhering goals for state activities have close relations to the so called *constitutional principles* laid down in the most important article 20. There are five constitutional principles: republic, democracy, rule of law, welfare state, and federal state. All articles of the constitution, even the entire law, have to harmonize with these principles.

The core values of the Basic Law I'm going to present to you now emerge from the different layers of the constitution. So they are in accordance with the constitutional principles as well.

### **3. An Outline of Core Values of the Basic Law**

My approach is as follows: There are 24 core values in the Basic Law. These values are the resource of the core concepts of civic education. It is no problem to identify each of these values in different articles of the Basic Law. It is no problem either to gather more values from the Basic Law. Every single article of every constitution expresses values in a certain

way. But what I claim is that these values are of secondary relevance or only define the core values in a more detailed way.

One can divide the 24 values into three groups. First of all, there are values legitimating the state's political structure and its tasks. Secondly, there are values forming practice of public authorities in a way that a good political order emerges and is maintained. Thirdly, there are values that influence society so that people can live freely, but also are asked to act responsibly.

### **a) Legitimizing Values**

There are eight values in the constitution that legitimize the state. They are the basis of the Basic Law. These values are human dignity, life, domestic security, individual freedom, equality before the law, social justice, popular sovereignty, and democracy.

**1. Human dignity** was included in the Basic Law as a direct consequence of the Nazi dictatorship in which many people were denied this basic right. Before and during that period human dignity was not a significant component of the constitution.

It is the government's duty to respect and to protect human dignity. There are two potential threats to this dignity: Originating from the government itself and from private persons or groups, respectively. Respecting the dignity means to refrain from anything that could affect it. The government should not interfere with the private sphere of any person. To protect the human dignity means that the government needs to intervene when a private person assaults the dignity of another individual. For instance, the media or other public institutions could infiltrate the privacy of an individual. The duty of protection can also mean the support of a single person in order for him or her to live in decent conditions.

The dignity of man is a universal principle. All humans possess human dignity. It is an attribute that defines us as who we are as humans. In fact, the dignity of man is given to him through his very existence.

Human dignity is harmed by procedures that treat humans like objects or animals. That includes experiments performed with humans. Moreover, human dignity is violated by torture, enslavement, forced displacement, humiliation, prosecution, condemnation, and cruel punishments. This culminates in any form of genocide, the eradication of ethnic or religious groups through killing, battery, forced abortion, deportation of children, or the creation of life conditions that target physical extermination.

**2.** There is no doubt that the **right to live** and the **right of physical inviolability** were included in the Basic Law as a result of the Nazi dictatorship. The Nazis had unlimited access to the lives of any person who lived in their state. Their government conducted euthanasia, forced sterilizations, and medical experiments on living individuals.

The right to live is directed against the state with the purpose that what happened during the Nazi period will never happen again. It is a defensive right which protects the individual from the state. As a consequence of the right to live the death penalty was abolished and does not occur in the Basic Law.

The most obvious threat to the basic right to live comes from within the society. Physical violence conducted by one individual against another is a violation of the right to live and the right of physical integrity. Therefore it is the government's responsibility to provide police and security departments in order to protect these rights by legally prosecuting those who violate them. Humans are free only when they do not have to fear the arbitrary acts of other persons.

Another important duty of the government is to protect unborn life from abortion. Having an abortion eventually means to wipe out life. Thus, an unborn child's right to live cannot be measured with the pregnant woman's right of self-determination. The protection of unborn life is more important than any other of the aforementioned points.

**3. Inner/Domestic security** is a central condition to guarantee a peaceful life for everyone. Therefore, it is the purpose of the government to establish peace. The state legitimizes itself by guaranteeing domestic security. Security is what distinguishes the state from its basic alternative, the anarchy.

The state is entitled to create security within the community and to protect it from assaults from others. Through its monopoly of power the state prevents civil wars and private vigilantism.

**4. Individual freedom** consists of two major components, freedom of action and freedom of movement. The intention of freedom of action is to guarantee the development of one's personality. People should be able to realize their own beliefs and goals. The purpose of freedom of movement is to establish mobility. People should be able to go wherever they want.

Freedom of action basically is a defensive right, i.e. a right against state interference. It protects the actions of an individual from violations through the government. Federal interferences need to be justified.

The freedom of movement grants a person the right to go to any place and to leave it. This freedom is based on the tradition of habeas corpus: It protects the person from *unjustified* arrests and illegal imprisonment.

**5. Equality before the law** is a logical consequence of the values of human dignity and individual freedom. These values can only then exist when everyone is entitled to use them. Thus, equality before the law is valid for everyone and not only for a chosen few with higher privileges. Therefore, the opposite of equality is privilege. Privileges are prerogatives of special groups. These privileges for the chosen few limit the rights and the freedom of other persons, causing not only slavery, peonage, and economic exploitation, but also excluding these people from the political process. The creation of equality means to overcome unjustified inequalities and privileges with the intention to establish freedom for everybody.

The idea of equality is a source of great fascination. It unfolds its enormous potential as soon as judicial inequality of certain groups becomes questionable.

Equality before the law does not necessarily mean factual equality, which is a term describing a state in which everyone enjoys the same commodities. It does not question the differences of mental or physical capacities of people. The differences caused by acquired skills and purchased goods are not challenged either.

Yet, the principle of equality is so dynamic that it will eventually lead to an approximation of the factual living conditions in society. People who live in poverty are not really free as they are constantly worried about their own survival. Therefore, the overcoming of societal poverty and dependency is a central demand of equality as well as of freedom. That is because being dependent means to be unfree. Real freedom means the establishment of social conditions that guarantee free development of everybody's personality.

**6. Social justice** is highly useful to establish legitimacy. A government that focuses on social justice is aiming to create equality, not inequality. Thus, this kind of government appeals to most people. Yet, when the creation of equality is progressing too slowly or not at all, people will react critically. Social justice and equality are therefore closely related to each other.

There are four different kinds of social justice: justice of performance, justice of need, justice of starting conditions, and justice of outcome.

The most important of these is the justice of starting conditions. Its goal is to establish equal conditions for the development of each individual. Everybody should be able to enjoy the same education. In order to achieve this, social inequalities must be balanced out. The state has to support the financially weak through social benefits. The money that is needed for that can be collected through progressive taxation of the rich. Therefore, justice of starting conditions has a “redistributing” effect on society.

**7.** The principle of **popular sovereignty** originates from the theory of the *social contract*. It comes from the conviction that the domination of some people over other people is not simply given or to be taken for granted. It needs to be legitimized. Only the people themselves are in charge of legitimizing it. A political order needs to be accepted by those who are subject to it. Only in this way it is an expression of the self-determination of the people.

Popular sovereignty is derived from the idea of the *constituent power* of the people. It expresses the people’s authority to establish, carry and abolish a constitution. Yet, it is hard to imagine that the people themselves can establish a constitution. In fact, a constitution is the result of the work of a small elite who claims to work in the name of the people.

The actual meaning of sovereignty is shown in the qualities the sovereign possesses. Sovereignty means the tenure of the highest power that is not subject to any judicial or legal authority and that cannot be annulled by any authority. It literally is *absolute power*.

Popular sovereignty is important in the process of establishing a constitution. After this process sovereignty is at rest. Inside a state there cannot be any sovereign because it would not underlie any legal obligation to the state. Sovereignty comes to live when the people revolt against the state and when a new constitution needs to be created.

Popular sovereignty does not necessarily mean that the people govern the state directly. For example, the governing part could be carried out by a monarch who is installed by the people. Yet, an important condition is that the people are the sole bearers of the constituent power.

**8. Democracy** as a form of government is a logical continuation of popular sovereignty. Democracy organizes its public authority in a way that is always based on the will of the people. In doing so, democracy establishes the rule of the people.

Democracy means that the people are the bearers of public authority. They are as they execute public authority in elections. The rest is a task of the parliament, the administration or the constitutional court. Executing public authority does therefore not necessarily that the people

themselves take action. But when constitutional organs execute public authority they always need to base their decisions on the will of the people.

The constitution establishes a *representative democracy*. This means: Elected persons who have a fixed sphere of influence realize the common good. When making decisions, representatives are not bound to the latest will of the people. There are at least two reasons for this: First of all people have no solid will in most political fields that they could obligate constitutional organs with. Secondly, the diagnosis of the popular will must be based on opinion polls. The results of these polls are constantly changing because they depend on current moods. Therefore they would not represent a clear picture of the popular will.

The decision for a representative democracy means: Democracy is a political order. Democracy of the sense of the Basic Law is neither an anarchical identity of those who rule and those who are ruled as Rousseau hoped, nor a discourse which excludes the notion of ruling altogether.

## **b) Values Forming the Political Order**

In the constitution there are eight values that form the political order. They are moderate government, limited government, responsible government, common good, ideological neutrality, security and protection by law, functioning of public authorities, and irrevocable democracy.

**1. Moderate Government** is realized through separation of powers. Governmental power is not supposed to be handled by one institution. Separation of powers is operated through two mechanisms, *separation of powers* and *checks and balances*.

*Separation of powers* means the distribution of the governmental functions into various organs. There should not be any organ that is responsible for all functions. This would result in a concentration of power that is hazardous to the freedom of the people.

*Checks and balances* has two meanings: On the one hand it describes the mechanism in which various organs work on the completion of governmental functions. This is *split political power*. A prime example for this is the legislative branch that is divided into two chambers. Split political power forces the participating organs to work together and advances compromises.

On the other hand, checks and balances means that various organs can control each other. This is *controlled political power*. One example for this is the impeachment of the head of

state before the supreme court initiated by the parliament. Controlled political power prevents autocratic behavior.

Separation of powers limits the power of the constitutional organs and makes them dependent from one another. It slows down and complicates the political process. This happens on purpose. Thereby the freedom of the citizens is protected.

**2. Limited Government** is shown by the fact that the Basic Law lists the competences of the legislature. It also appoints the tasks of the other organs. Therefore, the jurisdiction of the state is limited from the beginning. The state in the sense of the Basic Law is not omnipotent.

Moreover, the basic rights mark the state's jurisdiction. It has to respect the privacy of the humans. Furthermore, many fields of society like art, science, economy, and religion may underlie certain legal rules, but in general they are autonomous. Eventually, all elected representatives are unexceptionally given power for a limited amount of time.

**3.** The principle of **responsible government** states that the elected have to justify the decisions they made or potentially carry the consequences before the electors. The foundation of responsibility is a trustworthy relationship between the people and the representatives.

Responsibility is shown best during the elections in a parliamentary regime. The current majority has to justify its policies before the voters. The minority campaigns for trust in order to take over responsibility for the future of the nation.

In addition, during a legislative period, the administration has to take responsibility before the representatives of the people. In this case responsibility means that the administration needs to justify and explain its actions and its will before the parliament, i.e. the people. It has to respond to critical questions from the parliament. The publicity of the parliament is an expression of responsibility.

**4. Common good** embodies the idea of a good condition of the community and all of its branches. The elected representatives are explicitly bound to the common good. The oath of the members of government contains the basic contents of common welfare. They vow to dedicate their power to common good, increase its use, protect it from damage and to exercise justice against everyone. Yet, the oath leaves out one important issue: The exact definition of welfare. Thus the elected can follow their own image of common good. Still it is impossible for them to use their power for their own personal benefit.

The common good is a *republican* category. It requires politicians who have the virtues of justice and steadfastness against pressure of particular interest groups. It requires citizens who respect the law, who use their freedom in a positive way and who are engaged for the welfare of their community.

**5. Ideological Neutrality** of the state results from the state's secularity. It is also a result of the increasing religious pluralism in modern societies. A secular state does not identify itself with any religion or religious community. It does not judge the citizens' belief or disbelief. Yet, it gives religions freedom to evolve within society by giving them religious freedom.

A secular state has two alternatives in its attitude towards religious communities: *Excluding* or *negative neutrality* pushes religions into privacy. Every single contact between public authorities and religious communities is avoided. *Benevolent* or *positive* neutrality grants religions public room for evolvment, including schools, educational institutions, prisons, as well as the military. Germany opted for a positive neutrality.

**6. Security and protection by law** are important elements of the constitutional state. Security by law is given when the laws are stable. Stable regulations are able to stay in the peoples' legal consciousness. They know exactly what is legal and what is illegal. They can also anticipate how the administration is going to decide. Another aspect of legal security is that the legislative power is bound to the constitution and that the executive power and the courts are bound to the law. The constitution rules, not the arbitrariness of humans.

Protection by law means that an individual can go to court over every act of public authorities. The dispute is decided by independent judges. Individuals can even place a constitutional complaint at the supreme court, if they think their basic rights were violated.

**7.** The Basic Law has established many articles that are supposed to guarantee the **functioning of public authorities** in all possible situations. It makes sure that authorities constantly maintain their ability to make decisions and to act. It guarantees that the federal government is always superior to the governments of the federal states and always able to prevail against them in conflict situations.

The Basic Law has found institutional precautions for exceptional circumstances like natural disasters or the state of defense.

**8.** The Basic Law establishes an **irrevocable democracy**. It draws the consequences from the failure of the first German democracy. The Weimar Republic was defenseless against destructive internal anti-democratic parties and organizations. This is because it had a

relativistic view of democracy. Even its advocates said that democracy had to be abolished if a majority decided to do so.

For the Basic law democracy is a value that cannot be given up. The basic principles of democracy cannot be changed at all.

Democracy protects itself against its enemies. Parties or organizations that fight the *free democratic basic order* can be prohibited. The state has installed agencies that observe anti-constitutional activities in order to protect the constitution.

In case of emergency all Germans have the right to exercise resistance against those who try to abolish the free democratic basic order if public authorities are no longer able to protect the democratic order.

### **c) Values with an Impact on Individual Life and Society**

There are eight values which have an impact on individual life and society. These values are privacy, marriage and family, religious and ideological self-determination, economic autonomy, free communication, societal pluralism, political participation, and civic duties.

**1. Protection of **privacy**** is a value which is protected by several basic rights. It includes freedom of thought, handling of the own body, the home as a shelter, control over personal data, and the sexual orientation.

The protection of privacy fosters the development and the stabilization of the personal identity. The state is prohibited to interfere with the individual's privacy.

**2. The Basic Law protects **marriage** and **family**.** They are important forms of coexistence. Families assure the growth and the future of society through children. They parent the children and guarantee their growth and education. Therefore families handle important tasks. Without families the state would have to deal with these tasks.

**3. Religious and ideological self-determination** refers to the innermost core of human existence. The individual is free to develop beliefs. These beliefs can be both religious and ideological. The individual is allowed to have no belief at all. Anything goes.

Those who come together to form a group with certain beliefs have the right to practice their beliefs discretely or as a community in public or private.

**4. Basic rights guarantee individual liberties.** These include the freedom of contract, the freedom of profession, the right to property, and the right to an inheritance. Together, they

establish **economic autonomy**. Economic activities should primarily be a matter of the individual, not the state.

An economy which is planned by the state with a lot of public ownership cannot be combined with the basic rights in the Basic Law. In contrast, a market economy harmonizes with the Basic law. It is based on the economic autonomy of the individuals.

**5.** The Basic Law ensures **free communication** within society. It thereby agrees with a basic need of the human being. Being a thinking, social character, a human needs to communicate with others. Free communication of thoughts, beliefs and wishes is an elemental concern.

Apart from that, open and free communication is necessary for democracy. It assures intellectual competition and free debate of ideas and interests. Free public discussion is a basic condition for an authentic public opinion.

**6.** The Basic Law assumes that there is a variety of opinions, interests, and wills. It does not only take **societal pluralism** as a fact, but embraces it as a feature of a free society. Pluralistic initiatives and alternatives mark a free democracy. In contrast, dictatorships battle pluralism.

The Basic Law allows the pursuit of various political goals. It allows the decision of conflicts and ensures parties and organizations equal chances for the accomplishment of these aims.

**7.** People have many opportunities for **political participation**. The most classical instruments are elections and referenda. Elections are decisions about political parties, their candidates and programs. The issues of referenda are purely pertinent questions. Referenda are very popular on a local as well as on a regional level. They usually have a function of control and opposition.

In the time between elections people can always participate in political decision-making: They can work in parties, organize citizens' action groups, take part in demonstrations, write petitions, and much more.

**8. Civic duties** aim for common welfare. It, too, is a *republican* category. Responsibility exists as a legal obligation in form of basic duties and as a moral claim in the moral law.

The Basic Law only names a few basic duties. It thereby reacts to the exaggerated stressing of obligations during the national socialist dictatorship. A fundamental basic duty is the *obedience to the law*. Part of this duty is the *peace obligation* i.e. the waiver of violent vigilante justice. A second fundamental duty is *tax liability*. In addition to that, there is *military draft* or the *alternative service* obligation for young men.

The *moral law* is a reminder for the people to use their liberties and rights in a positive way. Freedom of press would be useless if nobody printed or read newspapers. The right to vote would not have an effect if no one went to vote. Freedom of profession would be senseless if nobody worked.

#### **4. The Application of the Core Values on Civic Education**

Is it possible to transform 24 core values of the Basic Law into 24 core concepts of civic education? From a merely logical perspective such a transformation is not a problem. Determining core concepts is a question of didactic decision. The number of 24 concepts seems to be pretty high. But I remind you that John Patrick listed a total of 32 core concepts in his speech in 2006.

The decision to take concepts from the Basic Law is the decision to understand the political order and to live appropriately in the political order. It means a decision for civic education in a narrower sense. It's not the perspective of social studies. For the concepts do not have a relation to current social problems or challenges of internal or international policy. They only help indirectly with political analyzing, judging and acting, since they can only show which solutions of problems and which political actions are lying within or outside of the Basic Law.

But these concepts allow an integral civic education. In the same way as John Patrick's four-component model of civic education a civic education based on the Basic Law includes knowledge of the constitutional democracy, intellectual skills of citizenship in a constitutional democracy, participatory skills of citizenship in a constitutional democracy, and dispositions of citizenship in such a democracy.