

On the issue of determining the role of law in the economic development of Germany (Theoretical aspect)

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Simon Kuznets

Kharkiv National University
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In my opinion,
you cannot exert a good influence on the future
unless you learn from the past and take with you
what is valuable from the past.

Konrad Adenauer, 1952.



75 years of the Federal Republic of Germany:

how liberal democracy was able to withstand modern challenges.

On 23 May 1949, Konrad Adenauer proclaimed the Grundgesetz (Basic Law (GG)), which then came into force. This made the Federal Republic of Germany a liberal parliamentary democracy and a federal and social constitutional state.

Liberal democracy is a success story. At the same time, at this stage she found herself under greater pressure than ever before

Strengthen Ukraine's resilience

“Ukraine today is defending itself from aggression and at the same time protecting security in Europe. Therefore, the German federal government committed itself to providing Ukraine with full support and concluded a security agreement with Ukraine. This includes not only military but also civilian participation. Because in these conditions, Ukraine needs not only weapons and ammunition, but also electricity, a functioning healthcare system, education and economic power.”

SVENJA SCHULZE

Federal Minister for Economic Cooperation and Development of Germany
(2024)

In modern conditions, a lot of vector uncertainty, the military asset of a power is determined not only by the general reconstruction of the economic machine into a defense differential, but also by the direct efficiency of the defense sector, consisting of six important economic institutions (armed forces, defense industry, defense supply (logistics), military R&D), military foreign trade and the central defense bureaucracy) operating in specific economic systems (Davis, C. (1990).

The newest theory used in academic publications touches on the influence of the relative dynamics of the economic, technological and military balance on powers. The rise and fall of major powers, empires and alliances in Europe in the twentieth century have been strongly influenced by shifts in these balances and that the key driver of economic governance is to maintain an optimal distribution of national income between consumption, investment and defense (Christopher Mark Davis (2015))

Even Simon Kuznets, in his work “National Income: A Summary of the Results” (1946), emphasized the importance of the proper distribution of national income not only for defense, but also for the stability and well-being of society. Kuznets acknowledged that extreme inequality could lead to social tensions and threaten long-term economic growth. His research has shown that in the early stages of economic growth, inequality often increases, but over time, especially as economic development progresses, income inequality may tend to decrease. He argued that through policies such as taxes and redistribution systems, governments can promote a fair distribution of income that supports both social stability and long-term economic growth.

Of course, against this background, institutions are an important driver for the manifestation of the relationship and interaction of law and economics.

Although institutions can be divided into many different dimensions, perhaps the most significant is the distinction between extractive institutions, which favor selected groups within society, and inclusive institutions, which promote the well-being of the entire society. The specific influence of inclusive institutions, stimulating economic growth, is manifested in the following positions:

legal certainty, providing for consistency of regulation, as the legal basis for private investment;

an independent judiciary as a mechanism to protect against fraudulent activity and unfair competition through contract enforcement, investor protection from predation, both broad and narrow enforcement of property rights, and commercial dispute resolution;

freedom from corruption as the basis for optimal resource allocation.

Since the early 1950s, there has been active debate in German academic circles about whether the Grundgesetz (GG) (Basic Law) provides legal guarantees for a specific economic platform.

This debate is still relevant today and must therefore be assessed against a historical background:

- (a) the strong influence of the neo- or ordo-liberal school (in particular Walter Eucken, Wilhelm Röpke and Franz Böhm) on legal and political thinking - a school of thought, it should be noted, which established itself in the open resistance to the Nazi regime in the late 1930s. (The main contribution of the ordoliberal school was that a stable and well-functioning market economy calls for strong legal and institutional frameworks);
- (b) the huge economic boom (Wirtschaftswunder) in the early Federal Republic of Germany, which was caused by the implementation of economic policies contrary to the general trend - the (restoration of) a market economy together with some clear social guarantees, as is known, called Soziale Marktwirtschaft (social market economy) and politically linked to the first economics minister, Ludwig Erhard, who briefly succeeded Konrad Adenauer as chancellor.

The "Economic Miracle" in Germany also refers to the exceptionally rapid and sustained economic recovery and development of West Germany during the 1950s and 1960s. This is a period that marked one of the most significant economic transformations of the 20th century and helped Germany become one of the world's leading industrial countries.

The key principles of the ordoliberal school include:

Market economy with competition.

Stability and strictness of rules.

Limited government intervention.

Social market economy.

The concept of a social market economy, implemented in the second half of the 1940s in West Germany, was partly based on the ideas of the ordoliberal school.

It combined free market principles with social and distributional goals.

After the victory over Nazism, the ordoliberal school had a significant influence on the economic development of Germany and contributed to the formation of a social market economy. This mental mechanism is rightly considered by some researchers as the backbone of Germany's economic success at that time, which is called an example of the development of a market economy based on the rule of law.

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The social market economy is not intended to be a ready-made system or recipe that, once established, can be applied equally at all times. This is an evolutionary order in which, in addition to the fixed basic principle that everything should be carried out within the framework of a free order, new tones must always be set in accordance with the demands of changing times.

Alfred Müller-Armack,
national economist and cultural sociologist,
1956

The modern concept of economic regulation in Germany was founded in the course of scientific discussions and formed by various authors and scientific schools, including theorists, economists and politicians:

Walter Eucken, as one of the leading minds of the Freiburg School and the founder of ordoliberalism, laid the foundations for the development of the concept of economic order in Germany. His ideas emphasized the need for a regulatory framework that would encourage competition and limit government intervention to a minimum to ensure an efficient and fair economic system.

Ludwig Erhard, as Federal Minister of Economics and then Chancellor of the Federal Republic of Germany, had a significant influence on the development of the country's economic policy after the liquidation of Nazism. He is considered the architect of the social market economy, which is a mixture of the principles of market economics and social welfare and forms the basis of German economic regulation.

Alfred Müller-Armack, co-founder of the concept of a social market economy, formed an understanding of the role of the state in the economy. He emphasized the importance of a balanced relationship between the market and the state, and the need for government intervention to ensure the common good and social justice.

Franz Böhm, as an outstanding representative of ordoliberalism, made a significant contribution to the development of regulatory principles that shape German economic regulation. He emphasized the importance of the rule of law for a fair, efficient and vibrant market economy. In *The Rule of Law in a Free Society* (1971), he explored the role of the rule of law in the context of a free market economy, which contributed to a deeper understanding of the interaction of law and economics and strengthened the foundations of liberal economic policy.

His main postulates on the role of law in economic development, reflected in the economic policy of Germany:

Legal certainty.

Priority of ownership.

Freedom of contract and contract enforcement.

The rule of law and the limitation of state power.

Legal basis of entrepreneurship.

Law plays a decisive role in the German economy

Law plays a decisive role in the German economy today, as it forms the basis for the functioning of the economic system.

Legal certainty: The German legal system offers a high level of legal certainty, meaning that companies and individuals can be confident that their rights and obligations are clearly defined and that contracts and agreements can be respected.

Supporting innovation and entrepreneurship. German law encourages innovation and entrepreneurship through mechanisms such as the protection of intellectual property rights, regulation of venture capital and support for research and development. Strong legal protection for intellectual property rights encourages innovation by ensuring that creators can reap the benefits of their inventions.

Legal institutions. Germany's legal institutions, including the judiciary and administrative authorities, play a vital role in maintaining the rule of law and resolving disputes. Independent and impartial courts ensure that businesses can seek redress and effectively enforce their rights.

Integration into the European Union. As a member of the European Union (EU), Germany is subject to EU laws that harmonize rules among member countries and facilitate cross-border trade and investment. EU legislation complements and sometimes replaces national laws, influencing German economic development in the wider European context.



Rechtsstaat (rule of law) and **Rechtsstaatlichkeit** (German version of the rule of law) are central concepts of German constitutional thinking. Canonized under the same roof with the principle of democracy, the concepts of the republican, federalist and welfare states, as well as the indispensable guarantee of individual dignity, they go back to 200 years of historical tradition. From the standpoint of formal comprehension, the term Rechtsstaat depicts the image of a sovereign architecture and system of political order in which all popularly exercised power is constituted by law and obeys its rules, and rests on the foundation of numerous segments of power and devices of control (“Bindung and control”). Rechtsstaatlichkeit in this understanding is an accumulating concept for numerous (sub)principles that make it possible to restrain politics by law and at the same time prevent lawlessness and arbitrariness. From a more substantive perspective, Rechtsstaatlichkeit also exhibits democratic preferences and respect for individual freedom and equality, thereby committing to a liberal and just constitutional order.

In Germany, both of these positions are presented as twofold.

Features of the German national model

What meaning do we have when we use the term “German model” to designate a successful, industrial nation that proudly promotes the slogan “Made in Germany”? This formulation is generally identified with a strong and reliable line of mechanical engineering products. Nevertheless, it is rightly applicable to many other important products of the German nation and culture, including the art of painting and literature.

These drivers to a certain extent contributed to the gradual dynamics of the formation of a detailed and punctual legal system. A system that draws its strength both from the sources of centuries-old German case law and from the continental vector of codification, initiated at one time to strengthen absolute power by royal and imperial persons. The pinnacle of codification was the Napoleonic Code, which served as a vivid prototype for the Prussian rulers in their efforts to modernize their legal system.

Based on such premises, the slogan “Made in Germany” can also be successfully attributed to specific political, legal and economic institutions and their public support for the corresponding cultural values. They were all “made in Germany” and, perhaps, thereby made a significant contribution to the creation of these “goods made in Germany”, creating a specific “variety of capitalism” that made it conceivable for these “reliable engineering products” to be released in Germany in the very first place.

Scientific perspectives

The concept of economic regulation in Germany, as part of the debate on the role of law in the economy, has recently faced some problems arising from difficult economic, political and social realities, including:

Balance between market freedom and government intervention.

Conflicting goals between economic growth and sustainability.

Tensions between globalization and national sovereignty.

Inequality and social justice.

The dynamics between innovation and stability.

Promoting innovation and economic change often conflicts with the need for stability and security in the economy. While innovation and technological advances can create new opportunities, they can also threaten existing business models and jobs, leading to social and economic disruption.

Overcoming these contradictions requires constant assessment and adjustment of economic regulation policies, as well as broad social dialogue about the goals and priorities of economic development, and therefore can and should be the subject of further scientific development.

CONCLUDING REMARKS ON OUR FUTURE

1. In general, the role of law in German economic development is multifaceted and includes legal certainty, regulation, support for innovation and entrepreneurship, institutional integrity and social welfare.
2. The German legal system has played an important role in ensuring a stable and prosperous economy both within the country and within the European Union.
3. One of the most important tasks of the modern German state in a social market economy is the creation of a legal framework within which economic activity can be carried out.
4. This includes the provision of personal freedoms, such as the right to free economic activity and the opportunity to establish an independent business, private ownership of the means of production or the right to form associations to protect economic and social interests.
5. Ensuring competition in a market economy and maintaining it through a functioning competition system that prevents competitive processes in markets is also of fundamental importance.

THANK YOU FOR YOUR ATTENTION

