

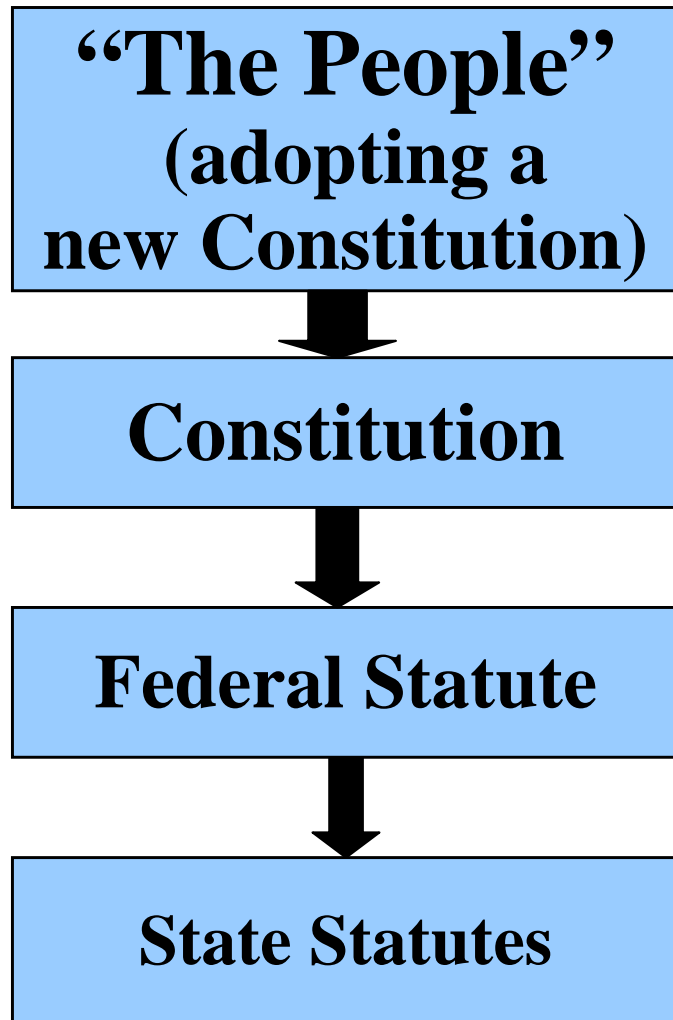
Summer School Jakarta – Constitutional Law

Constitutional Safeguards of German Democracy

1. Essential Principles – Irreversibility?
2. Structure of the Constitution
3. Individual Rights
4. Institutional Foundations

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Legal Hierarchy



Art. 146: Constitution ceases to be in force once the German people adopts by free decision a new one

Art. 79: Certain Principles are specially protected

Art. 31: Federal Law takes precedence over State Law

Art. 70: The States have the right to legislate unless otherwise provided for by the Constitution

The German Constitution - Structure

Chapter I:	Basic Rights
Chapter II:	Federation and States
Chapter III-VI:	Federal Bodies
Chapter VII:	Legislature
Chapter VIII:	Executive
Chapter IX:	Judicature
Chapter X-XI:	Finance, Defence, Transition



Individual Rights



Federalism



Separation of Powers

Basic Rights (1)

Art. 1 Human Dignity

- (1) Human dignity is inviolable. To respect and protect it is the duty of all state authority.
- (2) The German People therefore acknowledge inviolable and inalienable rights as the basis of every human community, of peace, and of justice in the world.
- (3) The following basic rights are binding on legislature, executive and judiciary as directly valid law.

Basic Rights (2)

Art. 2 Liberty

(1) Everyone has the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or morality

Art. 3 Equality

(1) All humans are equal before law

Art. 4-17: Faith, Religion; Expression, Press, Art and Science; Marriage, Family and Education; Assembly; Association; Communication and Privacy; Movement; Work; Military Service; Home; Property, Citizenship, Asylum; Petition...

Basic Principles of State (1)

Art. 20 Basic Principles of State

- (1) The Federal Republic of Germany is a democratic and social federal state.
- (2) All state authority emanates from the people. It is being exercised by the people through elections and voting and by specific organs of legislature...
- (3) Legislation is subject to the constitutional order; the executive and the judiciary are bound by law and justice.

Basic Principles of State (2)

Art. 38 Elections

(1) The deputies to the German house of Representatives are elected in general, direct, free, equal, and secret elections. They are representatives of the whole people, not bound by orders and instructions, and subject only to their conscience.

Art. 21 Political Parties

(1) The political parties participate in the forming of the political will of the will of the people. They may be freely established. Their internal organisation must conform to democratic principles...

Amending the Constitution

**adaptation to
modern demands**



**protection of
democracy**

Art. 79 Amendment of the Constitution

- (1) This constitution can be amended only by statutes which expressly amend or supplement the text thereof...
- (2) Any such statute requires the consent of two thirds *of the members* of the House of Representatives and two thirds of the vote of the senate
- (3) Amendments of the constitution affecting the division of the Federation into States, the participation on principle of the States in legislation, or the basic principles laid down in Articles 1 and 20 are inadmissible.

Basic Rights – Further Safeguards

Art. 19 Restriction of Basic Rights

- (1) Insofar as a basic right may, under this Constitution, be restricted...such statute must apply generally and not solely to an individual case...
- (2) In no case may the essence of a basic right be infringed.

“Well Fortified Democracy”

Art. 21 Political Parties

(2) Parties which, by reason of their aims or the behaviour of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional. The Federal Constitutional Court decides on the question of unconstitutionality.

Art. 20 Resistance

(4) All Germans have the right to resist any person seeking to abolish this constitutional order, should no other remedy be possible.

Judiciary (1)

Art. 19 Legal Protection

(4) Should any person's right be violated by public authority, recourse to the court is open to him...

Art. 93 Federal Constitutional Court

(1) The Federal Constitutional Court decides...
on complaints of unconstitutionality, being filed by any person claiming that one of his basic rights...has been violated by public authority

Art. 97 Independence of Judges

(1) The judges are independent and only subject to the law.

Judiciary (2)

Art. 101 No Extraordinary Courts

(1) Extraordinary courts are inadmissible. No one may be removed from the jurisdiction of his or his lawful judge.

Art. 103 Due Process

- (1) In the courts, everybody is entitled to a hearing in accordance with the law.
- (2) An act can be punished only where it is constituted a criminal offence under law before the act was committed.
- (3) No one may be punished for the same act more than once under general criminal legislation.

The Only Real Safeguard

**Widespread acceptance and support
for democracy and freedom
by the people
(including officials, military, economy etc.)**

**Otherwise...
“The Constitution” is just
a piece of paper**