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Germany's Constitutions  
of  
1871 and 1919



TEXTS  
*With Notes and Introductions*



BY  
OTIS H. FISK

1924  
The Court Index Press  
Cincinnati, Ohio



To  
My Wife  
Helen Hague Fisk

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OTIS H. FISK

Limited Edition

# PREFACE

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There are three Parts to this work. Part One consists of the Constitution of 1871, of the German Empire, together with an historical and explanatory preliminary sketch. Part Two embraces the National Constitution of Germany, adopted in 1919, with an introductory review of the Revolutionary Period of 1918-1919. Part Three is a "Parallelograph", in which the provisions of the different preliminary drafts of the Constitution of 1919 are compared or paralleled with those of that Constitution as finally adopted. The Sections and Articles of the preliminary drafts can be located by means of the Tables at the end of the "Parallelograph".

The Constitutions of 1871 and 1919 are best compared or paralleled through their Indexes, which are detailed and adequate for that purpose.

An Appendix gives the areas and populations of the states of Germany before and after the World War.

I have approached the subject-matter from the viewpoint of the constitutional lawyer, and not from that of the historian or reciter of "battles and dates". The treatment is evolutionary. Hence the use, especially in the introductory review of Part Two, of many constitutional events and constitutional documents in a chronological survey, and the omission of many purely military and police events or details, and of many public demonstrations or riotings.

The principal authorities consulted and used by me are the following:

- Conrad Bornhak, "Die Verfassung des Deutschen Reichs vom 11. August 1919." 2d edition. 1921. Munich, Berlin and Leipsic. J. Schweitzer Verlag (Arthur Sellier). (Text, with a few notes.) Cited as "Bornhak".
- S. Miles Bouton, "And the Kaiser Abdicates." Revised edition. 1921. Yale University Press. (A recital of events of the revolutionary period, as seen by a newspaper correspondent.) Cited as "Bouton".

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- René Brunet, "The New German Constitution." Translated from the French, by Joseph Gollomb. 1922. New York. Alferd A. Knopf. (A systematic treatise of considerable informative value.) Cited as "Brunet."
- Godehard Jos. Ebers, "Die Verfassung des Deutschen Reichs vom 11. August 1919." 1919. Berlin. Ferd. Dümmlers Verlagsbuchhandlung. (A paralleling of the texts of the different drafts, including the final draft.)
- Georg Meyer, "Lehrbuch des Deutschen Staatsrechts". 4th edition (1895); and 7th edition (1919), by Gerhard Anschütz, after the author's death. Munich and Leipsic. Verlag von Duncker und Humblot. (A masterful treatise on German national constitutional law. I enjoyed a delightful acquaintanceship with Georg Meyer when I studied in Germany.)  
Seventh edition cited, as "Meyer-Anschütz".
- Karl Pannier, "Die Verfassung des Deutschen Reichs vom 11. August 1919." 1919. Reclam's Universal Bibliothek, No. 6064 and 6065. Leipsic. Verlag von Philipp Reclam, Jr. (Text and related statutes.)
- Friedrich Purlitz, Deutscher Geschichtskalender, "Vom Waffenstillstand zum Frieden von Versailles, Oktober 1918-Juni 1919." Leipsic. Verlag von Felix Meiner. (Chronological recital, primarily, of efforts for peace.)  
Cited as "Purlitz, Waffenstillstand."
- Friedrich Purlitz, Deutscher Geschichtskalender, "Die Deutsche Revolution". Volume 1—November, 1918, to February, 1919, both inclusive. Leipsic. Verlag von Felix Meiner. (Chronological recital, primarily, of constitutional and political events.) Cited as "Purlitz, Revolution".
- Friedrich Purlitz, Deutscher Geschichtskalender, "Die Deutsche Reichsverfassung". Leipsic. Verlag von Felix Meiner. (Texts of different drafts of the Constitution of 1919, and sketches of debates thereon, January, 1919, to July 1919.)
- L. v. Rönne, "Verfassung des Deutschen Reichs." 10th edition. 1912. Berlin. J. Guttentag, Verlagsbuchhandlung. (Text of the Constitution of 1871, with notes.)
- Fritz Stier-Somlo, "Die Verfassung des Deutschen Reichs vom 11. August 1919." 2d edition. 1920. Bonn. A. Marcus & E. Webers Verlag (Albert Ahn). (A systematic survey.) Cited as "Stier-Somlo".
- George Young, "The New Germany." 1920. New York. Harcourt, Brace and Howe. (A narration of events from

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the Armistice to the Treaty of Versailles, as seen by a  
British Laborite.) Cited as "Young".

Current History, published by the New York Times.

Cited as "Current History", etc.

The Living Age.

Cited as "The Living Age", etc.

The New International Year Books, published by Dodd, Mead  
& Co., New York.

Cited as "The New International Year Book", etc.

The reason for my quoting from some writers at such length is, that they were either on the ground and got their information and facts at first hand, or they used, translated or paraphrased some documents, articles or sources of information the original German of which I have not seen. In the introductory review of Part Two it has been my aim, not so much to be original in narrating events, as to present to the reader a correct socio-political background to the National Constitution of 1919. This has been no easy task; and I do not know that I have entirely succeeded, because no one writer or work gives all the events and hardly any two of them give the same dates and details of the events they do mention. I have also desired to present the facts and events to the reader in such a way that he can draw his own conclusion from them.

In quoting or citing writers I do not necessarily endorse their views and interpretations of events. It is the events that I am after.

And now a word about translating.

The art of translating consists of mirroring the expressed thoughts of the original writer. With works that are not fiction, but are formal or technical or scientific—especially legal documents, that requires a literal translation of words and expressions, which translation can be departed from only where idiomatic words or expressions are employed in the original or where the literary style would otherwise be unduly stiff. A translator has no right to use words or expressions which are translations of words or expressions which he thinks the original writer ought to have used, or which he thinks express the thought the original writer really had in mind. A writer must stand or fall by his own words or expressions, and no translator has a right to translate them otherwise than literally, except as suggested above, and even then he must translate the writer's expressed thoughts as exactly as he can.

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The translations of the provisions of the German National Constitution of 1919 which I have seen seem to me to be somewhat too "free" in many places. They are not satisfactory to the lawyer. He likes exact translations, just as he likes exact quotations. Indeed, a translation is a quotation.

In some of the translations of the Constitution of 1919, the translator translates "*Reich*" "Realm" or "Commonwealth", apparently because he thinks Germany is not an empire. Whether Germany is an empire or is not an empire, the Germans call it an empire, and they mean what they say and they have a reason for saying it. They were and are proud of their country and its traditions, and fond of its name under the Constitution of 1871, if not of all its political institutions under that Constitution. Supposedly, they had a right to retain that name; and they did so. In referring to the then country the word "Reich", as a noun and in the adjective sense, was used freely by them during the stirring democratic, republican, socialistic times of November and December, 1918. Compare, for instance, the *Reichswahlgesetz* of November 30th, and the name of the general or national congress of councils (*Reichskonferenz*) that assembled at Berlin on December 16th. The Preamble to the Constitution of 1919 shows the continuity of the state and of its name. During the debates on that Constitution the outstanding desire was to strengthen the central or national state—representing which, the old Empire was still dear to the people in name—and to weaken the component states, especially Prussia. There was a strong current of feeling that Germany was inevitably on the way towards a single, unified state, which could not be established over night, but only after an evolutionary stage. There was something sublime about the name "Empire" for the central or national state. "State" was too high-sounding to be retained for the component parts of that state. Weakening these component states—even in name—would strengthen or tend to strengthen the central or national state. That is the psychology of the Germans' retaining the name "Empire" for the national state and calling the former component states "Lands". The "Land", one German publicist says, is a cross—a Middle Thing—between a state and a province.

During the debates on the new constitution there was a realization of the difficulty translators would have with the

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word "Reich". It was not unexpected that it would be translated "Empire".

The Germans, therefore, cannot complain of one's translating "Reich" in the Constitution of 1919 with the word "Empire", as a noun, and with "Imperial", as an adjective, nor accuse any one of bad faith in so translating it. The word was carried over from the old "Reich" and the old constitution without any break in constitutional continuity and usage. "Norddeutscher Bund" was changed to "Reich" in 1870, and no one has objected to translating that word "Reich" with the word "Empire". Legally, as a type of state, the country was no more an empire after that change than it was before. In 1918-1919 it was seen fit not to change the name "Reich" into another name. Legally, as a type of state, the country was just as much an empire after that as it was before. So why change to another translation?

Of course, outside the Constitution and other legal documents, such as statutes, one may call the present Germany a "Reich", or a "Realm", or a "Commonwealth", and may speak of its institutions as "national" instead of "imperial". But it must also not be forgotten that the Germans have a word that means national, namely, "*national*", but they do not employ it in the Constitution of 1919.

After all, in English we speak of "empires" that have no emperors, and of things "imperial" that are not connected with an emperor. Can we object to the Germans' doing the same with "Reich", if they wish to do so? At any rate, they have done so; and they should be willing to stand or fall by the word they have used and the way in which they arrived at using it. They cannot logically complain if the word is translated literally, whether in a literary translation or in "diplomatic language" or otherwise. The only difference between before and after November, 1918, is, that before then Germany was an "Empire" with an hereditary president, and since then she has become an "Empire" with an elective president. In each instance "Empire" is merely a name—for Germany neither was nor is even a monarchy. Because of the glamor of his rattling saber, the former president was called "Emperor", which was a mere title, for the "Emperor" was not a monarch of all Germany. But the saber, with its rattling,

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has disappeared, and the present president is a plain, democratic institution, without a high-sounding title.

It has been suggested that the word "Reich" in the Constitution of 1919 be left untranslated, and be carried in the original into a translation of the Constitution. That seems to be the only proper alternative to translating the word with "Empire". At the present time there is an increasing use of the word "Reich" among our English writers and newspapers when referring to Germany. In time that word, in connection with Germany, may become as thoroughly incorporated into our language as Reichstag, Bundesrat and Kaiser have become, so that the retention or use of the original word, even in the adjective sense, in translating the Constitution of 1919 may become unobjectionable. But if the word is to be *translated*, the translation must be "Empire" and "Imperial", which, as already indicated, are not necessarily inseparable from a monarchy.

I have used the word "Imperial" in translating "Reich" in the adjective sense in the Constitution of 1919, in order to be consistent.

As mentioned above, the Constitution of 1919 calls the constituent territorial subdivisions of the Empire "Lands" (*Länder*; singular *Land*). Whether those "Lands" are states or are not states, the Germans do not call them "States" (*Staaten*). The latter name was purposely avoided, and it is above shown why the new and lower-sounding name was given them.

So "*Land*" can not be translated "State," and "*Länder*" can not be translated "States".

Consequently, I translate "*Land*" literally, "Land"—using a capital L in order to lend proper dignity to the translation and to raise the meaning above that usually connected with the plain word "land".

In closing, I might call attention to the fact that in Part Second of the Constitution of 1919 the word "Staat" is often used, mainly in the generic sense of "state". In some places in that portion of the Constitution "*Staat*" (singular) or "*Staaten*" (plural) refers to the "Lands"—which is one of many evidences that Part Second of the Constitution was, in parts, hastily adopted.

Cincinnati, Ohio.

OTIS H. FISK.

Part One

*Constitution of 1871*

*With Notes and Index*

AND AN

*Historical and Explanatory  
Introductory Sketch*



## A.

# HISTORICAL AND EXPLANATORY SKETCH

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On the 6th day of August, 1806, Emperor Francis II took off and laid aside forever the imperial crown of the Holy Roman Empire and thereby abdicated the imperial office of the Emperor of that Empire. With this ceremony the Holy Roman Empire was formally buried. It had been dead for a long time, and the body was in an advanced state of decomposition. The funeral was attended by the Confederacy of the Rhine. This Confederacy was formed on the 17th day of July, 1806, and about the only purpose it served was, to attend the funeral of the old empire and to act as mourner for a respectable length of time. As far as constitutional law is concerned, it was artificial. It was one of the greatest political miscarriages of history. Created and fathered over by Napoleon, as a wedge to ward off Prussia and Austria, it waned as his power waned, and fell with him. There was no formal funeral over it. It was a political toy, and, like all toys, it gradually found its way to the scrap pile. It disappeared after individual withdrawals or renunciations, as the result of the events of 1813.

In the meantime Prussia had been lamed by the Treaty of Tilsit (July 9, 1807), and Austria by the Treaty of Vienna (October 14, 1809).

The Confederacy of the Rhine eventually embraced all of Germany, except Austria, Prussia, Swedish Pomerania, Holstein (which had become incorporated with Denmark), Lauenburg (which was administered by the French as crown-land), and the Hanseatic cities.

The best service performed by the Confederacy was the absorption, by the members of the Confederacy, of the countries or holdings of seventy-two imperial princes and counts, the imperial cities of Nuremberg and Frankfort, the possessions of

the German Order and the Order of St. John, and all the territories or holdings of the knights of the empire.

As already stated, the Confederacy was abortive. As a legal or constitutional being, the whole organization really never came into life. It was in no sense a legal successor to the Holy Roman Empire. As a matter of fact, it was created before that Empire legally ceased to exist, and its territory embraced only a small part of that of the Empire.

The War of Liberation, as the Germans call the War of 1813 and 1814, instilled into them great, patriotic and national enthusiasm, which resulted in the formation of the German Confederation, which was accomplished in 1815 (*Deutsche Bundesakte* of June 8; signed June 10), and which was rounded out in 1820 (*Wiener Schlussakte* of May 20; adopted or recognized by the Assembly of the Confederation on June 8).

By the Congress of Vienna (1815) and special treaties thereafter the map of Europe was recast; and from the melting pot of states and countries there emerged a new alignment, which had been in process of formation for some time. Originally the Confederation consisted of forty members. Later one more was added. In the course of time the number of members was reduced to thirty-three, by a process of absorption, addition, elimination and readjustment. The four Free Cities of Lübeck, Frankfort, Bremen and Hamburg were among the members from the beginning.

Upon the re-organization of the old German Empire by and after the Peace of Luneville (February 9, 1801) the Free Cities were reduced from fifty-one to six in number: Augsburg, Nuremberg, Frankfort, Hamburg, Lübeck and Bremen. Augsburg was given to Bavaria by the Treaty of Pressburg (December 26, 1805), and Bavaria took possession of it on March 4, 1806. Nuremberg became incorporated with Bavaria in 1806, by virtue of the Articles of the Confederacy of the Rhine. In 1806 the City of Frankfort lost its independence and was assigned to the Prince-Primate of the Confederacy of the Rhine. In 1810 the Prince-Primate was made Grand Duke of the then-created Grand Duchy of Frankfort, of which the City of Frankfort was a part. Upon the re-organization of Germany in 1815, Frankfort again became a Free City, which it remained until it was annexed by Prussia in 1866.

The three Hanseatic Cities (Hamburg, Lübeck and Bremen) became parts of France in 1810. Upon the breaking up of the Confederacy of the Rhine some of the Napoleonic states were

destroyed and some of the old states and the Free Cities of Hamburg, Lübeck and Bremen, as well as Frankfort, were restored. They—Hamburg, Lübeck and Bremen—were among the states constituting the German Empire of 1871-1918 and, in their forms of government, were then really republics.

The German Confederation was an international-law league. It reminds us of our own Confederation of 1781-1787. From the standpoint of constitutional law, it had some of the weaknesses of our Confederation, conspicuously the absence of direct authority over the subjects or citizens of the several states. From the political standpoint it is well that this direct authority over the people was lacking, because the activities of the Parliament or Assembly of the Confederation developed into a main business of stifling the growth of freedom and liberties of the German people. The German people were justified in expecting popular freedom and liberty after the War of Liberation and kept up an agitation in that direction, more or less intense, until the fifties. Under the predominating influence of the reactionary Metternich, the Confederation pursued a policy of repression. The Confederation possessed a power that was called the "power of execution." It could only be used against the states as such, but it was often applied to them for the purpose of reaching the people. After the revolution of 1830 in France the popular movement in Germany gained in impetus and reached a culmination in the movements of 1848 and 1849. Even the Parliament or Assembly of the Confederation was put out of business, and a constitution for a German empire was adopted by a special National Assembly (March 28, 1849). In this empire the king of Prussia was to be the emperor. But the whole thing fell like a house of cards when the king of Prussia refused to accept the office of emperor, which he did with the declaration that he would accept it only with the consent of all the German states.

With this attempt the people seem to have become exhausted. They could not rally force enough to carry the fight for national freedom and unity farther. What was left of the National Assembly was dissolved June 18, 1849. A reaction set in, which speedily restored the Parliament or Assembly of the Confederation and the former order of things. This "restoration" was rapidly accomplished. It was all over by May 30, 1851. The movement was so strong that many Germans found it advisable to seek safety in emigration.

Although the German people failed in this attempt at

national freedom and unity, yet they were successful in obtaining constitutions in the several states, which gave them a share or voice in the government. This success began as far back as the Confederacy of the Rhine, but the movement received great impetus after the Charter of June 4, 1814, in France. (The resulting constitutions are said to bear unmistakable traces of influence flowing from this Charter.) There developed what the Germans call a "constitutional monarchy" or "constitutional government," the theory of which will be explained later. Suffice it to say here, that the people secured representation in the government. This representation was by "estates," ranks or classes, and was worked out in such a way as to include representation of the peasants, while the prelates for the most part fell away. Thus popular representation, as a rule, consisted of representatives of the nobility or gentry, the cities and the peasants.

Even the fundamental law of 1815 of the German Confederation says: "In all of the federated States there will be a representative constitution." But the federal or national Assembly or Parliament took an early and decided stand against the movement. However, in spite of this opposition, the federated States, especially those of Southern Germany, soon began to have written constitutions providing for representative government. The Belgian Constitution of 1831 (February 25) was a very liberal constitution, and it, as well as the French Charter of 1814, exercised considerable influence in Germany. The movement in North Germany was strongest after and because of the July Revolution in France (1830). The events of 1848 and 1849 gave the final impetus to the movement. The restoration of the Assembly or Parliament of the Confederation in 1851 was followed by a veritable raid upon the constitutions of the States, and some of them received pretty rough constitutional and unconstitutional treatment. (The events of 1866-1867 and 1870-1871 resulted in alterations and amendments of the constitutions of the States, but they were all effected constitutionally, that is, in accordance with the provisions of the constitutions.)

As already stated the German Confederation was an international-law league, *i. e.*, a league formed and held together by treaty or treaties. It was what the Germans call a *Staatenbund*, which means that it was not a state, but a union or league of states. Its purpose was stated to be: The Maintenance of the external and internal Security of Germany and of the Inde-

pendence and Inviolability of the several German States. The maintenance of external security meant defense of German territory against foreign powers. The maintenance of internal security referred to the avoidance of disputes between the different German States and the suppression of revolutionary movements, but the disputes or revolutionary movements had to affect or endanger all Germany. The maintenance of peace and order within the several States was a matter for the States themselves.

In this defined purpose lay the delimitation of the powers, rights or competencies of the Confederation.

A member of the Confederation could not of its own will withdraw from membership in it. New members could be admitted only with the unanimous consent of the existing members. Cessions of territory to foreign powers required the consent of the Confederation. But such consent was not requisite for cessions to members of the Confederation. Changes of boundaries of the members could change their rights and duties only with the approval of the Confederation.

In the management of its affairs there was no popular representation of the people in the Confederation. The sole organ and governing body was the federal Assembly, Parliament or Diet (*Bundestag, Bundesversammlung*). It was a permanent congress of ambassadors, who were delegated by the members of the Confederation. It solely and purely represented the several States and directly exercised authority over them only, and not over the people or citizens. It met at Frankfort-on-the-Main. It was presided over by Austria. This presiding office was called *Präsidium*, which means presidency or chairmanship. It gave Austria no special privileges or prerogatives, but only the right of formally conducting the proceedings. The members of the Assembly were under instructions from their respective States. They were considered ambassadors of the second class.

The Confederation had its own army, and had the right to declare war, make peace, make treaties, and to send and receive ambassadors.

The "execution" was a peculiar institution. As already stated, it could be directed only against the individual states. If a state proved recalcitrant, the enforcement of the execution was entrusted to one or more of the other states.

The finances of the Confederation were made up of contri-

butions by the several states, the amounts of which were assessed by the federal assembly according to needs.

In spite of the re-organization of Prussia under the guidance of Stein and Hardenberg after the Treaty of Tilsit (July 9, 1807), the people of that state did not get a popular constitution until January 31, 1850, popular representation having, until then, been practically confined to the provincial governments, the provinces being subdivisions of the state. By a peculiar coincidence, just as the German people themselves failed to accomplish national unity, Prussia steps forward as their champion in this connection. But Prussia had her own ideas about how this national unity was to be accomplished. Two things at which she especially aimed, namely, exclusion of Austria and the introduction of a popular national assembly proceeding from direct, general, popular election, were finally accomplished under the leadership of Bismarck. The rivalry between Prussia and Austria for predominance and leadership in Germany was for years like a running sore. It weakened the whole body and prevented the whole country from coming into a "place in the sun." Moreover, internal jealousy, dissension and discord between all the states also crippled national growth. Particularism was strong in these individual states. Bismarck realized that the struggle with Austria was one of "blood and iron," that is, war. He hoped to overcome the particularism of the states by going over their heads as such and replacing them by a popular assembly elected directly by the people of the whole country. In the Schleswig-Holstein controversy Bismarck made (or at least saw) and used his opportunity against Austria. The final outcome of the quarrel and war with Austria was the formal dissolution of the German Confederation on August 24, 1866, and the formation of the North German Confederation, whose constitution became effective July 1, 1867.

The making of this constitution began with a draft made by Prussia and submitted to delegates from the twenty-two interested states. The draft was discussed by these delegates and a final draft was approved by them. This final draft was submitted to a national assembly (*Reichstag*) proceeding from elections under uniform election laws of the different states; and, after being very considerably amended, it was adopted and approved by the assembly on April 16, 1867, with two hundred and thirty against fifty-three votes. On the next day the approval of the constitution by the governments of the different states was announced. This was followed by a ratification by the legisla-

tures of the different states. The "publication" of the constitution took place in each state and provided that the constitution should go into effect July 1, 1867, the date agreed upon by the states.

The uniform election laws under which was elected the national assembly which approved the draft of the constitution on April 16, 1867, provided for a general and direct vote of the people, and were copied after an election law enacted by the National Assembly of 1849 (passed April 12, 1849). Prussia, throughout her efforts at national unity, consistently insisted upon that law being followed or adopted, and it was at her instigation or upon her initiative that it was adopted by the several states in providing for the constitutional convention of 1867, which approved the Constitution of the North German Confederation on April 16, 1867. While this assembly was a "constitutional convention," it was only an advisory body, for the constitution approved by it had to be, and was, submitted to the several states for ratification before it became effective. But this ratification was by the legislative bodies of the states. As the people were represented in these legislative bodies, they, through them, had a voice in making the Constitution of the North German Confederation. But only the peoples of the different states so had a voice in this action. The entire people of the country embraced by the North German Confederation did not act as a *unit* in ratifying or adopting the constitution. In other words, it was the states as states that created the constitution. Nevertheless, what the constitution created was not a mere league of states, but what the Germans call a *Bundesstaat*, *i. e.*, a state, formed by a union of states, in contrast with a *Staatenbund i. e.*, a league of states. We call a *Bundesstaat* a federal state, and we call a *Staatenbund* a confederacy or confederation. The former is as much a state as any state can be. The latter is not a state at all, but only a league, an international-law league.

So that German unity passed through the same process as national unity in this country—first into a league, then into a state.\* But in Germany the one was not the legal successor of

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\* This is the prevailing theory, but it is not undisputed. There are claims that Germany was a *Staatenbund* under the Constitution of 1871. Germany had her Calhouns, and its "South" and "North", but escaped a Civil War. The World War has made the question merely academic. But a similar dispute has arisen under the Constitution of 1919.

the other. The German Confederation passed out of existence without leaving any legal successor. It was formally dissolved and dissipated on the 24th day of August, 1866. The North German Confederation was not born until July 1, 1867. Moreover, the two did not embrace the same territory or states. Austria and the German states south of the Main were not members of the North German Confederation when it was created.

While the North German Confederation—the Germans call it “*Norddeutscher Bund*,” and we should translate the name “*North German Union*” (the German word “*Bund*” can mean either union or federation or confederation or confederacy)—was a state, it was not a monarchy. It was a federal state, just as the United States is; and its constitution is of the same type or genus as that of the United States.

The preamble of the Constitution of the North German Confederation recites that the monarchs of the states and the senates of the three Hanse Cities “form a perpetual Federation for the protection of the Federation’s territory and of the law in force within the same, and also for the fostering of the welfare of the German People. This Federation shall bear the name of the *North German [Confederation].*”

Article 1 says the territory of the Union embraced twenty-two states, as follows: Prussia (with Lauenburg), Saxony, Mecklinburg-Schwerin, Saxe-Weimar, Mecklinburg-Strelitz, Oldenburg, Brunswick, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, Anhalt, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reuss of the Elder Line (Reuss-Greiz), Reuss of the Younger Line (Reuss-Schleiz, Reuss-Lobenstein, Reuss-Ebersdorf), Schaumburg-Lippe, Lippe, Lübeck, Bremen, Hamburg, and Hesse (that is, the parts of it that lie north of the Main).

Articles 2 to 5 of the Constitution contain provisions relating to legislative powers.

Articles 6 to 10 relate to the branch of the legislative body which is called “*Bundesrat*.”

Articles 11 to 19 refer to the presiding office of the union or confederation, called “*Bundes-Präsidium*.”

Articles 20 to 22 cover the branch of the legislative body called “*Reichstag*.”

Articles 23 to 73 contain provisions relating to tariff or customs, commerce, railroads, posts and telegraph, navy and navigation, consuls, war or army, finances.

Articles 74 to 77 provide for the settlement of disputes and controversies, including certain ones between the several states.

Article 78 provides for the amending of the constitution.

Article 79, the last article, concerns the relations of the union or confederation to the German states south of the Main.

We are here most interested in the *Bundesrat*, *Bundes-Präsidium*, *Reichstag*, and the mode of amending the Constitution.

The translation of "Bundesrat" is "Federal Council," but the word, like "Reichstag," has become incorporated into our language. Its members were delegates from the different states. They were classed as diplomatic representatives, like ambassadors. They acted under instructions from their respective states. The states were entitled to different numbers of votes in the Bundesrat, and could send as many delegates to it as they had votes, but the delegates could only vote as a unit. The deliberations of the Bundesrat were presided over by the Federal Chancellor, who was appointed by the Bundes-Präsidium. (Article 15.)

The translation of "Bundes-Präsidium" is "Federal Presiding-Office." The Constitution of the North German Confederation says:

"The Presiding-Office of the Confederation appertains to the crown of Prussia, in the exercise of which it is authorized to represent the Confederation in the law of nations, in the name of the Confederation to declare war and conclude peace, to enter into alliances and other treaties with foreign states, to accredit and receive ambassadors." (Article 11.)

Under that Constitution, the Reichstag consisted of members elected at universal and direct elections, by secret vote, and its proceedings were public. (Articles 20 and 22.)

The same Constitution says:

"The federal legislative power is exercised by the Bundesrat and the Reichstag. The concurrence of the majority votes of both bodies is necessary and sufficient for a federal statute." (Article 5.)

And:

"The federal statutes receive their binding force through

their promulgation on behalf of the Confederation, which takes place by means of a Federal Gazette." (Article 2.)

The federal statutes were binding upon the citizens and subjects of the Confederation and the different states, and not merely upon the several states as such.

Both the Bundesrat and the Reichstag had the right of initiative in legislation, and each amended bills proposed by the other.

The "crown of Prussia," in the exercise of the Presiding-Office of the Confederation, had no voice in the legislation of the Confederation. It had no right of veto. It had, in the exercise of that office, no initiative in legislation. It promulgated the federal statutes, but had no alternative in this connection. It was its duty to promulgate them; and if it had refused to promulgate them, it would have acted unconstitutionally in so doing.

Note and remember that no name or title was given to the person who discharged the duties and enjoyed the rights of the Presiding-Office. The Constitution simply said the office appertained to the "crown of Prussia."

The Constitution of the North German Confederation contains most interesting provisions relating to the amending of the Constitution. In them the effort of Bismarck to have a popular representation of the whole people as a unit in the national or federal government was realized. The Constitution (Article 78) says:

"Amendments of the Constitution are had by way of legislation, but in the Bundesrat a majority of two-thirds of the represented votes is necessary therefor."

In other words, the Constitution was amendable by federal statute, to which, as in the case of all federal statutes, the consent of the Reichstag, the popular representative body, was necessary. The only other consent required was that of the Bundesrat. The Presiding-Office, as such, had nothing to do with the amending of the Constitution.

As already stated more than once, the Constitution of the North German Confederation became effective July 1, 1867. The territory of the Confederation did not embrace the German states south of the Main. The Constitution said the relations to these southern states were to be regulated immediately by special treaties, which were to be subject to the approval of the Reichstag, and further provided that "the entrance of the South-

German states or of any one of them into the Confederation shall be had by way of federal legislation, upon the proposal of the Presiding-Office." (Article 79.) In other words, a new state was to be added to the Confederation by a federal statute.

During the Franco-German or Franco-Prussian War of 1870-1871, these southern states did join the Confederation, and in conformity with the Constitution of the Confederation. (These southern states took part in the war because of defensive and offensive alliances with them, and not because they were members of the Confederation—they took part in the war before they became such members.)

On the 15th day of November, 1870, a treaty was made with Baden and Hesse (for her territory south of the Main), providing for their joining the Confederation. A similar treaty with Bavaria was made on November 23d, and one with Württemberg on November 25th. These treaties were approved by the federal Reichstag and Bundesrat, and by the legislative bodies of Württemberg, Baden and Hesse, before the year 1870 expired. The legislative body of Bavaria approved in January, 1871. They all became effective January 1, 1871.

In the meantime, the Constitution of the Confederation was amended in two respects, by a federal statute, passed by the Reichstag December 10, 1870. By these amendments the name of the North German Confederation was changed to "German Empire," and the person enjoying the rights and discharging the duties of the Presiding-Office was given a name or title—thenceforth he was to be known as "German Emperor." The king of Prussia accepted this title, with pomp and ceremony, at Versailles, January 18, 1871.

Notice that all these things took place by way of amending the Constitution of the North German Confederation. No new state was created; the same state continued to exist, but it received enlargement of territory and a new name. The laws, rights and obligations of the North German Confederation were carried, automatically, into the German Empire. No new constitution was created—the existing one was amended and continued to exist. The Reichstag and the Bundesrat continued organically as before. The Presiding-Office continued organically as before, but received a name or title, or, rather, the person discharging the office received a name or title. His constitutional position, powers, rights and duties underwent no organic change.

And all these changes happened before the Constitution of 1871 came into existence. In other words, the German Empire existed prior to the Constitution of 1871. That Constitution is dated April 16, 1871, and was adopted as a new Constitution, in order to clarify the confusion in the fundamental law caused by treaties, by the special and complicated privileges granted the southern German states (especially Bavaria, Baden and Württemberg), by changing the name of the country to "Empire," and by creating the title of "Emperor." In some parts of the Constitution the expressions "Bund" and "Bundes-Präsidium" still existed. Except changes necessitated by these amendments of the old constitution, the new constitution follows the old in the main almost word for word and article for article. In some quarters it was considered a mere redaction of existing constitutional provisions, with only a few alterations. It was created by way of federal (now "imperial") legislation, *i. e.*, by a federal or imperial statute. One important change was made in the provision for amending the Constitution. It was altered to read (Article 78): "Amendments of the Constitution are had by way of legislation. They shall be considered as rejected if they have fourteen votes against them in the Bundesrat." But the same article provided that no state could be deprived of the special privileges guaranteed it by the Constitution, without its consent.

Article 79 of the old constitution was dropped, because the states referred to in it joined the union or empire.

The votes of the twenty-two states in the Bundesrat under the old constitution were as follows:

States.	No. of Votes.
Kingdom of Prussia (with the former votes of Han- over, Kurhesse, Holstein, Nassau and Frankfort),	17
Kingdom of Saxony,	4
Grand Duchy Hesse,	1
Grand Duchy Mecklinburg-Schwerin,	2
Grand Duchy Saxe-Weimar,	1
Grand Duchy Mecklinburg-Strelitz,	1
Grand Duchy Oldenburg,	1
Duchy Brunswick,	2
Duchy Saxe-Meiningen,	1
Duchy Saxe-Altenburg,	1
Duchy Saxe-Coburg-Gotha,	1

States.	No. of Votes.
Duchy Anhalt,	1
Principality Schwarzburg-Rudolstadt,	1
Principality Schwarzburg-Sondershausen,	1
Principality Waldeck,	1
Principality Reuss of the Elder Line,	1
Principality Reuss of the Younger Line,	1
Principality Schaumburg-Lippe,	1
Principality Lippe,	1
Free City of Lübeck,	1
Free City of Bremen,	1
Free City of Hamburg,	1
	—
Total,	43

Under the Constitution of 1871 there were (until 1911) 58 votes, distributed among the twenty-five states as provided in Article 6 of that Constitution. Article 6a (added in 1911) gave 3 votes to Alsace-Lorraine as a new component state.

#### SIDELIGHTS ON THE CONSTITUTION OF 1871

The German Emperor was not a monarch of the German Empire in the ordinary sense of that word. He was not a sovereign of the kings, dukes and princes of the different states, nor of the free cities. Those cities were republics and could not have a sovereign, *i. e.*, monarch in the ordinary sense, over them. These kings, dukes and princes were themselves sovereigns, and as such owed no allegiance to the Emperor as a monarch. They were themselves monarchs, and did not look upon the Emperor as a superior, but merely as one who was *primus inter pares*—a favorite expression with German constitutional writers.

The German people owed no allegiance to the Emperor in the ordinary sense in which a subject owes allegiance to his sovereign, or a monarch. The Emperor, as such, had no voice whatever in enacting the imperial statutes which governed the German people. He could neither propose nor veto them. He had to promulgate them. He could not declare war without the consent of the Bundesrat, except when the Empire was attacked. (It is said that the German protectorates did not come under this exception.) The rights the Emperor exercised were not

exercised by him in his own name, but in that of the Empire. He filled an imperial office. He did not fill an imperial throne.

The German Empire was not a monarchy at all. We have seen that the King of Prussia clothed the same office before he had a title or name identified with the office, the office being called "Präsidium." The expression "German Emperor" was a mere title or name, and the imperial Constitution said so explicitly, and the title was used only when the Emperor acted in imperial matters, and not when acting in purely Prussian affairs. The office clothed by the Emperor was not called that of a monarch. On the contrary, the imperial Constitution expressly called it Präsidium, which means presidency or presiding office. He "presided"—he did not "reign." He was "German Emperor," not "Emperor of Germany." That may seem absurd, but the former is a mere title, while the latter would mean an office, a monarchical office, the office of a monarch. The office of the German Emperor was a *presiding* office. He was really the hereditary president of a federal state, just as our President is the elected president of a federal state.

But the person who was German Emperor had other and great (probably greater) powers and rights, namely, those of a king of Prussia. Those powers and rights, of course, arose under the Constitution of Prussia, which can not be considered here. The military glamor of the "Emperor and King" was primarily Prussian.

The Constitution of the Empire itself gave precedence in position, and thus in importance, to the Bundesrat over the Emperor.

The imperial legislation was supreme, superseding that of the different states, and was binding directly upon, not only the states, but also the subjects of the states and of the Empire. Theoretically, this imperial legislative power was unlimited, because the Constitution could be amended by legislative enactment in such a manner as to deprive the states of whatever powers were reserved to them, or, rather, in such a manner as to appropriate unto the Empire whatever power it did not already have. Amendments of the Constitution were nothing more than statutes. They originated and were acted upon as in the case of ordinary imperial statutes. As the Constitution of 1871 stood, there were, as already mentioned, two restrictions on this power of amendment, namely, fourteen votes in the

Bundesrat could defeat an amendment, and no state could be deprived of the special privileges granted or guaranteed to it by the Constitution, without its consent. It is probable that no state, without its consent, could have been legislated out of existence, or out of the Empire, or have been interfered with in making its own constitution or governing itself fundamentally in its constitutional organization. And it is also debatable whether or not a state could have voluntarily withdrawn from the Empire. The power of "execution" under the Constitution was very broad. All the Constitution said about it is the following (Article 19):

"If members of the Federation do not fulfil their constitutional Federal duties, they can be held thereto by way of execution. This execution is to be decided upon by the Bundesrat, and is to be carried out by the Emperor."

The Constitution said that the consent of the Bundesrat and the Reichstag was sufficient and all that was necessary to enact a federal or imperial statute. These two bodies might be compared with the Senate and House of Representatives of our federal government, but this comparison is a limited one. It is limited, because the Bundesrat enjoyed certain executive or administrative and judicial powers, in addition to its legislative powers. In the legislative powers the Bundesrat and Reichstag enjoyed like rights and powers. They both had the initiative, and could amend each other's proposed statutes. In the Reichstag the laws were passed by a majority vote. In the Bundesrat the same rule applied generally, but there were some exceptions which required different voting. One exception related to amendments of the Constitution, and has already been referred to. Another exception related to special privileges or rights guaranteed to certain states, which had to consent to their alteration before it was valid. Other exceptions referred to statutes relating to the army and navy, to tariff and excise. In these cases, if there was a difference of opinion in the Bundesrat, the vote of the Chairman was decisive, if it was for the continuance of the existing regulations.

The Chairman of the Bundesrat was the Imperial Chancellor.

In the Bundesrat, votes not instructed or not represented were not counted. In case of a tie, the Chairman cast the deciding vote.

Every member of the Bundesrat had the right to appear in the Reichstag, and to be heard there, in order to represent the views of his state government, even when these views were not supported by a majority of the Bundesrat.

No one could be a member of the Bundesrat and Reichstag at the same time.

In its executive or administrative function, the Constitution said the Bundesrat had the right to issue administrative ordinances and regulations necessary to carry out the imperial statutes, and the right to meet defects occurring in carrying out imperial statutes or the above-named ordinances and regulations. In appointing consuls and certain tariff and taxation officers the Emperor consulted certain committees of the Bundesrat, but in this they had no legal control over his choice. In the appointment of members of the Supreme Court of the Empire, of the Imperial Attorney General, Imperial Solicitors, and many other imperial officials, the Bundesrat had the right to make nominations. This right was created by different imperial statutes. The Emperor was not bound by these nominations, but the practical effect was that the Bundesrat and Emperor had to agree upon the appointment. Other imperial statutes gave the Bundesrat the right to elect or appoint certain imperial officials, without the concurrence of the Emperor.

The Bundesrat also acted in its executive capacity in connection with declaring war, as already mentioned. It has also been mentioned that the right to make peace, alliances and treaties with foreign countries rested with the Emperor; but if these treaties referred to matters defined by the Constitution as being comprehended within the competency of imperial legislation, they had to be concurred in by the Bundesrat and approved by the Reichstag.

Among the judicial powers enjoyed by the Bundesrat was that connected with the imperial "execution," to which allusion has already been made. The Bundesrat decided upon the execution, *i. e.*, tried the case and decided whether or not a case for execution existed. The Emperor carried out the execution. This execution could be applied to states which were guilty of disobedience against imperial statutes, decisions and commands which were binding upon them. An example of this would have been the refusal or failure of a state to furnish its contingent for the army or to pay its share of the deficiency caused by the failure of the usual sources of revenue to meet

the expenses of the imperial government. The execution was a proceeding, with military force, against the state in question.

The Bundesrat also had the right to determine certain controversies *between* the states and certain controversies *within* a state. In these cases it acted in a judicial capacity. Controversies *between* states, which did not partake of the nature of private law (which were determined by usual competent courts), were determined by the Bundesrat, upon appeal to it by one of the parties. Constitutional controversies *within* a state, in whose constitution no provision was made for settling such controversies, were, upon appeal to it by one of the parties, to be settled by the Bundesrat by way of friendly adjustment or, if that failed, by having an imperial statute enacted for the purpose.

The Constitution (Article 77) also said that if there occurred a denial or obstruction of justice in a state, and an adequate remedy therefor was not provided by the law of the state, it was the duty of the Bundesrat to receive complaints thereof. If the Bundesrat deemed the complaint established or proved, it thereupon had to bring about judicial relief at the hands of the state government which caused the complaint. The complaint was to be adjudged according to the constitution and existing laws of the state involved.

The Emperor summoned, opened, prorogued and closed the Bundesrat. It had to be summoned at least every year, and might have been summoned without the Reichstag for preparation of its labors, but the Reichstag could not be summoned without the Bundesrat. The Bundesrat had to be summoned upon request therefor by one-third of its votes. The transactions of the Bundesrat were presided over and conducted by the Imperial Chancellor, who was appointed by the Emperor. The Constitution did not fix any quorum for the Bundesrat, so that any number present could transact business. As already stated, the Bundesrat voted by a majority, with exceptions, which have also been explained. Each state could send to the Bundesrat as many members as it had votes in it; but the votes of each state had to be cast as a unit—they could not be split up.

Reference has been made to what the Germans call "constitutional monarchy." The gist of the theory of this type of state is, that the monarch is presumed to have all authority not disposed of or distributed by the constitution. In Germany there was a strong tendency to consider the senates of the free

cities the same as "monarchs" in this respect. And it was argued that, in the Empire, the Bundesrat, consisting of representatives of the "monarchs", was like the monarch of a constitutional monarchy, and was thus the source, or at least the repository or residuary legatee, of imperial sovereignty. This was not the universal idea among Germany's constitutional writers, but was perhaps the prevailing view. One of the significant features of this theory is that the Emperor was not considered a monarch like a monarch in a monarchy. It was not the Emperor who was considered the source or repository or residuary legatee of the sovereignty of the Empire. Indeed, the German Empire was not a monarchy. There was, as already explained, no such person as a monarch of the German Empire, in the usual legal acceptance of the term "monarch."

Before leaving the subject of the Bundesrat, it might be added that measures proposed by the Bundesrat to the Reichstag were represented in the Reichstag by members of the Bundesrat or by special commissioners appointed by the Bundesrat.

The business of the Bundesrat was supposed to be continuous, so that business at a session might have been resumed at the point where it was at the end of a previous session.

It became the custom of the Bundesrat to sit continuously or unbrokenly.

The Reichstag proceeded from universal and direct elections, with secret vote or ballot. That is about all the Constitution itself said about the elections. The qualifications of voters, the number of members to be elected, the mode and conduct of the elections, and other details were provided for in the Election Statute of 1869, as amended from time to time (for instance, with respect to Alsace-Lorraine in 1873 and with respect to Heligoland in 1890).

According to this statute, every German male citizen who had finished his twenty-fifth year was entitled to vote, and every such person, who had been a subject of one of the states at least a year, could be elected. In addition to the usual exceptions of persons who were mentally unsound and paupers, spendthrifts were excluded, and bankrupts were excluded during bankruptcy proceedings. There were other exclusions, both from voting and from being elected, certain suspensions of the right to vote (*e. g.*, in case of soldiers and marines while with

the colors), and certain other details in this connection, which need not be considered here.

There were three hundred and ninety-seven members of the Reichstag, apportioned among the states according to the population as it existed at the time the Constitutional Convention of 1867 was elected. The basis was one member for every hundred thousand of that population. Even the apportionment for Alsace-Lorraine was based upon the population as of that year. But each state was entitled to at least one member, if its population was under one hundred thousand in 1867. Such was the law until the Election Statute of August 24, 1918, which increased the membership of the Reichstag from 397 to 441, and made a more equitable distribution of the mandates.

The elections were held throughout the Empire on the same day, which was fixed by the Emperor.

Under the Constitution, the Emperor summoned, opened, prorogued and closed the Reichstag. It could not be summoned without the Bundesrat's being summoned at the same time. It had to be summoned regularly each year, but might have been summoned for a special session at any time. Proroguing did not break the continuity of business, but closing did. Without the consent of the Reichstag itself, proroguing for more than thirty days could not be had, nor, without that consent, could proroguing be had more than twice during the same session. The Reichstag could not prorogue of its own motion, but by postponing meetings it could produce an actual interruption of business.

The legislative period of the Reichstag was (after 1888) five years. (It was originally three years.) During this period it might have been dissolved by vote of the Bundesrat, with the concurrence of the Emperor. Upon a dissolution, a new election had to be held within sixty days, and the new Reichstag assembled within ninety days, after the dissolution.

The Reichstag examined and passed upon the credentials of its members. It regulated its proceedings and discipline by its own standing rules, and elected its President, Vice-Presidents and Secretaries. Its proceedings were public. True reports of its public proceedings involved no responsibility. Statutes required three readings or considerations. Motions and resolutions made or offered by members and not embracing a statute, could be disposed of at one reading or consideration.

The Reichstag had the right, within the competency of

the Empire, to propose statutes, and to transmit to the Bundesrat or the Imperial Chancellor petitions directed to it. A practice arose of adopting "addresses," especially to the Emperor, and also of interpellating representatives of the Government.

The legislative competency of the Empire, as already stated, was unlimited, because the Constitution could be amended by a mere imperial statute, subject, however, to certain exceptions, which have already been explained.

The Reichstag acted by absolute majority of votes. In case of a tie vote the measure was lost, as the President's vote did not control in this respect. A quorum consisted of a majority of the legal number of members. The immunities of members of the Reichstag from arrest or prosecution, and from responsibility or suit for their votes or statements in the Reichstag were similar to those enjoyed by members of the legislative bodies of this country.

The Constitution expressly said the members of the Reichstag were representatives of the whole people of the Empire, and were not bound by instructions.

The Constitution originally provided that members of the Reichstag, as such, should receive no salary or indemnification. Under an amendment of May 21, 1906, it was provided that the members of the Reichstag, as such, should receive no salary, but should receive an indemnification in accordance with statutory provisions. Under a statute of May 21, 1906, they were entitled to free transportation on the German railroads during the sessions of the Reichstag and for eight days before the beginning of, and eight days after the close of, each session; and also to a yearly indemnification of three thousand marks, which was increased to five thousand marks in 1918. Twenty marks a day were deducted for absences from plenary sessions.

Under the Constitution of 1871 the Reichstag had great control over the government and affairs of the Empire, because of its right to grant or refuse money appropriations, which were always made by statutes. No act of the Government—not even a treaty—requiring money could be carried out unless the Reichstag voted the money for it.

Whether or not the exercise of that control was neglected is another question.

The Imperial Chancellor of Germany was unique among the governments of the world. He constituted an organ or

office of government unlike any other in the world. He was, generally speaking, the supreme administrative official of the Empire.

The Constitution said the Emperor was to verify and promulgate the imperial statutes, and to superintend the execution thereof; and the decrees and regulations of the Emperor were to be issued in the name of the Empire, and needed, for their validity, the countersignature of the Imperial Chancellor, who thereby assumed the responsibility. (Article 17.)

The imperial statutes received their binding force by their promulgation on behalf of the Empire; and the promulgation was had by means of an imperial gazette (*Reichsgesetzblatt*). (Article 2 of the Constitution.) The promulgation was an obligatory act of the Emperor; and it was one of his decrees or regulations that had to be countersigned by the Chancellor, in order to be valid.

In this promulgation and in the superintendence over the execution of the imperial statutes, the Chancellor was the *alter ego* of the Emperor. He has been called the responsible self, or responsible proxy, of the irresponsible Emperor.

It was the practice to leave the execution or administration of imperial statutes, to a great extent, to the states of the Empire. As a result of this practice, the imperial administrative departments were mostly only central offices. Only in a few branches did the Empire undertake entire charge of the administration in all its details, for instance, in the posts and telegraph department. In some others, the administration was left entirely to Prussian administrative departments, for example, the Prussian War Department, the Prussian Administration of Public Debts, and the Prussian Supreme Chamber of Accounts (Audit-Office).

In leaving the execution of imperial statutes to the states the Empire could prescribe not only what was to be done, but how it was to be done. The Chancellor, as the Emperor's responsible self, superintended the performance by the states of the administration of the statutes. He dealt, not directly with the state officials, but with the state government, to which those officials were responsible.

Among the imperial departments which were subordinate to the Imperial Chancellor, and whose heads were usually called State Secretaries, were the following: Imperial Department of Interior, which had charge of imperial affairs which were

not entrusted to special administrative bodies; Department of Foreign Affairs; Imperial Naval Department; Administration of the Imperial Pension Funds; Imperial Department of Railroads, which took charge of the imperial superintendence of railroads; Imperial-Bank Board; Imperial Postoffice Department; Imperial Department of Justice; Imperial Board of Imperial Railroads; Imperial Department of Finance.

The following were some of the imperial boards which acted according to their own judgment, independently of the Imperial Chancellor: Imperial Domiciliary Board, whose activities were engaged, for example, in disputes about public aid to paupers; Imperial Patent Office; Imperial Insurance Board, which had jurisdiction in accident, sickness and old-age insurance.

The functions, duties, rights, regulations and dispositions of all the imperial departments or boards were prescribed, not by the Constitution, but almost entirely by imperial statutes.

A substitute or proxy could be appointed to take the place of the Imperial Chancellor in his administrative duties, either in all his duties (Vice-Chancellor) or in different branches (special substitutes). This was regulated by an imperial statute. The appointment took place when the Imperial Chancellor was prevented from attending to his duties, even if only by the burden of business; and the appointment was made by the Emperor, upon the application of the Imperial Chancellor. But the Imperial Chancellor could, at any moment he so desired, discharge the duties entrusted to a Vice-Chancellor or substitute, even while either of them was still in office.

The Imperial Chancellor had to account yearly to the Bundesrat and Reichstag for the disbursement of all the receipts of the Empire.

In practice the Imperial Chancellor acted as the go-between between the Bundesrat and the Reichstag, or the Emperor and the Reichstag, or the Emperor and the Bundesrat, but he was not a "prime minister." There was in the German Empire no "ministry." There was indeed in the German Empire no "parliamentary government," such as exists in England. There was no college or group of ministers, constituting a ministry. The Imperial Chancellor stood alone as the head of the Administration. He was appointed by the Emperor, and was removable by the Emperor at his pleasure. He was in no sense controlled by party government or the majority in the Bundesrat

or Reichstag. He did not represent the majority in the Reichstag and he was not responsible in the sense that he resigned when a majority of the Reichstag were opposed to him. He was only bound to obey the law.

When the Imperial Chancellor acted as Chairman of the Bundesrat and discharged his duties in that body as a member of that body he was not an imperial official at all. He did not represent the Empire or the Emperor therein, but only Prussia or the King of Prussia—he was a Prussian official. The Emperor, as such, had no place or seat or vote in the Bundesrat.

Originally the Chancellor could appoint any member of the Bundesrat as his substitute in the Bundesrat, but later he had to appoint a Bavarian delegate as such substitute, if a Prussian delegate was not or could not be so appointed.

There was, technically, only one imperial court in Germany, namely, the Supreme Court of the Empire (*Reichsgericht*), with its seat at Leipsic. It was the court of last resort. In reality many state courts were courts of the Empire. Imperial statutes prescribed their jurisdictions and procedures and the qualifications of the judges and the steps in reviewing proceedings from the lowest to the highest courts, and then to the Imperial Supreme Court.

In Germany, under the Constitution of 1871, the courts had a right to pass on the question whether or not an imperial statute was passed in the form and manner prescribed by law, that is, especially, whether or not it was voted upon and concurred in by the Bundesrat and the Reichstag as required by the Constitution, and whether or not it was promulgated in the proper way. But they had no right to pass upon such questions as belonged exclusively to the legislative bodies themselves, for example, the decisions of the Reichstag concerning the credentials of its members, concerning its proceedings in acting upon a statute, and concerning the presence of a quorum. Nor had they the right to pass upon the constitutionality of the *subject-matter* of an imperial statute. This is directly contrary to the right of the courts in this country, and followed from the fact that in Germany there were really no constitutional restrictions upon the subject-matter of imperial legislation. If an imperial statute was passed in proper form and manner, no constitutional question as to its subject-matter could really arise. But the German courts could examine the contents or subject-

matter of imperial statutes and statutes of the several states, for the purpose of deciding whether or not they were in conflict, and, if they did conflict, to declare and treat the state statutes invalid to the extent of the conflict. They could not pass upon the question whether or not an imperial statute trespassed upon the competency of a state, because that would have been passing upon the *subject-matter* of the statute of and in itself.

But a different rule applied to administrative or executive decrees. These the German courts could pass upon, both as to the form and manner in which they were issued, and as to whether or not they were within the competency of the organ issuing them and as to whether or not in their subject-matter they were in consonance with existing laws.

The imperial Constitution provided that there should be a common denizenship in the sense that the subjects or citizens of a state were entitled, in another state, to the same rights, privileges and immunities as the subjects or citizens of that other state. A person became a citizen of the Empire by being or becoming a citizen of one of the states. But the subject of citizenship and naturalization was regulated by imperial statutes.

The allegiance and subjection of a citizen of one of the states to the Empire was just as direct and powerful as those to his state. And all Germans were entitled to the same claim to protection at the hands of the Empire against foreign countries.

With respect to citizenship, Alsace-Lorraine was (until 1911), by an imperial statute, placed on the same basis as the states of the Empire.

Alsace-Lorraine was not, until 1911, one of the states of the Empire. It was governed by the Empire as a province, or more or less like our Territories are governed before becoming States. It had no vote in the Bundesrat; but delegates were sent to it to represent its interests in the proceedings of the Bundesrat. **But it sent fifteen voting representatives to the Reichstag.**

But all this was changed in 1911, by the adoption of Article 6a of the Constitution, which conferred upon Alsace-Lorraine the (qualified) status of a component state of the Empire.

The German protectorates were also governed or controlled by the Empire.

**It was possible to become a citizen of the Empire, without becoming a citizen of one of the states; for example, by acquiring citizenship in one of the German protectorates.**

If a foreigner accepted an official position in the government of one of the states, he thereby acquired citizenship in that state. If a foreigner accepted an official position in the imperial government, he thereby acquired citizenship in the state in which he had his first official residence.

Acquisition and loss of citizenship were also regulated by treaties between the Empire and foreign countries.

The German Emperor stood at the head of the army; he was its commander-in-chief. But there were restrictions on this authority.

The army of the Empire constituted a single army, made up of contingents of the individual states. While the Constitution said the Emperor determined the sizes of these contingents, yet it fixed the original peace footing of the army at one per cent. of the population of 1867 and left future determinations of this peace footing to future imperial legislation, in which, it will be remembered, the Emperor, as such, had no voice. The Emperor appointed the highest commanding officer of a contingent, all officers who commanded more than a contingent, and all commanders of fortresses. In the absence of special conventions, the sovereigns of the different states and the senates of the three free cities appointed the other officers of their respective contingents, but generals and officers filling the office of generals were subject to the approval of the Emperor. These sovereigns and senates were chiefs of all troops belonging to their territories, and enjoyed the honors connected therewith. They particularly had the right of inspection and the right to be kept informed of certain military affairs. They also had the right to use for police purposes, not only their respective contingents, but also whatever other forces of the imperial army were located within their respective territories. These provisions were all in the Constitution.

All or nearly all of these rights in connection with contingents were turned over to Prussia, by special conventions or agreements, by all the states except the three kingdoms of Saxony, Württemberg and Bavaria. The contingents of Saxony and Württemberg constituted separate army corps, with independent administration. The constitutional provisions with respect to them were not greatly modified. The Bavarian army was an entirely independent unit. With certain exceptions, framed with a view to furthering uniformity and preparedness in the whole imperial army, this Bavarian army was entirely un-

under the control of Bavaria. It was not until war that it came under the command of the Emperor, which it did upon mobilization.

As already pointed out, war could not be declared by the Emperor without the consent of the Bundesrat, unless the territory of the Empire was attacked.

As appropriations for the army and for war were made by imperial statute, the Reichstag had—as far as the Constitution was concerned—great power in military affairs, for without its consent the necessary money could not be obtained.

The Emperor could, whenever the public safety in the Empire was endangered, proclaim martial law in any part of the Empire, subject to certain statutory regulations as to the form of notice and the effects of such a proclamation.

The navy of the German Empire was a unit, and stood entirely under the control of the Empire. The states had nothing to do with it. The Emperor was its supreme commander, and he controlled and regulated its organization and composition, and named its officers and officials. (Constitution, Article 53.) Of course, appropriations for the navy were subject to the approval of the Reichstag, just as were those for the army. As nothing could be done without these appropriations, the will of the Emperor as to the navy was not in itself always law—as far as the Constitution was concerned.

The expenditures of the Empire were made out of duties and the imperial taxes, and the receipts of the railroad, post-office, telegraph and the other imperial administrative departments. If these sources were not sufficient, the balance was made up by the individual states by way of contributions, which were based upon their populations, and were assessed or imposed upon them by the Imperial Chancellor. These contributions, proportionate payments or quotas were called *Matrikularbeiträge*.

Appropriations were usually made for one year, but could cover a longer period of time in special instances. In cases of extraordinary need a loan or guaranty could be authorized or assumed by imperial statute.

As already mentioned, the Imperial Chancellor had to account yearly to the Bundesrat and Reichstag for the disbursement of all the revenues or receipts of the Empire.

The fiscal year began with the first day of April.

Such was the fundamental law until

*The Constitutional Amendments of October 28, 1918.*

These amendments were the last effort of those in authority to stave off a revolution. There were two of them. Their main aim was to introduce into the national government "parliamentary government," with its principle of ministerial responsibility, to give the Reichstag the right to have something to say in declaring war, and to put the military under the civil authority.

According to one of the amendments, Reichstag members were no longer to forfeit their seats and votes if they should accept salaried state or imperial offices; and not only the Imperial Chancellor, but also his Proxies were to be heard in the Reichstag at any time upon their demand— thus the Proxies did not have to be members of the Bundersat in order to be entitled to demand to be heard in the Reichstag.

The second amendment provided, that the consent of both the Bundesrat and the Reichstag was necessary for a declaration of war, and that a like consent was required for treaties of peace and for alliances with foreign states dealing with matters within the competency of imperial legislation. It also provided, that the Imperial Chancellor needed for the conduct of his office the confidence of the Reichstag, further provided for the ministerial responsibility to the Bundersat and Reichstag of the Chancellor and his Proxies, and placed the military under the control of the civil authorities.

Thus the "parliamentary form of government" and "ministerial responsibility" were introduced, and militarism was dealt a blow. But the ink of the enactments was hardly dry before the Revolution of November 9, 1918, put an end to the Constitution of 1871.

History has to explain the psychology of the German people's failure to exercise the powers, literal and potential, granted it by the Constitution of 1871.



**B.****CONSTITUTION OF 1871**

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The statute, of which the Constitution of 1871 was a part and to which that Constitution owes its validity, reads as follows:

“§ 1. The place of the Constitution of the German Confederation, agreed upon between the North German Confederation and the Grand Duchies of Baden and Hesse (Federal Gazette of 1870, pp. 627 ff.), and also of the treaties of the 23d and 25th of November, 1870, made with the Kingdoms of Bavaria and Württemberg concerning their joining said Constitution (Federal Gazette of 1871, pp. 9 ff., and of 1870, pp. 654 ff.) is taken by the hereto-attached

**“CONSTITUTION OF THE GERMAN EMPIRE.**

“§ 2. The provisions in Article 80 of the Constitution of the German Confederation mentioned in § 1 (Federal Gazette of 1870, p. 647), under III, §8, of the treaty with Bavaria of the 23d of November, 1870 (Federal Gazette of 1871, pp. 21 ff.), in Article 2, No. 6, of the treaty with Württemberg of the 25th of November, 1870 (Federal Gazette of 1870, p. 656) concerning the introduction into those states of the statutes enacted in the North German Confederation remain in force.

“The statutes therein designated are Imperial statutes. Wherever in the same mention is made of the North German Confederation, its Constitution, territory, members or states, denizenship, constitutional organs, subjects or citizens, officials, flag, etc., the German Empire and its respective relationships are to be understood as meant.

“The same applies to those statutes enacted in the North German Confederation, which are later introduced into one of the aforesaid states.

“§ 3. The covenants in the Protocol of Versailles of the 15th of November, 1870 (Federal Gazette of 1870, p. 650 ff.), in the negotiations at Berlin of the 25th November, 1870 (Federal Gazette of 1870, p. 657), in the Final Protocol of the 23d of November, 1870 (Federal Gazette of 1871, pp. 23 ff.), and also

under IV of the treaty with Bavaria of the 23d of November, 1870 (Federal Gazette of 1871, pp. 21 ff.), are not affected by this statute.”

This statute—called by the Germans an “*Einführungsgesetz*,” *i. e.*, a statute which is supplementary to a larger statutory enactment, and which is a sort of “introduction” (*Einführung*) of the latter, in the sense of starting it on its way, usually with temporary or transitional details—was enacted April 16, 1871, which is the date of the “Constitution of the German Empire.”

The Constitution of the North German Confederation, under which the “Constitution of the German Empire” was adopted, or, rather, enacted, contained the following provision, in Article 3:

“The Federal statutes receive their binding force through their promulgation on behalf of the Confederation, which takes place by means of a Federal Gazette. So far as another beginning of its effectiveness is not provided in the published statute, its effectiveness begins with the fourteenth day after the lapse of the day on which the particular number of the Federal Gazette is issued at Berlin.”

The *Einführungsgesetz* embodying and enacting the Constitution of 1871 was promulgated in the Federal Gazette at Berlin on April 20, 1871. As the Constitution and the *Einführungsgesetz* are both silent as to the beginning of the effectiveness of the Constitution, and the Constitution was a statute or statutory enactment, or was a part of a statute, the inference is that the Constitution became effective with the fourteenth day after April 20, 1871, namely May 4, 1871; but the writer recalls no judicial holding to that effect. The Germans call it the Constitution of April 16, 1871, the date on which it was adopted or enacted.

## CONSTITUTION OF THE GERMAN EMPIRE

OF

APRIL 16, 1871

AS AMENDED.\*

### PREAMBLE.

His Majesty the King of Prussia in the name of the North

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\* Not all informal amendments, by way of custom, practice, annexation, etc., are here mentioned. The formal amendments of the text are given, and some of the informal ones are mentioned in the Notes.

German Confederation, His Majesty the King of Bavaria, His Majesty the King of Württemberg, His Royal Highness the Grand Duke of Baden and His Royal Highness the Grand Duke of Hesse and Rhenish Hesse for the parts of the Grand Duchy of Hesse lying north of the Main, form a perpetual Federation for the protection of the Federation's territory and of the law in force within the same, and also for the fostering of the welfare of the German People. This Federation shall bear the name German Empire, and shall have the following

## CONSTITUTION.

### I. FEDERAL TERRITORY.

#### ARTICLE 1.

The Federal territory consists of the States of Prussia (with Lauenburg), Bavaria, Saxony, Württemberg, Baden, Hesse, Mecklenburg-Schwerin, Saxe-Weimar, Mecklenburg-Strelitz, Oldenburg, Brunswick, Saxe-Meinigen, Saxe-Altenburg, Saxe-Coburg-Gotha, Anhalt, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reuss of the Elder Line, Reuss of the Younger Line, Schaumburg-Lippe, Lippe, Lübeck, Bremen and Hamburg.

**NOTE**—Throughout this Constitution the word **Bund** is very frequently used. It was the name applied to the North German Confederation (**Norddeutscher Bund**). To translate it here "Confederation" would be confusing, because the name "Empire" succeeded the name "Confederation". To translate it "Union" would not comport with historical and legal usage, for we do not find a German **Bund** designated "Union" in history or constitutional law. For convenience in avoiding conflict, it is here translated, as an adjective, "Federal", and as a noun, "Federation". For instance, **Bundesgebiet** is translated "Federal territory", and **Bundesstaat** (the name given to the States making up the Empire) is translated "member of the Federation". In German law **Bundesstaat** is used in a generic sense of Federal State, as contrasted with **Staatenbund**, which is used generically for a League of States. But in this Constitution **Bundesstaat** means one of the States making up the Empire.

In adopting "Federal" and "Federation" the translator does not here mean to give any expression to his opinion as to whether the German Empire of 1871-1918 was a **Bundesstaat** or a **Staatenbund**. He here merely finds them convenient in avoiding conflict with historical and legal usage, which would be better served were **Bund** translated "Union". The temptation to translate it "Union" here is very strong, because "union" is without color in the language of disputatious legal institutions.

To the territory of the Empire under the Constitution of 1871 were added Alsace-Lorraine in 1871 (as a result of the Franco-Prussian War) and Heligoland in 1890 (by cession from Great Britain). By an Imperial statute enacted in 1873 the Constitution of the Empire was extended to Alsace-Lorraine, beginning with January 1, 1874. Heligoland became an integral part of Prussia in 1891.

In passing, we might call attention to the following from Brunet (pp. 69-70):

"Formerly when one spoke of the German Constitution the question was, 'Is the German Empire a federal state or a confederation of states?' Today when speaking of the Constitution of Weimar the question is asked, 'Is the Reich a federal state or a single state?'"

"Nearly all the German jurists have attempted to answer this question and are almost equally divided in the answer."

Brunet then gives the arguments of the German publicists on both sides of the question, and also expresses his view of the whole controversy, which is to the effect that:

"Actually \* \* \* it is difficult to understand the interest in this question. What difference does it make whether the states are states or provinces, so long as their powers and obligations are strictly defined by the Constitution? From their names alone we can deduce nothing practically informative about their nature. It is an academic question which has not progressed one step in three generations, which one studies but does nothing about, for there is no reality in it." (p. 71.)

Bornhak says that Germany, under the Constitution of 1919, is a single state, and not a federal state. Stier-Somlo says it is a federal state, and not a single state.

## II. IMPERIAL LEGISLATION.

### ARTICLE 2.

Within this Federal territory the Empire exercises the right of legislation in accordance with the contents of this Constitution and with the effect that the Imperial statutes supersede State statutes. The Imperial statutes receive their binding force through their promulgation on behalf of the Empire, which takes place by means of an Imperial Gazette. So far as another beginning of its effectiveness is not provided in the published statute, its effectiveness begins with the fourteenth day after the lapse of the day on which the particular number of the Imperial Gazette is issued at Berlin.

**NOTE**—The word translated "Imperial Gazette" is *Reichsgesetzblatt*. The Gazette was issued by the Imperial Department of the Interior.

### ARTICLE 3.

For all of Germany there exists a common denizenship with the effect that a member (subject, citizen) of each member of the Federation is to be treated in every other member of the Federation as a native and accordingly is entitled to permanent residence, pursuit of business, public offices, acquirement of land, obtaining of citizenship, and enjoyment of all other civil rights under the same conditions as a native, and is also to be treated like the latter in the matter of the administration of justice and the protection of the law.

No German may be restricted in the enjoyment of this right by the authorities of his home or by the authorities of any other member of the Federation.

Those provisions which apply to the care of paupers and the admission into a local communal association are not affected by the principle enumerated in the first paragraph.

Likewise remain in force until further disposition the treaties which exist between the several members of the Federation concerning the taking over of persons who are to be banished or deported, the care of sick citizens, and the burial of deceased citizens.

As to the fulfilment of military duty in relation to the home state, the necessary regulations will be made by way of Imperial legislation.

Over against foreign countries all Germans uniformly have a claim to the protection of the Empire.

**NOTE**—The word translated "denizenship" is *Indigenat*.

#### ARTICLE 4.

The following matters are subject to supervision at the hands of the Empire and to the legislation thereof:

1. The regulations concerning freedom of travel, relationships of domicile and settlement, citizenship, passports and police supervision of foreigners and strangers, and concerning pursuit of business, including insurance, in so far as these items are not already disposed of by Article 3 of this Constitution, in Bavaria, however, with the exception of the relationships of domicile and settlement; and also concerning colonization and emigration to non-German countries.

2. Customs and trade legislation, and taxes to be used for purposes of the Empire.

3. The regulation of the systems of measures, coinage and weights, together with determination of the principles controlling the issue of funded and unfunded paper money.

4. The general regulations concerning the banking system.

5. Patents.

6. The protection of intellectual property.

7. Organization of a common protection of German trade abroad, of German navigation and its flag upon the sea, and establishment of common consular representation, which shall be maintained by the Empire.

8. Railroads, with the reservation in Bavaria of the provision in Article 46; and the establishment of roads and waterways in the interest of the defence of the country and of general traffic.

9. Rafting and navigation on waterways common to several States, and the condition of the waterways, and also tolls and other water charges; likewise the sea-navigation marks (beacons, lights, buoys and other day-marks).

10. Posts and telegraphs; in Bavaria and Württemberg, however, only in accordance with the provision in Article 52.

11. Regulations concerning the mutual execution of judgments in civil cases, and satisfaction of requisitions in general; and also concerning

12. The authentication of public documents.

13. The common legislation concerning the whole civil law, criminal law and court procedure.

14. The military system of the Empire, and the navy.

15. Medical and veterinary police regulations.

16. The regulations concerning the press and societies.

**NOTE**—No. 9 is given as amended in 1873. Originally it was as here given, up to the semi-colon.

No. 13 is given as amended in 1873. Originally it was:

"The common legislation concerning the law of contracts, criminal law, law of commerce and negotiable instruments, and court procedure."

See Articles 11, 48 of this Constitution.

#### ARTICLE 5.

The Imperial legislative power is exercised by the Bundesrat and the Reichstag. The concurrence of the majority votes of both bodies is necessary and sufficient for an Imperial statute.

In cases of bills concerning the military system, the navy, and the revenues mentioned in Article 35, if a disagreement exists in the Bundesrat, the vote of the presiding officer\* shall decide the matter, if such vote is for the maintenance of the existing order of things.

**NOTE**—See Articles 7, 48, of this Constitution.

\* Normally that meant Prussia. See Article 15 of this Constitution, and the note thereunder.

### III. BUNDESRAT.

#### ARTICLE 6.

The Bundesrat consists of the representatives of the members of the Federation, among whom the votes are allotted as follows:

Prussia (with the former votes of Hanover, Kurhesse, Holstein, Nassau and Frankfort)	17
Bavaria	6
Saxony	4
Württemberg	4
Baden	3
Hesse	3
Mecklinburg-Schwerin	2
Saxe-Weimar	1
Mecklinburg-Strelitz	1
Oidenburg	1
Brunswick	2

Saxe-Meiningen	1
Saxe-Altenburg	1
Saxe-Coburg-Gotha	1
Anhalt	1
Schwarzburg-Rudolstadt	1
Schwarzburg-Sondershausen	1
Waldeck	1
Reuss of the Elder Line	1
Reuss of the Younger Line	1
Schaumburg-Lippe	1
Lippe	1
Lübeck	1
Bremen	1
Hamburg	1
<hr style="width: 10%; margin-left: auto; margin-right: 0;"/>	
Total	58

Every member of the Federation can appoint as many representatives to the Bundesrat as it has votes, but the total of the votes allowed it can be cast only as a unit.

**NOTE**—See Article 6a of this Constitution.

The members of the Bundesrat were subject to, and bound by, instructions from their respective States. They partook of the nature of diplomatic representatives or ambassadors. See Articles 7 and 10 of this Constitution.

**ARTICLE 6a.**

Alsace-Lorraine has three votes in the Bundesrat, as long as the provisions of Article II, §1, §2, Paragraphs 1 and 3, of the statute concerning the Constitution of Alsace-Lorraine, of May 31, 1911, are in force.

The votes of Alsace-Lorraine are not counted if the vote of the presiding officer, only by the addition of these votes, would make a majority or would be the deciding vote in the sense of Article 7, Paragraph 3, Sentence 3. The same applies to a vote on amendments of the Constitution.

Alsace-Lorraine is a member of the Federation in the sense of Article 6, Paragraph 2, and of Articles 7 and 8.

**NOTE**—This Article was added in 1911, when Alsace-Lorraine was given a new Constitution.

**ARTICLE 7.**

The Bundesrat passes upon:

1. Bills to be proposed to the Reichstag, and measures passed by the latter.

2. The general administrative provisions and regulations necessary for the execution of the Imperial statutes, so far as is not otherwise provided by Imperial statute.

3. Defects which develop in the execution of the Imperial statutes or the above-mentioned provisions or regulations.

Every member of the Federation is authorized to make proposals and to bring them up for discussion, and the presiding officer is obliged to present them for consideration.

Action is had, with the reservation of the provisions in Articles 5, 37 and 78, by a simple majority vote. Votes not represented or not instructed are not counted. In case of a tie vote the vote of the presiding officer is decisive.

In acting upon a matter that, according to the provisions of this Constitution, is not common to the whole Empire, the votes of only those members of the Federation are counted, to which the matter is common.

**NOTE**—See Article 6a of this Constitution.

#### ARTICLE 8.

The Bundesrat shall form from its members Standing Committees:

1. On the Land Forces and the Fortresses.
2. On Maritime Affairs.
3. On Customs and Taxes.
4. On Trade and Commerce.
5. On Railroads, Posts and Telegraphs.
6. On the Administration of Justice.
7. On the System of Accounting.

In each of these Committees at least four members of the Federation shall be represented, in addition to the presiding officer, and on them each State shall have only one vote. On the Committee on the Land Forces and the Fortresses Bavaria shall have a permanent seat, and the other members of it and also the members of the Committee on Maritime Affairs shall be appointed by the Emperor; the members of the other Committees shall be selected by the Bundesrat. The appointment of these Committees is had for each session of the Bundesrat, *i. e.*, every year, and the retiring members are eligible for re-appointment.

In addition, in the Bundesrat a Committee on Foreign Affairs shall be formed, consisting of the representatives of the Kingdoms of Bavaria, Saxony and Württemberg, and of two other representatives of other members of the Federation, to be selected annually by the Bundesrat, in which Committee Bavaria shall have the chairmanship.

At the disposition of the Committees shall be placed the officials necessary to their work.

**NOTE**—See Article 6a of this Constitution.

## ARTICLE 9.

Every member of the Bundesrat has the right to appear in the Reichstag and must be heard there at any time upon request, in order to represent the views of his Government, even when these views have not been adopted by the majority of the Bundesrat. No one can be a member of the Bundesrat and of the Reichstag at the same time.

**NOTE**—Under statute enacted October 28, 1918, not only the Imperial Chancellor, but also his Proxies must be heard in the Reichstag at any time upon request. Thus the Proxies, although not members of the Bundesrat and therefore not within the above Article 9, became entitled to be heard in the Reichstag. That was a part of the enactments of October 28, 1918, whose object was to introduce the parliamentary system of government, with ministerial responsibility, into the Constitution of the Empire. The ink on the enactments was hardly dry when Revolution Day upset that Constitution.

For the other enactments of October 28, 1918, see under Articles 11, 15, 17, 21, 53, 64, 66 of this Constitution.

## ARTICLE 10.

It is the duty of the Emperor to accord to the members of the Bundesrat the usual diplomatic protection.

## IV. PRESIDING OFFICE.

## ARTICLE 11.

The Presiding Office of the Federation appertains to the King of Prussia, who bears the name *German Emperor*. The Emperor has to represent the Empire in the Law of Nations, in the name of the Empire to declare war and conclude peace, to enter into alliances and other treaties with foreign states, to accredit and to receive ambassadors.

[For a declaration of war in the name of the Empire the consent of the Bundesrat is required, except in case of an attack upon the territory of the Empire or its coasts.] \*

[In so far as the treaties with foreign states relate to such matters as, according to Article 4, belong in the domain of the Imperial legislation, the concurrence of the Bundesrat is required for their conclusion and the approval of the Reichstag is required for their validity.] \*

**NOTE**—The word translated "Presiding Office" is "**Präsidium**".

\* The portions in brackets were amended October 28, 1918, to read as follows:

"For a declaration of war in the name of the Empire the consent of the Bundesrat and the Reichstag is required. Treaties of peace, and also those treaties with foreign states which

relate to matters of Imperial legislation, need the consent of the Bundesrat and the Reichstag."

For other enactments of October 28, 1918, see under Articles 9, 15, 17, 21, 53, 64, 66 of this Constitution.

#### ARTICLE 12.

The Emperor summons, opens, prorogues and closes the Bundesrat and the Reichstag.

#### ARTICLE 13.

The summoning of the Bundesrat and of the Reichstag shall take place annually, and the Bundesrat can be summoned, for the preparation of business, without the Reichstag, but not the latter without the Bundesrat.

**NOTE**—It became the practice for the Bundesrat to sit continuously or uninterruptedly.

#### ARTICLE 14.

The summoning of the Bundesrat must take place as soon as it is demanded by a third of the number of votes.

#### ARTICLE 15.

The presiding chair in the Bundesrat and the conduct of business appertain to the Imperial Chancellor, who is to be appointed by the Emperor.

The Imperial Chancellor can let himself be represented, by virtue of written substitution, by any other member of the Bundesrat.\*

**NOTE**—One of the conditions of Bavaria's joining the North German Confederation (later called "Empire") was that Bavaria should preside in the Bundesrat in case of the prevention of Prussia's so doing.

\* By amendment of October 28, 1918, the following was added to this Article:

"The Imperial Chancellor needs for the conduct of his office the confidence of the Reichstag. The Imperial Chancellor bears the responsibility for all acts of political significance, which the Emperor undertakes to do in the exercise of the powers granted him by the Constitution. The Imperial Chancellor and his Proxies are responsible to the Bundesrat and the Reichstag for the conduct of their offices."

That was part of the eleventh-hour introduction of the parliamentary system of government. See under Articles 9, 11, 17, 21, 53, 64, 66 of this Constitution, for other amendments of October 28, 1918.

Meyer-Anschütz says:

"Of these constitutional amendments two groups are especially important; first, those relating to Article 15; and, second, those relating to Articles 53, 64 and 66. The first group, above all the clause that the Imperial Chancellor needs the confidence of the Reichstag for the conduct of his office, means the introduction of the parliamentary system

of government. But the second, by subjecting the entire military system—not only the military administration, but also the command of the army \* \* \*—to ministerial responsibility, and thereby to the influence of the Reichstag, accomplishes the subordination of the military power to the civil power, and thereby removes some 'militarism', which belongs to the peculiarities of Prusso-German constitutional law and undoubtedly had stood in contradiction to the principles of the constitutional state." (Page 1030.)

See, further, under Article 18 of this Constitution.

#### ARTICLE 16.

The necessary bills shall, in accordance with the resolutions of the Bundesrat, be introduced, in the name of the Emperor, in the Reichstag, where they shall be represented by members of the Bundesrat or by special commissioners to be appointed by the Bundesrat.

#### ARTICLE 17.

To the Emperor appertain the verification and promulgation of the Imperial statutes, and the supervision of the execution of the same. The decrees and ordinances of the Emperor shall be issued in the name of the Empire and need for their validity the countersignature of the Imperial Chancellor [who thereby assumes the responsibility].\*

**NOTE**—Under an Imperial statute enacted in 1878, Proxies for the Imperial Chancellor could be appointed by the Emperor, upon nomination by the Chancellor. The Proxy could be for all the activities of the Chancellor, or for any branch thereof, and could "countersign". But the Chancellor could himself act in any matter that was in the hands of a Proxy. This statute of 1878 was amended October 28, 1918. See under Article 9 of this Constitution.

The word here translated "verification" is **Ausfertigung**, which means, literally, to draw up in the final shape or draft for promulgation, but is interpreted to mean **Beurkundung**, i. e., verification or authentication. This duty is said to include the ascertainment of the correctness of the text of the statutes and the ascertainment whether or not the statutes were constitutionally enacted.

\* By amendment of October 28, 1918, the portions in brackets were stricken out of this Article. At the same time a general responsibility of the Imperial Chancellor was introduced. See under Article 15 of this Constitution. Compare also Articles 9, 11, 21, 53, 64, 66 of this Constitution.

#### ARTICLE 18.

The Emperor appoints the Imperial officials, causes them to be sworn for the Empire and, in necessary cases, orders their dismissal.

The officials of a member of the Federation called to an Imperial office enjoy, so far as not otherwise provided by way of Imperial legislation before their entrance into the Imperial service, as opposed to

the Empire those rights which are accorded them in their home State by virtue of their official position.

**NOTE**—The Imperial Chancellor stood at the head of the administrative authorities of the Empire. The chiefs of the different Departments were subordinate to him. In the name of the Emperor, he superintended the execution of the Imperial statutes, conducted the administration and supervision of affairs assigned to the Empire by the Constitution, and countersigned the decrees and ordinances of the Emperor. There was no cabinet or ministry in the ordinary sense of the words. And there was no system of responsible ministerial government, subject to the confidence of the Reichstag or Bundesrat. The Imperial Chancellor was not a "Prime Minister". He was responsible to no one but the Emperor. He was a sort of *alter ego* of the Emperor, and was subject to appointment and dismissal by the Emperor at the latter's whim. In practice he was a go-between between the Bundesrat and the Reichstag, or the Emperor and the Bundesrat, or the Emperor and the Reichstag. The heads or chiefs of the Departments were officially called State Secretaries, but are often mentioned as Ministers.

Such was the condition of affairs until just before Revolution Day, 1918. See under Article 15 of this Constitution.

#### ARTICLE 19.

If members of the Federation do not fulfil their constitutional Federal duties, they can be held thereto by way of Execution. This Execution is to be decided upon by the Bundesrat, and is to be carried out by the Emperor.

### V. REICHSTAG.

#### ARTICLE 20.

The Reichstag shall proceed from universal and direct elections with secret voting.

Until the statutory regulation which is reserved in §5 of the Election Statute of May 31, 1869 (Federal Gazette, 1869, page 145), there shall be elected in Bavaria 48, in Württemberg 17, in Baden 14, in Hesse South of the Main 6, in Alsace-Lorraine 15 deputies, and accordingly the total number of deputies shall be 397.

**NOTE**—This Article was given this form when the Imperial Constitution was extended to Alsace-Lorraine by the Imperial Statute of 1873. The original number of deputies was 382, to which the 15 of Alsace-Lorraine were added, making the 397, which includes, of course, the deputies from the States not mentioned by name in this Article 20.

The Election Statute of May 31, 1869, became an Imperial statute of the Empire. It contained detailed provisions concerning the active and passive rights of election and the conduct of elections. As a rule, elector was every German male who had completed the twenty-fifth year of his life. The basis of representation was one deputy to every 100,000 of the population of 1867. The adherence to the census of 1867 caused in the course of time much inequality in the representation of cities and industrial areas, where the population increased rapidly.

This condition of affairs was the ground of much complaint, and was not remedied until the enactment of an Imperial statute on August 24, 1918, which increased the membership of the Reichstag from 397 to 441, the 44 new mandates being distributed among said places that were not fairly represented.

**ARTICLE 21.**

Officials need no leave of absence for entrance into the Reichstag.

[If a member of the Reichstag accepts a salaried Imperial office, or accepts a salaried State office in a member of the Federation, or enters upon an office in the Imperial or State service with which a higher rank or a higher salary is connected, he thereby loses seat and vote in the Reichstag and can re-acquire his office therein only by a new election.]\*

\* The paragraph in brackets was abrogated by amendment of October 28, 1918. That was to carry out in part the introduction of the parliamentary system of government, by allowing members of the Reichstag to enter the Government or Ministry without losing their mandates. See under Articles 9, 11, 15, 17, 53, 64, 66 of this Constitution.

**ARTICLE 22.**

The proceedings of the Reichstag shall be public.

Accurate reports of the proceedings in the public sittings of the Reichstag shall remain free from any and all liability.

**ARTICLE 23.**

The Reichstag has the right, within the competency of the Empire, to propose statutes, and to refer to the Bundesrat or the Imperial Chancellor petitions directed to it.

**ARTICLE 24.**

The legislative period of the Reichstag lasts five years. For the dissolution of the Reichstag during this period a resolution of the Bundesrat with the concurrence of the Emperor is required.

**NOTE**—The legislative period was made five years by an amendment of the Constitution in 1888. Until then it was three years. Under the Constitution of 1919 it is four years.

**ARTICLE 25.**

In case of a dissolution of the Reichstag the voters must be assembled within a period of sixty days thereafter, and the Reichstag assembled within a period of ninety days after the dissolution.

## ARTICLE 26.

Without the consent of the Reichstag the proroguing thereof may not exceed a period of thirty days, nor be repeated during the same session.

## ARTICLE 27.

The Reichstag examines into the legality of the election of its members and passes judgment upon the same. It regulates its procedure and its discipline by Standing Rules, and elects its President, Vice-Presidents and Secretaries.

**NOTE**—The word translated "Standing Rules" is *Geschäftsordnung*.

## ARTICLE 28.

The Reichstag acts with an absolute majority vote. For the validity of its action the presence of a majority of the legal number of the members is required.

**NOTE**—A second paragraph of this Article was abolished in 1873. It read:

"In acting upon a matter which, according to the provisions of this Constitution, is not common to the whole Empire, only the votes of those members are counted who are elected in the members of the Federation, to which the matter is common."

## ARTICLE 29.

The members of the Reichstag are representatives of the whole people and are not bound by commissions and instructions.

## ARTICLE 30.

No member of the Reichstag may at any time, because of his vote or because of any utterances made in the exercise of his office, be prosecuted by court or disciplinary proceeding or otherwise called to account outside the assembly.

## ARTICLE 31.

Without the consent of the Reichstag no member thereof can be held for examination or arrested during the session period because of a penal offence, except when he is taken in the commission of the act or in the course of the next following day.

Like consent is required for imprisonment for debt.

Upon demand of the Reichstag any criminal proceeding against a member thereof and any arrest for examination or civil arrest shall be suspended for the duration of the session period.

**ARTICLE 32.**

The members of the Reichstag may as such receive no stipend. They shall receive an indemnity according to statute.

**NOTE**—This Article received this wording by an enactment of 1906. Up to then it read:

“The members of the Reichstag may as such receive no stipend or indemnity.”

**VI. CUSTOMS AND TRADE.****ARTICLE 33.**

Germany constitutes a customs and trade area, surrounded by a common customs frontier. Excluded remain the several territorial parts which, because of their situation, are not adapted to inclusion within the customs frontier.

All articles which are in the free commerce of a member of the Federation can be imported into any other member of the Federation and can be subjected to a charge in the latter only in so far as therein like domestic products are subject to a domestic tax.

**ARTICLE 34.**

The Hanseatic Cities of Bremen and Hamburg, together with a strip of their own or the surrounding territory suitable for the purpose, remain as Free Ports outside the common customs frontier, until they request their admission into the same.

**NOTE**—Hamburg entered the customs area in 1882, and Bremen did the same in 1885.

**ARTICLE 35.**

The Empire exclusively has the right of legislation concerning the entire customs system, concerning the taxation of salt and tobacco produced in the Federal territory, of prepared spirituous liquors and beer, and sugar and syrup produced from beets or other domestic products, concerning the mutual protection against fraud connected with the excises levied in the several members of the Federation, and also concerning the regulations which are required in the customs-exclusions for the security of the common customs frontier.

In Bavaria, Württemberg and Baden the taxation of domestic spirituous liquors and beer is reserved to the State legislation. The members of the Federation shall, however, direct their efforts towards producing a uniformity of legislation concerning the taxation of these articles too.

**NOTE**—See Article 5 of this Constitution.

**ARTICLE 36.**

The collection and administration of the customs-duties and excises (Article 35) are left to each member of the Federation within its territory, so far as it has heretofore exercised those rights.

The Emperor shall supervise the compliance with the statutory procedure, through Imperial officials, whom he shall appoint as assistants to the customs and tax offices and the directive authorities of the several States, after hearing the Committee of the Bundesrat on Customs and Taxes.

The reports by these officials of defects in the execution of the common legislation (Article 35) shall be laid before the Bundesrat for action.

**ARTICLE 37.**

In taking action on the administrative rules and regulations applied to the execution of the common legislation (Article 35) the vote of the presiding officer shall decide the matter when it is in favor of the continuance of the existing rule or regulation.

**NOTE**—See Article 5 of this Constitution, and the Note thereunder. See Article 7 of this Constitution.

**ARTICLE 38.**

The proceeds of the customs-duties and the other revenues mentioned in Article 35 (the latter so far as they are subject to Imperial legislation) flow into the Imperial treasury.

These proceeds consist of the total receipts from the customs-duties and the other revenues after deduction:

1. Of the tax rebates and reductions resting upon statutes or general administrative regulations.

2. Of restitutions because of wrongful collections.

3. Of the costs of collection and of administration, namely:

- (a) In case of the customs-duties: the costs which are required along the borders on foreign countries and in the frontier district for the protection and the collection of the customs-duties.

- (b) In the case of the salt tax: the costs incurred in paying the salaries of the officials entrusted at the salt works with the collection and control of this tax.

- (c) In the case of the beet-sugar tax and the tobacco tax: the allowance which is to be made, according to the resolutions of the Bundesrat from time to time, to the several State governments for the costs of the administration of these taxes.

- (d) In the case of the other taxes: fifteen per cent. of the total receipts.

The districts lying outside the common customs frontier shall contribute to the expenses of the Empire by paying an *aversum*.

Bavaria, Württemberg and Baden shall not share in the proceeds of the taxes on spirituous liquors and beer that flow into the Imperial treasury and in the portion of the aforesaid *aversum* corresponding to these proceeds.

**NOTE**—The *aversum* was an amount fixed or agreed upon as fair under all the circumstances.

As to Imperial finances, see Division XII of this Constitution, especially Article 70.

#### ARTICLE 39.

The quarterly statements to be made by the tax-collection authorities of the members of the Federation after the lapse of every quarter, and the final statement, to be made at the closing of the year and the books, covering the receipts, from the customs-duties and the excises flowing into the Imperial treasury under Article 38, that have become due during the quarter or the fiscal-year, respectively, shall be cast by the directive authorities of the members of the Federation, after previous examination, into general summaries, in which each tax is to be indicated separately, and these summaries shall be sent in to the Committee of the Bundesrat on the System of Accounting.

This Committee shall determine, upon the basis of these summaries, provisionally every three months, the amount due the Imperial treasury from the treasury of each member of the Federation, and shall inform the Bundesrat and the members of the Federation of this determination, and also lay before the Bundesrat annually the final determination of those amounts, with its remarks. The Bundesrat shall act upon this determination.

#### ARTICLE 40.

The provisions of the Customs-Union Treaty of July 8, 1867, remain in force, so far as they are not altered by the provisions of this Constitution, and as long as they are not altered in the way designated in Article 7 or 78.

### VII. RAILROADS.

#### ARTICLE 41.

Railroads which are deemed necessary in the interest of the defence of Germany or in the interest of the common traffic can, by virtue of an Imperial statute, even against the objection of the members of the Federation whose territory the railroads traverse,

without prejudice to the State prerogatives, be built at the expense of the Empire, or granted to private contractors by way of concession for construction, and be endowed with the right of expropriation.

Every existing railroad administration is obliged to allow a connection with newly constructed railroads at the expense of the latter.

The statutory provisions which grant to existing railroad enterprises a right to oppose the construction of parallel or competing lines, are, without prejudice to existing vested rights, hereby abolished for the whole Empire. Such a right of opposition can also not be included in the concessions to be granted in the future.

#### ARTICLE 42.

The State governments obligate themselves to administer the German railroads in the interest of the general traffic as a unified network, and, to this end, also to cause roads that are to be newly built to be constructed and equipped according to uniform standards.

#### ARTICLE 43.

Accordingly, uniform operating arrangements are to be made with as much expedition as practicable, particularly uniform railroad police-regulations. The Empire has to take care that the railroad administrations keep the roads at all times in a condition of construction securing the necessary safety, and so to furnish them with equipment as the need of traffic demands.

#### ARTICLE 44.

The railroad administrations are obliged to furnish the passenger trains necessary for through service and for the establishment of harmonizing timetables, with suitable speed, likewise the freight trains necessary for the handling of the freight traffic, also direct dispatch in passenger and freight traffic, with allowance of the transfer of rolling stock from one road to another, upon payment of the usual rates.

#### ARTICLE 45.

To the Empire belongs the control of the system of tariffs. The same shall be exercised to the end:

1. That as soon as possible uniform operating regulations be introduced on all German railroads.

2. That the greatest possible uniformity and reduction of the tariffs be accomplished, especially that there be introduced for long distances in the transportation of coal, coke, wood, ores, stone, salt, pig-iron, fertilizers and similar articles a reduced tariff corresponding to the needs of agriculture and industry, and in the first instance as far as practicable the one-pfennig tariff.

**ARTICLE 46.**

In cases of distress, especially of unusual high cost of the necessities of life, the railroad administrations are obliged to introduce for transportation, particularly of grain, flour, legumes and potatoes, from time to time a low special tariff, corresponding to the need, to be fixed by the Emperor upon recommendation of the particular Committee of the Bundesrat, which tariff, however, may not be lower than the lowest for raw materials on the particular road.

The foregoing and also the provisions in Articles 42 to 45 do not apply to Bavaria.

However, as opposed to Bavaria also, the Empire has the right to set up by way of legislation uniform standards for the construction and equipment of the railroads important for the defence of the country.

**ARTICLE 47.**

All railroad administrations have to comply unhesitatingly with the demands of the authorities of the Empire in connection with the use of the railroads for the defence of Germany. Especially are the military forces and war material to be transported at uniform, reduced rates.

**VIII. POSTS AND TELEGRAPHS.****ARTICLE 48.**

The posts and telegraphs shall be organized and administered as a unified state means of communication for the whole territory of the German Empire.

The legislation of the Empire in matters of the posts and telegraphs, provided for in Article 4, does not extend to those things whose regulation, according to the controlling principles which have applied in the North-German postal and telegraphic administration, is left to regulative determination or administrative decree.

## ARTICLE 49.

The receipts of the posts and telegraphs are common for the whole Empire. The expenses are met out of the common receipts. The surpluses flow into the Imperial treasury (Division XII).

**NOTE**—Articles 49-52 did not become, effective for Baden until January 1, 1872.

As to Imperial finances, see Division XII of this Constitution, especially Article 70.

## ARTICLE 50.

To the Emperor belongs the supreme conduct of the postal and telegraphic administration. The authorities established by him have the duty and the right to take care that uniformity in the organization of the administration and in carrying on the service and also in the qualification of the officials is established and maintained.

To the Emperor appertains the issuance of the regulative determinations and general administrative decrees, and also the exclusive charge of the relations to other postal and telegraphic administrations.

All officials of the postal and telegraphic administration are obliged to comply with the decrees of the Emperor. This obligation is to be incorporated in the oath of office.

The appointment of the necessary superior officials connected with the administrative authorities of the posts and the telegraphs in the different districts (*e. g.*, the Directors, Councillors, Chief Inspectors), furthermore, the appointment of the postal and telegraphic officials acting as organs of the said authorities in handling the supervising service, etc., in the several districts (*e. g.*, Inspectors, Controllers) proceed for the whole territory of the Empire from the Emperor, to whom these officials render the oath of office. For State confirmation and publication, timely notice shall be given to the several State governments of the appointments in question, so far as they affect their territories.

The other officials needed in the administrative authorities of the posts and telegraphs and also all officials employed for the local and technical service, including those acting in the actual operating offices, etc., shall be appointed by the respective State governments.

Where an independent State postal or telegraphic administration does not exist, the provisions of the special treaties are decisive.

## ARTICLE 51.

In turning over the surplus of the postal administration for general Imperial purposes (Article 49) there is, in view of the hith-

erto existing differences in the net receipts acquired by the State postal administrations of the several districts, to be followed, for the purpose of a suitable equalization, the following procedure during the transitional period hereinafter mentioned:

From the postal surpluses which have accrued in the several postal districts during the five years 1861 to 1865 an average annual surplus shall be calculated, and the share which each separate postal district has had in the postal surplus resulting thereby for the whole territory of the Empire shall be fixed on a percentage basis.

In accordance with the proportion fixed in this way, there shall be credited to the several States, during the eight years following their entrance into the Imperial postal administration, on account of their other contributions to Imperial purposes, the quotas resulting for them from the postal surpluses accruing in the Empire.

After the lapse of the eight years that discrimination shall cease, and the postal surpluses flow into the Imperial treasury in undivided reckoning, according to the principle contained in Article 49.

Of the quota of the postal surplus accruing to the Hanseatic Cities during the aforesaid eight years one-half shall be placed annually and at once at the disposition of the Emperor for the purpose of meeting therefrom first of all the cost of the establishment of normal postal institutions in the Hanseatic Cities.

#### ARTICLE 52.

The provisions of the foregoing Articles 48 to 51 shall not be applied to Bavaria and Württemberg. In place thereof the following provisions shall apply to these two members of the Federation:

To the Empire exclusively appertains the legislation concerning the privileges of the posts and telegraphs, concerning the legal relations of both institutions to the public, concerning the franking privilege and concerning postal rates, exclusive, however, of the regulative and rate provisions for the domestic service within Bavaria and Württemberg, respectively, and also, with like restriction, concerning the fixing of rates for telegraphic correspondence.

There also appertains to the Empire the regulation of the postal and telegraphic intercourse with foreign countries, except Bavaria's and Württemberg's own immediate intercourse with their neighboring states not belonging to the Empire, the regulation of which is governed by the provision of Article 49 of the Postal Treaty of November 23, 1867.

In the receipts of the posts and telegraphs flowing into the Imperial treasury Bavaria and Württemberg shall have no share

## IX. NAVY AND NAVIGATION.

## ARTICLE 53.

The navy of the Empire is a unified one, under the supreme command of the Emperor. The organization and composition thereof appertain to the Emperor, who appoints the officers and officials of the navy, and for whom the same, together with the seaman, are to be sworn into service.\*

The harbors of Kiel and Jahde are Imperial naval stations.

The necessary expense of forming and maintaining the navy and the establishments connected therewith shall be met out of the Imperial treasury.

The entire seafaring population of the Empire, including the machinery personnel and the ship mechanics, is free from service in the land forces, but is liable to service in the Imperial navy.

**NOTE**—The word translated "navy" is *Kriegsmarine*.

The naval station of Jahde is better known as that of Wilhelms-haven, which is on the west side of Jahde Bay.

There was originally a fifth paragraph to Article 53. It was abrogated in 1893. It read as follows:

"The apportionment of requisitions to supply the ranks of the navy is had according to the existing seafaring population, and the quota furnished by each State in this connection is deducted from the number required for the land forces."

\* The following was added here, by amendment of October 28, 1918:

"The appointment, transfer, advancement and dismissal of the officers and officials of the navy, take place under the countersignature of the Imperial Chancellor."

As to the significance of this amendment, see under Articles 9, 11, 15, 17, 21, 64, 66 of this Constitution."

## ARTICLE 54.

The merchant ships of all the members of the Federation form a unified merchant marine.

The Empire has to determine the procedure for ascertaining the tonnage of sea-going vessels, to regulate the issuance of bills of tonnage, and also ship registers, and to fix the conditions upon which the license to navigate a sea-going vessel is dependent.

In the seaports and upon all natural and artificial waterways of the several members of the Federation the merchant ships of all the members of the Federation shall be admitted and treated alike. The tolls which are collected in the seaports from the sea-going vessels or their cargoes for the use of the navigation facilities may not exceed the costs required for the maintenance and usual construction of these facilities.

On all natural waterways tolls can be collected for only the use of special means which are designed for facilitating traffic. These tolls, and also the charges for navigating such artificial waterways as are state property, may not exceed the costs required for the maintenance and usual construction of the facilities and works. These provisions apply to rafting in so far as it is pursued on navigable waterways.

To lay upon foreign ships or their cargoes other or higher tolls than are to be paid by the ships of the members of the Federation or their cargoes is a right of no individual State, but of the Empire alone.

NOTE—The word translated "merchant marine" in the first paragraph is *Handelsmarine*.

ARTICLE 55.

The flag of the navy and merchant marine is black-white-red.

X. CONSULAR AFFAIRS.

ARTICLE 56.

The entire consular system of the German Empire is under the supervision of the Emperor, who appoints the consuls after hearing the Committee of the Bundesrat on Trade and Commerce.

In the districts of the German consuls new State consulates may not be established. The German consuls discharge for the members of the Federation not represented in their district the functions of a State consul. All existing State consulates shall be abolished as soon as the organization of the German consulates is so perfected that the representation of the separate interests of all the members of the Federation is recognized by the Bundesrat as secured by the German consulates.

XI. IMPERIAL MILITARY AFFAIRS.

ARTICLE 57.

Every German is liable to military service and cannot let himself be represented in the exercise of this duty.

ARTICLE 58.

The expenses and burdens of the entire military system of the Empire are to be borne by all members of the Federation and their subjects equally, so that neither preferences nor overburdenings of the several States or classes are fundamentally allowable. Where the equal distribution of the burdens cannot be made in

*natura* without detriment to the public welfare, the equalization is to be had according to the principles of justice, by way of legislation.

ARTICLE 59.

Every German capable of bearing arms belongs to the standing army for seven years, as a rule from the completed twentieth to the beginning of the twenty-eighth year of his life, and to the *Landwehr* of the first call for the next five years of his life, and then to the *Landwehr* of the second call until the 31st day of March of the calendar year in which the thirty-ninth year of his life is completed.

During the period of the compulsory service in the standing army the forces of the cavalry and mounted field-artillery must serve the first three years, all other forces the first two years, uninterruptedly with the colors.

With respect to the emigration of the reservists only those provisions are to control which apply to the emigration of members of the *Landwehr*.

**NOTE**—This Article originally consisted of two paragraphs, of which the third one here given was the second. An amendment of 1905 contains the first and second paragraphs here given. The first paragraph of the original Article read as follows:

"Every German capable of bearing arms belongs to the standing army for seven years, as a rule from the completed twentieth year to the beginning of the twenty-eighth year of his life—the first three years with the colors, the last four years in the reserves—and to the *Landwehr* for the next five years of his life. In those members of the Federation in which hitherto a longer total service than twelve years was legal, the gradual reduction of the duty takes place only in a degree that the consideration of the preparedness of the Imperial army for war permits it."

According to an amendment of 1888, the first sentence of this original first paragraph became as follows:

"Every German capable of bearing arms belongs to the standing army for seven years, as a rule from the completed twentieth year to the beginning of the twenty-eighth year of his life—the first three years with the colors, the last four years in the reserves—, to the *Landwehr* of the first call the next five years of his life, and then to the *Landwehr* of the second call until the 31st day of March of the calendar year in which the thirty-ninth year of his life is completed."

ARTICLE 60.

The peace strength of the German army shall be, until December 31, 1871, based upon one per cent. of the population of 1867, and shall be furnished by the several members of the Federation in proportion to the population. For the subsequent time the peace strength of the army shall be determined by way of Imperial legislation.

**NOTE**—See Article 71 of this Constitution.

**ARTICLE 61.**

After publication of this Constitution the entire Prussian military legislation is to be introduced without delay throughout the whole Empire, as well the statutes themselves as the regulations, instructions and rescripts issued in execution, explanation or supplement thereof, particularly therefore the Military Criminal Code of April 3, 1845, the Military Criminal Court Decree of April 3, 1845, the Ordinance concerning the Courts of Honor of July 20, 1843, the regulations concerning recruiting, period of service, quartering, commissariat, billeting, reparation of damage to fields, mobilization, etc., in time of war and in time of peace. But the Military Decree concerning Religious Services is excluded.

After the uniform completion of the military organization of the German army a comprehensive Imperial Military Statute shall be laid before the Reichstag and the Bundesrat for constitutional action.

**ARTICLE 62.**

To meet the expense of the whole German army and the institutions thereto belonging there shall, until December 31, 1871, be placed at the disposition of the Emperor annually as many times Two Hundred and Twenty-five (225) Thalers as the number of men in the peace strength of the army according to Article 60. Compare Division XII.

After December 31, 1871, these contributions are to be continued to be paid by the several States of the Federation to the Imperial Treasury. In computing them the peace strength provisionally fixed in Article 60 shall be retained until it is changed by an Imperial statute.

The expenditure of this amount for the whole Imperial army and its institutions shall be determined by the Budget Statute.

In fixing the Budget for the army expenditures the basis shall be the statutory organization of the Imperial army, as founded upon this Constitution.

**NOTE**—As to "Budget", see under Article 69 of this Constitution.

**ARTICLE 63.**

The entire land forces of the Empire shall constitute a single army, which in time of war and in time of peace shall be under the command of the Emperor.

The regiments, etc., shall have consecutive numbers throughout the whole German army. For the uniforms the primary colors and the cut of the royal Prussian army shall be the standard. The de-

termination of the external insignia (cockades, etc.) is left to the head of the particular Contingent.

The Emperor has the duty and the right to take care that within the German army all bodies of the troops are at hand in full complement and fit for war, and that uniformity in the organization and formation, in equipment and command, in the training of the forces, and also in the qualification of the officers is established and maintained. For this purpose the Emperor is authorized to satisfy himself of the condition of the several Contingents at any time by inspections, and to order the removal of defects thereby discovered.

The Emperor determines the strength, the composition and the division of the Contingents of the Imperial Army, and also the organization of the *Landwehr*, and has the right to designate the garrisons within the Federal territory and also to provide for the war-ready array of every part of the Imperial army.

For the maintenance of the indispensable unity in the administration, commissariat, arming and equipment of all bodies of troops of the German army, the respective regulations issued hereafter for the Prussian army are to be imparted, for observance in a fitting manner, to the commanders of the other Contingents, through the Committee on the Land Forces and the Fortresses mentioned in Article 8, No. 1.

**NOTE**—The word translated "Contingent" is **Kontingent**, which means the Contingent furnished by each of the several States towards the national or imperial army.

#### ARTICLE 64.

All German troops are obliged to obey unconditionally the commands of the Emperor. This obligation is to be incorporated in the military oath.

The highest commander of a Contingent and also all officers who command troops exceeding a Contingent, and all commanders of fortresses are appointed by the Emperor.\* The officers appointed by him render to him the military oath. In the case of generals and the officers discharging generalships with a Contingent the appointment is to be made dependent upon the approval of the Emperor in each instance.

The Emperor is authorized, for the purpose of a transfer, with or without promotion, to select from the officers of all the Contingents of the Imperial army for the places to be filled by him in the Imperial service, whether in the Prussian army or in other Contingents.

\* At this point there was inserted, by amendment of October 28, 1918, the following: "under the countersignature of the Imperial Chancellor."

As to the significance of this amendment, see under Articles 9, 11, 15, 17, 21, 53, 66 of this Constitution.

## ARTICLE 65.

The right to construct fortresses within the Federal territory appertains to the Emperor, who shall apply, in compliance with Division XII, for the appropriation of the means necessary therefor, so far as the ordinary Budget does not provide them.

## ARTICLE 66.

Where special conventions do not otherwise provide, the Federal sovereigns or the Senates, respectively, appoint the officers of their Contingents, with the restriction of Article 64. They are the Chiefs of all bodies of troops belonging to their territories, and enjoy all the honors connected therewith. They have particularly the right of inspection at any time, and receive, in addition to the regular reports and announcements concerning changes taking place, for the purpose of the necessary State sovereign publication, timely notice of the advancements and appointments affecting the particular bodies of troops.

They also have the right, for police purposes, not only to use their own troops, but also to requisition all other bodies of troops of the Imperial army, that are stationed in their territories.\*

**NOTE**—The "Senates" referred to are the Senates of the Hanseatic Cities of Bremen, Hamburg and Lübeck, which were considered the "sovereigns" thereof, the Cities themselves being states and members of the Federation in the full sense of the expressions.

\* There was added to this Article, by amendment of October 28, 1918, the following:

"The appointment, transfer, advancement and dismissal of the officers and military officials of a Contingent take place under the countersignature of the Minister of War of the Contingent. The Ministers of War are responsible to the Bundesrat and the Reichstag for the administration of their Contingent."

As to the significance of this amendment, see under Articles 9, 11, 15, 17, 21, 53, 64 of this Constitution. Stier-Somlo (p. 7, note 2) says it did not apply to Bavaria.

## ARTICLE 67.

Unexpended portions of the military appropriations belong under no circumstances to a separate State government, but always to the Imperial treasury.

## ARTICLE 68.

The Emperor can, if the public safety in the Federal territory is threatened, declare martial law in any part thereof. Until the enactment of an Imperial statute regulating the conditions, the form

of the proclamation and the effects of such a declaration, the provisions applying thereto shall be those of the Prussian statute of June 4, 1851 (Compiled Statutes, 1851, pages 451, ff.).

#### CLOSING PROVISION OF DIVISION XI.

The provisions contained in this Division are applicable in Bavaria according to the more detailed provisions of the Treaty of Alliance of November 23, 1870 (Federal Gazette, 1871, page 9) under III, §5, and in Württemberg according to the more detailed provisions of the Military Convention of November 21/25, 1870 (Federal Gazette, 1870, page 658).

### XII. IMPERIAL FINANCES.

#### ARTICLE 69.

All receipts and disbursements of the Empire must be estimated for each year and be put into the Imperial Budget. The latter shall be determined by statute before the beginning of the Budget year according to the following principles.

**NOTE**—"Budget" is here used in the same sense as in the translation of the Constitution of 1919. See under Article 28 of that Constitution.

#### ARTICLE 70.

To meet all common disbursements there shall be applied in the first place the common receipts flowing from the customs-duties and common taxes, from the railroads, posts and telegraphs and also from the other administrative branches. In so far as the disbursements are not covered by these receipts, they are to be defrayed by contributions of the several members of the Federation in proportion to their population, which contributions shall be assessed by the Imperial Chancellor to the amount of the Budget. In so far as these contributions are not covered by the assignments of the funds they are to be refunded to the members of the Federation at the end of the year to the extent that the other ordinary receipts of the Empire exceed its needs.

Any surpluses from preceding years shall be used, in so far as the statute fixing the Imperial Budget does not otherwise provide, to cover the common extraordinary disbursements.

**NOTE**—This Article is given as amended in 1904. Originally it was as follows:

"To meet all common disbursements there shall be applied in the first place any surpluses from preceding years and also the common receipts flowing from the customs-duties, the common taxes on articles of consumption, and from the posts and telegraphs. In so far as the same are not covered by these

receipts, they are, as long as Imperial taxes are not introduced, to be defrayed by contributions of the several members of the Federation in proportion to their population, which contributions shall be assessed by the Imperial Chancellor to the amount of the Budget."

These "contributions", proportionate payments or quotas were called *Matrikularbeiträge*.

#### ARTICLE 71.

The common appropriation shall, as a rule, be granted for one year, but can be granted for a longer period in special cases.

During the transitional period prescribed in Article 60 the Budget (arranged according to headings) covering the disbursements for the army is to be laid before the Bundesrat and the Reichstag merely for their information and remembrance.

#### ARTICLE 72.

Of the use of all receipts of the Empire an accounting is to be made annually, through the Imperial Chancellor, to the Bundesrat and the Reichstag, for the purpose of a discharge from responsibility.

#### ARTICLE 73.

In cases of extraordinary need the assumption of a loan can be had by way of Imperial legislation, and also the assumption of a guaranty by the Empire.

#### CLOSING PROVISION OF DIVISION XII.

To the expenditures for the Bavarian army Articles 69 and 71 apply only in accordance with the provisions of the Treaty of November 23, 1870, mentioned in the Closing Provision of Division XI, and Article 72 only in so far as the assignment to Bavaria of the amount required for the Bavarian army is certified to the Bundesrat and the Reichstag.

#### XIII. SETTLEMENT OF CONTROVERSIES, AND PENAL PROVISIONS.

#### ARTICLE 74.

Every undertaking against the existence, the integrity, the safety or the Constitution of the German Empire, finally an insult of the Bundesrat, the Reichstag, a member of the Bundesrat or of the Reichstag, a public authority or of a public official of the Em-

pire, while the same are engaged in the exercise of their office, or with reference to their calling, by word of mouth, writing, printing, drawing, pictorial or other representation shall be adjudged and punished in the several members of the Federation as under the existing or in-the-future effective statutes therein, according to which a like act committed against the individual member of the Federation, its Constitution, its legislative houses or estates, the members of its said houses or estates, its authorities and officials would be judicially handled.

**NOTE**—See the next Article, 75.

#### ARTICLE 75.

For those undertakings against the German Empire, designated in Article 74, which, if directed against one of the several members of the Federation would be qualified as high treason, the common Superior Court of Appeals of the three free Hanseatic Cities in Lübeck is the competent tribunal in the first and last resort.

The detailed provisions concerning the competency and the procedure of the Superior Court of Appeals shall be determined by Imperial legislation. Until the enactment of an Imperial statute, the hitherto existing competency of the courts in the several members of the Federation and the provisions relating to the procedure of these courts remain applicable.

**NOTE**—The word translated "Superior Court of Appeals" is *Oberappellationsgericht*.

#### ARTICLE 76.

Controversies between different members of the Federation, so far as they are not of a private-law nature and therefore to be decided by the competent tribunals, shall be disposed of by the Bundesrat upon application of one of the parties.

Constitutional controversies in members of the Federation in whose Constitutions no authorities to decide such controversies are designated, the Bundesrat has to settle amicably, upon application of one of the parties, or, if that is not successful, to bring them to settlement by way of Imperial legislation.

**NOTE**—The system of courts of ordinary jurisdiction was controlled by statute. There was one Imperial court, namely, the Imperial Supreme Court (*Reichsgericht*). The other courts were State courts, but they were controlled by Imperial statutes.

#### ARTICLE 77.

If in a member of the Federation a case of denial of justice occurs and adequate relief in statutory proceedings can not be at-

tained, it is the duty of the Bundesrat to receive substantiated complaints concerning denial of, or delay in, the process of law, to be adjudged according to the Constitution and the existing statutes of the particular member of the Federation, and thereupon bring about judicial relief at the hands of the State government that provoked the complaint.

#### XIV. GENERAL PROVISIONS.

##### ARTICLE 78.

Amendments of the Constitution are had by way of legislation. They shall be considered as rejected if they have fourteen votes against them in the Bundesrat.

Those provisions of the Imperial Constitution by which certain rights of individual members of the Federation in their relations to the whole are determined, can be amended only with the consent of the member of the Federation entitled to said rights.

**NOTE**—The provisions of the Constitution mentioned in the second paragraph of this Article are:

1. As to Bavaria: Article 4, Nos. 1, 3 and 10; Articles 35, 38, 46, 52; Closing Provisions of Divisions XI and XII.
  2. As to Württemberg: Article 4, No. 10; Articles 8, 35, 38, 52; Closing Provision of Division XI.
  3. As to Baden: Articles 35 and 38.
  4. As to Saxony: Article 8.
  5. As to Bremen and Hamburg: Article 34.
- See also Article 7 of this Constitution.

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Part Two

*Review*  
*OF THE*  
*Revolutionary Period*  
*1918-'19*  
*AND*  
*Constitution of 1919*  
*with*  
*INDEX*



## A.

REVIEW OF THE REVOLUTIONARY  
PERIOD, 1918 - 1919

## PROLOGUE.

The recent Revolutionary Period in Germany extended to the adoption of the Constitution in August, 1919. When it began, it is hard to say.

In passing through the Revolution of November 9, 1918, and the period following it Germany was very much like a ship at sea, upon which the crew mutinied and were at sixes and sevens after the helmsman and officers had jumped overboard or had been thrown overboard by the crew. The ship was not rudderless, but drifted, being carried hither and thither with the cross currents, with no one with authority at the wheel, and with no one with authority in command. The engines were kept going, and the ship kept in motion, but an observer could not tell what course she was following or whither she was bound. After a time order came out of the chaos. The German Empire was like the ship. The Kaiser and his associate sovereigns were like the helmsman and officers. They left the country, either voluntarily or involuntarily,—jumped overboard or were thrown overboard by the mutinous crew, *i. e.*, the German people. The German people were at sixes and sevens. The country drifted, being carried hither and thither with the cross currents of divergent political, social and economic streams of public thought. Somehow or another the country functioned as a state, but an observer could not tell who was running the government. No one with authority was visible at the wheel. No one with authority appeared to be in command. No one with authority was seen to keep the engines of government running. Indeed, they seemed to be running of their own momentum after the people took charge. The state seemed to function through and by some unseen, hidden, mysterious power. Whither the state was bound no one could tell. Finally order came out of the chaos, and persons with authority appeared at the different posts of government.

## CHAPTER 1.

As already stated, just when the Revolutionary Period in Germany started, it is hard to tell, and it probably never will be established to the satisfaction of everybody when it began, because the matter is obscure. There was some revolutionary agitation, but no revolutionary movement. By "movement" we mean an actual, continuous, connected, concerted, organized movement, not sporadic, independent manifestations or outbreaks. Political and governmental reforms had been advocated in Germany for years before the Revolution of 1918. Socialism and communism had been preached for decades. Reforms of the franchise had been fought for for years. A change to the parliamentary form of government—with its system of ministerial responsibility—had been advocated for a long, long time. Reforms along these lines were introduced or promised during the summer or fall of 1918, not as the end-result of a revolutionary movement, but in efforts to stem revolutionary agitation, to stave off a revolution. In spite of these reforms and promised reforms the revolutionary agitation continued and a revolution took place. It is not safe to say that either laborism or socialism or communism or any two or all of them started a revolutionary movement. Their representatives "agitated," it is true, but they only co-agitated with others, for there were other agitation-producing elements, including an impending stupendous military defeat, war-weariness, hunger, general economic distress, enemy propaganda, and, last but probably not least, certain Fourteen Points and certain state papers, speeches and notes from a high source in this country. The revolution was brought about by many elements working at the same time. No definite, well-defined strife between political parties produced it. Neither the laborites nor the socialists nor the communists were organized and ready to take charge when the revolution came. Indeed, no group or party was organized and ready to take charge when it came. That is exactly why the chaos resulted.

The only complete thing we know with absolute certainty is, that the German people revolted against conditions and authority as they existed. Like the crew of the ship, they mutinied, as a people, not having the least idea what they were going to do, once those in authority over them were gone.

There were at times outbreaks in different parts of the country. Some of these were sporadic and independent, and did not penetrate deeply into the body politic. Others were outward and visible manifestations of a general inner unrest. They were not parts of an organized, concerted movement. They were more or less unconnected and rather like straws showing the direction in which events were tending.

Before taking up these outbreaks, let us have a short review of the political parties of Germany. This is necessary, because, although the revolution was not brought about by a definite, well-defined strife between political parties, yet there was a rivalry between political parties in obtaining the mastery of the situation produced by the revolution. It was this struggle between political parties to reap the fruits of the revolution that constitutes the outstanding feature of the revolutionary period. It is the feature of that period that is of most interest to the statesman, publicist, jurist and sociologist.

Generally speaking, the great dividing line between the political elements was, of course, one between the Right and the Left—Conservatism and Liberalism. On each side of the line there were many shadings of political conviction, running off into extreme conservatism on the Right, and off into extreme socialism on the Left.

The conservatives can be dismissed with a few words. They were the Monarchists, Junkers, and others who advocated, at least in general, the continuance of the existing order of political, social and economic institutions. Previous to, and up to, the Revolution the most they would concede was certain constitutional reforms along the lines of the franchise and parliamentary government. At the time of the Revolution itself and during the immediately succeeding period they were afflicted with an attack of political paralysis, and became spectators of events.

On the Left, the Socialists—they call themselves "Social Democrats"—occupied the center of the stage and were the noisy actors of the play.

At the outbreak of the World War the Socialist members of the Reichstag were united in supporting the war. But by and by they began to split. In December, 1914, during the second war session of the Reichstag, Karl Liebknecht voted against the war credit. He was alone in this. But he found active assistants and lieutenants in his opposition to the war in several men and women, including Rosa Luxemburg.

The Socialist Party expelled Liebknecht from the party on February 2, 1915.

“The first of the anti-war propaganda articles whose surreptitious circulation later became so common were the so-called ‘Spartacus Letters,’ which began appearing in the summer of 1915. There had been formed during the revolution of 1848 a democratic organization calling itself the ‘Spartacus Union.’ The name came from that Roman gladiator who led a slave uprising in the last century of the pre-Christian era. This name was adopted by the authors of these letters to characterize the movement as a revolt of slaves against imperialism. The authorship of the letters was clearly composite and is not definitely known, but they were popularly ascribed to Liebknecht. His style marks some of them, but others point to Frau Luxemburg, and it is probable that at least these two and possibly other persons collaborated in them. They opposed the war, which they termed an imperialistic war of aggression, and summoned their readers to employ all possible obstructive tactics against it. Revolution was not mentioned in so many words, but the tendency was naturally revolutionary.” (Bouton, p. 80.)

Not much progress was made with the opposition during 1915, until December. The German armies were winning victories!

On the 21st of that month of December, Hugo Haase, one of the prominent leaders of the Socialist Party, and fourteen other members of his party voted, as members of the Reichstag, against the war credit.

In the early part of 1916 the opposition of Haase and his group, when the situation arising from the submarine warfare reached a sort of crisis, led to their expulsion from the Socialist Party by a party caucus, on March 24, 1916. There were eighteen of them. Liebknecht joined them. They were all internationalists.

These radicals kept up a propaganda against the continuance of the war.

They and their increasing following organized as the Independent Socialist Party in April, 1917. “Haase and Ledebour were chosen chairmen of the executive committee, and a plan of opposition to the further conduct of the war was worked out.

\* \* \* Revolution could naturally be no part of their open policy, and there may have been many members of the party who did not realize what the logical and inevitable consequences of their actions were. The leaders, however, were by this time definitely and deliberately working for the overthrow of the government, although it may be doubted whether even

they realized what would be the extent of the *débâcle* when it should come." (Bouton, p. 84.)

The Socialists from whom the Independent Socialists seceded became known as the Majority Socialists. Thus the Socialists were divided into two camps, the Majority Socialist Party and the Independent Socialist Party. This alignment of the Socialists among themselves continued up to the Revolution, but by that time the Independent Socialists had become tainted with Bolshevism.

In the meantime there had been certain outbreaks in different parts of the country, including some strikes.

But these strikes were, "up to 1918, chiefly due to dissatisfaction over material things—hunger \* \* \*, inadequate clothing, low wages, long hours, etc. They were encouraged and often manipulated by radical Socialists who perceived their importance as a weapon against the government, and were to that extent political, but the first great strike with revolution as its definite aim was staged in Berlin and Essen at the end of January, 1918. \* \* \*

"The January strike assumed large proportions, and so confident were the Berlin strikers of the strength of their position that they addressed an 'ultimatum' to the government. This ultimatum demanded a speedy peace without annexations or indemnities; the participation of workingmen's delegates of all countries in the peace negotiations; re-organization of the food-rationing system; abolishing of the state of siege, and freedom of assembly and of the press; the release of all political prisoners; the democratization of state institutions, and equal suffrage for women. The strikers appointed a workmen's council\* to direct their campaign, and this council chose an 'action commission,' of which Haase was a member." (Bouton, pp. 84-85.)

But this strike was put down by the authorities.

This propoganda of the Independent Socialists, although

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\* This was the first Workmen's (or Workers') Council, or among the first of such Councils, formed in Germany. Brunet says Ernest Daumig, a leader of the Independent Socialists, "had been to Moscow to study the Bolshevist movement, and Russia had come back with him in the persons of Joffe and his agents of propoganda. Already during the strikes of January, 1918, which had been organized by them, there had appeared for the first time in Germany Workers Councils; and in the days preceding the insurrection of November, 1918, Councils of Workers and Soldiers had been secretly organized at Kiel as well as in Berlin." (p. 17.)

aided by the increasing distress and hunger of the people, by certain unpopular war measures (notably the "*Hilfsdienstgesetz*, or Auxiliary Service Law, intended to apply military rules of enrollment and discipline to the carrying out of necessary work at home, such as wood-cutting, railway-building, etc."—Bouton, p. 83—passed in the autumn of 1916) and by the Russian Revolution of March, 1917, did not get far below the surface of the body politic. The outbreaks mentioned were sporadic. The movement was strongest in Berlin and generally in the industrial centers of Westphalia, but took only shallow root in the rural sections and small towns. (Bouton, p. 85.)

The Independent Socialists can not be said to have reaped much from their sowing up to and including January, 1918. They can not be said to have broken down the morale of the fighting forces to any great extent.

But there were other outbreaks which were manifestations of the inner unrest of the body politic and showed in which way the political wind was blowing. These outbreaks were not results of the propaganda of the Independent Socialists. They were essentially spontaneous outbursts of a war-weary and hungry people facing certain and disastrous military defeat. The Independent Socialists did not originate them. They rather endeavored to use them, and to make them weapons in their propaganda. At best (for them) they took advantage of, and fanned the manifestations of the unrest. They did not cause the original manifestations.

These manifestations first occurred where military defeat was first imminent, namely, in the navy, and in connection with the submarine service, in which drafts succeeded volunteers and "such a draft came to be considered as equivalent to a death-sentence." (Bouton, p. 90.) The disaffection spread to the High Seas Fleet. The Independent Socialists were promptly on the job. There was a mutiny in the fleet in the summer of 1917. In October, 1917, the Independent Socialists were openly attacked in the Reichstag for their propaganda among the sailors. The Russian Revolution of November, 1917, added fuel to the propaganda of the radicals in Germany, and the Treaty of Brest-Litovsk opened the door for activities of the Bolsheviki in Germany, through their ambassador, Joffe, and his cohorts.

In the meantime war-weariness, hunger and enemy propaganda (see Bouton, pages 100-104) were further undermining

the morale of the soldiers and people generally. These influences continued to act uninterruptedly until the Revolution.

Most ominous military reverses began in the summer of 1918.

The rumblings among the people were heard by those in authority. An attempt was made to stifle them with political or governmental reforms. Chancellor von Hertling had promised more participation by the people in the government. Bills to reform the franchise were pending in the Prussian Diet. On August 24, 1918, the number of the members of the Reichstag was raised from 397 to 441, the 44 new mandates being distributed among places theretofore unequally represented, namely, the large cities and certain industrial districts. But von Hertling made little headway.

Bouton (p. 110) says:

“Talk of a ‘chancellor crisis’ was soon heard, and by the middle of September there was little doubt that Hertling’s days were numbered. Nothing else can so adequately indicate the reversal of conditions in Germany as the fact that one of the men named oftenest even in *bourgeois* circles as a likely successor to Count Hertling was Philip Scheidemann, a leader of the Majority Socialists. \* \* \*

“The crisis became acute on September 20th. The government unofficially sounded the Majority Socialists as to their willingness to participate in a coalition government. The question was discussed on September 22d, at a joint conference of the Socialist Reichstag deputies and the members of the party’s executive committee. Although one of the cardinal tenets of Socialism had always forbidden participation in any but a purely Socialist government, the final vote was nearly four to one in favor of abandoning this tenet in view of the extraordinary situation confronting the empire.”

Although they sat in joint conference, the deputies and the executive committee voted separately. By a vote of 55 to 10 and 25 to 11, respectively, they approved the entrance of members of their party into a coalition government, under the following conditions:

“1. Unqualified acceptance of the Resolution of the Reichstag of July 19, 1917, with the declaration of willingness to join a League of Nations which rests upon the foundation of peaceful handling of all cases of disputes and of universal disarmament.

“2. Absolutely unambiguous declaration concerning the Belgian question, restoration of Belgium, understanding regarding indemnifications, restoration of Serbia and Montenegro.

“3. The Peace Treaties of Brest-Litovsk and Bucharest shall not stand in the way of a general peace treaty. Immediate introduction of civil administration in all occupied territories. Upon the conclusion of peace all occupied lands are to be evacuated; democratic popular representative bodies are to be established at once.

“4. Autonomy of Alsace-Lorraine, as of all German States of the Empire. Universal and equal, secret and direct franchise. The Prussian Diet is to be dissolved, if the same franchise does not without delay result from the deliberations of the House of Lords.

“5. Unity of the Imperial Government. Elimination of irresponsible side-governments. Appointment of government representatives from the parliamentary majority or from persons who are of the politics of the party majority. Abolishment of Article 9 of the Imperial Constitution. The political pronouncements of the Crown and of the military authorities are to be communicated to the Imperial Chancellor before they are made public.

“6. Immediate revocation of all provisions whereby the freedom of assembly and the freedom of the press are restricted. Censorship shall be applied to only purely military matters. Creation of a political authority for the control of all measures which are applied upon the ground of a state of siege. Removal of all military institutions which serve political influence.”\*

On September 30th these conditions became principles set up by the majority parties (Majority Socialists, Center, Progressives) as the program of the new Government. That program reads as follows:

“1. Adherence to the answer of the Imperial Government to the Pope's Note of August 1, 1917, and unqualified acceptance of the Resolution of the Reichstag of July 19, 1917.

“2. Declaration of readiness and willingness to join a League of Nations in accordance with the following principles:

“The League of Nations embraces all states and rests upon the idea of the equality of all peoples. Its object is the securing of a lasting peace, of an independent existence and free economic development of the nations.

“The League of Nations protects with all its powers its member states, with the recognition of their enjoyment of the rights vouchsafed them by the League, and excludes all special treaties contrary to its object.

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\* As given in Purlitz, *Waffenstillstand*, p. 2.

“The foundations of the League of Nations are: comprehensive expansion of the Law of Nations; mutual obligation of the states to refer every case of dispute, that can not be settled through diplomatic channels, to peaceful treatment; carrying out of the principle of the freedom of the seas; understanding concerning universal and simultaneous disarmament on land and on the water; guaranty of the open door for the economic and private-law intercourse of the nations; international development of social legislation and protection of the workers.

“3. Unambiguous declaration concerning the restoration of Belgium and understanding regarding indemnification.

“4. Peace treaties heretofore made shall not stand in the way of the conclusion of a general peace; in the Baltics, in Lithuania and in Poland popular representative bodies upon a broad basis are to be created at once. These states, in which civil administrations are to be introduced at once, regulate their Constitution and their relations to neighboring nations.

“5. Creation of an independent state of the Empire in Alsace-Lorraine, with guaranty of complete autonomy, corresponding to the demand of the popular representative body of Alsace-Lorraine.

“6. Immediate carrying out of the reform of the franchise in Prussia. Like efforts for such reform in those states of the Empire, in which it is lacking.

“7. Unity of the Imperial Government; appointment of government representatives from the Parliament for the carrying out of a united Imperial policy; strict observance of all constitutional responsibilities; removal of all military institutions which serve political influence.

“8. For the protection of personal freedom, of the right of assembly and of the freedom of the press—immediate change of the provisions concerning the state of siege. Restriction of the censorship to questions of the relations to foreign governments, of war strategy and tactics, movements of troops, production of war supplies. Creation of a political authority for the control of all measures which are applied upon the ground of a state of siege.”\*

But in the meantime the Handwriting had appeared upon the Wall of the Halls of the Mighty.

On September 24th Imperial Chancellor von Hertling made a long speech in the Reichstag on the condition of affairs. The speech did not make a satisfying impression, and after the four days taken up by its delivery and consideration, there was a

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\* As given in Purlits, *Waffenstillstand*, p. 44.

general feeling that a chancellery crisis was imminent. On September 28th the majority parties and the National Liberals united in demanding the immediate abolishment of Article 9, Sentence 2, of the Imperial Constitution and the immediate reorganization of Alsace-Lorraine. On September 29th von Hertling tendered his resignation to the Kaiser. On September 30th the Kaiser issued a decree, in which he asked von Hertling to continue in office until his successor could be found, and in which the Kaiser uses this significant language:

“I wish that the German people co-operate more effectively than heretofore in the determination of the fortunes of the Fatherland. It is therefore my will that men, who are supported by the confidence of the people, participate to a great extent in the rights and duties of the Government.”\*

The Conservatives on October 2d placed themselves upon the Kaiser's decree of September 30th, and, “with the sacrifice of conviction,” pledged support to a government that should wholeheartedly strive to end the war. The National Liberals placed themselves upon “the program of the majority parties of the Reichstag, and of the Kaiser and the future Imperial Chancellor,” and promised, “in common with the majority parties to co-operate in the carrying out of this program and to support with all might the coming Imperial Government.”

Purlitz (*Waffenstillstand*, p. 45) puts it in this way: After accord on the future course of Imperial policy had thus been attained between the Crown, the Imperial Government and the large parties of the Reichstag, except the Conservatives, Imperial Chancellor von Hertling's resignation was accepted and Prince Maximilian of Baden was appointed Imperial Chancellor, Prussian Prime Minister and Minister of Foreign Affairs of Prussia—all on October 3d.

In the Cabinet formed by Maximilian there were, according to Purlitz (*Waffenstillstand*, pp. 45-46), three members of the Center Party (Clericals) and two Majority Socialists, namely, Bauer (Minister, or State Secretary, of the to-be-created Department of Labor) and Scheidemann (the leader of his party), who was Minister, or State Secretary, without portfolio. Bouton says (p. 118): “It was the first German ministry to contain

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\* The whole decree may be seen in Purlitz, *Waffenstillstand*, p. 36.

a Social-Democrat, and the first which could be said to have strong democratic leanings.”\*

Maximilian informed the Reichstag of his program on October 5th.

In the meantime military reverses were piling up on the Western Front.

Bulgaria surrendered (September 30th).

During the night from October 4th to October 5th Germany started a request for an armistice to the United States via Switzerland.\*\*

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\* On the 5th of October the Independent Socialists branded the Majority Socialists as traitors to socialism. They accused them of surrendering to the *bourgeoisie* and to the “capitalistic Government”. See Purlitz, *Waffenstillstand*, pp. 72-74.

\*\* It was delivered at Washington on the morning of October 7th, accompanied by a note of the Swiss Ambassador dated October 6th. The American note of October 14, 1918, in which the German people were given to understand that they would have to do away with their autocratic and arbitrary disturbers of the world's peace before the Allies would deal with Germany, started a great commotion in that country. That commotion culminated in the demand for the Kaiser's abdication and resulted ultimately in that abdication. In an outburst of the Majority Socialists on October 17th they proclaimed that “Germany is on the way from an autocratic state (*Obrigkeitstaat*) to a people's state (*Volksstaat*)”—the “will of the people” is becoming the “supreme law”—“we are on the way to peace and to democracy”. See Purlitz, *Waffenstillstand*, pp. 108-110. The exchange of notes between the United States and Germany is reproduced by Purlitz, *Waffenstillstand*, near these pages. If these American notes did not actually produce the Revolution, they certainly helped to “speed it up”. They had as much to do with the demand for the Kaiser's abdication as any other one thing did—and probably more. The German people wanted peace—at any price, including the Kaiser. Hunger, more than impending military defeat, brought them to that degree of surrender. Military defeat was certain. Wilson and his Fourteen Points, as Amended, did not induce Germany to stop fighting when she might have conquered had they not appeared on the scene. She did not stop fighting because of them. She stopped fighting because she was facing sure defeat. But she hoped Wilson would save her face. She looked to him as she looked in the time of her mythology to a God to appease an enemy. Was the Kaiser a sacrifice placed on the altar before the Mighty One?

The end of the war (armistice and peace) was one thing.

The Revolution (abolishment of the Kaiser) was another thing.

They were not produced by the same thing.

By “Kaiser” here we mean not only William II, but the Kaiser as an institution of constitutional law

The Conservatives in the Prussian Diet withdrew their opposition to the reform of the franchise in Prussia.\*

On October 28th the Imperial Constitution was amended by two enactments by the concurrence of the Bundesrat and the Reichstag. According to one of them, Reichstag members were no longer to forfeit their seats and votes if they should accept salaried state or imperial offices. That was along the line of "parliamentary government," in enabling members of the Reichstag to enter the cabinet without surrendering their mandates. The same enactment provided that not only the Imperial Chancellor, but also his proxies, must be heard in the Reichstag at any time upon their demand. Thus the proxies did not have to be members of the Federal Council (Bundesrat) in order to be entitled to (and under circumstances obliged to) demand to be heard in the Reichstag. That was along the line of "ministerial responsibility." The second enactment provided that the consent of both the Bundesrat and the Reichstag was necessary for a declaration of war in the name of the Empire (previously the Reichstag had nothing to say about it), and that the consent of both the Bundesrat and the Reichstag was required for treaties of peace and for treaties with foreign states dealing with matters within the competency of imperial legislation (previously the Reichstag had nothing to do with treaties of peace—unless legislation was needed in order to carry them out—and the other treaties needed the "concurrence" of the Bundesrat and the "approval" of the Reichstag). The second enactment also provided that the Imperial Chancellor needed for the conduct of his office the confidence of the Reichstag, further provided for the "ministerial responsibility" to the Bundesrat and Reichstag of the Chancellor and his proxies, and placed the military power under the control of the civil authorities. Thus the "parliamentary form of government" was introduced and "militarism" was dealt a blow. Article 9, Sentence 2, was not amended or abolished. It provided that no one could be a member of the Bundesrat and of the Reichstag at the same time. Thus the Imperial Chancellor could not at the same time be a member of the Reichstag, since, according to Article 15, he had to be a member of the Bundesrat. With Article 9, Sentence 2, still standing,

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\* These reform measures were not enacted before the Revolution came. So Prussia went down with her "Three-Class" electoral system around her neck.

a member of the Reichstag as Imperial Chancellor could have presided formally in the Bundesrat, but he could not have voted Prussia's votes. That is Stier-Somlo's view (p. 5).

The significance of these constitutional reforms is, that the Bundesrat, in which the power of the monarchists was strongly entrenched, came over to the views and demands of the Reichstag, which was strongly democratic in sentiment.

Various states announced or promised reforms of the franchise and along the lines of parliamentary government.

The Independent Socialists and the Spartacans were now openly demanding the abdication of the Kaiser. Liebknecht delivered fiery speeches against the Hohenzollerns and for an uprising of the proletariat against the capitalists and *bourgeoisie*.

On October 26th Ludendorff resigns—after the Reichstag had, on that day, adopted the constitutional amendment placing the military under the civil authority.

On October 28th, the Kaiser "decrees" his full support of the reform measures. (This decree, however, was not made public until November 3d.)\*

Turkey quits (October 31st).

Austria surrenders (November 2d—armistice with Italy).

By this time the political pot in Germany was boiling hard.

Across the dark sky of Germany there appeared a comet, consisting of a head made up of Fourteen Points, and of a trailing tail made up of state papers, speeches and notes.

"'What will the Kaiser do?' asked the Berlin *Vorwärts* in its leading article on the last day of October. The article voiced a question which all but the most extreme reactionaries had been asking for two weeks. Even men devoted to the monarch personally and themselves convinced monarchists in principle realized that the only hope of securing a just peace lay in sacrificing Kaiser Wilhelm. Scheidemann, the Socialist Secretary of State, wrote to Chancellor Prince Max, declaring that the Kaiser must retire, and that his letter had been written 'in agreement with the leaders of the Socialist party and its representatives in the Reichstag'." (Bouton, p. 128.)

"The new government made an appeal to the people's reason. In a proclamation issued on November 4th and signed by Prince Max and all other members of the cabinet, including Scheidemann, it called attention to the parliamentary reforms

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\* This decree may be seen, in German, in Purlitz, *Revolution*, pp. 23-24; in translation, in Bouton, pp. 124-125.

already accomplished and summoned the people to give their fullest support to the government. These reforms were:

“Equal franchise in Prussia;\* the formation of a government from the majority parties of the Reichstag; the Chancellor and his ministers could retain office only if they possessed the confidence of the Reichstag and hence of the people; declarations of war and conclusions of peace now required the assent of the Reichstag; the military had been subordinated to the civil authorities; a broad amnesty had been declared, and the freedom of assemblage and of the press assured.” (Bouton, p. 131.)

Coming back to outbreaks, an order of the Admiralty on October 28th that the fleet was to be prepared for a cruise into the North Sea started a mutiny on some of the ships. At Kiel the mutiny spread from the ships to the town and resulted in a revolt on land. During the first week of November, especially beginning with Sunday, the 3d, there was a combination of mutiny, revolt and strike at Kiel.

During this trouble at Kiel the first Soldiers' Council in Germany was formed. Workers' Councils of Kiel joined in the agitation.

The Independent Socialists and Spartacans fanned the Kiel flame. It set on fire, rather than spread to, other parts of the country; at first Lübeck, Harburg, Bremen and other seaports, and then interior cities. Soldiers' Councils and Workers' Councils acted together. Finally sparks reached Berlin—on Thursday evening, November 7th, in the form of armed marines from Hamburg.

“The procedure was everywhere the same. Workmen's and soldiers' councils were formed, policemen and loyal troops were disarmed and the city government was taken over by the soviets. By Thursday evening soviet governments had been established in Hamburg, Cuxhaven, Wilhelmshaven, Bremen, Hanover, Rostock, Oldenburg and other places. The soviets in virtually all these places were controlled by Independent Socialists—even then only a slight remove from Bolsheviki—and their spirit was hostile not alone to the existing government, but equally to the Majority Socialists.” (Bouton, pp. 142-143.)

And they were hostile to the leaders of trade-unions.

“The government was \* \* \* embarrassed by the uncertain attitude of the Majority Socialists. Ostensibly these did not desire the overthrow of the monarchy, but merely of the

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\* See note above, p 78.

Kaiser; Scheidemann had declared in so many words that his party, despite the fact that it had always striven for an eventual republic, was willing to wait for such a development and was for the present not opposed to the maintaining of a constitutional monarchy. As late as November 8th Scheidemann told von Payer\* that the Socialists did not insist on the abolition of the monarchy.

“There were even Socialists who did not desire the Kaiser’s abdication.” (Bouton, p. 148.) But the sentiment for his abdication was strong in Bavaria, where it was not confined to the Socialists.

“If Scheidemann, Ebert and their fellow members in the central committee of the Majority Socialist organization had had their followers in hand the revolution could probably still have been prevented, or at least transformed into an orderly dethroning of the Kaiser and institution of parliamentary reforms. But they did not have them in hand, and the result was that *Vorwärts*, the party’s central organ, published in its morning issue [November 7th] a further demand for the Kaiser’s abdication. \* \* \* The appearance of this article was followed a few hours later by an ultimatum to the government, demanding that the Kaiser abdicate within twenty-four hours and declaring that if he failed to do so, the Socialists would withdraw from the government.\*\* It is probable that Scheidemann, Ebert and some of the other leaders of the party presented the ultimatum with reluctance,

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\* Vice-Chancellor.

\*\* Scheidemann was commissioned by the Majority Socialists to present the ultimatum to the Imperial Chancellor. It demanded that:

1. The orders against assemblies “today” be revoked.
2. The police and military be held in the strictest restraint.
3. The Prussian Government be re-organized immediately in conformity with the majority in the Reichstag.
4. The influence of the Majority Socialists in the Imperial Government be increased.
5. The abdication of the Kaiser and the renunciation of the throne by the Crown Prince be brought about by noon of November 8th.

It ended by saying that, if these demands were not complied with, the Majority Socialists would withdraw from the government.

This is as Purlitz, *Revolution*, pp. 25-26, reports the ultimatum. See a translation of the ultimatum, or of a report of it, in *The Living Age*, March 1, 1919, pp. 513-514. The *Living Age* there says the ultimatum was extended to midnight of the eighth. To the ultimatum Maximilian did not reply.

On the night of the eighth the Workers and Soldiers’ Council of Berlin was formed. On the next day—Revolution Day—it called a general strike in Berlin, the call being published in an extra edition of the *Vorwärts* at 1 p. m.

realizing what it would involve, but they were helpless in the face of the sentiment of the mass of their party and of the attitude of the Independent Socialists.

"The attitude of the Kaiser toward abdication was already known to them. Following Scheidemann's demand a week earlier Dr. Drews, the Minister of the Interior, had submitted the demand to the Kaiser. Scheidemann had declared that, if the Kaiser did not abdicate, the Independent Socialists would demand the introduction of a republic, in which case the Majority Socialists would be compelled to make common cause with them. The Kaiser, doubtless still convinced of the loyalty of the troops, was not moved by Drews's report. He declared that his abdication would mean complete anarchy and the delivering of Germany into the hands of the Bolsheviki. He could not accept the responsibility for such a step." (Bouton, pp. 150-151.)

"Throughout Thursday and Friday the Independent Socialists were feverishly active. Liebknecht, 'Red Rosa' Luxemburg and other Spartacans joined the Independent agitators in revolutionary propaganda among the soldiers and in making preparations for the final coup." (Bouton, p. 153.)

On November 8th Chancellor Maximilian offered to resign. It is said he did this because he thought the Kaiser should abdicate and he could not continue to hold the office if the Kaiser was of a different opinion. But the Kaiser refused to accept the resignation, and requested him to continue in office until his, the Kaiser's, final decision, which would be forthcoming shortly.

"Friday night the Berlin Workmen's and Soldiers' Council was organized at a meeting summoned by Barth, Haase and other Independents \* \* \* Barth presided at the meeting, which was held in the Reichstag chamber.

"The Majority Socialists now saw the hopelessness of keeping apart from the movement. They declared their solidarity with the Independents, and, in the few hours that remained, set about trying to save whatever could be saved out of the wreck which was plainly coming.

"Friday night, despite these occurrences, passed quietly." (Bouton, pp. 153-154.)

The crash came on Saturday, November 9th—"Revolution Day."

The ferment in the Empire received its first pronounced political impress in Munich, where a great demonstration of the Independent Socialists in the night from the 7th to the 8th of November was followed by serious disturbances, the expulsion of the royal family, and the proclamation of a republic. Up to

that time the ferment partook more of the nature of a mixed military-labor revolution—very “mixed!”

On November 9th the Kaiser abdicated\* and the Crown Prince—as was generally supposed—renounced the succession.\*\* The succession would thus have gone to the oldest son of the Crown Prince, which son was a minor. But this succession did not actually take place, nor did the regency that was necessarily involved with it.

During the afternoon of Revolution Day Chancellor Maximilian requested Ebert to take over the office of Chancellor.

Earlier in the day Maximilian issued the following proclamation:

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\* The formal act of abdication was signed by the Kaiser nineteen days later—November 28th. It reads as follows:

“I hereby renounce for all time the rights to and of the Crown of Prussia and the rights to and of the German Imperial Crown that are connected therewith. At the same time I release all officials of the German Empire and of Prussia, and also all officers, non-commissioned officers and forces of the Navy, of the Prussian Army, and the troops of the Federal Contingents from the Oath of Loyalty which they have rendered to me as their Emperor, King and Commander-in-Chief. I expect of them that, until the re-organization of the German Empire, they will help the persons exercising de facto power in Germany, to protect the German People against the threatening dangers of anarchy, famine and foreign domination

“Witness my own hand and affixed Imperial Seal.

“Amerongen, November 28, 1918.

[Signed] “WILHELM.”

It may be seen in German in Purlitz, *Revolution*, p. 32; and in a facsimile of the original and in a translation in *Current History*, March, 1919, p. 438. Another translation of it may be seen in *The Living Age*, March 1, 1919, p. 515.

\*\* The Crown Prince did not renounce his rights before his formal renunciation of December 1, 1918, which was a document reading as follows:

“I hereby expressly and definitively renounce all rights to and of the Crown of Prussia and to and of the Imperial Crown, which may appertain to me, whether by reason of the abdication of His Majesty the Emperor and King, or because of any other legal ground.

“Witness my own hand.

“Wieringen, December 1, 1918.

[Signed] “WILHELM.”

It may be seen in German in Purlitz, *Revolution*, p. 32.

“The Kaiser and King has decided to give up the throne.” The Imperial Chancellor will remain in office until the questions connected with the abdication of the Kaiser, the renunciation by the Crown Prince of the German Empire and Prussia of his rights to the throne, and the installation of a regency shall have been adjusted. He intends to propose to the regent the appointment of Deputy Ebert as Imperial Chancellor and a draft of a bill providing for the immediate calling of general elections for a constituent German national assembly, whose duty it would be to determine definitively the future form of government of the German people, including those peoples that may desire their inclusion within the borders of the Empire.”\*\*

But Maximilian was told by Ebert, Scheidemann, Braun and two members of the Workers' Council of Berlin, that they considered it absolutely necessary to form a socialistic government, since that alone could save Germany. Then came the request to Ebert to assume the chancellorship, and his acceptance.

In the pressure of events the “regency” was forgotten or thrown into the discard, and the Empire and Prussia became “democratic republics.” Ebert was or became Chancellor of an Empire that did not exist.

The other monarchs of the states of Germany closely preceded or closely followed the Kaiser into retirement, voluntarily or involuntarily, and their states became republics.

Here you have the German Revolution of 1918.

Here you have the ship in the possession of the unorganized mutinous crew.

It seems to us that the Revolution was not the result of outbreaks originated by the activities or propaganda of any political party or parties, but was caused by the inner unrest of a war-weary, hungry people, facing a disastrous, overwhelming military defeat, and believing or hoping the Wilson comet was a

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\* This announcement, made at about 1 p. m., preceded the actual decision of the Kaiser by something like an hour. And William II did not at this time decide to give up the throne of Prussia. He gave it up in his formal act of abdication of November 28th. It is Stier-Somlo's opinion (p. 8, note 2) that a renunciation by the Kaiser of his rights as Emperor without a renunciation by him of his rights as King of Prussia was constitutionally impossible.

\*\* The proclamation may be seen in German in Purlitz, **Revolution**, p. 26.

favorable omen; and the outbreaks were not organically connected manifestations of a centralized, concerted political movement, but were merely straws showing the direction of the political wind. Putting it a little differently, the Revolution appears to us to be a stupendous expression of a disapproval of the existing order of things by the great mass of the German people while looking to Wilson for salvation. The precipitancy of the Revolution was, apparently, due to an underlying dread of Bolshevism. It happened so quickly that there was no organization at hand to handle it. Hence the chaos that resulted.

## CHAPTER 2.

It is not our purpose to go into details of strikes, mutinies, desertions, street fighting or rioting, but only to outline the struggle of political parties for the mastery of the situation, and to trace the constitutional developments.

At 10 o'clock in the forenoon of Revolution Day negotiations began between the two groups of Socialists concerning the formation of a new Government in the Empire and in Prussia. Ebert, Scheidemann and David represented the Majority group; Ledebour, Vogtherr and Dittmann, the Independent group. It was agreed that both groups should meet with the Workers and Soldiers' Council in common at 12 o'clock; but at the request of the Independents the negotiations were put off until later.

At about 1 P. M. the abdication of the Kaiser and the renunciation of the Crown Prince were announced. Thereupon Scheidemann proclaimed, from the Reichstag building, the "German Republic," in some such words as these:

"The monarchical system has collapsed. A large part of the garrison has joined us. The Hohenzollerns have abdicated. Long live the great German Republic! Ebert is building a new Government, in which all Socialist parties are to be represented. Alongside the supreme military commander has been placed Deputy Göhre, who will sign the orders together with him. Nothing shall disturb the great victory which we have won! Preserve peace, order and safety!"\*

At 3 P. M. Ebert, Scheidemann, Braun and the two members of the Workers' Council of Berlin had the visit with Chancellor Maximilian, in the chancellery, when they told him of the necessity of forming a socialistic government, and when Ebert became "Chancellor."

Bouton says that the "socialistic government" it was then deemed necessary to form was "socialistic" "in a non-partisan sense; a republic based on the Socialist party's tenets, but not necessarily conducted exclusively by them," and that "the exclusion of the *bourgeoisie* was a later idea" (page 161, note). In another note on the same page he puts it thus: "The Ma-

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\* Taken from Purlitz, *Revolution*, p. 36. For a different and larger report of the occasion, see *The Living Age*, March 1, 1919, p. 515.

majority Socialists honestly intended to form a people's government representing all parties. That only Socialists were eventually admitted was due to the flat refusal of the Independents to let the despised *bourgeoisie* have any voice whatever in the governmental affairs."

Later on, on November 9th, Ebert signed, as "Imperial Chancellor," a proclamation, which informed the public that he had taken over the chancellorship and in which he said: "I am in process of forming the new government by agreement with the parties, and will shortly inform the public of the result. The new government will be a People's Government."\* At the same time Ebert signed and issued, as "Imperial Chancellor," an appeal to the authorities and officials to rally to the support of the new government, and to let their patriotism overcome any disinclination to work with "the new men who have undertaken to guide the Empire," with whom he knew it would be hard for them to co-operate.\*\* When Ebert signed these papers it is doubtful that the chancellorship was still in existence; but, if it was, November 9th soon thereafter became "Revolution Day" and put an end to it.

In the evening of Revolution Day Ebert, Scheidemann and Landsberg signed and issued a proclamation announcing, among other things, that:

"This day has completed the freeing of the people. The Emperor has abdicated, his eldest son has renounced the throne. The [Majority] Social Democratic Party has taken over the Government, and has offered entry into the Government to the Independent Social Democratic Party on the basis of complete equality. The new Government will arrange for an election of a Constituent National Assembly, in which all citizens of either sex who are over 20 years of age will take part with absolutely equal rights. After that it will resign its powers into the hands of the new representatives of the people.'\*\*\*

Ebert, Scheidemann and Landsberg were at that time no cabinet or ministry under the Constitution of 1871. They were

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\* Taken from *The Living Age*, March 1, 1919, p. 515, where the whole proclamation is translated. It may be seen in German in Purlitz, *Revolution*, pp. 36-37.

\*\* This appeal may be seen in Purlitz, *Revolution*, p. 37.

\*\*\* *The Living Age*, March 1, 1919, p. 516, where the whole document is translated.

merely men selected by the Majority Socialists to represent them in the "Government" they, the Majority Socialists, had "taken over".

In the meantime, in the late afternoon the three representatives of the Majority Socialists again conferred with the three representatives of the Independent Socialists, in the endeavor to arrange for a coalition government. They came to no agreement, except, apparently, that each group or party should have three members in the "cabinet" that was to be formed. A constituent national assembly was opposed by the Independents. So "the Independents withdrew to confer with their party's executive committee. This committee debated the question for some hours with the Workmen's and Soldiers' Council. Liebknecht, still nominally an Independent, for the *Spartacus Bund* had not yet been formally organized as a separate party; Ledebour, Dittmann, and Barth, who was chairman of the council, took a leading part in the debate that ensued. It was finally decided to make the Independents' participation in the government conditional upon the granting of certain demands" (Bouton, pp. 164-165). These demands were put up to the three representatives of the Majority Socialists, who in turn put them up to their party's executive committee, which gave out its answer, at 8:30 P. M., as follows:

"To the Executive Committee of the Independent Social-Democratic Party.

"Guided by the sincere wish to arrive at an agreement, we must make clear to you our fundamental attitude to your demands.

"You demand:

"1. Germany is to be a socialistic republic.

"This demand is the goal of our own policy; however, the people, through the constituent assembly, has to decide the matter.

"2. In this republic the whole executive, legislative and judicial power is to be exclusively in the hands of chosen representatives of the whole laboring population and of the soldiers.

"If by this demand is meant a dictatorship of a part, of a class, behind which the majority of the people do not stand, then we must reject this demand, because it is contrary to our democratic principles.

"3. Exclusion of all *bourgeois* members from the Government.

“This demand we must reject, because its fulfilment would seriously endanger the feeding of the people, if not render it impossible.

“4. The participation of the Independents shall apply for only three days, as a provisional measure, in order to create a Government capable of concluding the armistice.

“We deem a co-operation of the Socialist groups necessary at least until the convening of the constituent assembly.

“5. The Departmental Ministers shall count only as technical assistants of the real and deciding cabinet.

“To this demand we agree.

“6. Equal powers to the two heads of the cabinet.

“We are for equal powers to all the members of the cabinet; however, the constituent assembly has to decide the matter.”\*

It was agreed that night to resume the negotiations the next morning, Sunday, which was done. The Executives of the Independent Socialists presented to the Executives of the Majority Socialists the following:

“To your communication of November 9, 1918, we reply as follows:

“The Independent Social-Democratic Party is ready, in order to fortify the revolutionary socialistic gains, to enter the cabinet under the following conditions:

“The cabinet shall consist of only Social Democrats, who shall stand side by side as equal People’s Commissaries (*Volkskommissare*).

“This restriction does not apply to Ministers of special training (*Fachminister*\*\*); they are only technical assistants of the deciding cabinet. With each of them will be associated two members of the two Social Democratic Parties with equal rights, one of each Party.

“A period of limitation will not be attached to the entrance of the Independent Social Democrats into the cabinet (to which each party delegates three members).

“Political power lies in the hands of the Workers’ and Soldiers’ Councils, which are to be assembled at an early date in a general convention from the whole Empire.

“The question of a Constituent Assembly will not be acted upon until after a consolidation of the conditions brought about

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\* Taken from Purlitz, *Revolution*, p. 38. Compare the translation in *The Living Age*, March 1, 1919, p. 516.

\*\* See pages 99, 102, below.

by the Revolution and is therefore to be reserved for future discussions.

“In case of the acceptance of these conditions, which are dictated by the desire for a united front of the proletariat, we have delegated to the cabinet our members Haase, Dittmann and Barth.”\*

The three representatives selected by the Majority Socialists as members of the Government, namely, Ebert, Scheidemann and Landsberg, declared themselves satisfied with these conditions. Thus, by concessions on each side, the two Socialist Parties got together, and formed a “Government”, consisting of the six men last mentioned, who are sometimes called People’s Commissioners (*Volksbeauftragte*), sometimes People’s Commissaries or Commissars (*Volkskommissare*), sometimes Government (*Regierung*), sometimes Cabinet (*Kabinett*).

At the meeting of the Workers and Soldiers’ Council of Greater Berlin, held Saturday night, it was decided to elect local Councils the next morning. In the larger factories one member of a Workers’ Council was to be elected for every thousand employees. Smaller factories were to unite for the election of members. Each battalion or formation of soldiers was to elect one member of a Soldiers’ Council in their barracks and hospitals. All the Workers’ and Soldiers’ Councils so created were to assemble Sunday afternoon, at 5 o’clock, at the Circus Busch, in Berlin, for the election of a provisional government.

“When, at 5:00 p. m., the combined workmen’s and soldiers’ councils of Greater Berlin met in the Circus Busch, Ebert was able to announce that the differences between the two Socialist parties had been adjusted. \* \* \* A considerable number of front-soldiers were present, and the meeting was dominated throughout by them. They demonstrated at the outset that they had no sympathy with fanatic and ultraradical agitators and measures, and Liebknecht, who delivered a characteristic passionate harangue, demanding the exclusion of the Majority Socialists from any participation in the government, had great difficulty in getting a hearing.” (Bouton, p. 172). Yet, in the proclamation mentioned just below, the meeting expressed sympathy with soviet Russia.

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\* Taken from Purlitz, *Revolution*, p. 42.

The meeting formally approved, ratified and confirmed the choice of the six People's Commissioners.

It elected an Executive Council (*Vollzugsrat*), consisting of twenty-eight men, fourteen workers and fourteen soldiers, each group being made up of seven Majority Socialists and seven Independent Socialists. This Executive Council was to conduct affairs until the holding of a general convention of all Workers and Soldiers of Germany. It in turn confirmed the choice of the six People's Commissioners and established rules for their guidance.

As Bouton reminds us, neither the Executive Council nor the People's Commissioners "could claim to have their mandate from the whole Empire, but they assumed it" (p. 173).

The Circus-Busch meeting adopted a proclamation to the working classes, of which the following passages\* bear most closely on constitutional matters:

"Germany has become a republic, a socialistic republic."

"The bearers of political power are now Workers' and Soldiers' Councils. In all garrisons in which no Workers' and Soldiers' Councils exist, the formation of such Councils will rapidly take place. In the open country Peasants' Councils will be created for the same purpose."

"The task of the provisional government, which is sanctioned by the Workers and Soldiers' Council of Berlin, will primarily be, to conclude the armistice and to put an end to the bloody butchery."

"Immediate peace is the parole of the Revolution."

"The rapid and consequential socialization of the capitalistic means of production is, according to the social structure of Germany and to the ripeness of its economic and political organization, capable of being accomplished without serious disturbance. It is necessary, in order to build up a new economic order from the blood-soaked ruins, and to avoid the economic enslavement of masses of the people, the destruction of cultur. All Workers, intellectual and manual, who are filled with this ideal, who seriously are in favor of its realization, are called to co-operate for it."

The meeting "sends its brotherly greetings to the Russian union of Workers and Soldiers", and resolves "that the German

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\* Taken from the proclamation as given by Purlitz, *Revolution*, pp. 48-49.

republican Government immediately take up international-law relations with the Russian Government, and awaits the representation of this movement in Berlin."

"The Workers and Soldiers' Council is conscious of the fact that the revolutionary power cannot make good at one stroke the crimes and mistakes of the old régime and of the propertied classes, that it cannot immediately bring to pass a glittering condition for the masses. But this revolutionary power is the only one that can yet rescue what can be rescued. The socialistic republic is alone in a position to redeem the forces of international socialism for the bringing about of a democratic permanent peace."

After the meeting in the Circus Busch, the "Cabinet" (Ebert, Scheidemann, Landsberg, Haase, Dittmann, Barth) met and organized as a body with equal rights, as "Council of the People's Commissioners." The chairmanship was divided between Ebert and Haase, which meant these two would have to work in accord and sign documents before their acts would be valid. The labors of the "Cabinet" were distributed among the members.

On the same day, the *Vollzugsrat* named the members of the "People's Cabinet for Prussia."\*

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\* There was no constitutional authority for the so-called successorship in the chancellorship, from Maximilian to Ebert. Maximilian could not name his successor, and it is the writer's opinion that the ending of Maximilian's chancellorship marked the end of the Empire under the Constitution of 1871 as the sole fundamental law. Although Ebert signed documents as Chancellor and considered himself Chancellor, there was no constitutional authority for such a Chancellor. What followed the termination of Maximilian's chancellorship was not within the four corners of the Constitution of 1871, but was part of a formative revolutionary flux. It is the writer's view that a *de facto* national government was first created when Ebert, Scheidemann and Landsberg took charge of affairs as announced in their proclamation on the evening of November 9th.

Brunet says (p. 14): "When Vice-Chancellor von Payer asked Ebert if he intended to conduct the government on the basis of the Constitution or in the name of the Councils of Workers and Soldiers, Ebert replied, 'Within the frame work of the constitution.' After short deliberation and in view of the fact that the troops in Berlin had deserted the old government the cabinet of Maximilian decided to place in the hands of Ebert the powers of Chancellor of the Empire 'subject to the approval of the legislature.'"

Stier-Somlo says (p. 8): "Prince Max of Baden lays down the office of Imperial Chancellor and, after consultation with the State Secretaries, requests Ebert to take over the office, subject to legislative ap-

“There was still some scattered firing in Berlin on Monday, but comparative order was established. The six-man cabinet

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proval. This transaction is without constitutional justification and cannot be founded upon anything in the Constitution in force up to that time.”

Thus it appears that Ebert considered himself under the Constitution of 1871, but that it was thought some constitutional approval of his appointment was necessary. No such approval was had.

Brunet says that the “proclamation of the republic” by Scheidemann in front of the Reichstag building “took place several minutes after the installation of Ebert as Chancellor” (p. 14), and he is of the opinion “that on November 9, 1918, when at two in the afternoon in front of the Reichstag Scheidemann proclaimed the Republic, the ancient régime had fallen in Germany” (p. 15). But that was Scheidemann’s “proclamation,” not Ebert’s. (Bouton—p. 161—says Ebert proclaimed the republic, as his first official act, in a speech to a crowd in front of the Chancellery. He also says—p. 161: “Scheidemann, like Max, also anticipated events, for the republic had not yet been authoritatively proclaimed, nor had Ebert been appointed Chancellor,”—thus contradicting Brunet. Purlitz does not record the Ebert proclamation.) Ebert thereafter issued the proclamation and the appeal, mentioned in the text, signed by him as “Chancellor.” There was at that time neither an “Empire” nor a “Republic” legally in existence—something was in the making but was not completed.

When in the evening of November 9th, Ebert, Scheidemann and Landsberg signed the proclamation issued by them, they were really acting as usurpers, on behalf of the Majority Socialists. They were backed up by only their own party. When on November 10th the three Independent Socialists—Haase, Dittmann and Barth—joined them, the six acted as usurpers. They were backed up by only a couple of political parties. Even then, on the 10th, Ebert signed, as “Imperial Chancellor,” an appeal to the “home army,” in which it was asked to avoid civil war, and in which the formation of Soldiers’ Councils was approved, but they were asked to keep order and to work for the closest understanding between men and officers, and the appeal contained an injunction against the use of arms against the German people except in self-defence, or in cases of meaner crimes or to prevent pillage. (This appeal may be seen in Purlitz, *Revolution*, pp. 42-43. Compare the telegram sent two days later to the supreme command of the army, by the six People’s Commissioners.) And the “Imperial Chancellor” issued further appeals on the 10th, to the Workers’ and Soldiers’ Councils (warning them against interference with railroad transportation) and to the people (asking them not to interfere with provisions on the way to the army in the field). Whatever motive, reason or excuse Ebert had for calling himself Chancellor on these occasions, he certainly was not acting under the Constitution of 1871.

The meeting at the Circus Busch might be called a body of usurpers, as far as the whole of Germany is considered, but it at least backed up a machinery of national government with officials at the head who thereby acquired some show of authority besides the support of mere political parties. That government rested upon a much broader basis after the national Congress of Workers’ and Soldiers’ Councils held in Berlin in December, 1918.

See, also, note on page 135, below.

was in almost uninterrupted session, and the first result of its deliberation was an edict, issued on Tuesday, making many fundamental changes in existing laws." (Bouton, p. 174).

This edict or proclamation was *legislative* in tone, and was also the "Cabinet's" program of government. It reads as follows:

"To the German people.

"The Government which has come out of the Revolution and whose guidance is purely socialistic sets itself the task of realizing the socialistic program. It now announces, with statutory force, the following:

"1. The state of siege is abolished.\*

"2. The right of association and assembly is subject to no restriction, even for officials and state workers.

"3. A censorship is not had. The censorship of theatrical performances is abolished.

"4. Expressions of opinion by word of mouth and in writing are free.

"5. The freedom of religious practice is guaranteed. No one shall be forced into a religious act.

"6. An amnesty is granted for all political penal offences. The pending court proceedings for such penal offences are quashed.

"7. The Statute concerning the National Auxiliary Service\*\* is abolished, with the exception of the provisions referring to the settlement of disputes.

"8. The Code of Regulations for Domestic workers is null and void, and also the statutory exceptions against rural workers.

"9. The provisions for the protection of labor which were abolished at the beginning of the war are hereby again put into effect.

"Further socio-political decrees will be published shortly. The maximum eight-hour day of labor will come into effect not later than January 1, 1919.\*\*\* The Government will do everything in order to provide for ample opportunity to work. A decree concerning the support of the unemployed is worked out and ready. It distributes the burdens between the Empire, State

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\* A state of siege for the city of Berlin and the Province of Brandenburg was declared on or about September 6, 1918. A general state of siege began with the war. Apparently both were abolished by this order.

\*\* As to this statute, see above, p. 72.

\*\*\* The eight-hour day was introduced in some industries by decrees of November 23, 1918, and December 17, 1918. See Brunet, p. 212, note 1.

and Commune.—In the domain of sickness insurance the insurance obligation will be extended beyond the hitherto existing limit of 2500 marks.—The shortage of dwellings will be dealt with by the furnishing of dwellings.—Efforts will be made for a securing of the regular feeding of the people. The Government will maintain ordered production, and protect property against interference of private individuals, and also the freedom and safety of the person.—All elections to public bodies are to be carried out henceforth in accordance with equal, secret, direct and universal suffrage, upon the basis of the system of proportional representation, for all male and female persons at least twenty years old.

“This suffrage also applies to the Constituent Assembly, concerning which more detailed provisions will follow.”\*

On the same day (Tuesday) the “Cabinet” sent a telegram to the supreme command of the army, which, after reciting that an orderly demobilization is necessary, in order to avoid chaos, famine and want, and that strict self-discipline is expected of the supreme command, requests the supreme command to announce those statements to the army in the field and to issue the following orders:

“The relations between officer and men are to be built up upon mutual understanding. Prerequisites thereto are willing subordination of the men under the officer and comradely treatment of the men by their superior.

“2. The superiority in rank of the officer continues to exist. Unqualified obedience in service is of decisive importance for the success of the return of the troops to their German homes. Military discipline and order in the army must therefore be maintained under all circumstances.

“3. The Soldiers’ Councils have, for the maintenance of confidence between officer and men, an advisory voice in questions of the commissariat, leaves of absence and furloughs, and the infliction of disciplinary penalties. It is their highest duty to work for the prevention of disorder and mutiny.

“4. The same food for officers, officials and men.

“5. The same bonuses in pay. The same additional allowances for service in the field for officers and men.

“6. Use of arms against members of our own people is to

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\* This edict or proclamation may be seen in the German in Puritz, *Revolution*, pp. 50-51. Another translation may be seen in *The Living Age*, March 1, 1919, p. 517.

be made only in self-defence and for the prevention of pillage.\*\*

A similar telegram was sent by the "Government" to the Navy Department. In it the marines were called upon to render unqualified obedience, to cease damaging ships and material, and to co-operate in carrying out the terms of the armistice.

Von Hindenburg, on November 11th, put himself and the army at the disposal of the "Cabinet." Local military authorities also co-operated with the "Cabinet." The Grand Headquarters was removed from Spa to Homburg vor der Höhe.\*\*

"The Soldiers' and Workmen's Councils held plenary sessions on Monday and ratified the proceedings of Sunday. The spirit of the proceedings, especially in the Soldiers' Council, was markedly moderate. Ledebour, one of the most radical of the Independent Socialists, was all but howled down when he tried to address the soldiers' meeting in the Reichstag. Colin Ross, appealing for harmonious action by all factions of Social-Democracy, was received with applause.

"The *Vollzugsrat*, which was now in theory the supreme governing body of Germany, also took charge of the affairs of Prussia and Berlin. \* \* \*

"The *Vollzugsrat* made a fairly clean sweep among the Prussian ministers, filling the majority of posts with *Genossen*\*\*\*. Many of the old ministers, however, were retained in the national government, including Dr. Solf as Foreign Minister and General Scheuch as Minister of War, but each of the *bourgeois* ministers retained was placed under the supervision of two Socialists, one from each party, and he could issue no valid decrees without their counter-signature\*\*\*\*. The same plan was followed by the revolutionary governments of the various federal states." (Bouton, pp. 183-184.)

As before stated, the "Cabinet" formally organized on Sunday, after the meeting in the Circus Busch, and its labors were distributed among its six members. The State Secretaries, or Ministers, and the Chiefs of the Imperial offices were left in

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\* The whole telegram may be seen, in the German, in Purlitz, *Revolution*, p. 51, and, translated, in *The Living Age*, March 1, 1919, p. 518.

\*\* In Hesse-Nassau, nine miles northwest of Frankfort-on-the-Main.

\*\*\* Comrades.

\*\*\*\* Members of the two Socialist groups were put into office, but they did not have any of this "supervision" over or beside them.

temporary discharge of their former duties.\* A re-organization of the national Departments by the "Cabinet" on November 14th removed some uncertainty and confusion in the minds of the public, and put the Departments on a permanent, clear basis. As Bouton says, many of the old Ministers or State Secretaries were retained in the national government. Erzberger was one of such State Secretaries. He was to open up the peace negotiations, in conjunction with the Foreign Office.

The "Ministry" or body made up of these Ministers, or State Secretaries, must be kept in mind as distinct from the "Cabinet," *i. e.*, "Council of People's Commissioners," and both of them must be sharply differentiated from the *Vollzugsrat*, *i. e.*, the Executive Council of the Workers' and Soldiers' Councils of Greater Berlin, which council was recognized, even by the "Cabinet," as the supreme governing body or authority of all Germany—in theory, though perhaps not always in practice, for clashes early and frequently arose, for example, between it and the "Cabinet" on governmental measures, resulting in constitutional friction and constitutional jealousy between them.

At the very start, with its edict or proclamation of November 12th, the "Cabinet" assumed unto itself *legislative* power. That was a clash with the claims of the *Vollzugsrat*. The latter sought to maintain itself as the supreme power in the "German Republic"—and in Prussia—in spite of the establishment of the Ebert-Haase government. On the same November 12th it, the *Vollzugsrat*, designated itself, in a command by it to the troops of Greater Berlin, as the "head of the executive military power;" yet it said that the "Imperial Government" had consented to its, the *Vollzugsrat's*, creation,—the *Vollzugsrat* thereby, as Stier-Somlo remarks (p. 10), itself unconsciously placing its constitutional superiority in question. The troops were to obey its orders and those of the representative General Command. In the "official declaration" of the same day, November 12th, all public authorities, including the national authorities mentioned by name, were told to continue to discharge their duties, and it was stated that all orders of these authorities were issued under commission from the *Vollzugsrat*, and were

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\* The officials at the head of the old Imperial Departments (of Foreign Affairs, of the Interior, of the Treasury, etc.) were officially called "State Secretaries" (*Staatssekretäre*), but they are sometimes designated "Ministers" by writers.

to be obeyed by everybody. As already indicated, the *Vollzugsrat*, of its own motion, created a new Prussian Ministry.

The armistice had come, on November 11th.

The Spartacans formally organized as a party on November 14th. Liebknecht, of course, was their leader.

On November 14th (by decree that became effective with its promulgation the next day) the "Cabinet" permitted the Bundesrat to continue to exercise the *administrative* functions, but not the *legislative* functions, enjoyed by it under the old Empire.\* On the next day, *i. e.*, the 15th, the "Cabinet" refused to permit the Reichstag to assemble, with this statement: "In consequence of the political overturn, which has done away with the institution of the kaiserdome as well as with the Bundesrat in its capacity of a legislative body, the Reichstag elected in 1912 also can not reconvene". That was not without protest, but the old Reichstag never met after October 28, 1918. Brunet says (p. 16): "In February, 1919, it was dissolved by decree which also declared that its last session was dated as of November 9, [1918]."

On the same day, November 15th, the Prussian Government, in conformity with a resolution of the *Vollzugsrat*, dissolved the Prussian House of Representatives, and abolished the House of Lords, these two Houses having theretofore constituted the Prussian Diet. It seems the "Cabinet" had nothing to do with this, at least officially.\*\*

On the same 15th day of November the "Cabinet" announced its financial program, in which it declared it was not its intention to seize bank accounts, savings accounts, money, bank notes, etc., nor to repudiate the War Loans or touch their legality, although it did intend to draw on large estates and incomes heavily to meet expenditures. It was emphasized that

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\* The Bundesrat seems to have shrivelled up and died without further constitutional action. Its members—except those from the Hanseatic cities—were deputized by the monarchs of the different states of the Empire. When those monarchs dropped out of constitutional offices, the Bundesrat lost its heart's blood. When said states became republics they lost interest in monarchist institutions, among which the Bundesrat was classed. The writer recalls no statement that they deputized new members to the Bundesrat, and no record of activities of the Bundesrat after November 14th.

\*\* This is according to Purlitz, *Revolution*, p. 55. Bouton (p. 198) says the "Cabinet" ordered the dissolution and abolishment.

the salaries, pensions and other claims of public officials and employees, of officers and others of the military, of those damaged by the war, and of the surviving dependents of such persons were to remain unaffected and to continue to be valid.

The "Cabinet," in its edict or proclamation of November 12th, promised the summoning of a national constituent assembly. That was in keeping with the proclamation of Ebert, Scheidemann and Landsberg of November 9th, and Chancellor Maximilian's proclamation of November 9th. The Spartacans openly opposed it, and some of the Independent Socialists joined in this opposition. Indeed the Berlin Workers and Soldiers' Council and the *Vollzugsrat* opposed the national assembly or demanded that the question be relegated until a national congress of Workers' and Soldiers' Councils could settle the future of the country.

In the face of this opposition the "Cabinet" weakened in its clashes with the *Vollzugsrat*, and on November 22d it reached an understanding with the *Vollzugsrat*, in which the "Cabinet" declared its agreement with the following principles:

1. "The political power lies in the hands of the Workers' and Soldiers' Councils of the German socialistic republic. Their task is, to maintain and round out the accomplishments of the Revolution and to keep 'down counter-revolution.

2. "Until a congress of the Workers' and Soldiers' Councils has elected an Executive Council (*Vollzugsrat*) of the German republic, the Berlin *Vollzugsrat* exercises the functions of the Workers' and Soldiers' Councils of the German republic in an understanding with the Workers' and Soldiers' Councils of Greater Berlin.

3. "The appointment of the Council of the People's Commissioners by the Workers and Soldiers' Council of Greater Berlin means the transferring of the executive power of the republic.

4. "The appointment and dismissal of the members of the deciding Cabinet of the republic and—until the final regulation of the state relations—also of Prussia shall be had by the central *Vollzugsrat*, which shall also have the right of control.

5. "The *Vollzugsrat* is to be consulted before the Cabinet appoints skilled ministers (*Fachminister\**)."

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\* See page 89, above, and page 102, below.

The national assembly is nowhere mentioned in this "understanding," as Meyer-Anschütz points out (p. 1037).

But the cry for a national assembly was very general throughout the country, and after a conference with representatives of the different states (except Saxe-Weimar, Mecklinburg-Strelitz and Schwarzburg-Sondershausen), held at Berlin on November 25th, the "Cabinet" took new courage. At that conference it was resolved to strive for a united Empire, to resist separatist movements, and to adhere to the calling of a national assembly, but, until the convening of the national assembly, the Workers' and Soldiers' Councils were to be recognized as the bearers of sovereignty, in accordance with their claim to power.

Even the three Independent Socialists in the "Cabinet" yielded to the popular demand for a national assembly.

So, on November 30th :

"The six-man cabinet announced that a national assembly would be convened. The date tentatively fixed for the elections\* was February 2d,\*\* which was a compromise, for the Majority Socialists wanted an earlier date, while the Independent trio desired April. It was announced also that a central congress of all Germany's workmen's and soldiers' councils had been summoned to meet in Berlin on December 16th. This congress was to have power to fix the date for the national assembly and to make the necessary preparations." (Bouton, p. 211.)

That Congress so convened, and it "was a remarkably representative body. The numerical weakness of the two radical wings of Socialism found striking illustration in the makeup of the congress. Of its total membership of some four hundred and fifty, the Spartacans and Independents together had only about

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\* On the same day, November 30th, the "Cabinet" adopted and promulgated the qualifications of the electors and the regulations for these elections. Voters were to be all German men (including soldiers) and women, twenty years old or older on election day. The elections were to be general, direct and secret, according to the principles of the proportional system of representation. Any qualified elector could be elected if a German citizen of at least a year's standing on election day. The suffrage "enactment" was called "Imperial Election Statute" (*Reichswahlgesetz*).

\*\* This should be February 16th; or the date was again tentatively fixed, at February 16th.

forty delegates.\* That this accurately represented the proportionate strengths of the conservative and the radical camps was proved at the elections for the national assembly a month later, when the Independents, with four per cent of the total popular vote, again had one-eleventh of the Majority Socialists' forty-four per cent." (Bouton, p. 211.)

The Congress convened on December 16th and was in session until December 20th.\*\* There were some stormy sittings. The Spartacans and Independent Socialists attempted to have the Russian soviet system of government adopted as that of Germany. These efforts met with overwhelming defeat. Even permission for Liebknecht and Rosa Luxemburg to address the Congress was refused, by a vote of five to one. Desperate efforts had been made to elect them as delegates, but neither had been chosen. While the Spartacan and Independent-Socialist delegates raised disturbances within the Congress, Liebknecht was busy raising disturbances outside the Congress—even in the same building.

On December 18th the Congress adopted the following:

"The Imperial Conference (*Reichskonferenz*) of the Workers' and Soldiers' Councils of Germany, which represents the whole political power in Germany, transfers, until other regulation by the National Assembly, the legislative and executive powers to the Council of the People's Commissioners. The Congress further orders a Central Council (*Zentralrat*) of the Workers' and Soldiers' Councils, which shall exercise supervision over the German and Prussian Cabinets. To it appertains the right of appointment and dismissal of the People's Commissioners of the Empire and, until the final regulation of the state relationships, also of the People's Commissioners of Prussia. For the supervision of the conduct of business in the Imperial Departments or Offices, supervisors shall be placed over the State Secretaries or Ministers by the Council of the People's Commissioners. To each Imperial Department or

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\* The returning front-soldiers—the first of whom marched into Berlin on December 10th—were, on the whole, opposed to radicalism and threw their support to the policies of the Majority Socialists. This fact and the revelation, on December 8th, of the machinations of the Russian Bolshevik Ambassador, Joffe (who was finally expelled from Germany on November 6th), and his cohorts—among them many Germans, especially prominent Independent Socialists—proved of great assistance to the Majority Socialists. See Bouton, pp. 209 and 98 ff.

\*\* Purlitz (*Revolution*, p. 201) calls the Congress "the first German Parliament."

Office there shall be assigned two supervisors, who are to be taken from the two Socialist Parties. Before the appointment of the technical Ministers (*Fachminister\**) and supervisors the Central Council (*Zentralrat*) is to be heard."

On December 19th the Congress changed the date of the elections for the National Assembly from February 16th to January 19th, by a vote of 400 to 50.\*\* That was the outcome of long, spirited debates on the issue of National Assembly *versus* Workers' and Soldiers' Councils.

Many measures and policies were debated by the Congress, and much was left to the Council of People's Commissioners to "execute". The latter was also directed to begin immediately the socialization of "all industries suited thereto", especially of mines. That was the outcome of extensive debates and speeches and propaganda of long standing, in which capitalism and monopoly were not dealt with gently, and, all things considered, the outcome was very moderate. Rabid socialization lost out in the Congress just as Bolshevism did.

Ebert and Haase declared, on behalf of the "Cabinet", that they understood supervision of the "Cabinet" by the *Zentralrat* meant that all proposed laws were to be submitted to the *Zentralrat* for discussion, but the "Cabinet" had the right to enact statutes without the previous concurrence of the *Zentralrat*, because the latter had the right to recall the members of the "Cabinet" at any time. A motion to give the *Zentralrat* the right of previous concurrence to statutes was rejected, upon a call of the roll.

The *Zentralrat* supplanted the Berlin *Vollzugsrat* in national affairs; so the latter fell back into the position of a Berlin institution.

The *Vollzugsrat* almost at the start of its career became infected with Red radicalism. It met with determined resistance from the Soldiers' Councils of Berlin. It gradually drifted to the Left. The Independent-Socialist members of it dominated it, although the two parties (Majority and Inde-

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\* See pages 89 and 99, above.

\*\* The elections for the National Assembly were not held early because demobilization had not taken place (hence the soldiers could not vote) and because the Socialists wished to "educate" the people more thoroughly in their policies. It was also not known which Germans would remain Germans, nor which Non-Germans would become Germans. But in the end these last two considerations were of no avail—the peace negotiations dragged along too slowly.

pendent) were evenly divided on it. On December 5th the election of two Independents to take the place of two vacancies among the soldier members gave the Independents the numerical control, 16 to 12. There was, as already shown, much friction between it and the "Cabinet".\* And during the Con-

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\* By December 9th it was time for another "understanding" between these two bodies; so on that day, at joint session, they agreed as follows:

"Both, created by the Revolution, strive for the same political goal, to secure for the German People the socialistic Republic. The Council of People's Commissioners adheres unconditionally to the constitution produced by the Revolution, which cannot be changed without the consent of the **Vollzugsrat** of the Workers' and Soldiers' Councils. From the position of the **Vollzugsrat** results the right of control; to the Council of the People's Commissioners belongs the executive function transferred to it. Both are convinced that their activity can be exercised beneficially only by trustful co-operation. We are confident that our people, in recognition of the difficult internal and external situation, will energetically support us in our endeavors."

On December 1st, an Imperial Committee (**Reichsausschuss**) of the **Vollzugsrat** was formed, with Daümig as chairman. It consisted of nineteen members—8 from Greater Berlin (Prussia), 8 from Non-Prussian states, and 1 from each of the East Front, West Front and the Navy. It was a sort of superexecutive committee on national affairs.

During the evening of December 6th there was a demonstration by troops before the Chancellery, during which Ebert was proclaimed President of the Socialist German Republic, but he declared that before heeding that call he would have to consult his friends in the "Government," and said: "The conduct of affairs must remain firmly in the hands of the Imperial Government. We have always tried to work in common with the Workers' and Soldiers' Councils, in whose hands power lies. And we have also come to an agreement with the **Vollzugsrat** of Berlin." He appealed to the crowd to have patience until the assembling of the Congress in Berlin on December 16th, "which is to take action on the technically earliest possible date of the National Assembly."

(In passing, it might be mentioned that a motion, made in the Congress of December 16th-20th, to elect a "President of the Republic" was withdrawn.)

On December 14th, the "Cabinet," by a special legislative enactment, created a volunteer militia (**freiwillige Volkswehr**)—"Free-Corps". It was placed under exclusive control of the "Cabinet."

(This voluntary militia, together with some of the forces of the old army, was of material assistance to the "Government" in the uprising during the first part of January, 1919. The National Assembly passed, on February 27, 1919, a statute creating a provisional Imperial Militia—**Reichswehr**. The Independent Socialists voted against it.)

One of the greatest causes of the friction between the "Cabinet" and the **Vollzugsrat** was the extension, or attempted extension, by the **Vollzugsrat** of its "right of control" to actually handling governmental business, especially in national matters. Its conduct was especially offensive in the national Navy Department. Its extravagant use of money and demands for money also caused much irritation,

gress that convened on December 16th the *Vollzugsrat* steadily lost ground and reputation.\* It had become "strongly Independent Socialist and Spartacan" (Bouton, p. 212). It had even invited Russia to send delegates to the Congress. The *Zentralrat*, which replaced it in national affairs, was composed entirely of Majority Socialists—thanks to a bolt of the Independent Socialists. It consisted of twenty-seven soldiers and workers.

Up to the end of the Congress on December 20th the Majority Socialists and Independent Socialists in the "Cabinet" worked together pretty well, but subsequent events brought about their severance. During some of the military disturbances in Berlin, Ebert, Scheidemann and Landsberg, without consulting their Independent colleagues, on December 23d ordered force to be used to end the disturbances. The Independents asked the *Zentralrat* (entirely Majority-Socialist) its attitude in the matter. The *Zentralrat* approved the employment of force. Thereupon the Independents withdrew from the "Cabinet", on December 29th. The Majority Socialists tendered their resignation to the *Vollzugsrat*, but it was not accepted.

Bouton tells us (p. 220):

"Ebert, Scheidemann and Landsberg, in a manifesto to the people, declared that the Independents had, by their resignations, refused to take a stand in favor of assuring the safety of the state. The manifesto said:

"By rejecting the means of assuring the state's safety, the Independents have demonstrated their incapacity to govern. For us the revolution is not a party watchword, but the most valuable possession of the whole wealth-producing folk.

"We take over their tasks as people's commissioners with the oath: All for the revolution, all through the revolution. But we take them over at the same time with the firm purpose to oppose immovably all who would convert the revolution of the people into terror by a minority.'"

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\* When this Congress assembled, the *Vollzugsrat* had been increased in membership to forty-five, by the addition of representatives of Workers' and Soldiers' Councils of other parts of Germany than Greater Berlin or Prussia. This increase of membership was decided upon on November 23d, and was made in order to parry or meet the opposition to the *Vollzugsrat* in other parts of Germany because of its assumption to act for the whole country, which fact added to its unpopularity. After the Congress assembled three more members were added in the same way, bringing the total number to forty-eight.

On December 29th the *Zentralrat*, in a joint session with the "Cabinet", elected, to fill the vacancies caused by the withdrawal of the Independent Socialists (Haase, Dittmann, Barth) from the "Cabinet", Noske (Governor of Kiel), Wissel (member of the old Reichstag) and Löbe (editor of the Socialist *Volkswacht* of Breslau). But Löbe refused to serve, and his place was not filled; and the "Cabinet" consisted of five members until replaced by a new cabinet by action of the National Assembly in February. Scheidemann replaced Haase as chairman with Ebert.

The People's Commissioners continued to recognize the Workers' and Soldiers' Councils and their *Vollzugsrat* or *Zentralrat* in the scheme of government after the Congress of December 16th-20th. On December 21st, in a semi-official statement, they said, that everywhere the people, represented by the Workers' and Soldiers' Councils, had taken the place of the former possessors of the highest power, and that the legislative power had been transferred to them, the People's Commissioners, by the bearers of sovereignty. On December 29th they referred to the *Zentralrat* as "the highest instance" of power. And, as shown in the preceding paragraph, it was the *Zentralrat* that elected, or at least co-operated in the election of, the three People's Commissioners to succeed the three Independent Socialists who withdrew from the "Cabinet".\* In appeals to the public and the soldiers issued by the *Zentralrat* on December 29th, it itself says it has "again confirmed" Ebert, Scheidemann and Landsberg as People's Commissioners and has completed the Government by the appointment of Noske, Wissel and Löbe as members of it; and to the soldiers, they added: "The new Imperial Government is the highest body of officials of the German Republic, and every one, who bears arms, owes loyalty to it as the highest military command."

As late as January 29, 1919, the People's Commissioners recognized the *Zentralrat* as a "controlling" authority over their activity. They put down the January disturbances in Berlin in harmony with it.

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\* In the Berlin Congress Landsberg, one of the People's Commissioners, said, on December 17th: "We have never disputed the right of control belonging to the *Vollzugsrat*," but he complained of its construing that right to mean the right to handle or transact the actual business in hand.

The *Zentralrat* was a busy body in that month of January, issuing appeals and proclamations on various occasions, and holding many conferences on national and Prussian matters.

The Spartacans reorganized on December 30th, as the "Communist Laborers' Party of Germany—Spartacus League," and were talking civil war. They welcomed Radek and other Bolsheviks. The rising storm broke in January, the first big demonstration being on Sunday, the fifth.

"The *Vollzugsrat* [*Zentralrat*] rose to the occasion like a *bourgeois* governing body. It conferred extraordinary powers on the cabinet and authorized it to use all force at its disposal to put down the Bolshevik uprising. That it was Bolshevik was now apparent to everybody. The cabinet, still hesitant about firing upon *Genossen*,\* conferred with the Independents Haase, Dittmann, Cohn and Dr. Rudolph Breitscheid, the last named one of the so-called 'intellectual leaders' of the Independent Socialists. These men wanted the government to 'compromise.' \* \* \*

"\* \* \* Despite their traditions of and training in party 'solidarity,' the cabinet could not help seeing that the 'compromise' proposed would mean handing the government over bodily to Liebknecht, for Haase and Dittmann had long lest all power to lead their former followers back into democratic paths. The bulk of the party was already irrevocably committed to practical Bolshevism." (Bouton, pp. 227-228.)

Noske handled the military for the "Government." The uprising was put down. Liebknecht and Rosa Luxemburg were arrested. On January 15th or 16th they were killed.

The country now proceeded to the elections of the members of the National Assembly. Election day was January 19th.\*\*

"The Spartacans, as outspoken enemies of any national assembly, could not consistently have anything to do with it and placed no ticket in the field. Most of the Independent Socialists were also opponents of a constituent assembly, but

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\* Comrades.

\*\* During the Revolutionary Period elections were held in Prussia and other states of Germany for state constituent or constitutional assemblies or conventions, under provisions closely like those of the *Reichswahlgesetz* of November 30th, 1918.

the party organization was still trying to blow both hot and cold and had not yet gone on record officially as favoring a soviet government and the dictatorship of the proletariat." (Bouton, p. 237.)

Bouton says that the Majority Socialists polled about forty-three per cent. of the total number of popular votes, and elected 163 delegates to the Assembly; and that the Independent Socialists elected 22 delegates; the "Democrats" (former Progressives and Left Wing of the National Liberals) elected 75; the German Christian Party (the former Clericals or Center) 88; the Conservatives (now under the name of the German National People's Party) 42; the German People's Party (former Right Wing of the National Liberals) 21; and 10 delegates fell to the lot of four smaller organizations;—total 421.\*

"The total membership of the National Convention was to have been 433 delegates, but the French authorities in charge of the troops occupying Alsace-Lorraine refused to permit elections to be held there, which reduced the assembly's

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\* These figures as to the number of delegates elected by the different parties are the same as those given by Purlitz, *Revolution*, p. 419.

Meyer-Anschütz gives the following figures (pp. 1038-1039): German National Party, 34; German Christian Party, 88; German People's Party, 23; German Democratic Party, 77; Majority Socialists, 164; Independent Socialists, 24; smaller organizations, 11;—total 421.

According to the New International Year Book for 1919 (p. 291): "The actual votes cast for the largest parties were: Majority Socialists, 11,112,450; Democrats, 5,552,930; Centre, 5,338,804; Conservatives, 2,729,186; Independent Socialists, 2,186,305, and the German People's Party, 1,106,408."

Brunet (p. 28) sums up the results as follows:

Parties	Votes.		Deputies.		
	Round Numbers	Men	Women	Total	
German National People's Party	3,200,000	39	3	42	
German People's Party	1,200,000	21	1	22	
Center	6,000,000	83	6	89	
Democrats	5,600,000	67	7	74	
Majority Socialists	11,400,000	146	17	163	
Independent Socialists	2,300,000	19	3	22	
Other Parties	500,000	7	2	9	
<b>Grand Totals</b>	<b>30,200,000</b>	<b>382</b>	<b>39</b>	<b>421</b>	

In addition, says Brunet, there were two deputies, both Majority Socialists, sent by the troops on the Western front.

membership to 421.\* A majority was thus 211, and the two Socialist parties, with a combined total of 185, could accomplish nothing without 26 additional votes from some *bourgeois* party. As it later developed, moreover, the government party could count on the support of the Independents only in matters where Socialist solidarity was sentimentally involved; on matters affecting economic policies there was much more kinship between the Majority Socialists and the Democrats than between them and the followers of Haase." (Bouton, p. 241.)

The Clericals (German Christian Party) stood in the "center," between the Right and Left, or rather astride the line between the Right and Left, and held the real balance of power.

"Democracy had an overwhelming majority in the assembly." (Bouton, p. 242.) Not the "Democrats," but democracy.

The "Cabinet" called the National Assembly to convene at Weimar on February 6th; and it there and then convened. The call was issued without consultation with the *Zentralrat*, which resented such treatment. (The call is dated January 21st, and was published January 24th.)

"On February 7th Dr. Eduard David, a scholarly man who had been for many years one of the Majority Socialists' leaders, was elected president (speaker) of the National Assembly. The other officers chosen came from the Christian, Democratic and Majority Socialist parties, the extreme Right and extreme Left being unrepresented. Organization having been effected, a provisional constitution was adopted"—on February 10th. (Bouton, p. 245.)

Under that Constitution Ebert was elected "President of the German Empire" (*Präsident des Deutschen Reiches*), on February 11th, by a vote of 277 out of a total of 379. Count

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\* Purlitz, *Revolution*, p. 419, says the elections also could not be held in a part of Poland, because of enemy occupation, and that 17 of the delegates were missing. But he accounts for 421 elected delegates. As already shown, Brunet accounts for 423 delegates, but says two of them, Majority Socialists, were sent by the soldiers on the Western front. The election decree or ordinance of November 30, 1918, provided for the election of 433 delegates, distributed among 37 election districts, of which one was Alsace-Lorraine, to which were assigned 12 delegates. The system of proportional representation was applied to the election. That system was also incorporated in the statute of August 24, 1918, which increased the membership of the Reichstag and established new election districts.

Posadowsky received 49 votes, and Scheidemann and Erzberger one each. Fifty-one ballots were blank.

On February 13th a Ministry or Cabinet was chosen, with Scheidemann as Prime Minister or Minister-President. This Cabinet consisted of 7 Socialists, 3 Democrats, 3 Centrists, and 1 Nationalist. (International Year Book for 1919, pp. 291, 295. The personnel of this Cabinet may be seen in Pur-litz, *Revolution*, pages 580-581.) As David accepted membership in that Cabinet, he resigned as president or speaker of the National Assembly. On the next day, February 14th, Fehrenbach was elected to succeed him in that office.

On February 10th, after the adoption of the Provisional Constitution, the People's Commissioners redeemed their promise to surrender their powers to the National Assembly, but the Assembly, by unanimous resolution, kept them functioning until the Cabinet was formed on February 13th.

“The days between the elections and the convening of the National Assembly brought \* \* \* serious complications in Germany's domestic situation. Disaffection among the soldiers was increased by an order of Colonel Reinhardt, the new Minister of War, defining the respective powers of officers' and the soldiers' councils. The order declared that the power of command remained with the officers in all matters affecting tactics and strategy. The councils' functions were confined to matters of provisioning and to disciplinary punishments. This order, although in accordance with the original decree of the cabinet regarding the matter, failed to satisfy men who had become contemptuous of all authority except their own.

“The Workmen's and Soldiers' Councils of the whole country were also disquieted by the announcement of the government that, with the convening of the National Assembly, all political power would pass to the assembly, and revolutionary government organs everywhere and of all kinds would cease to exist. This was not at all to the taste of most of the members of the Soviets. \* \* \* The combined Soviets of Greater Berlin voted, 492 to 362, to demand the retention of the Workmen's and Soldiers' Councils in any future state-form which might be adopted. Other Soviets followed the example, and there was talk of holding a rival congress in Berlin contemporaneously with the sessions of the National Assembly in Weimar.” (Bouton, p. 243.)

“The Spartacans, who since their defeat in Berlin in January had been more carefully watched, began to assemble

their forces elsewhere. Essen became their chief stronghold, and the whole Ruhr district, including Düsseldorf, was virtually in their hands. Other Spartacan centers were Leipsic, Halle, Merseburg, Munich, Nuremberg, Mannheim and Augsburg. All this time, however, they were also feverishly active in Berlin." (Bouton, p. 255.)

The agitation culminated in the call of a general strike in Berlin, March 3d, which developed a serious situation for the authorities.

At a party congress, convening at Berlin on March 2d and lasting four days, the Independent Socialist Party "went over to the Spartacans officially, bag and baggage." (Bouton, p. 259.)

Bouton says of this (p. 259):

"In theory, to be sure, it did nothing of the kind. It maintained its own organization. 'rejected planless violence,' declared its adherence to 'the fundamental portion of the Erfurt program,' and asserted its readiness to use 'all political and economic means' to attain its aims, 'including parliaments,' which were rejected by the Spartacans. Apart from this, however, there was little difference in theory and none in practice between the platforms of the two parties, for the Independents declared themselves for Soviet government and for the dictatorship of the proletariat and their rejection of violent methods existed only on paper."

They set up a revolutionary program, in which it was declared (Bouton, p. 260):

"In all capitalistic lands the Soviet system is growing out of the same economic conditions and becoming the bearer of the proletarian world-revolution.

"It is the historic mission of the Independent Social-Democratic Party to become the standard bearer of the class-conscious proletariat in its revolutionary war of emancipation.

"The Independent Social-Democratic Party places itself upon the foundation of the Soviet system. It supports the Soviets in their struggle for economic and political power.

"It strives for the dictatorship of the proletariat, the representatives of the great majority of the people, as a necessary condition precedent for the effectuation of Socialism.

"In order to attain this end the party will employ all political and economic means of battle, including parliaments.'"

And the following "immediate demands" were proclaimed (Bouton, pp. 261-262):

"1. Inclusion of the Soviet system in the constitution: the Soviets to have a deciding voice in municipal, state and industrial legislation.

"2. Complete disbandment of the old army. Immediate disbandment of the mercenary army formed from volunteer corps. Organization of a national guard from the ranks of the class-conscious proletariat. Self-administration of the national guard and election of leaders by the men. Abolishment of courts-martial.

"3. The nationalization of capitalistic undertakings shall be begun immediately. It shall be carried through without delay in the mining industry and production of energy (coal, water, electricity), iron and steel production as well as other highly developed industries, and in the banking and insurance business. Large estates and forests shall immediately be converted into the property of society, whose task it shall be to raise all economic undertakings to the highest point of productivity by the employment of all technical and economic means, as well as to further comradeship. Privately owned real estate in the cities shall become municipal property, and the municipalities shall build an adequate number of dwellings on their own account.

"4. Election of officials and judges by the people. Immediate constitution of a state court which shall determine the responsibility of those persons guilty of bringing on the war and of hindering the earlier conclusion of peace.

"5. War profits shall be taxed entirely out of existence. A portion of all large fortunes shall be handed over to the state. Public expenditures shall be covered by a graduated tax on incomes, fortunes and inheritances. The war loans shall be annulled, but necessitous individuals, associations serving the common welfare, institutions and municipalities shall be indemnified.

"6. Extension of social legislation. Protection and care of mother and child. A care-free existence shall be assured to war widows and orphans and the wounded. Superfluous rooms of the possessing class shall be placed at the disposition of the homeless. Fundamental reform of public-health systems.

"7. Separation of church from state and of church from school. Uniform public schools of secular character, which shall be erected on socialistic-pedagogic principles. Every child shall have a right to an education corresponding

to his capacities, and to the furnishing of means toward that end.

“‘8. A public monopoly of newspaper advertisements shall be created for the benefit of municipalities.

“‘9. Establishment of friendly relations with all nations. Immediate resumption of diplomatic relations with the Russian Soviet Republic and Poland. Re-establishment of the Workmen's *Internationale* on the basis of revolutionary social policy in the spirit of the international conferences of Zimmerwald and Kienthal.’”

Bouton continues thus (pp. 262-263):

“It will be observed that the difference between these demands and those of the Bolsheviki (Spartacans) is precisely the difference between tweedledum and tweedledee—one of terminology. Some even of these principles were materially extended by interpretation three weeks later. On March 24th the Independent Socialists in the new Prussian Diet, replying to a query from the Majority Socialists as to their willingness to participate in the coming Prussian Constituent Assembly, stated conditions which contained the following elaboration of point 3 in the program given above:

“‘The most important means of production in agriculture, industry, trade and commerce shall be nationalized immediately; the land and its natural resources shall be declared to be the property of the whole people and shall be placed under the control of society.’

“\* \* \*

“‘The essential kinship of the Independents and Spartacans will be more clearly apparent from a comparison of the latter's demands, as published on April 14th in *Die rote Fahne*, then appearing in Leipsic. They follow:

“‘Ruthless elimination of all Majority Socialist leaders and of such Independents as have betrayed the Soviet system and the revolution by their coöperation with Majority Socialists.

“‘Unconditional acceptance of the demands of the Spartacus program.\*

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\* These demands, as published in *Die rote Fahne* at Berlin November 9th or 10th, 1918, and reproduced by Purlitz, *Revolution*, p. 41, are as follows:

“1. Disarming of the whole police force, of all officers, and also of the soldiers who do not stand on the basis of the new order. Arming of the people. All soldiers and proletarians retain their weapons.

“2. Taking over of all military and civil offices and commands by

“ ‘Immediate introduction of the following measures: (a) Liberation of all political prisoners; (b) dissolution of all parliamentary gatherings; (c) dissolution of all counter-revolutionary troop detachments, disarming of the *bourgeoisie* and the internment of all officers; (d) arming of the proletariat and the immediate organization of revolutionary corps; (e) abolition of all courts and the erection of revolutionary tribunals, together with the trial by these tribunals of all persons involved in bringing on the war, of counter-revolutionaries and traitors; (f) elimination of all state administrative officials and boards (mayors, provincial councillors, etc.), and the substitution of delegates chosen by the people; (g) adoption of a law providing for the taking over by the state without indemnification of all larger undertakings (mines, etc.), together with the larger landed estates, and the immediate taking over of the administration of these estates by workmen’s councils; (h) adoption of a law annulling war-loans exceeding twenty thousand marks; (i) suppression of the whole *bourgeois* press, including particularly the Majority Socialist press.’

representatives (*Vertrauensmänner*) of the Workers and Soldiers’ Council.

“3. Surrender of all weapons and stores of munitions, and also of all armament activities to the Workers and Soldiers’ Council.

“4. Control by the Workers and Soldiers’ Council of all means of communication.

“5. Abolishment of military courts. Replacement of military obedience by voluntary discipline of the soldiers under the control of the Workers and Soldiers’ Council.

“6. Abolishment of the Reichstag and of all parliaments, and also of the existing Imperial Government. Taking over of the Government by the Berlin Workers and Soldiers’ Council until the formation of an Imperial Workers and Soldiers’ Council.

“7. Election throughout Germany of Workers’ and Soldiers’ Councils, in whose hands exclusively the legislative and administrative power shall rest. In the election of the Workers’ and Soldiers’ Councils shall participate all adult working people in cities and in the country and without discrimination as to sex.

“8. Abolishment of all dynasties and separate states. Our parole is: One United Socialistic Republic of Germany.

“9. The immediate establishment of relations with all Workers’ and Soldiers’ Councils existing in Germany, and with the socialistic brother parties of foreign countries.

“10. The immediate recall to Berlin of the Russian Embassy.”

See another translation in Bouton, pp. 167-168. He notes that in the “Arming of the people,” “people” is “used as a synonym for the proletarian section of it. The *Bourgeoisie* are not *das Volk* (the people) to the extreme Socialist.”

These demands of the Spartacans were elaborated in an “Appeal” issued on December 14th, 1918. It may be seen in German in Purlitz, *Revolution*, pp. 390-394.

“Some of the members of the former right wing of the Independent Socialists left the party and went over to the Majority Socialists following the party congress of the first week in March. They included the venerable Eduard Bernstein, who declared that the Independents had demonstrated that they ‘lacked utterly any constructive program.’”

The Berlin uprising was put down, but the situation in the whole country became such as to force the “Government” to make concessions. Some “socialization” measures, relating generally to socialization, and especially to coal mines and the potash industry, were put through the National Assembly. (See Brunet, p. 271.)\* The “Government” agreed to recognize the Councils of Workers and Soldiers as factors of economic life, but not as political bodies, and promised to “anchor” them in the new, permanent Constitution.

The disturbances continued during April, May and June throughout the country, the most serious being at Munich, where, in April, the Spartacans or Communists had the upper hand for a while. (See the events recited in Young, Chap. III, and see the New International Year Book, 1919, p. 294.) The disturbances were all finally suppressed. The only other serious event before the Constitution was adopted in August was the crisis in the “Government” produced by the peace terms of the Allies, which crisis caused a change in the “Cabinet,” on June 20th. Scheidemann and others stepped out, and Bauer became Prime Minister of a “Cabinet” favorable to acceptance of the peace terms.\*\* But this crisis apparently did not materially affect the grouping of the political parties on the domestic issues.

Thus Democracy of an evolutionary Majority-Socialist type obtained the political mastery of the Revolutionary Period. The original doctrines of the Socialists had, as a result of actual experience in government, become modified

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\* The statute providing for socialization generally was enacted March 23, 1919. On the same day the statute socializing the coal mines was passed. That socializing the potash industry is dated April 24 (Brunet says April 29), 1919. These last two statutes underwent some modifications later. See Stier-Somlo, p. 133, note 5, where it is also noted that the electricity industry was socialized December 31, 1919.

\*\* The treaty was ratified by the National Assembly on July 9th, by a vote of 208 to 115 (99 members not voting).

from theory to practical application. Coalition sobered them. Communism or Spartacism or Sovietism, whichever one may prefer to call this particular "ism," tinted them. There was left more or less Socialism, but rights of the *bourgeoisie*, of capital, of private property, etc., were recognized and protected. Force was applied when Communism went too far. Welfare of the whole was placed above terrorism by the few. But how far did the social evolution extend? The Constitution of 1919 answers this question. At least, it shows the extent of the evolution, fundamentally, up to the time of its becoming effective.\*

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\*It would be interesting to know what the final outcome would have been had the attitude of the soldiers been different during the chaos, beginning with Revolution Day—or had even the attitude of the public officials been different, for they, as a whole, stuck to their posts, under anything but pleasant conditions. Repeated promises of rewards were made to the officials, to induce them to continue to function.

## CHAPTER 3.

Let us here take up again the thread of constitutional events.

First let us try to dispose of one of the most perplexing and intricate features of the Revolutionary Period, namely, that of the "Soviets" or "Councils," which, as Meyer-Anschütz says (p. 1034), sprang up like fungi.

The Workers' Councils are another name for Soviets. They originated in Russia, but Sovietism is not the same as Bolshevism. Soviets arose in Russia because the law there prohibited Unions. The workers were thereupon driven to the expedient of an organization in which they could nominate in each factory or shop or other places men whom they could trust. In 1917 they were champions of democracy and were supporters of Kerensky. But when the Bolsheviks came into control they turned the Soviets into instruments of a dictatorship of the proletariat.

Germany copied the machinery of the Russian Soviets, but did not resort to Bolshevism. The German Workers' Councils did not adopt the extreme political doctrines of the Russian Bolshevik Soviets, in spite of the efforts of the Spartacans, and, later, of the Independent Socialists. Dictatorship of the proletariat took very shallow root in Germany.

The system of Councils, as worked out for Germany by their chief sponsors, with Daümig as their chief theorist, was something like this:

The parliamentary system has outlived its usefulness. The Councils are the only real instruments of real democracy for substituting socialism for capitalism. In them manual laborers and brain workers co-operate. Their aim is, political and economic equality for all. Before this aim is ultimately attained, it may be necessary to have a dictatorship of the proletariat, but in the final triumph there will be no classes, but only one class. *Politically*, the Councils unite in themselves parliament and administration, the latter embracing a thorough system of supervision. *Economically*, they supervise the execution of socialization measures, and eventually become the controllers of production and consumption.

(It is important to keep clearly in mind these two functions: *political* and *economic*, because a corresponding dual organization is built up in carrying out the system of Councils.)

The base of the political organization is the specific Workers' Council (*Arbeiterrat*); that of the economic organization is the Factory Workers' Council (*Betriebsrat*).

The Workers' Councils start with the Communes. In each Commune, workers, employees and peasants, organized in vocational groups as far as possible, elect representatives, one for every 1,000 electors. These representatives constitute the Communal Councils. They control communal administration, and they send delegates to the Circle Council (*Kreisarbeiter-rat*), the next higher body. The latter in turn sends delegates to the next higher body, the District Council (*Bezirksrat*). Then comes the State Central Council (*Landeszentralrat*), sitting in the capital of each state. These different bodies control the administration of their respective jurisdictions. At the top is the Congress of Councils, which is in supreme control of all political power, and meets at least every three months. This Congress elects a Central Council (*Zentralrat*), which is a kind of Executive Committee and is the body that appoints and controls the Commissioners of the People (*Volksbeauftragte*), who constitute a sort of executive arm of government.

So much for the political side of the system.

The economic organization starts in each factory, shop, etc., with a Factory Workers' Council, consisting of one representative for every hundred workers and employees. Small factories, rural enterprises and the professions are grouped as electors. The Factory Workers' Councils look after the interests of their electors, and control the enterprises in which they are employed or active; and they co-operate in the application of socialization measures. Above the factory, shop, etc., are established Economic Districts (*Wirtschaftsbezirke*), in each of which the Factory Workers' Councils of each branch of industry and of commerce designate a District Group-Council (*Bezirksgruppenrat*). All the District Group-Councils of an Economic District send delegates to a District Economic Council (*Bezirkswirtschaftsrat*) for that District. And the District Group-Councils deputize delegates to an Imperial

Economic Council (*Reichswirtschaftsrat*), which has general supervision of economic life and, in accord with the *Zentralrat*, determines the necessary measures for the maintenance of production and the application of socialization laws.

So far this sketch of the Council system is based mainly upon what Brunet tells us (pp. 83-84, 77-80). On page 80 he adds:

“The whole system, so simple theoretically, rests on the elections of workers as councillors in the Workers Councils and in the Factory Workers Councils. The composition of the electoral body therefore takes on a particular importance. The fundamental principle, in which Däumig and his friends would tolerate no diminution, was that no employer as such could take part in the system. *Only employés are eligible as electors.* An exception is made in favour of peasants ‘who do not permanently employ farm hands.’ A second axiom stipulates that those elected must remain under the constant control of the electors. The electoral body is therefore free to recall them whenever it seems desirable to it. In any event a worker councillor must not remain such for more than twelve months. He must stay a worker and not become a functionary.”

Paralleling, and in some respects running with, this system of Councils there was another movement in Germany, namely, that of a Vocational Parliament—called a Chamber of Labor (*Kammer der Arbeit*). Its champions claim that a political parliament cannot be depended upon to meet Germany's economic needs and problems. Therefore the political parliament, if not actually done away with, should have placed beside it special economic bodies. Such bodies should be Workers' Councils and Production Councils (*Produktionsräte*). To the Workers' Councils—somewhat like those of Däumig—should be assigned the protection, representation and defence of the workers' rights which have heretofore been within the province of the unions. Beside them should exist Production Councils, charged with the supervision of production. Beginning with the Commune, there should be a Local or Communal Council of Production for each branch of economic activity; the enterprises each being represented by an equal number of delegates of the employers and of delegates of the employees. This idea of parity between employers and employees runs throughout this system. Above the Communal Production Councils there should be District Group-

Councils, Provincial Councils, etc., with a Central Production Council (*Zentralproduktionsrat*) at the top. Thus, Brunet (whom we here follow) says (p. 84) there exist for the whole Empire a Central Council of Metallurgical Production, a Central Council of Brewers, a Central Council of Chemical Production, etc.

Continuing with Brunet (pp. 84-85), there is at each stage of the above structure a corresponding economic council, namely, a Chamber of Labor, consisting of delegates deputized by the Production Councils of that stage. Thus by the side of the political or legislative assembly of the Commune, of the District, of the Province, as well as by the side of the Imperial or National Assembly (*Reichstag*), there are a Communal Chamber of Labor, a District Chamber of Labor, a Provincial Chamber of Labor and an Imperial Chamber of Labor, wherein all the economic interests of each respective territory are represented.

“The producers, as producers, participate in political life. It is an economic parliament by the side of a political parliament. Whether in the commune, the province, or the Reich, no assembly elected according to merely habitual democratic principles (*Volkskammer*) can of itself deliver verdicts or decisions of principle. An ordinance of a communal assembly would have to be submitted to the approval of the corresponding Chamber of Labour just as a law passed by the National Assembly would have to be ratified by the National Chamber of Labour, no matter what its subject matter. The Chamber of Labour thus plays the rôle of a second chamber and its veto cannot be broken unless for three years in succession the popular chambers vote the same provisions in the same terms in regard to the matter in conflict. The Chamber of Labour and the popular chamber have equally the right to invoke a referendum. Finally, it belongs in principle to the Chamber of Labour to be the first to examine all projects of an economic character; and it can, when it sees fit, take the initiative in proposing a law.”

The great difference between this system and that of Daümig, is that the employers are treated on a parity with the employees.

Of this system of Vocational Parliament there is some trace in the Economic Councils provided for in the Constitution of 1919 (Article 165). But these Economic Councils have no real political power. The Constitution recognizes and pro-

vides for the principle of Vocational Representation, but does not endue it with political power (Articles 7, 130, 159, 165).

As already seen, there arose Soldiers' Councils beside the Workers' Councils, but the former diminished in importance as demobilization reduced the army and as universal compulsory military service became abolished. They finally disappeared, as far as the Constitution of 1919 is concerned. There is no mention of them in that Constitution.

Throughout the labor agitations as manifested in the Council movement in Germany the old Labor Unions continued to exist, and they played an important rôle in the Revolutionary Period.

According to Brunet (pp. 238 ff.):

"Already before the war the law of 1891 provided for 'Committees of Workers' in the factories, who could be consulted on the provisions of factory regulations; but as the formation of these committees depended entirely on the goodwill of the employers, the workers looked with little sympathy on this institution. In fact, such committees existed in several thousand factories, but their activity was limited to the administration of the income from fines and the institution of welfare work.

"During the war the rôle of the workers increased considerably in importance. The laws for compulsory patriotic service which took away from them the liberty of work owed them compensation. There were established therefore in all enterprises where there were more than fifty employed, 'committees of workers,' which were elected by all the workers and had definite functions. There were in addition 'joint arbitration committees,' where conflicts between employers and employés were settled. 'Committees on decisions' also existed, charged with ruling on other questions raised by the law for patriotic service. These different organisms at once assumed an important place in the economic life.

"On the advent of the Revolution the unions easily obtained some reforms for which they had fought for a long time, and which constituted their immediate claims.

"On November 15, the unions concluded an agreement with the employers' associations, which has served as the basis of an important development, begun on that date and known as the 'labour board' (*Arbeitsgemeinschaft*). The *Arbeitsgemeinschaft* appeared several months before the end of the war, but assumed a rôle of prime importance in the new organization of economic Germany.

“The *Arbeitsgemeinschaft* has been defined as ‘the combination of big associations of employers and of workers for the regulation of reciprocal relations between employers and workers and for the solution in common of all economic and social questions touching industry and labour.’

“The essential principle of the *Arbeitsgemeinschaft* is that of *parity*. In the agreement of November 15, the labour unions are recognized as the vocational representatives of the workers. The most complete liberty of organization is accorded them. The agreement specifies as its practical tasks the feeding of veterans, the distribution of raw material, and the regulation in common of labour disputes. For the settlement of pending questions there was organized a special committee composed one-half of employers and one-half of workers.

“Several days later, December 4, 1918, there was drawn up the ‘statutes of the *Arbeitsgemeinschaft* of the employers and employés of Germany.’ All German industries were divided into a certain number of groups, which had common organs composed half of employers and half of workers, each elected by their respective organizations. There was in addition a central council, which was the *Arbeitsgemeinschaft* of all the employers and organized workers of all German industries. Its members were elected by the groups from their membership; and these in turn elected a Central Committee, which executed the decisions of the Central Council.

“All these organs—and this point must be emphasized—were composed half of employers and half of workers. The parity principle is at the basis of the whole organization of the *Arbeitsgemeinschaften*. Thus all economic and social questions concerning industry and labour were regulated by committees in which the employers’ associations and the labour unions were each represented by one-half in each committee. The *Arbeitsgemeinschaft* is a treaty of peace.

“In addition on December 23, 1918, the Commissars of the People signed a decree ‘on collective agreements, workers and employers committees, and the arbitration of labour disputes.’ This decree maintained the committees which were developed during the war by virtue of the law for patriotic service, and increased their powers. Here, too, the whole mechanism rested on the parity principle. According to this decree, committees of workers and employers had to be organized in all industries, in all the administrative bodies and in all offices where there were at least twenty labourers or employés. These had as their mission the protection of the economic interests of labourers and employés against employers

in the factories, administrative bodies and offices. The committees had to supervise in co-operation with the bosses the carrying out of the various provisions in the collective contracts. In factories where there was no collective contract the committees were supposed to co-operate in the regulation of wages and other conditions of labour in agreement with the economic representatives of the workers and employes. It was their task, in addition, to maintain good relations among the workers, as well as between the workers and employers.

“It would seem that an evolution thus commenced could have continued normally and without difficulty, and that economic and social problems raised by the reorganization of Germany could thereafter be regulated by the *Arbeitsgemeinschaften*; that is to say, by direct agreement between employers associations and labour unions. But the problem was peculiarly complicated by the introduction and rapid diffusion in Germany of Russian revolutionary ideas. The Soviet differs essentially from the committee above described. Whereas in the latter employers and employes are placed on terms of equality and the committee itself becomes a purely economic institution, the Soviet, according to the Russian conception, is a political organization, whose purpose is to eliminate the employers and to establish the dictatorship of the proletariat. The Soviet must have in its hands all the political and economic power of the State.”

We have traced the interlacing contest between the Majority Socialists, the Independent Socialists and the Councils or Soviets, with the Soldiers' Councils functioning as a sort of governor in the complicated social and political mix-up—a sort of constitutional mince pie; and the reader has learned how the Independent Socialists were eliminated from the political stage by January, 1919.

Brunet reviews the events leading up to the promise to “anchor” the Councils in the permanent Constitution, as follows (pp. 241-244):

“Parallel to the political struggle between the Social Democrats and the Independents, there developed another, on the economic field, between the Trade Unions and the Councils, which found themselves in conflict as much over what reforms should be demanded by the working class as over the rôle these two groupings should respectively retain in the struggle for the recognition of their claims.

“The Trade Unions declared themselves satisfied with the agreement they had concluded with the employers, as well as with the decree of December 23, 1918, which Legien, President of the General Confederation of Labour, called ‘The Great Charter of Labour.’ They were convinced that thereafter there was nothing more to do but to wait for time to develop logically and peacefully the rôle of the *Arbeitsgemeinschaften* and of the Committees provided for by the decree of 1918. *They did not believe that in this evolution there was any room for Councils.* It was they, the Trades Unions, that had theretofore been the only ones to occupy themselves with economic questions, and they did not propose to permit special groups, operating in isolated factories, to deprive them of their traditional mission. Legien in particular did not want to hear any talk of the Councils. They did not seem to him to be able to ‘incorporate themselves in the actual hierarchy of the organizations and agencies of the workers.’ He protested against any concession to the system of Councils, and declared that the only organisms in position to defend the economic interests of the working class, were the Trades Unions.

“But an increasingly important part of the working class, attracted by the ardent propaganda of the theoreticians of the Councils system, physically and mentally depressed by misery and unemployment, irritated by the mistakes of the Cabinet \* and disillusioned by the impotence of the Assembly of Weimar, rallied to the doctrines of the Councils. The Trades Unions were no longer believed by them able to lead the battle which would assure to the workers the preponderant rôle which should be theirs in economic matters. They showed during the war, co-operating with the militarists and the bureaucrats of the Empire, that they were always ready to compromise. They were directed by veritable functionaries, whose whole careers developed within the Trades Union administration and who had no qualification for representing the working class. In order to secure what the working class wants these claims must be taken in hand by organs issuing directly from the workers—militant organizations in position to lead a swift energetic fight—these organs being the Workers Councils. *The Councils must be placed above the unions,* and it is to them that belongs the right to decide on the campaigns that should be waged.

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\* Under the Provisional Constitution adopted February 10, 1919.

“As for the Cabinet, it declared itself from the first against the Councils, and in an official communication on February 26, 1919, Scheidemann, President of the Council of Ministers, declared that the Cabinet never considered the introduction of the Councils System in Germany, and that above all, if any part should be accorded the Councils, it could only be that of an intermediary between the employers and the trade unions.

“But it soon became impossible for either the Cabinet or the Trades Unions to remain in this almost completely negative position; for the struggle for the *Mitbestimmungsrecht*\* ceased to be merely a debate among theoreticians. At the beginning of March the workers in the metallurgical industry declared a general strike in Berlin; and in April the miners of Central Germany did the same.

“The Cabinet found itself forced to modify its point of view. Receiving at Weimar a delegation of strikers come to present an ultimatum to him, Scheidemann recanted the communication of February 26, and engaged himself by a written promise to effect the recognition of the principle of Councils in the Constitution.\*\* One month later he fulfilled his promise. On April 5, a new note made known under what conditions and to what extent the Cabinet envisaged the possibility of organizing and utilizing the Councils. He proposed to inscribe in the Constitution an article proclaiming in general terms the right of workers to participate in common and on equal terms with employers in the regulation of questions of wages and work, as well as in the development of the forces of production in the common economic interest. By the side of special Workers Councils there were to be mixed Councils which would have general economic authority.

“On their side the Trades Unions also found themselves obliged to seek a working basis, and they concluded by agreeing to the introduction of Councils in German economic life, on the condition that a very sharp separation be marked between the powers of the Factory Workers Councils and the Economic Councils on the one hand, and those of the Trades Unions themselves on the other. Another condition was that assurance must be given the Trades Unions that the *Workers Councils would fulfil their mission in accord with the Trades Unions*. At the Congress of Nuremberg, July, 1919, the

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\* Right of co-decision.

\*\* This is the promise to “anchor” the Councils in the permanent Constitution.

Trades Unions engaged themselves to use their whole influence to secure for the workers and employés the *Mitbestimmungsrecht* in the various industries and to help the Factory Workers Councils to play an effective part."\*

The "People's Commissioners"\*\*, who, as has been seen, are sometimes called the "Cabinet," surrendered, as already stated, their powers to the National Assembly. The *Zentralrat*, or Central or Executive Council, did the same.\*\*\* Both

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\* From here on in his book, Brunet brings the interplay of Councils and Unions up to, and into, 1920, which is beyond our purpose.

\*\* Called by some translators "People's Commissaries;" and by others, "People's Commissars."

\*\*\* On February 11th there was read in the National Assembly a communication from the *Zentralrat*, out of which Stier-Somlo (page 26) picks three points of constitutional significance, namely:

"First, the declaration that the *Zentralrat*, in the expectation that the National Assembly will carry through its full sovereignty, lays into the hands of the German National Assembly the power assigned to it by the Imperial Congress of the Workers' and Soldiers' Councils.

"Second, that it demands the incorporation of the Workers' and Soldiers' Councils in the future Imperial Constitution, for the strengthening of the Workers' representation and of their interests in production, and also for the popular conformation of the means of defence.

"Third, that it most decidedly opposes the pernicious revival of states' rights which transcend the maintenance of provincial interests of self-administration and cultur."

This communication is dated February 4th, and may be seen in Purlitz, *Revolution*, p. 584. The last two paragraphs of it read as follows:

"In the expectation that the National Assembly will carry through its full sovereignty, the *Zentralrat* lays into the hands of the German National Assembly the power assigned to it by the Imperial Congress of the Workers' and Soldiers' Councils, and wishes for its labors every success for the welfare of the whole German people and of all the German races united in the new German Empire.

"The *Zentralrat* will continue to exercise the functions assigned to it, particularly the office of supreme appellate instance for the Soldiers' Councils, given to it by the statute concerning the regulation of the military command, until the National Assembly transfers these functions to another body."

The *Zentralrat* defended this action—against attacks and accusations of treason to the Workers' and Soldiers' Councils, made especially by the Independent Socialists and the Spartacans—in an announcement to those Councils, issued on February 6th, in which it says the resolution of the Berlin Congress creating it, the *Zentralrat*, justified and required such action upon the assembling of the National Assembly. (See that resolution, above, p. 101.) It ends the announcement (which may be seen in Purlitz, *Revolution*, pp. 588, 589) with the following:

"Now a word about calling a Congress of the Workers' and Soldiers'

were Majority-Socialist, yet it is strange they acted in the same way in this particular, because the *Zentralrat* was the executive body of the national organization of the "Soviets," i. e., the Workers' Councils and the Soldiers' Councils. How did these Councils take to the *Zentralrat's* surrender of its powers to the National Assembly? And what was the effect of that surrender on the Councils?

Young, who is a British Laborite, and who is an ardent advocate of the "Council System" of government in Germany, follows the history of the "Councils" in Germany during the Revolutionary Period, and throws some light on the questions just asked. We give his statement of the events, although in some respects it overlaps what we have reproduced from Brunet. At the end of the year 1919 he, Young, writes (at different places on pages 165-186):\*

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Councils. The central political tasks which the *Zentralrat* had to discharge in the name of the Workers' and Soldiers' Councils in all Imperial matters, are now transferred to the National Assembly of the German people, whose election the Congress of Councils itself ordered. No end is thereby yet put to the activity of the Workers' and Soldiers' Councils in the State matters that are non-Imperial. Such an end will rather first be reached when a new regulation of the matters here involved is made by the National Assembly or the respective State Diet; just as the *Zentralrat* itself is continuing to exercise its hitherto existing activity in all matters affecting the Prussian State until a new regulation by the National Assembly or the Prussian Diet. But, in addition, there still are important economic tasks for the Workers' Councils. To consider these and to assist in an effective manner in preparing and formulating the further economic activity of the Workers' Councils, might indeed be the task of a second Congress of Councils. Of course the *Zentralrat* has fundamentally no objection to calling it; on the contrary, it will take a stand in this matter as soon as possible."

All of which seems to indicate that the *Zentralrat* deemed it had surrendered to the National Assembly only its political power in national affairs, and to have retained its power in all State affairs (both political and economic) and its economic power in national affairs. The details are not clear. All that is certain is that the *Zentralrat* did not go out of existence when it surrendered to the National Assembly whatever it surrendered to it. It was otherwise with the Cabinet or Council of the People's Commissioners. It went out of existence when the new "Cabinet" under the Provisional Constitution was formed.

\* We would like to repeat here, that in quoting writers we do not necessarily commit ourselves to their views and interpretation of, and conclusions from, the events recited by them. It is the events that we are after.

“When the revolution broke out on November 9th it was carried through first by committees of sailors, then of soldiers, and finally of workmen, that sprang up simultaneously and assumed supreme authority. The advent of this new authority, however, brought about an alliance between the previous authorities thus put on one side, the Employers’ Associations and the Trades Unions.

“The employers, who had hitherto been resisting claims for an eight-hour day and a share in control, found themselves threatened with expropriation. Under the leadership of a Captain of Industry, Hugo Stinnes, they at once opened negotiations with the Unions led by Legien; and by November 15th reached agreement on the eight-hour day and the establishment of Labour Associations (*Arbeitsgemeinschaften*) equivalent to our Whitley Councils, and Labour Chambers (*Arbeitskammern*), for dealing with wages and welfare, in which employers and employed would have equal representation.”

“It is this agreement \* \* \* between the Trust and Trade Union bosses that is the basis of the present Coalition Government’s Labour policy, and that is embodied in the new Constitution.

“But, since the revolution, the real Labour movement of Germany has passed to the ‘Councils’ (*Räte*), as we must call them for want of a better word. For ‘moot’ is too archaic and ‘committee’ suggests either a party of bores and busybodies or a *posse* of Bulgarian brigands; while Soviet, which is only the Russian for Council, would mean branding the movement as ‘Bolshevist.’

“Of these Councils then, the three main divisions in Germany are Workmen’s Councils (*Arbeiterräte*), or Industrial Councils (*Betriebsräte*), Soldiers’ Councils, and Communal Councils. Of these, the first only seem to have a constitutional future in Germany.

“The Communal Councils have not yet been fully admitted to the Council system, and seem to have but little vitality.

“The Soldiers’ Councils, which played the more prominent part in the revolution, and still form part of the organisation, have not succeeded in making headway against the efforts of the Government to demobilise them. Thus a regulation of January 19th reduced them to welfare committees and restricted their right of deposing officers to a mere recommendation. Attempts of the more revolutionary corps to resist authority in December, January and March were put

down by the Frei-Corps with excessive and progressive severity; and the large bodies of revolutionary troops that survived the demobilisation, as 'Republican Guards,' 'Public Safety Guards,' 'People's Naval Division,' etc., etc., have been gradually dispersed by the Government's Frei-Corps. So that the Soldiers' Councils as the political organ of the revolutionary fighting forces are losing their importance."

"Returning, therefore, to the Industrial Councils, we find that in the early days of the revolution the movement spontaneously developed an organisation consisting of a national Central Council,\* elected by a national Congress of Councils, in its turn elected by local Executive Councils. These were all political institutions, which for a few days enjoyed entire political power. This power passed back to the old political Parties and Parliamentary system, owing to the Council accepting as 'Commissaries of the People'\*\* Parliamentary politicians, whose sole idea and secret intention it was to reconstitute a Cabinet and reconstruct a Chamber on reformed but not revolutionary lines. The capital error was in trying to realise the revolution by only establishing revolutionary bodies—the Councils—in supervision of, instead of in substitution for, politicians and officials of the old *régime*."

"The real revolutionaries realised this mistake and Liebknecht, after accepting office, withdrew and joined the Communists and 'Spartacists.' The Communists were and are, of course, 'whole-hoggers' in the Council movement, whose war cries are, 'All power to the Soviets' and 'Down with the Assembly.' The Independents ranged from men like Ledebour, Däumig and Richard Müller, who saw in the Councils the salvation, not only of the revolution, but of civilisation, to men like Haase, Cohn and Breitscheidt, who believed that Parliamentary democracy and proletarian dictatorship could be co-ordinated. The Social-Democrats\*\*\* ranged from members of the Council organisation, who believed that the Councils should have economic functions, and who were last summer coming to the Independents, down to men like Legien, who would abolish the Councils as a revolt against the Trade Unions, or Noske, who would abolish them as rebels against authority. The Democrats included intellectuals, who recognised the political utility of the Councils, but consisted mostly of Liberals with no appreciation for them: though many of

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\* This is the **Vollzugsrat** or **Zentralrat**.

\*\* These are the "People's Commissioners" mentioned above by us.

\*\*\* Majority Socialists.

these latter had been coming over to the idea, as, for instance, the veteran economist, Brentano, or the internationalist, Schucking.

“Owing to a tactical blunder of the Independents,\* the Central Council, as well as the Cabinet of Commissaries, came under the sole control of the Social-Democrats, the Trade Unions, and Moderate Socialists. Consequently, the Central Council, instead of being the citadel of the Council system, became a salient from which the enemies of the system could undermine its whole position.

“The Central Council, pursuing the Government’s policy that all power in the hands of revolutionary authorities must be surrendered to the parliamentary institutions, in February publicly and formally recommitted its mandate, whatever that might be, to the Assembly. One might have supposed that this solemn suicide of its central authority would have been the end of the Council movement. \* \* \* The first consequence of the abdication of the Central Council was that leadership passed to the Executive Council of Berlin, where the Independents and Communists were already in a majority. The Executive Council proceeded to press for a convocation of the Congress of Councils, and thereby a re-election of the Central Council. The latter procrastinated, but gave way on the Executive Council threatening to convene the Congress itself, but even then succeeded in having it postponed more than once.

“Now, while the Opposition was moving to the Left in attempts to realise the revolution, the Government was moving to the Right, and rapidly restoring the old Police-State behind a façade of parliamentary institutions. The consequence was a growing dissatisfaction with the Government, which, for want of proper expression through the Council organisation, broke out in periodic strikes and street fights. These were exploited by the Government as excuses for repressive and reactionary measures, which all contributed to reinforcing the Council movement.”

“The defection of the Central Council also resulted in depriving the whole Council movement of any stability and solidarity, and drove it into local offensives or ‘*putsches*,’ which were beaten in detail. First Bremen and the coast ports, then Dusseldorf and the coal area, next Saxony and

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\* This apparently refers to, or includes, the bolt of the Independent Socialists in the Congress that assembled at Berlin December 16, 1918, and the break with the Majority Socialists because of their order on December 23, 1918, to use force in putting down disturbances.

the industrial districts, and finally, in the first week of March, Berlin itself, all declared general strikes in which recognition of the Council system was the principal demand. And the Berlin strike, following close on that of Saxony, did frighten the Government into what might have been a considerable concession.

“As late as the end of February the Government had declared semi-officially that no member of the Government had the slightest intention of having the Council system incorporated in the Constitution either legislatively or administratively; but two days after the outbreak of the Berlin strike, early in March, the Government announced, not only the socialisation of mines, but the sanction of the Council system in the Constitution.

“The first Government scheme for organising the Councils was of much the same character as the socialisation that it promised at the same time—an elaborate organisation of Factory Councils, Industrial Councils and Labour Chambers with ‘economic functions’; which all boiled down to little more than the ‘Whitley Council’ principle previously proposed and rejected by the workmen. Since then the Government has had to concede more, and Art. 165 of the Constitution as signed in August, recognises the Workmen’s Councils without representation of the employers, though they have to associate themselves with employers’ representatives in order to discharge their constitutional functions. Thus associated they can intervene in social and economic legislation through a Central Economic Council. But it was clear that neither this nor any other concession likely to be made by the Assembly would satisfy the workmen. A bi-cameral system might have done so, but this the Coalition Government could never have imposed on its Centrum and middle-class supporters.

“The best chance of arriving at a compromise between Parliamentary and Council government was through the Congress of Councils which at last met in Berlin in May.”

“The Congress, when it met, was found to consist of 130 Majority Socialists, 64 Independents, 20 soldiers’ representatives, and about 80 miscellaneous and absent; and of these quite a number were not working men at all.”

“The opening of the discussion showed that a majority of the Congress favoured a combination of Parliament and Councils in which the latter should have political as well as economic functions. Whether the Majoritarian leaders in the Congress were genuinely convinced of the necessity of giving the Council system recognition or whether they were forced to compromise in order to retain command of their followers, and through them control their following among the workmen,

I do not know. Anyway, after a series of speeches, in which the Majoritarian leaders, Kalinsky and Cohn-Reuss, vied in concessions, a compromise was put forward that represented practically the position held by their opponents the Independents a few weeks before. The compromise between the Parliamentary system and Council system they proposed was probably workable; though arrived at from an unsound position—that of regarding the Central Council as a controlling authority over the National Assembly; whereas it would really be supplying the driving power and the Assembly the brake.”

“Thus the Socialist parties, still hopelessly divided in that cold storage of faction, the Weimar Assembly, had been re-fused and re-moulded by the volcanic fires of the Congress.

“One Sunday afternoon, after the Congress had been a week at work, I heard that the leaders of these two sections had that morning privately agreed to reconstitute the Central Council on a principle of parity, *i. e.*, twelve Majoritarians and twelve Independents, with a few Democrats and soldiers.”

“But one obvious result of this new alliance between Majoritarians and Independents in the Council system would have been the jettisoning of Majoritarian Ministers, such as Noske, Landsberg and Scheidemann. \* \* \* It was therefore not surprising that the full force of party pressure and of administrative authority was brought to bear on the Majoritarian parties to the agreement. Under this pressure, like good citizens and genuine Germans, they buckled up and broke down, repudiating the principle of parity. They offered instead a proportion of fourteen Majoritarians to ten Independents in the Central Council or a representation corresponding to the numerical proportion of parties in the gerrymandered Congress. These offers were refused, the Congress came to an end, and the pusillanimity and place-hunting of parliamentary politicians had ruined the revolution a second time. The first was when the Independents, under pressure from the Left, withdrew from the Coalition with the Majoritarians in December. The second was when the Majoritarians, under pressure from the Right, now in their turn withdrew from the reconstituted Coalition in May.

“The Council was reconstituted with Majoritarians, and the Independents were thrown back upon the Communists and ‘direct action.’ The only course then left to the adherents of the Council movement was to perfect their organisations and wait until parliamentary government was overthrown, either by reaction or revolution. The first essential for such organisation was a general electoral system which would put the Councils on a regular basis and prevent such interference and intrigues as had preceded the previous Congress.

The last meeting that I attended of the Plenary Assembly of Berlin Councils, the driving body of the movement, was occupied with discussing the crucial question as to who should be considered a workman and qualified to vote and stand for a Council. It was there tentatively agreed that a workman might have a few assistants without becoming an employer, and that scientists, experts, and such like connected with an industry, other than managers, directors and such, might count as workmen. On the other hand the Assembly had to adjourn for a time in disorder owing to protests against the presence of a police official as a delegate of the Democrats. It was clearly going to be difficult to express in terms of an electoral law a disability obvious enough in each individual case. The German workmen were ready to admit to equality anyone with any industrial productive status, who was not in the service of declared enemies of the Councils—such as the captains of industry or the Coalition Government. And so important is this suffrage question as a gauge of the liberality of the Council movement in Germany and of its distinction from Bolshevism, that I append as a footnote the regulation of the Berlin Executive Council, published previous to the Convention of the second Congress of Councils.<sup>1</sup>

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<sup>1</sup>“The re-organisation and reconstruction of our political and economic existence calls for the co-operation of the whole effective population. The revolution has given us the means of such reconstruction in the Council system. In order to give the Council system its full development and a better foundation, fresh elections to the Workmen's Councils are indispensable.

“1. All hand and head workers over 10 years without distinction of sex who earn their living by labour of public utility without exploiting the labour of others are entitled to vote. Are also entitled those who employ a limited number of helpers for their livelihood, as doctors, druggists, writers, jurists, artists, etc.—as also small industrials and craftsmen who do not employ others.

“2. Are excluded from voting those owners of means of production who use them to their own advantage and always through the labour of others. Also those who rent a private-capitalist industry or institutions worked by the labour of others. Also those who live from ground rents or interest as also those like Directors, etc., paid in percentage fees.

“3. Elections to Workmen's Councils are by proportional representation and by professions or industries. Great industries form distinct electoral bodies while medium and small industries will be associated. Professions and professional groups that do not work with other employees within a particular industry will form professional electoral bodies; employees in domestic service, housewives, unemployed and invalids will be provided for in special regulations.

“Further instructions as to the electoral regulations and procedure will be issued shortly.

“The Executive Council,  
 “RICHARD MUELLER,  
 “FRITZ PROLAT.”

“This work of making the Council system really representative has been much hampered of late by the growing reaction which is still trying to break the neck of the movement by arresting its leaders, and impeding its development in every way. At the same time, schemes are being continually put forward by the less reactionary elements for drawing the teeth of the movement by ‘diddling’ concessions. Among such may be counted the clauses ‘anchoring’ the Councils in the Constitution. The word itself shows how rapidly the German politicians are picking up the devices of parliamentary democracy. Again and again, on the platform and in the Press, the workmen are assured that all is well with the Councils because they are ‘anchored’ in the Constitution. What the workmen want is not to see them ‘anchored’ so much as under way; but it is creditable diddling is that catchword, ‘anchored in the Constitution.’ And another diddling device is the electoral law advocated by the Majoritarians that the Government are trying to impose on the Councils, which would penetrate the movement with propertied interests and partition it up into regional areas.

“Of late, indeed, the Council movement proper—the revolutionary movement—has been almost driven underground. The Central office of the Berlin Executive Council has been repeatedly raided, its leaders are continually being arrested, and its meetings broken up. At a conference of the Industrial Councils of Germany recently held (August 26th, 1919) at Halle from which all Majoritarians were excluded, the general tone was pessimistic. It was recognised that the German workman was not as a whole revolutionary in sentiment, that the mass movement to the Left that had marked the first months of reaction had to some extent been checked and that the Government policy of compromising with the Council movement had had some measure of success. No agreement could be reached at this conference, even on such primary questions of policy as to whether the Government proposals should be considered or whether the Trades Unions should be co-operated with. Finally, centres of the revolutionary movement were established at Halle and Leipzig.

“From this it would seem that the revolutionary Council movement is just at present passing through a phase of depression due to the Government’s diplomatic policy.

“It will be seen that so far the German Councils are no political system, but only a surge of spontaneous self-government. If they can be really co-ordinated with the new political machinery, and if they can be concentrated on the eco-

conomic reconstruction of Germany, it may be the salvation, not only of Germany but of Europe.”\*

But we are getting beyond the Revolutionary Period.\*\*

\* We should, in fairness, add that Young says: “the demand for a dictatorship by the proletariat is not an essential element in the Council movement. Such a demand is not the cause, but the consequence, of class conflict.” (p 189.) And: “If this new system were to develop, so to say, in a vacuum, without opposition, it would theoretically provide a democratic representation for every human relationship.” (p. 190.) He does not like “propertied interests” (p. 185), “capitalists,” “modern Parliamentary representation” (pp 190, 194, 195), and modern diplomacy (cf. pp 2, 3). He says (p. 188): “The workers are attached to the Council idea largely because it attacks the capitalist, and gives the workmen protection against him in a way the Union cannot. If the Councils are to be widened into a democracy including all classes, the power of private capital must first be broken or brought in bonds” He seems to interpret the German Revolution as a movement towards general “socialization” through the “Councils” system (see p. 188).

\*\* For a sketch of the German political parties since the Revolution of 1918, see *Current History*, Vol XVII, No 3 (December, 1922), p. 452. In the same volume of *Current History* (November, 1922), pp. 338-339, we have the following sidelight on Germany's political life:

“One of the most momentous of recent political events in Germany was the reunion of the two Socialist parties—the Majority Socialists and the Independent Socialists—split since 1917 over the question of war loans. The decision for reunion was taken by the [Majority] Social Democratic Congress at Augsburg on Sept 21, [1922,] and by the Independent Socialist Congress, which opened at Gera on the same day. The new United Social Democratic Party will be the most powerful political group in Germany, and will have a majority of seats (169 to 469) in the Reichstag. Its program as announced includes the following objects: (1) Protection of the republic, (2) struggle against class privilege, (3) reform of financial and economic policies, (4) improvement of popular hygiene and education, (5) the influencing of international policy. Under this last head, the program admitted Germany's moral duty to rebuild and reconstruct the devastated regions of Northern France and Belgium, but declared that the ever-increasing economic disaster and the appalling collapse of the mark made reparation relief imperative. Six years of embittered political warfare came to an end on Sept. 24, [1922,] when both groups in common session at Nuremberg unanimously ratified the fusion resolution adopted by the two congresses. Former Chancellor Muller, Herr Crispian and Herr Weis were elected Chairmen of the reunited party, and Carl Kautsky was made Chairman of the committee to draft the new party program. A prominent feature of this program will be the waging of a ‘finish’ fight against Communism; the Communist press commented accordingly. Pressure on the Government to take strong measures to reduce the high cost of living was also decided. The union was joyously hailed by most of the democratic press as a good augury for Germany's future.”

What is here meant by “majority of seats (169 to 469) in the Reichstag” is not clear. There are 469 seats in the Reichstag. Before their

See further, as to the Council movement, the note to Article 165 of the Constitution of 1919, in Part Three, below.

The Councils or Soviets in Germany often overreached themselves and made themselves unpopular by "butting in" too much in the machinery of government or business, under cover of their claim or right to "control" or "supervise." Ignorance and inexperience produced their natural fruit, for both existed in the Councils or Soviets of Germany. They lacked the backing of military power, such as the Russian Soviets or Bolshevists had. They also lacked the support of public officials of the old German school. The German soldier and the German official were of a "different mind" from the Russian. Only the *economic* Soviet, and not the *political* Soviet, survived in Germany. Nor was it the extreme, communistic, solely-for-the-proletariat Soviet that survived, for the German worker or peasant was not as plastic a revolutionary body to work on and with as the Russian worker or peasant.\*

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reunion here mentioned the Majority Socialists had 108 seats and the Independents had 61 seats, which together make 169, the number of seats of the "United Social Democratic Party."

According to Brunet (p. 81), the Independent Socialists and Communists polled 5,337,712 votes at the election held on June 6, 1920, sending 83 deputies to the Reichstag. That was the first election of a Reichstag under the Constitution of 1919.

\* As to the constitutional status of the Soviets or Councils, Stier-Somlo's idea is that "the organization of Councils corresponds to a Parliament, which claims the possession of the entire sovereignty, but transfers to, or leaves with, the Imperial Government the exercise thereof, in such a way that not only the administration, but also the law-making power (by decrees) is exercised by the Cabinet" (p. 13). Going into more details, he says (pp. 15-16): "The constitutional question, whether the Berlin Workers and Soldiers' Council, later the Imperial Committee of the *Vollzugsrat* and the Berlin Congress, or whether the Council of the People's Commissioners is to be considered the bearer of the sovereignty emanating from the Revolution, is of slight importance, if it is agreed that the legality, not only of the Commissioners' administrative acts, but also of their legislative acts, is undisputed, in consequence of the transfer to them of the exercise of sovereignty by the organization of Councils." And, after considering the old Empire, as a state system, was dissolved by the Revolution, he says (p. 18): "At first there was a state in the process of formation, with a provisional state power \* \* \*—a Government supported by a popular majority of workers, which for want of a normal popular representative body combined in itself the legislative and the executive power and also possessed the judicial power, although it left the exercise of this last power in the hands of an independent judiciary. Whatever

constitutional rôle may be assigned to the Berlin Congress of Workers' and Soldiers' Councils, at best it would only have been that of a right irregularly created parliament. With respect to the decrees issued with the force of statutes, it is to be observed that a concurrence with the Berlin *Vollzugsrat* has not been mentioned, 'which signifies that the Cabinet acted of itself, and did not intend, merely as an executive, to carry out the revolutionary will of the Council-Constituents or of their *Vollzugsrat*. As a matter of fact, it appears that from the later events the conclusion can be drawn that the Cabinet had acted in such a manner from its own inherent power.'" Stier-Somlo, quoting the same writer, further says (p. 19), that "'the Cabinet exercises the legislative and executive powers according to its own will only as at all times recallable and controlled subjective functions over against the *Zentralrat*, which is thereby recognized by the Cabinet as the real bearer of the revolutionary power, which it [the *Zentralrat*] claims to be.'"

Young tersely expresses his view as follows (pp. 13-14): "The Council system had no time to produce leaders—men with enough confidence in their own position and enough character to impose themselves on the permanent officials. The Central Council—the true revolutionary Executive—and the Congress of Councils—the true revolutionary Legislature—never got any power. It was all monopolised by the People's Commissioners, who were not really a revolutionary institution at all, but an ordinary Provisional Government of parliamentarians. And though they nominally held their mandate from the Congress of Councils a majority of them considered themselves as trustees for a Constituent Assembly. Such parliamentarians could work well enough with the permanent officials, and, indeed, welcomed their assistance. Whereas the councils, of course, came into violent collision with them."

It strikes us that the body of People's Commissioners was continuously and unbrokenly in existence as a governing body from November 9th, 1918, (beginning with Ebert, Scheidemann and Landsberg,) as far as the Empire was concerned, and was the body that really enacted Imperial or national legislative measures and issued Imperial or national decrees. The theoretical superiority of the Council system or of its *Vollzugsrat* or *Zentralrat* was more or less a legal myth—a fiction, almost,—when it came to objective measures. It was nothing but a subjective halter around the neck of the People's Commissioners, the theoretical restraint of which the latter sometimes respected and sometimes did not respect. The People's Commissioners were an objectively governing body, functioning legislatively and executively. The body of Councils, or the *Vollzugsrat* or the *Zentralrat*, was at most primarily an electing or appointing power, with the right of recall, and had an advisory power, but it was in no real sense a functionary in objective legislative and executive powers. The Circus-Busch Council and its *Vollzugsrat* began, not with electing or appointing the People's Commissioners, but with approving, ratifying and confirming their selection by somebody else.

It also strikes us that there was only a *de facto* government in Germany until the National Assembly met in February, 1919, for up to that time no governing body rested upon the will or action of the whole people of the country. The body of Councils or the *Vollzugsrat* or the *Zentralrat* certainly rested upon nothing broader than the proletarian element of the population. The People's Commissioners rested either upon the body of Councils or the *Vollzugsrat* or the *Zentralrat*, and thus upon the substratum of the proletarian elements, or upon the

Socialist parties, or upon both the proletarian elements and the Socialist parties. They did not rest upon the will or action of the whole people, unless in the extravagant sense of tacitness or toleration on the part of those persons who were not of the proletarian or Socialist elements. But they enjoyed the confidence and toleration of the great mass of the people to a greater extent than the system of Councils (especially the **Vollzugsrat**) did.

We suspect that the body of People's Commissioners, or at least the Majority-Socialist element of it, was merely playing for time, and its attitude towards the body of Councils or the **Vollzugsrat** or the **Zentralrat** was one of toleration, temporizing and expediency until a National Assembly representing the whole German People could be convened. The Majority Socialists were against class government and the control by a minority. They kept their hands on the actual helm of the ship of state and brought it through the contrary winds to the National Assembly as a harbor. They acted as if, and apparently believed, a *de facto* government was functioning temporarily until a national constituent assembly should meet.

When Scheidemann, on February 10th, tendered to the National Assembly the resignation, or withdrawal from existence, of the People's Commissioners he was careful to say they had derived their authority from the Revolution. He did not mention the system of Councils in any connection. This is what he said:

"Since the National Assembly has assembled and the Provisional Constitution has been adopted, the historical mission that fell to us as a Provisional Government has ceased. We hereby lay into your hands the power which we received from the Revolution."

After the assembling of the National Assembly the Soviets or Councils could hardly claim to represent the sovereignty of Germany. Most certainly such a claim could not be recognized after the adoption of the Provisional Constitution.

It has been judicially determined that the Council of People's Commissioners had legislative power. See Stier-Somlo, pp. 52-54.

The Interim Act of March 4, 1919, recognizes the legality of the decrees of the Council of People's Commissioners.

In connection with this note, see that on page 92, above.

## CHAPTER 4.

Let us now resume the thread of constitutional events.

As already stated, the National Assembly adopted—on February 10th—a Provisional Constitution. That was followed by an Interim Act on March 4th. These documents were designed to legalize matters between the Revolution of November 9, 1918, and the adoption of a new, permanent Constitution.

The following is the

## PROVISIONAL CONSTITUTION.

## §1.

The Constituent German National Assembly has the task of adopting the future Imperial Constitution and also other urgent Imperial statutes.

## §2.

The introduction of bills of the Imperial Government in the National Assembly needs, without prejudice to Paragraph 4, the consent of a States-Committee. The States-Committee shall be composed of representatives of those German Free-States whose governments rest upon the confidence of a popular representative body proceeding from universal, equal, secret and direct elections. Until March 31, 1919, other German Free-States can, with the consent of the Imperial Government, also deputize representatives.

In the States-Committee each Free-State has at least one vote. In the case of the larger Free-States there shall be fundamentally one vote to a million inhabitants, in which connection an excess, which is at least equal to the number of inhabitants of the smallest Free-State, shall be considered as a full million. No Free-State may be represented by more than one-third of all the votes. A member of the Imperial Government shall preside in the States-Committee.

When German-Austria annexes itself to the German Empire, it shall receive the right of participation in the States-Committee with a number of votes corresponding to Paragraph 2. Until then it shall participate with an advisory vote.

If an agreement between the Imperial Government and the

States-Committee is not reached, each may lay its bill before the National Assembly for action.

**Note.**—The word translated "States-Committee" is *Staatenausschuss*.

There is no provision saying how the Free-States are to name their representatives on the States-Committee—whether by the people, by the Diet, by the Government, by a President, or otherwise—and who is to instruct them. Stier-Somlo (p. 24, note 3) is of the opinion that the mandate is an imperative one, because, according to § 3, the members of the States-Committee have the right to participate in the deliberations of the National Assembly, in order to represent, not their own views, but those of their respective state Governments. Brunet is of the same opinion (pp. 32-33).

The translator would say § 3 shows the "Governments" were to name and instruct the members of the States-Committee. It looks as if it was taken for granted they would.

Brunet, in speaking of the States-Committee (or "Commission of States", as he calls the body), says (p. 31): "The application of paragraph 2 of the law of February 10 resulted in the following: Prussia had 19 votes, Bavaria 7, Saxony 5, Wurtemberg 3, the Grand Duchy of Baden 3, the Grand Duchy of Hesse 2; the other states one each, in all 58, and after the fusion of the two states of Reuss, 57. Thus Prussia had two votes more than in the Bundesrat, Bavaria and Saxony each one vote more, Wurtemberg, Hesse, Mecklenburg-Schwerin and Brunswick each at least one vote. If one considers the loss of Alsace-Lorraine and the disappearance of the two Reuss states it is quite remarkable to note that in the Bundesrat and in the Commission of States the total number of votes was exactly the same and the distribution almost the same in both."

### §3.

The members of the Imperial Government and of the States-Committee have the right to participate in the deliberations of the National Assembly and to have the floor there at any time, in order to represent the views of their Government.

**Note.**—See Note to § 2.

### §4.

The future Imperial Constitution shall be adopted by the National Assembly. However, the territory of the Free-States can be altered only with their consent.

As for the rest, Imperial statutes are enacted by concurrence of the National Assembly and the States-Committee. If such a concurrence cannot be reached, the Imperial President can produce a decision through a Popular Vote.

**Note.**—The word translated "Popular Vote" is *Volksabstimmung*.

### §5.

Articles 21 to 23, 26 to 32 of the hitherto existing Imperial

Constitution receive corresponding application to the National Assembly, with the proviso, that Article 21 also applies to soldiers.

**Note.**—The Articles here mentioned may be seen in the former Imperial Constitution as translated in this work.

#### §6.

The affairs of the Empire shall be conducted by an Imperial President. The Imperial President has to represent the Empire in the Law of Nations, to make treaties with foreign powers in the name of the Empire, and also to accredit and receive ambassadors.

Declaration of war and conclusion of peace take place through Imperial statute.

Treaties with foreign states, which refer to matters of Imperial legislation, need the approval of the National Assembly and of the States-Committee.

As soon as the German Empire shall have joined a League of Nations with the object of excluding all secret treaties, all treaties with the states united in the League of Nations shall need the approval of the National Assembly and of the States-Committee.

The Imperial President is obliged to publish in the Imperial Gazette the Imperial statutes and treaties adopted or made in conformity with §§ 1 to 4 and 6. .

**Note.**—The word translated "Imperial President" is *Reichspräsident*, and that translated "Imperial Gazette" is *Reichsgesetzblatt*.

#### §7.

The Imperial President shall be elected by the National Assembly by absolute majority vote. His term of office shall last until the entrance upon office of the new Imperial President elected upon the basis of the future Imperial Constitution.

#### §8.

The Imperial President shall appoint, for the conduct of the Imperial Government, an Imperial Ministry, to which all Imperial authorities and the supreme command of the army shall be subordinate.

The Imperial Ministers need for the conduct of their office the confidence of the National Assembly.

**Note.**—By virtue of this §, a decree was issued March 21, 1919, that designated the Ministers and defined the different Departments of the Imperial Ministry.

## §9.

All civil and military orders and measures of the Imperial President need for their validity ~~and~~<sup>the</sup> countersignature of an Imperial Minister.

The Imperial Ministers are responsible to the National Assembly for the conduct of their affairs.

## §10.

This statute shall become effective upon its adoption by the National Assembly. From that time on statutes and also decrees, which according to the hitherto existing Imperial law needed the co-operation of the Reichstag, shall become effective only in conformity with § 4 of this statute.

The following is the

## INTERIM ACT.

## §1.

The hitherto existing statutes and decrees of the Empire remain in force until further disposition, in so far as this statute or the Statute concerning the Provisional Imperial Power of February 10, 1919 (Imperial Gazette, page 169) does not conflict therewith. In force also remain all decrees of the Council of the People's Commissioners or of the Imperial Government heretofore issued and promulgated. A list of these decrees is to be laid before the National Assembly within a period of one month after this statute becomes effective. A decree is to be abrogated by the Imperial Government if the National Assembly so demands within three months after this statute becomes effective. The list is to be published in the *Reichsanzeiger*; decrees which are missing in this list cease to be effective with this publication.

Note.—A list of the decrees was laid before the National Assembly on March 29, 1919.

## §2.

So far as reference is made in statutes or decrees of the Empire to the Reichstag, the National Assembly takes its place.

## §3.

So far as reference is made in statutes or decrees of the Empire to the Bundesrat, the States-Committee takes its place. The

right of co-operation in legislation and also functions over against the National Assembly are enjoyed by the States-Committee only within the limits of the Statute concerning the Provisional Imperial Power.

§4.

The functions which appertain to the Emperor under the statutes or decrees of the Empire are transferred to the Imperial President.

§5.

The functions which appertain to the Imperial Chancellor under the statutes or decrees of the Empire are transferred to the Imperial Ministry. So far as the Imperial Ministry does not otherwise provide, they shall be exercised by each Imperial Minister independently for his Department.

§6.

This statute becomes effective with the day of its promulgation.

*Note.*—This statute was promulgated March 7, 1919.

To expedite matters further, the following statute was adopted April 17, 1919, by the National Assembly, with the concurrence of the States-Committee:

§1.

During the existence of the National Assembly the Imperial Government can, with the concurrence of the States-Committee and of a Committee of Twenty-eight Members appointed by the National Assembly, decree those legal measures which appear to be necessary and urgent for the regulation of the transition from the economics of war to the economics of peace.

These decrees are to be brought to the attention of the National Assembly at once, and are to be abrogated upon its demand.

§2.

This statute becomes effective with the day of its promulgation. It is to be abrogated by the Imperial Government as soon as the National Assembly so orders.

*Note.*—This statute was promulgated April 19, 1919.

Work on the new, permanent Constitution had been started before the convening of the National Assembly. Hugo Preuss, who was Minister of the Interior in the "Imperial Government," was entrusted with the drafting of a Constitution. This draft was made public on January 20th, and is used in the "Parallelegraph" in this work. On January 25th over a hundred representatives of all the different states of Germany met at Berlin, together with the People's Commissioners, the *Zentralrat* and the Prussian Cabinet, to consider it. The outcome of this conference was that a commission was appointed to draft a Provisional Constitution to be submitted to the National Assembly for immediate action. Preuss was the chairman of this commission, which consisted of representatives of all the German states. To it was referred the Preuss draft and other suggestions, for its consideration. It was to report directly to the "Imperial Government." The conference ordered that the Provisional Constitution be limited to the establishment of a central power, the formation of an Imperial ministry, and the co-operation of the Governments of the German Free-States in the National Assembly.

The commission began its work on January 26th. On January 28th a Provisional Constitution prepared by it underwent some changes in a conference with the "Imperial Government." On February 8th the final draft by the commission passed its first reading in the National Assembly. On February 10th it passed its second and third readings, and became effective on that day. In its form as then adopted it is translated above, in this work.

On February 21st, after collaboration with the States-Committee, the "Government" submitted to the National Assembly the draft of a new, permanent "Constitution of the German Empire." The draft so submitted is used in the "Parallelegraph" in this work.

February 24th was fixed for the first reading of the draft in the National Assembly, but on that day only Preuss' support of the draft was listened to. The first reading really began on February 28th. It ended on March 4th (after other sessions during it on February 28th and March 3d) with a reference of the draft to a committee of 28 members. This

committee held frequent sessions, went into the matter at great length, and re-cast the draft from end to end, almost no Article of it remaining unchanged.

The committee devoted two readings to the draft, the first beginning March 5th and ending June 2d (there being sessions on at least thirty-four days), and the second beginning June 3d and ending June 18th (there being sessions on at least seven days). The committee thereupon gave it a final systematic and orderly redaction. It is this redacted text that is used in the "Parallelograph" in this work.

The second reading in the National Assembly began July 2d and ended July 22d (the matter coming up at sessions on at least thirteen days)\*. The third reading there was had on July 29th, 30th and 31st, on which last day the Constitution was adopted by the National Assembly, by a vote of 262 yeas to 75 nays, one not voting. The members of the German National People's Party, those of the German People's Party, the Independent Socialists and some others voted against it.

In its final shape the Constitution was signed by President Ebert and the Ministry, at Schwarzburg, on August 11th. On August 14th it was promulgated, in the Imperial Gazette (*Reichsgesetzblatt*), and then and thereby, according to its own wording, became effective; but in Germany it is called the Constitution of August 11, 1919—the date when it was signed as just above stated.

On that August 14, 1919, the Constitution of April 16, 1871, became past history.\*\*

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\* During this second reading "the status of the Free States, the education question, and the recognition of industrial councils were especially contested and eventually compromised." Young, p. 263.

\*\* It must not be forgotten that up to this time the National Assembly did not confine itself to constitution-making. It was a legislative body, and enacted many laws. It also debated, and, as already stated, finally agreed to, the Peace Terms of the Allies. A government was in operation throughout its existence. It was the legislative branch of that government.

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Under Article 180 of the Constitution of August, 1919, the National Assembly functioned as the Reichstag until June 6, 1920. By virtue of the same Article 180, President Ebert took the oath to the Constitution of August, 1919, on August 21, 1919, before the National Assembly

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at Weimar. From September 30th on the National Assembly sat in the Reichstag Building in Berlin. Under said Article 180 of the Constitution, Ebert was to remain President until his successor should be elected by the people, which has not yet been done, because by an amendment of the Constitution, October 24, 1922, he was continued in office until June 30, 1925.

Before the National Assembly was dissolved it enacted some important financial legislation (income tax, consumption tax on liquors, etc.), an interesting statute regulating Factory Workers' Councils (enacted February 4, 1920—the bill was introduced August 9, 1919) and important election statutes, one (dated March 4, 1920) controlling the election of the Imperial President, which (because of the constitutional amendment mentioned just above) has not yet been applied, and one (dated April 27, 1920, and amplified by an ordinance of May 1, 1920) controlling the election of the Reichstag, under which a Reichstag was elected June 6, 1920.

**B.**  
**THE CONSTITUTION**  
**OF THE GERMAN EMPIRE**  
Dated August 11, 1919  
Effective August 14, 1919

**PREAMBLE.**

The German People, united in its racial branches and animated by the will to renew and consolidate its Empire in Freedom and Justice, to serve Internal and External Peace, and to further Social Progress, has given itself this Constitution.

**PART ONE.**

**Structure and Tasks of the Empire.**

**Division One.**

**EMPIRE AND LANDS.**

Article 1.

The German Empire is a Republic.  
Sovereignty emanates from the People.

Article 2.

The territory of the Empire consists of the territories of the German Lands. Other territories can be incorporated into the Empire by Imperial statute, if their inhabitants by virtue of the right of self-determination so desire.

Article 3.

The Imperial Colors are black-red-gold. The Merchant Flag is black-white-red, with the Imperial Colors in the upper inner corner.

Article 4.

The universally recognized rules of the Law of Nations are binding component parts of the German Imperial law.

## Article 5.

Sovereignty is exercised in Imperial matters by the organs of the Empire upon the basis of the Imperial Constitution; in matters of the Lands, by the organs of the Lands upon the basis of the constitutions of the Lands.

## Article 6.

The Empire has exclusive legislative power concerning:

1. Relations with foreign countries.
2. Colonial affairs.
3. Citizenship, freedom of travel and of domicile, immigration, emigration and extradition.
4. Military organization.
5. Coinage.
6. Customs, the consolidation of the customs and trade areas, and the freedom of transportation of commodities.
7. Posts, telegraphs and telephones.

## Article 7.

The Empire has legislative power concerning:

1. Civil law.
2. Criminal law.
3. Court procedure, including infliction of criminal punishment, and also official co-operation between public authorities.
4. Passports and police supervision of foreigners and strangers.
5. Poor relief and vagrancy.
6. The press, associations and assemblages.
7. Policies as to population, care of maternity cases, nurse-lings, children and young persons.
8. Public health, veterinary practice, and the protection of plants against diseases and pests.
9. Labor law, insurance and protection of workers and employees, and also employment bureaus.
10. Institution of vocationally representative bodies for the territory of the Empire.
11. Care for those who have taken part in war and their surviving dependents.
12. Expropriation.
13. Socialization of natural resources and of economic enterprises, and also the production, manufacture, distribution and price-regulation of economic commodities for the general economy.
14. Trade and commerce, measures and weights, issue of paper money, banking, and bourses.

15. Dealing in articles of food and luxuries and also in articles of daily need.

16. Crafts, industry and mining.

17. Insurance.

18. Navigation at sea, deep-sea and coast fisheries.

19. Railroads, inland navigation, traffic with power-driven vehicles on land, on water and in the air, and construction of roads, in so far as general traffic and defence of the country are concerned.

20. Theaters and moving pictures.

#### Article 8.

The Empire has also legislative power concerning taxes and other revenues, in so far as they are claimed in whole or in part for its purposes. If the Empire claims taxes or other revenues which heretofore appertained to the Lands, it has to take into consideration the maintenance of the vitality of the Lands.

#### Article 9.

In so far as a need of the issuance of uniform regulations exists, the Empire has legislative power concerning:

1. Public welfare.

2. The protection of public peace and safety.

#### Article 10.

The Empire can by way of legislation set up fundamental principles for:

1. The rights and duties of religious societies.

2. The school system, including the system of higher institutions of learning, and the scientific libraries.

3. The law for officials of all public bodies.

4. Land law, land distribution, settlements and homesteads, restrictions on landed property, housing, and distribution of population.

5. Disposal of the dead.

#### Article 11.

The Empire can by way of legislation set up fundamental principles concerning the permissibility, and method of raising, of Land taxes in so far as they are requisite in order to avoid:

1. Detriment to the revenues or trade relationships of the Empire;

2. Double taxation;

3. Excessive or traffic-hampering burdening of the use of public trade-routes and public facilities with tolls and fees;

4. Tax discriminations against imported commodities in favor of their own products in the commerce between the several Lands or between parts of a Land; or

5. Premiums on exports;  
or in order to preserve important social interests.

#### Article 12.

As long and in so far as the Empire does not exercise its legislative power, the Lands retain the right to legislate. This does not apply where the Empire has exclusive legislative power.

The Imperial Government has a right of veto against Land statutes which refer to the matters of Article 7, Number 13, in so far as the welfare of the whole Empire is thereby affected.

#### Article 13.

Imperial law supersedes Land law.

If there exist doubts or differences of opinion about whether a provision of Land law is consistent with Imperial Law, the competent Imperial or Land central authority can, in compliance with the more specific provisions of an Imperial statute, appeal to the decision of a supreme judicial court of the Empire.

#### Article 14.

The Imperial statutes shall be executed by the Land authorities, in so far as the Imperial statutes do not otherwise provide.

#### Article 15.

The Imperial Government exercises supervision in the matters in which the Empire has the right of legislation.

In so far as the Imperial statutes are to be executed by the Land authorities, the Imperial Government can issue general directions. It is empowered, for the supervision of the execution of the Imperial statutes, to send commissioners to the Land central authorities and, with their consent, to the lower authorities.

The Land Governments are bound, upon request of the Imperial Government, to remove defects arising in the execution of the Imperial statutes. In cases of differences of opinion, the

Imperial Government as well as the Land Government can appeal to the decision of the High Court of Judicature, in so far as another court is not designated by Imperial statute.

#### Article 16.

The officials to whom the direct Imperial administration in the Lands is confided are as a rule to be citizens of the particular Land. The officials, employees and workers of the Imperial administration are, at their request, to be employed in their home districts, in so far as this is possible and considerations of their training or demands of the service do not stand in the way.

#### Article 17.

Every Land must have a republican Constitution. The legislative body representing the people must be elected by universal, equal, direct and secret suffrage of all Imperial-German men and women in accordance with the principles of proportional representation. The Land Government shall need the confidence of the legislative body representing the people.

The principles for the elections of the legislative body representing the people shall also apply to the communal elections. However, the right to vote can by Land statute be made dependent upon the length of residence in the Commune up to one year.

#### NOTE

See Note to Article 178.

#### Article 18.

The division of the Empire into Lands is to serve the highest economic and cultural efficiency of the people together with all possible consideration of the will of the population concerned. A change in the territory of Lands and the new formation of Lands within the Empire are brought about by a constitution-amending Imperial statute.

If the Lands immediately concerned consent, only a simple Imperial statute is requisite.

A simple Imperial statute is also sufficient, if one of the Lands concerned does not consent, but the change in territory or the new formation is demanded by the will of the population and a paramount interest of the Empire requires it.

The will of the population is to be determined by a vote. The Imperial Government shall order the vote upon demand therefor by one-third of the inhabitants of the territory to be cut off who are qualified to vote for members of the Reichstag.

For the adoption of a change in territory or a new formation three-fifths of the votes cast, and at least a majority of the qualified voters, are required. And when there is involved only the severance of a part of a Prussian Governmental District, of a Bavarian Circle, or of a similar administrative district in other Lands, the will of the population of the whole district concerned is to be ascertained. If the territory to be severed is not geographically connected with the general district, the will of the population of the territory to be severed can, by virtue of a special Imperial statute, be declared sufficient.

After the ascertainment of the approval by the population, the Imperial Government has to lay before the Reichstag an appropriate bill for passage.

Should there arise, in connection with the union or severance, a dispute about the settlement of property rights, the High Court of Judicature for the German Empire, upon application of a party, shall decide the matter.

#### Article 19.

In constitutional controversies within a Land in which there is no court for their settlement, and also in controversies of a non-private-law nature between different Lands or between the Empire and a Land, the High Court of Judicature for the German Empire, upon application of one of the parties to the controversy, shall decide the matter, in so far as another court of the Empire is not competent.

The Imperial President shall execute the judgment of the High Court of Judicature.

## Division Two.

### THE REICHSTAG.

#### Article 20.

The Reichstag consists of the deputies of the German People.

#### Article 21.

The deputies are representatives of the whole People. They are subject to only their conscience and are not bound by instructions.

#### Article 22.

The deputies shall be elected by universal, equal, direct and

secret election by the men and women over twenty years old in accordance with the principles of proportional representation. The election day must be a Sunday or a public day of rest.

Details shall be prescribed by the Imperial Election Statute.

#### Article 23.

The Reichstag is elected for four years. The new election must take place not later than the sixtieth day after the expiration of the four years.

The Reichstag shall assemble for its first meeting not later than the thirtieth day after the election.

#### Article 24.

The Reichstag shall assemble in every year on the first Wednesday of November at the seat of the Imperial government. The President of the Reichstag must summon it earlier if the Imperial President or at least a third of the members of the Reichstag so demand.

The Reichstag determines the close of a session and the day of re-assembling.

#### Article 25.

The Imperial President can dissolve the Reichstag, but only once upon the same ground.

The new election shall take place not later than the sixtieth day after the dissolution.

#### Article 26.

The Reichstag elects its President, his Proxies and its Secretaries. It formulates its own Standing Rules.

#### Article 27.

Between two sessions or election periods, the President and Proxies of the last session continue to function.

#### Article 28.

The President exercises the law of the house and the police power within the Reichstag's building. The house administration is under him; he controls the receipts and expenditures of the house in accordance with the Imperial Budget, and represents the Empire in all business transactions and law-controversies of his administration.

**Article 29.**

The proceedings of the Reichstag shall be public. Upon application of fifty members the public can be excluded by a two-thirds majority.

**Article 30.**

Accurate reports of the proceedings in the public sittings of the Reichstag, of a Land Diet or of their Committees shall remain free from any and all liability.

**Article 31.**

In the Reichstag a Court for the Review of Elections shall be established. It shall also decide the question whether a deputy has lost his membership.

This court shall consist of members of the Reichstag, who shall be chosen by it for the election period, and of members of the Imperial Administrative Court, whom the Imperial President shall appoint upon nomination by the presidency of this court.

The Court for the Review of Elections shall render judgment, upon the basis of public, oral proceedings, by three members of the Reichstag and two professional judges.

Outside the transactions before the Court for the Review of Elections, the proceedings shall be conducted by an Imperial Commissioner, whom the Imperial President shall appoint. In other respects the proceedings shall be regulated by the Court for the Review of Elections.

**Article 32.**

For a decision of the Reichstag a simple majority vote is requisite, in so far as the Constitution prescribes no other vote. For the elections by the Reichstag the Standing Rules can allow exceptions.

The quorum for the transaction of business is regulated by the Standing Rules.

**Article 33.**

The Reichstag and its Committees can demand the presence of the Imperial Chancellor and any Imperial Minister.

The Imperial Chancellor, the Imperial Ministers and the Commissioners appointed by them have the right to attend the sittings of the Reichstag and its Committees. The Lands are authorized to send representatives to these sittings, who present the standpoint of their Government in the matter under discussion.

Upon their request the representatives of the Governments

must be heard during the proceedings, and the representatives of the Imperial Government also outside the regular order of business.

They are subject to the rulings of the presiding officer in conducting the proceedings.

#### Article 34.

The Reichstag has the right, and, upon request of a fifth of its members, the duty, to appoint Investigating Committees. These Committees shall take, in public hearing, the proof which they or those requesting the proceeding deem necessary. The public can be excluded by the Investigating Committee by a two-thirds vote. The Standing Rules shall regulate the proceedings of the Committee and determine the number of its members.

The courts and administrative authorities are obliged to comply with the demand of these Committees to assist them in taking proof; the records of the authorities are to be laid before them upon their request.

The provisions of the Code of Criminal Procedure are to be applied as far as practicable to the taking of proof by the Committees and the authorities upon whom they make demand. But the privacy of letters and the mail, telegraph and telephone shall remain undisturbed.

#### Article 35.

The Reichstag shall appoint a standing Committee on Foreign Affairs, which can be active also outside a session of the Reichstag and after the termination of the election period or after a dissolution of the Reichstag until the convening of the new Reichstag. The sittings of this Committee shall not be public, unless the Committee adopts publicity by a two-thirds vote.

The Reichstag shall further appoint a standing Committee for the protection of the rights of the body representing the people against the Imperial Government outside a session and after the termination of an election period.

These Committees shall have the rights of Investigating Committees.

#### Article 36.

No member of the Reichstag or of a Land Diet may at any time be prosecuted in court or by way of discipline or otherwise held to account outside the assembly for his vote or for utterances in the exercise of his office.

## Article 37.

No member of the Reichstag or of a Land Diet can, without the consent of the house to which the deputy belongs, during the session period, because of a punishable offence, be subjected to an examination or arrested, unless the member is apprehended in the commission of the act or not later than in the course of the next following day.

The same consent shall be necessary in every other case of restriction of personal liberty which interferes with the exercise of the office of deputy.

Every criminal proceeding against a member of the Reichstag or of a Land Diet and every detention or other restriction of his personal liberty shall, upon demand of the house to which the deputy belongs, be suspended for the duration of the session period.

## Article 38.

The members of the Reichstag and of the Land Diets shall have the right to refuse to testify about persons who make confidential communications to them in their capacity as deputies, or to whom they have made such communications in the exercise of their office as deputies, and also about these communications themselves. And with respect to sequestration of documents they shall enjoy the same rights as persons who have a statutory right to refuse to testify.

A search or sequestration may be undertaken in the rooms of the Reichstag or of a Land Diet only with the consent of the President.

## Article 39.

Public officials and members of the armed forces shall need no leave of absence or furlough in order to discharge their duties as members of the Reichstag or of a Land Diet.

If they are candidates for a seat in these bodies the requisite leave of absence or furlough for the preparation of their election is to be granted them.

## Article 40.

The members of the Reichstag receive the right of free transportation on all German railroads and also remuneration in accordance with an Imperial statute.

## Division Three.

### THE IMPERIAL PRESIDENT AND THE IMPERIAL GOVERNMENT.

#### Article 41.

The Imperial President is elected by the whole German People.

Eligible is every German who has completed the thirty-fifth year of his life.

An Imperial statute shall provide further details.

#### Article 42.

The Imperial President upon the assumption of his office shall take the following oath before the Reichstag:

"I swear that I will devote my energy to the welfare of the German People, increase its advantages, avert injury to it, uphold the Constitution and the laws of the Empire, conscientiously discharge my duties, and practise justice towards every one."

The addition of a religious asseveration is permissible.

#### Article 43.

The term of the Imperial President lasts seven years. Re-election is permissible.

Before the expiration of the term the Imperial President can, upon application of the Reichstag, be removed from office by a Popular Vote. The resolution of the Reichstag requires a two-thirds vote. Upon the adoption of the resolution the Imperial President is precluded from the further discharge of his office. The rejection of the removal by the Popular Vote shall be considered a new election and entail the dissolution of the Reichstag.

The Imperial President cannot be criminally prosecuted without the consent of the Reichstag.

#### Article 44.

The Imperial President cannot at the same time be a member of the Reichstag.

#### Article 45.

The Imperial President represents the Empire in the Law of Nations. He concludes in the name of the Empire alliances

and other treaties with foreign powers. He accredits and receives the ambassadors.

Declaration of war and conclusion of peace take place through an Imperial statute.

Alliances and treaties with foreign states, which relate to the competencies of the Imperial legislation, need the approval of the Reichstag.

#### Article 46.

The Imperial President appoints and dismisses the Imperial officials and the military officers, in so far as is not otherwise provided by statute. He can exercise the right of appointment and dismissal through other authorities.

#### Article 47.

The Imperial President has the supreme command over all the armed forces of the Empire.

#### Article 48.

If a Land does not fulfil the duties laid upon it by the Imperial Constitution or the Imperial statutes, the Imperial President can hold it thereto with the aid of the armed forces.

The Imperial President can, if in the German Empire the public safety and peace are seriously disturbed or threatened, take the necessary measures for the restoration of the public safety and peace, and, in case of necessity, intervene with the aid of the armed forces. For this purpose he may temporarily, in whole or in part, suspend from operation the Fundamental Rights enumerated in Articles 114, 115, 117, 118, 123, 124 and 153.

Of all the measures taken in accordance with Paragraph 1 or Paragraph 2 of this Article the Imperial President must immediately inform the Reichstag. The measures are to be revoked upon demand made by the Reichstag.

In case of danger from delay a Land Government can take for its territory temporary measures of the nature mentioned in Paragraph 2. The measures are to be revoked upon demand made by the Imperial President or by the Reichstag.

An Imperial statute shall provide the details.

#### Article 49.

The Imperial President exercises the right of pardon for the Empire.

Imperial amnesties require an Imperial statute.

**Article 50.**

All decrees and orders of the Imperial President, including those in the domain of the armed forces, need for their validity the countersignature of the Imperial Chancellor or of the competent Imperial Minister. By the countersignature the responsibility is assumed.

**Article 51.**

In case of his being prevented from discharging the duties of his office the Imperial President shall be represented in the first place by the Imperial Chancellor. If it is probable that the disability will last some time, the representation is to be regulated by an Imperial statute.

The same shall apply to the case of a premature vacancy of the Presidency until the new election is carried through.

**Article 52.**

The Imperial Government consists of the Imperial Chancellor and the Imperial Ministers.

**Article 53.**

The Imperial Chancellor, and, upon his recommendation, the Imperial Ministers are appointed and dismissed by the Imperial President.

**Article 54.**

The Imperial Chancellor and the Imperial Ministers need for the conduct of their offices the confidence of the Reichstag. Any one of them must resign if the Reichstag by express resolution withdraws its confidence in him.

**Article 55.**

The Imperial Chancellor presides in the Imperial Government and conducts its business according to rules of order, which shall be adopted by the Imperial Government and approved by the Imperial President.

**Article 56.**

The Imperial Chancellor determines the guiding political principles, and bears the responsibility therefor over against the Reichstag. Within these principles every Imperial Minister con-

ducts his Department independently and under his own responsibility as against the Reichstag.

#### Article 57.

The Imperial Ministers have to submit, for consideration and disposition, to the Imperial Government all drafts of statutes and all matters for which the Constitution or a statute prescribes such action, and also differences of opinion on questions which affect the Departments of more than one Imperial Minister.

#### Article 58.

The Imperial Government reaches decisions by a majority vote. In case of a tie vote the presiding officer casts the deciding vote.

#### Article 59.

The Reichstag is authorized to accuse the Imperial President, the Imperial Chancellor and the Imperial Ministers, before the High Court of Judicature for the German Empire, of being guilty of a wrongful violation of the Imperial Constitution or of an Imperial statute. The petition preferring the charge must be signed by at least one hundred members of the Reichstag and shall need the vote of the majority prescribed for amendments of the Constitution. Further details shall be prescribed in the Imperial statute organizing the High Court of Judicature.

## Division Four.

### THE REICHSRAT.

#### Article 60.

For the representation of the German Lands in the legislation and administration of the Empire a Reichsrat shall be formed.

#### Article 61.

In the Reichsrat every Land shall have at least one vote. In the case of the larger Lands there shall be one vote for every million inhabitants. An excess amounting to at least the population of the smallest Land is to be considered equal to a full million. No Land may be represented by more than two-fifths of all the votes.

[German-Austria shall receive, after its union with the German Empire, the right to participate in the Reichsrat with votes proportionate to its population. Until then the representatives of German-Austria shall have an advisory voice.]

The number of votes shall be fixed anew by the Reichsrat after every general census.

Article 62.

In the Committees appointed from its members by the Reichsrat no Land shall have more than one vote.

Article 63.

The Lands shall be represented in the Reichsrat by members of their Governments. However, one-half of the Prussian members shall be appointed by the Prussian Provincial administrations in accordance with a Land statute.

The Lands are entitled to send as many representatives to the Reichsrat as they have votes.

**NOTE**

See Note to Article 168

Article 64.

The Imperial Government must summon the Reichsrat upon demand by a third of the Reichsrat's members.

Article 65.

A member of the Imperial Government shall preside over the meetings of the Reichsrat and its Committees. The members of the Imperial Government have the right and, upon demand, the duty to take part in the proceedings of the Reichsrat and its Committees. They must, upon demand, be heard at any time during the deliberations.

Article 66.

The Imperial Government and every member of the Reichsrat are authorized to offer resolutions or make motions in the Reichsrat.

The Reichsrat regulates its proceedings by Standing Rules.

The plenary sessions of the Reichsrat shall be public. In accordance with the Standing Rules, the publicity can be excluded for certain matters under discussion.

In voting, a simple majority of those voting is decisive.

Article 67.

The Reichsrat is to be kept well informed by the Imperial Ministerial Departments about the conduct of Imperial matters. In deliberations about important subjects the competent Committees of the Reichsrat are to be called in by the Imperial Departments.

## Division Five.

### THE IMPERIAL LEGISLATION.

Article 68.

Bills are introduced by the Imperial Government or from the body of the Reichstag.

The Imperial statutes are enacted by the Reichstag.

Article 69.

The introduction of bills of the Imperial Government needs the concurrence of the Reichsrat. If there is lack of agreement between the Imperial Government and the Reichsrat, the Imperial Government can nevertheless introduce the bill, but in connection therewith it has to present the dissenting view of the Reichsrat.

If the Reichsrat decides on a bill to which the Imperial Government does not assent, the latter has to introduce the bill in the Reichstag, together with an exposition of the Government's viewpoint.

Article 70.

The Imperial President has to verify the constitutionally enacted statutes and promulgate them within a month in the Imperial Gazette.

Article 71.

Imperial statutes, if they do not otherwise provide, become of force with the fourteenth day after the lapse of the day on which the Imperial Gazette is published in the Imperial capital.

Article 72.

The promulgation of an Imperial statute is to be postponed

two months if a third of the Reichstag so demands. The Imperial President can, regardless of this demand, promulgate statutes which the Reichstag and Reichsrat declare to be urgent.

#### Article 73.

A statute enacted by the Reichstag is to be submitted, before its promulgation, to a Popular Decision if the Imperial President within a month so determines.

A statute, whose promulgation is postponed upon demand of at least a third of the Reichstag, is to be submitted to a Popular Decision, if one-twentieth of those entitled to vote so petition.

A Popular Decision is also to be had when a tenth of those entitled to vote petition for the introduction of a bill. The Popular Petition must cover a fully drafted bill. The bill is to be submitted to the Reichstag by the Government, together with a presentation of its attitude. The Popular Decision is not had if the desired bill is adopted by the Reichstag without change.

As to the Budget, tax statutes and salary regulations, the Imperial President alone can cause a Popular Decision to be had.

An Imperial statute shall regulate the procedure connected with the Popular Decision and with the Popular Petition.

#### Article 74.

The Reichsrat has the right to veto statutes enacted by the Reichstag.

The veto must be announced to the Imperial Government within two weeks after the final enactment of the statute by the Reichstag, and must be supplied with reasons within another fortnight.

In case of a veto the statute shall be laid before the Reichstag for another vote. If thereby no agreement between the Reichstag and the Reichsrat is reached, the Imperial President can, within three months, order a Popular Decision on the subject of the disagreement. If the President makes no use of this right, the statute is deemed unenacted. If the Reichstag overrides the veto of the Reichsrat by a two-thirds vote, the President has to promulgate, within three months, the statute as enacted by the Reichstag, or to order a Popular Decision.

#### Article 75.

An enactment of the Reichstag can be set aside by a Popular

Decision only when a majority of those entitled to vote take part in the voting.

#### Article 76.

The Constitution can be amended by way of legislation. However, enactments of the Reichstag amending the Constitution are effective only if two-thirds of the legal number of members are present and at least two-thirds of those present vote for them. And resolutions of the Reichsrat proposing amendments of the Constitution need a majority of two-thirds of the votes cast. If an amendment of the Constitution is to be passed upon by a Popular Decision upon a Popular Petition, the assent of a majority of those entitled to vote is necessary.

If the Reichstag overrides a veto of the Reichsrat in adopting an amendment of the Constitution, the Imperial President may not promulgate this statute if the Reichsrat within two weeks demands a Popular Decision.

#### Article 77.

The Imperial Government shall issue the necessary general administrative regulations for the execution of the Imperial statutes, in so far as the statutes do not otherwise provide. For this purpose it shall need the consent of the Reichsrat if the execution of the Imperial statutes is left with the Land authorities.

## Division Six.

### THE IMPERIAL ADMINISTRATION.

#### Article 78.

The cultivation of relations with the foreign states is exclusively a matter of the Empire.

In matters whose regulation is within the competency of Land legislation the Lands can make treaties with foreign states; the treaties need the approval of the Empire.

Agreements with foreign states concerning change of the Empire's boundaries are made by the Empire with the concurrence of the Land involved. The boundary changes may be effected only by an Imperial statute, unless a mere rectification of the boundaries of uninhabited territory is involved.

In order to safeguard the representation of interests which result to individual Lands from their particular economic relations

with, or their proximity to, foreign states, the Empire shall adopt the necessary arrangements and measures in an understanding with the Lands concerned.

**Article 79.**

The defence of the Empire is a matter of the Empire. The military organization of the German People shall be regulated uniformly by an Imperial statute, with consideration for the peculiar local characteristics of the people.

**Article 80.**

Colonial affairs are exclusively a matter of the Empire.

**Article 81.**

All German merchant ships form a unified merchant marine.

**Article 82.**

Germany constitutes a customs and trade area, surrounded by a common customs frontier.

The customs frontier coincides with the frontier against foreign countries. Along the sea the shore of the mainland and of the islands belonging to the territory of the Empire forms the customs frontier. For the course of the customs frontier along the sea and along other waters deviations can be provided.

Foreign states or parts of foreign states can be annexed to the customs area by treaties or agreements.

From the customs area parts can be excluded according to special need. For Free-Ports the exclusion can be discontinued only by a statute in amendment of the Constitution.

Districts excluded from the customs area can be annexed to a foreign customs area by treaty or agreement.

All products of nature and also of industry and art, which are in the free commerce of the Empire, may be transported across the boundaries of the Lands and Communes into, from or through them. Exceptions based upon an Imperial statute are permissible.

**Article 83.**

The customs duties and excises on articles of consumption shall be administered by Imperial authorities.

In the administration of Imperial revenues by Imperial authori-

ties measures are to be taken to render possible for the Lands the maintenance of special interests of the Lands in the realms of agriculture, commerce, trade, crafts and industry.

**Article 84.**

The Empire shall enact statutory regulations concerning:

1. The organization of the tax administration of the Lands, in so far as the unified and uniform execution of the Imperial tax statutes demands it.
2. The organization and powers of the authorities charged with the supervision of the execution of the Imperial tax statutes.
3. The settling of accounts with the Lands.
4. The reimbursement of the expenses of administration in executing the Imperial tax statutes.

**Article 85.**

All receipts and disbursements of the Empire must be estimated for each fiscal year and be put into the Budget.

The Budget shall be determined by statute before the beginning of the fiscal year.

The appropriations shall, as a rule, be made for a year; they can in special cases also be made for a longer period. As for the rest, provisions which extend beyond the fiscal year or do not relate to the receipts and disbursements of the Empire or their administration are not permissible in the statute determining the Budget.

The Reichstag cannot increase or add disbursements in the Budget bill without the consent of the Reichsrat.

The consent of the Reichsrat can be replaced in accordance with the provisions of Article 74.

**Article 86.**

For the discharge of the Imperial Government from responsibility, the Imperial Minister of Finance shall account for the disposition of all Imperial receipts to the Reichsrat and the Reichstag in the following fiscal year. The auditing of the account shall be regulated by Imperial statute.

**Article 87.**

Funds may be raised by loans only in cases of extraordinary need and as a rule only for expenditures for income-producing pur-

poses. Such loans and the assumption of a guaranty by the Empire shall be effected only by virtue of an Imperial statute.

#### Article 88.

The postal and telegraph service, together with the telephone service, is exclusively a matter of the Empire.

The postage stamps shall be uniform for the whole Empire.

The Imperial Government shall issue, with the consent of the Reichsrat, the regulations which determine principles and charges for the use of the means of communication. It can transfer this power, with the consent of the Reichsrat, to the Imperial Minister of Posts.

The Imperial Government shall organize, with the consent of the Reichsrat, an advisory board for co-operation in matters of the postal, telegraph and telephone service and of the tariffs.

Treaties covering service with foreign countries shall be concluded by the Empire alone.

#### Article 89.

It is a task of the Empire to acquire the ownership of, and to administer as a unified traffic institution, the railroads serving the general traffic.

The rights of the Lands to acquire private railroads are to be transferred, upon demand, to the Empire.

#### Article 90.

With the transfer of the railroads the Empire takes over the right of expropriation and the state prerogatives relating to railroads. In case of dispute the High Court of Judicature shall decide the extent of these rights.

#### Article 91.

The Imperial Government shall issue, with the consent of the Reichsrat, the decrees which control the construction, management and traffic of the railroads. It can transfer this power, with the consent of the Reichsrat, to the competent Imperial Minister.

#### Article 92.

The Imperial railroads are, regardless of the incorporation of their budget and their accounts in the general budget and the

general accounts of the Empire, to be administered as an independent economic enterprise, which itself has to meet its expenditures, including interest on, and a sinking fund for, the railroad debt, and to accumulate a railroad reserve fund. The amount of the sinking fund and the reserve fund and the purposes for which the latter may be used are to be regulated by special statute.

#### Article 93.

The Imperial Government shall organize, with the consent of the Reichsrat, advisory boards for the Imperial railroads for co-operation in matters of the railroad traffic and the tariffs.

#### Article 94.

If the Empire has taken over into its administration the general-traffic railroads of a certain district, new general-traffic railroads can be constructed within this district only by the Empire or with its consent. If the construction of new, or the change of existing, Imperial railroads comes in contact with the jurisdiction of the Land police power, the Imperial railroad administration has to grant a hearing to the Land authorities before reaching a decision.

Where the Empire has not yet taken the railroads over into its administration, it can build railroads deemed necessary for the general traffic or for the defence of the country, by virtue of an Imperial statute and contrary to the objection of the Lands whose territory is traversed, but without prejudice to the Land prerogatives, at its own expense, or turn the construction over to some one else, together with the grant, if necessary, of the right of expropriation.

Every railroad administration must allow a connection with other roads at the expense of the latter.

#### Article 95.

Railroads of general traffic which are not administered by the Empire, are subject to supervision by the Empire.

The railroads subject to the Imperial supervision are to be constructed and equipped according to uniform principles fixed by the Empire. They are to be kept in condition safe for operation and to be developed to meet the demands of traffic. Passenger and freight traffic are to be served and equipped in keeping with requirements.

Uniform and low railroad rates are to be aimed at in the supervision of the tariffs.

## Article 96.

All railroads, including those not serving general traffic, must meet the demands of the Empire for the use of railroads for the defence of the country.

## Article 97.

It is a task of the Empire to take over into its ownership and its administration the waterways serving general traffic.

After such taking over, waterways serving general traffic can be constructed or developed only by the Empire or with its consent.

In the administration, development or the new construction of waterways the needs of agriculture and water-economics are to be conserved in an understanding with the Lands. Their advancement is also to be taken into consideration.

Every administration of waterways has to allow a connection with other inland waterways at the expense of the latter. The same obligation exists for the making of a connection between inland waterways and railroads.

With the assumption of the waterways the Empire acquires the right of expropriation, the tariff prerogative, and the police jurisdiction over streams and navigation.

The tasks of the associations for the construction of waterways with respect to development of natural waterways in the Rhine, Weser and Elbe Districts are to be taken over by the Empire.

## Article 98.

Advisory boards shall be organized under detailed regulations issued by the Imperial Government, with the consent of the Reichsrat, in connection with the Imperial waterways, for co-operation in matters of the waterways.

## Article 99.

On natural waterways charges can be collected only for such public works as are adapted to relieve the traffic. In the case of state or communal institutions they may not exceed the necessary costs of construction and maintenance. The costs of construction and maintenance for public works which are not adapted exclusively to relieve the traffic, but also to further other purposes, may be met by navigation charges to a proportionate extent only. Interest and sinking-fund payments for the capital invested are to be considered as costs of construction.

The provisions of the preceding paragraph apply to the charges which are collected for artificial waterways and for public works on them and in harbors.

In the domain of inland navigation the total costs of a waterway of a stream district, or of a system of waterways can be taken as the basis of adjusting the navigation charges.

These provisions apply also to rafting on navigable waterways.

Only the Empire can collect from foreign ships and their cargoes charges other or higher than those from German ships and their cargoes.

For the raising of means for the maintenance and improvement of the German system of waterways the Empire can call upon those engaged in navigation for contributions in other ways provided by statute.

#### Article 100.

To meet the costs of maintenance and construction of inland waterways there can also be called upon, by Imperial statute, whoever receives a benefit from the construction of dams otherwise than from navigation, in as far as more than one Land are concerned or the Empire bears the costs of the works.

#### Article 101.

It is a task of the Empire to take over into its ownership and administration all sea-marks, particularly beacons, light-ships and buoys. After such taking over, sea-marks can be established or extended only by the Empire or with its consent.

## Division Seven.

### THE ADMINISTRATION OF JUSTICE.

#### Article 102.

The judges are independent and subject to only the law.

#### Article 103.

The ordinary jurisdiction shall be exercised by the Imperial Supreme Court and by the courts of the Lands.

#### Article 104.

The judges of the ordinary jurisdiction are appointed for life.

They can, against their will, be permanently or temporarily deprived of their office or transferred to another court or retired only by virtue of a judicial decision and only on the grounds and in the manner provided by the statutes. Legislation can fix the age limits upon reaching which the judges retire.

The statutory provisional suspension from office is not hereby affected.

In case of a change in the organization of the courts or of their territorial jurisdictions, the Land Administration of Justice can order involuntary transfers to another court or removals from office, only, however, with retention of the full stipend.

These provisions do not apply to judges of the Industrial Courts, Assessors and Jurymen.

#### Article 105.

Exceptional courts are not allowed. No one may be deprived of the judge provided for him by law. The provisions of law concerning Courts-Martial, including the drum head variety, are not hereby affected. The Military Courts of Honor are abolished.

#### Article 106.

The jurisdiction of military courts is to be abolished, except for times of war and on board warships. An Imperial statute shall prescribe the details.

#### Article 107.

In the Empire and in the Lands there must exist, in accordance with statutes, Administrative Courts for the protection of the individuals against orders and decrees of the administrative authorities.

#### Article 108.

In accordance with an Imperial statute a High Court of Judicature for the German Empire shall be established.

## PART TWO.

### Fundamental Rights and Fundamental Duties of the Germans.

#### Division One.

##### THE INDIVIDUAL.

###### Article 109.

¶ All Germans are equal before the law. Men and women have fundamentally the same civic rights and duties.

¶ Public-law privileges or disadvantages of birth or of rank are to be abolished. Titles of nobility are considered only as part of the name and may no longer be conferred.

¶ Titles may be conferred only when they designate an office or calling; academic degrees are not hereby affected.

¶ Orders and decorations may not be bestowed by the state.

¶ No German may accept a title or order from a foreign government.

###### Article 110.

Citizenship in the Empire and in the Lands is acquired and lost in accordance with the provisions of an Imperial statute. Every citizen of a Land is at the same time a citizen of the Empire.

Every German has in each Land of the Empire the same rights and duties as the citizens of the Land itself.

###### Article 111.

All Germans enjoy freedom of travel and domicile throughout the whole Empire. Every one has the right to stay and settle at any desired place in the Empire, to acquire land, and to pursue any livelihood. Restrictions require an Imperial statute.

###### Article 112.

Every German is entitled to emigrate to foreign countries. Emigration can be restricted only by an Imperial statute.

As against foreign countries all citizens of the Empire within and without the territory of the Empire have a claim to the protection of the Empire.

No German may be delivered up to a foreign government for prosecution or punishment.

Article 113.

The foreign-language elements of the population of the Empire may not be restricted by legislation and administration in their free, ethnological development, especially in the use of their mother tongue in education, nor in internal administration and the administration of justice.

Article 114.

The freedom of the person is inviolable. A restriction or deprivation of personal freedom by public power is permissible only upon statutory grounds.

Persons who are deprived of their freedom are to be notified not later than the next following day by what authorities and upon what grounds the deprivation of freedom has been ordered; without delay opportunity is to be given them to object to the deprivation of their freedom.

Article 115.

The home of every German is for him an asylum and inviolable. Exceptions are permissible only upon statutory grounds.

Article 116.

An act can be punishable only when the penalty was fixed by statute before the act was committed.

Article 117.

The privacy of letters and also that of the mail, telegraph and telephone are inviolable. Exceptions can be allowed only by Imperial statute.

Article 118.

Every German has the right, within general statutory limitations, to express his opinion freely by word of mouth, writing, printing, picture or otherwise. No relationship of labor or employment may hinder him in this right, and no one may wrong him if he makes use of this right.

A censorship is not had; however, divergent provisions for moving pictures may be made by statute. And statutory measures are permissible for the suppression of trashy and obscene literature, and for the protection of young persons in public performances and exhibitions.

## Division Two.

### THE COMMUNITY LIFE.

#### Article 119.

Marriage stands, as the foundation of family life and of the preservation and increase of the nation, under the special protection of the Constitution. It rests upon the equality of rights of both sexes.

The keeping pure, the wholesomeness, and the social advancement of the family are a task of the state and of the Communes. Families of many children have a claim to financial relief.

Motherhood has a claim to the protection and care of the state.

#### Article 120.

The rearing of the rising generations to physical, mental and social fitness is the supreme duty and natural right of the parents, over whose activities the political community watches.

#### Articles 121.

Legislation is to create for illegitimate children the same conditions for physical, mental and social development as for legitimate children.

#### Article 122.

Young persons are to be protected against exploitation and also against moral, mental or physical neglect. State and Commune have to adopt the necessary measures.

Rules for care by way of compulsion can be made by virtue of statute only.

#### Article 123.

All Germans have the right to assemble peaceably and unarmed, without notice or special permission.

Assemblies in the open can, by Imperial statute, be made subject to notice, and can be forbidden in case of immediate danger to the public safety.

Article 124.

All Germans have the right to form societies or associations for purposes that are not contrary to the criminal laws. This right can not be restricted by preventive measures. The same provisions apply to religious societies and associations.

The right of incorporation is open to every society conformably to the provisions of the civil law. It may not be denied a society on the ground that it pursues a political, socio-political or religious purpose.

Article 125.

Freedom of elections and secrecy of elections are guaranteed. The election statutes shall determine the details.

Article 126.

Every German has the right to petition, in writing, with requests or complaints, the proper authorities or the popular representative body. This right can be exercised by individuals as well as by several together.

Article 127.

Communes and Communal Unions have the right of self-administration within the limits of the statutes.

Article 128.

All citizens without distinction are eligible for public offices in accordance with the statutes and according to their ability and their attainments.

All exceptional provisions against women officials are removed.

The underlying principles of official relationships are to be regulated by Imperial statute.

Article 129.

The appointment of the officials is for life, in so far as is not otherwise provided by statute. Pensions and care of surviving de-

pendents are regulated by statute. The duly acquired rights of the officials are inviolable. For the claims of the officials to property rights the process of law is open.

The officials can be provisionally suspended from office, or temporarily or permanently retired, or transferred to another office with a lower salary only in conformity with the statutory requirements and forms.

For every disciplinary sentence there must be open a remedy by way of appeal, and the possibility of a rehearing. In the personal record of the official, notations of facts unfavorable to him are to be made only after an opportunity has been given him to express himself about them. The official is to be granted an inspection of his personal record.

The inviolability of the duly acquired rights and the keeping open of the process of law for the claims to property rights are to be guaranteed especially to the professional soldiers too. In other respects their position shall be regulated by Imperial statute.

#### Article 130.

The officials are servants of the whole body politic, not of a party.

To all officials are guaranteed the freedom of their political beliefs and the freedom of association.

The officials are entitled to special bodies representing them as officials, in accordance with detailed Imperial statutory provisions.

#### Article 131.

If an official in the discharge of the public power entrusted to him breaches his official duties towards a third party, the responsibility rests fundamentally with the state or body in whose service he stands. The right of redress against the official is reserved. The ordinary process of law may not be excluded.

It is the duty of the competent legislature to provide details.

#### Article 132.

Every German has the duty, in accordance with the statutes, to accept honorary offices.

#### Article 133.

All citizens are bound, in accordance with the statutes, to perform personal services for the state and the Commune.

The military duty is directed along the lines of the Imperial Military Statute. This shall also provide how far particular fundamental rights are to be restricted for members of the armed forces for the performance of their duties and for the maintenance of discipline.

#### Article 134.

All citizens, without distinction, contribute to all public burdens in proportion to their means, as provided by statutes.

### Division Three.

#### RELIGION AND RELIGIOUS SOCIETIES.

#### Article 135.

All inhabitants of the Empire enjoy full freedom of religious belief and conscience. Undisturbed public worship is guaranteed by the Constitution and is under the protection of the state. The general statutes are not hereby affected.

#### Article 136.

The civil and civic rights and duties are neither qualified nor restricted by the exercise of religious freedom.

The enjoyment of civil and civic rights and the admission to public offices are independent of religious belief

No one is obliged to reveal his religious conviction. The authorities have the right to ask about membership in a religious society only so far as rights and duties are dependent thereon or a statutory statistical inquiry demands it.

No one may be forced into a church ceremony or celebration or into participation in religious exercises or into the use of a religious form of oath.

#### Article 137.

There exists no state church.

The freedom to form religious societies is guaranteed. The union of religious societies within the territory of the Empire is subject to no restrictions.

Every religious society regulates and administers its affairs independently within the limits of the law applicable to everybody.

It bestows its offices without the co-operation of the state or the civil Commune.

Religious societies become incorporated in accordance with the general provisions of the civil law.

The religious societies remain public corporations in so far as they were such heretofore. Other religious societies are, upon their request, to be granted like rights if they, by their constitution and the number of their members, offer a guaranty of permanence. If several of that class of public-law religious societies join in a union, this union is also a public corporation.

The religious societies which are public corporations are entitled to raise taxes upon the basis of the civil tax lists, in accordance with the provisions of the Land laws.

The associations which have for their object the common cultivation of a view of the world are treated like the religious societies.

As far as the carrying out of these provisions demands further regulation, the same shall be made by Land legislation.

#### Article 138.

Contributions by the state to religious societies, which rest upon statute, treaty or special legal title, shall be commuted by Land legislation. The principles therefor shall be set up by the Empire.

Ownership and other rights of religious societies and unions in their institutions, foundations and other properties designated for purposes of worship, education and charity are guaranteed.

#### Article 139.

Sunday and state holidays remain protected by statute as days of rest from labor and of spiritual edification.

#### Article 140.

To the members of the armed forces is to be granted the necessary free time for the fulfillment of their religious duties.

#### Article 141.

In so far as the need for religious services and cure of souls in the army, hospitals, penal institutions or other public institutions exists, the religious societies are to be admitted for the holding of religious exercises, in connection with which there is to be no compulsion.

## Division Four.

### EDUCATION AND SCHOOLS.

#### Article 142.

Art and science and the teaching of them are free. The state vouchsafes them protection and participates in their cultivation.

#### Article 143.

The education of young persons is to be provided for by means of public institutions. In their establishment Empire, Lands and Communes work together.

The education of teachers is to be regulated uniformly for the Empire, in accordance with the principles which are applied generally to higher education.

The teachers in public schools have the rights and duties of state officials.

#### Article 144.

The entire school system stands under the supervision of the state; it can call upon the co-operation of the Communes. The supervision of schools is exercised by high, professionally trained officials.

#### Article 145.

There exists universal compulsory education. Its accomplishment shall be served, fundamentally by elementary schools with at least eight school years, and by connecting continuation schools until the completed eighteenth year of life. The instruction and the school supplies in the elementary and continuation schools shall be furnished free of charge.

#### Article 146.

The public school system is to be planned organically. Upon a primary school common to all there shall be built up the intermediate and higher school system. For this building-up the variety of vocations is to be the guide, and for the reception of a child into a particular school the guide shall be his aptitude and inclination, and not the economic and social position or the religious belief of his parents.

Within the Communes, however, there are to be established, upon request of those entitled to instruction, elementary schools of their faith or of their view of the world, in so far as thereby an organized school system—also in the sense of Paragraph One of this Article—is not impaired. The will of those entitled to instruction is to be considered as much as possible. Land legislation shall provide for details in accordance with the principles of an Imperial statute.

For the admission of the less well-to-do to the intermediate and higher schools, public means are to be furnished by Empire, Lands and Communes, especially assistance for parents in rearing children who are deemed fit for training in intermediate and higher schools, until the finishing of the training.

#### Article 147.

Private schools as substitutes for public schools need the approval of the state and are under the Land statutes. The approval is to be given if the private schools, in their educational aims and arrangements and also in the scientific development of their teaching forces, do not stand below the public schools and a separation of the scholars according to the means of the parents is not furthered. The approval is to be denied if the economic status and legal status of the teaching forces are not sufficiently secured.

Private elementary schools are permissible only if there exists for a minority of those entitled to instruction, whose will is to be considered according to Article 146, Paragraph Two, no public elementary school of their faith or of their view of the world in the Commune, or if the educational administrative authorities recognize a special pedagogical interest.

Private preparatory schools are to be abolished.

For private schools which do not serve as substitutes for public schools the law remains as it is.

#### Article 148.

In all schools moral training, civic sentiment, personal and vocational efficiency are to be aimed at, in the spirit of German nationality and of the reconciliation of nations.

In the instruction in public schools care is to be taken not to hurt the feelings of persons of a different way of thinking.

Civics and labor are to be taught in the schools. Every pupil shall receive a copy of the Constitution upon completion of the compulsory education.

National education, including national universities, is to be fostered by Empire, Lands and Communes.

## Article 149.

Religious instruction shall be a regular subject of the school curricula, except in non-confessional (secular) schools. The imparting of it shall be regulated within the limits of the school legislation. Religious instruction shall be imparted in conformity with the principles of the respective religious society, without prejudice to the right of supervision of the state.

The imparting of religious instruction and the use of church forms are optional with the instructors, and the participation [by the pupil] in religious studies and in church festivities and ceremonies is left to the decision of him who has to settle the matter of the religious education of the child.

The theological faculties in the universities remain in existence.

## Article 150.

✓ The monuments of art, of history and of nature and also scenery enjoy the protection and care of the state.

It is a matter of the Empire to prevent the exportation of German art treasures to foreign countries.

## Division Five.

## THE ECONOMIC LIFE.

## Article 151.

The ordering of the economic life must conform to the principles of justice, with the assurance to all of an existence worthy of a human being as the goal. Within these limits the economic freedom of the individual is to be secured.

Statutory compulsion is permissible only for the realization of threatened rights or in the service of superior demands of the public weal.

The freedom of trade and industry is guaranteed in accordance with Imperial statutes.

## Article 152.

✓ In economic intercourse freedom of contract prevails in accordance with the statutes.

✓ Usury is forbidden. Transactions which are contrary to good morals are void.

## Article 153.

Property is guaranteed by the Constitution. Its content and its limitations shall be defined by the statutes.

Expropriation can be had only for the common welfare and upon statutory grounds. It is had with adequate compensation, in so far as an Imperial statute does not otherwise provide. In case of dispute about the amount of the compensation the ordinary courts are to be open for relief, in so far as Imperial statutes do not otherwise provide. Expropriation by the Empire as against Lands, Communes and associations serving the public can be had only with compensation.

Property obligates. Its use is to be at the same time service for the best good of the public.

## Article 154.

The right of inheritance is guaranteed in accordance with the civil law.

The portion of the state in an estate of inheritance shall be fixed by the statutes.

## Article 155.

The distribution and use of the land shall be supervised by the state in a way to avoid abuse and with the aim to secure to every German a healthful habitation and to all German families, according to their needs, especially those with many children, a homestead for dwelling and economic purposes. Those who have taken part in war are especially to be considered in the homestead law which is to be enacted.

Real estate, whose acquisition is necessary for meeting the needs of a dwelling, for the advancement of settlements and reclamation of land, or for the encouragement of agriculture, can be expropriated. Entailments are to be abolished.

The cultivation and exploitation of the land are a duty of the owner to the community. The increase in value of the land, which is brought about without the expenditure of labor or capital on the property, is to inure to the benefit of the community.

All treasures of the ground and all economically useful forces of nature stand under the supervision of the state. Private *jura regalia* are to be transferred to the state by way of legislation.

**Article 156.**

The Empire can, by statute, without prejudice to compensation, in an appropriate application of the provisions relating to expropriation, transfer into public ownership private economic enterprises adapted to socialization. It can engage itself, the Lands or the Communes in the administration of economic enterprises and associations, or secure to itself in other ways a controlling influence therein.

The Empire can further, in case of urgent need, for the purpose of common-economics, by statute, combine economic enterprises and associations upon the basis of self-administration, with the aim to secure the co-operation of all producing elements of the people, to engage employers and employees in the administration, and to regulate production, manufacture, distribution, utilization, price-fixing, and importation and exportation of economic products according to common-economic principles.

The co-operative societies and their confederations are, upon their request, to be incorporated into the common-economics, upon consideration of their form of organization and of their peculiar nature.

**Article 157.**

Labor stands under the special protection of the Empire.  
The Empire shall create a uniform labor law.

**Article 158.**

Intellectual labor, copyright, the rights of inventors and artists enjoy the protection and care of the Empire.

Recognition and protection are to be secured for the creations of German science, art and technics in foreign countries also, by international agreement.

**Article 159.**

The freedom of combination for the maintenance and advancement of the conditions of labor and economics is guaranteed for everybody and for all vocations. All agreements and measures which seek to restrict or to interfere with this freedom are contrary to law.

**Article 160.**

Whoever stands in a relationship of service or labor as an employee or worker has the right to the free time necessary for

the exercise of his civic rights and, in so far as the business is not materially thereby interfered with, for the discharge of public honorary offices assigned to him. The statute shall provide how far he retains a claim to compensation.

Article 161.

For the conservation of health and the ability to work, for the protection of motherhood and for providing against the economic results of old age, infirmity and the vicissitudes of life, the Empire shall create a comprehensive system of insurance, under dominant co-operation of the insured.

Article 162.

The Empire shall advocate an international regulation of the legal status of the workers, which shall endeavor to obtain a universal minimum measure of social rights for the whole working class of mankind.

Article 163.

Every German has, without prejudice to his personal freedom, the moral duty so to employ his intellectual and physical powers as the welfare of the whole demands.

Every German is to be given the possibility to earn his living by economic work. In so far as it cannot be shown that he has an adequate opportunity to work his necessary maintenance will be provided for. Details shall be provided by special Imperial statutes.

Article 164.

In legislation and administration the independent middle class in agriculture, crafts, industry, trade and commerce is to be fostered and protected against being overburdened and being sucked up.

Article 165.

Workers and employees are called to take part, with equal rights in co-operation with the employers, in the regulation of the conditions of wages, salaries and work and also in the whole economic development of the productive forces. The organizations on both sides and their agreements shall be recognized.

The workers and employees shall receive, for the purpose of

looking after their social and economic interests, statutory representation in Factory Workers' Councils, and also in District Workers' Councils organized according to economic areas, and in an Imperial Workers' Council.

The District Workers' Councils and the Imperial Workers' Council shall meet, for the purpose of fulfilling all the economic tasks and of co-operating in the carrying out of the socialization statutes, with the representatives of the employers and other interested circles of the people as District Economic Councils and as an Imperial Economic Council. The District Economic Councils and the Imperial Economic Council are to be so organized that all important business groups are represented therein according to their economic and social importance.

Socio-political and economic bills of fundamental importance are, before their introduction, to be submitted by the Imperial Government to the Imperial Economic Council for its opinion. The Imperial Economic Council itself has the right to propose such bills. If the Imperial Government does not agree to them, it has nevertheless to introduce the bills in the Reichstag together with the presentation of its standpoint. The Imperial Economic Council can have the bill represented in the Reichstag by one of its members.

There can be granted to Workers' Councils and Economic Councils functions of control and administration in the areas assigned to them.

The formation and the task of the Workers' Councils and of the Economic Councils and also their relation to other social self-administrative bodies are exclusive matters of the Empire.

## **Transitional and Final Provisions.**

### Article 166.

Until the creation of the Imperial Administrative Court the Imperial Supreme Court shall take its place in forming the Court for the Review of Elections.

### Article 167.

The provisions of Article 18, Paragraphs 3 to 6, do not become effective until two years after the promulgation of the Imperial Constitution.

#### **NOTE**

By amendment of November 27, 1920, the following was added to this Article 167:

"In the Prussian Province of Upper Silesia there shall be had, within two months after the German authorities have again taken over the administration of the territory now occupied, a vote, in accordance with Article 18, Paragraph 4, Sentence 1, and Paragraph 5, on the question whether a Land of Upper Silesia shall be established.

"If the question is answered in the affirmative, then the Land is to be organized without delay, without the necessity of a further Imperial statute. In connection therewith the following provisions shall apply:

"1. A Land convention is to be elected, which is to be assembled within three months after the official determination of the result of the vote, for the installation of the Land Government and action upon the Land Constitution. The Imperial President shall issue the Election Decree in accordance with the provisions of the Imperial Election Statute, and shall fix the election day.

"2. The Imperial President shall, in agreement with the Upper-Silesian Land convention, determine when the Land shall be considered as established.

"3. The following persons acquire the Upper-Silesian citizenship:

"a) The citizens of the Empire who are of full age and on the day of the establishment of the Land of Upper Silesia (No. 2) have their residence or permanent domicile in its territory—on said day;

"b) Other citizens of Prussia who are of full age and were born in the territory of the Province of Upper Silesia and within a year after the establishment of the Land (No. 2) declare to the Land Government that they desire to acquire the Upper-Silesian citizenship—on the day of the receipt of said declaration;

"c) All citizens of the Empire who by birth, legitimation or marriage follow the citizenship of one of the persons mentioned under a and b."

Because of the continued complications connected with Upper Silesia, the attempt here started to establish it as a Land of the Empire has not yet been consummated. It was hoped it would be before August 14, 1921, the date prescribed by Article 167, as originally adopted, for such action.

#### Article 168.

Until the enactment of the Land statute provided for in Article 63, but for not longer than one year, all the Prussian votes in the Reichsrat can be cast by members of the Government.

#### NOTE

Prussia having been unable to comply with Article 63, the period of one year was extended, by amendment of August 6, 1920, to not later than July 1, 1921.

#### Article 169.

The time when the provision in Article 83, Paragraph 1, shall become effective shall be fixed by the Imperial Government. For a reasonable transition period the collection and administration of customs-duties and excises can be left with the Lands, if they so wish.

## Article 170.

The postal and telegraphic administrations of Bavaria and Württemberg shall be transferred to the Empire not later than April 1, 1921.

In so far as by October 1, 1920, no agreement as to the conditions of the transfer is reached, the High Court of Judicature shall decide the matter.

Until the transfer, the existing rights and duties of Bavaria and Württemberg shall remain in force. The postal and telegraphic traffic with the neighboring foreign states, shall, however, be regulated exclusively by the Empire.

## Article 171.

The state-railroads, waterways and sea-marks are to be transferred to the Empire not later than April 1, 1921.

In so far as by October 1, 1920, no agreement as to the conditions of the transfer is reached, the High Court of Judicature shall decide the matter.

## Article 172.

Until the Imperial statute creating the High Court of Judicature becomes effective, its functions shall be exercised by a senate of seven members, of which the Reichstag elects four and the Imperial Supreme Court elects three from its members. It shall itself regulate its proceedings.

## Article 173.

Until the enactment of an Imperial statute in accordance with Article 138, the existing state contributions to religious societies, resting upon statute, treaty or other legal title, shall remain in force.

## Article 174.

Until the enactment of the Imperial statute provided for in Article 146, Paragraph 2, the existing legal status shall continue to exist. The statute has to consider especially the areas of the Empire in which a school not separated according to religious faiths legally exists.

## Article 175.

The provision of Article 109 does not apply to orders and decorations which are to be bestowed for services during the war years 1914-1919.

**Article 176.**

All public officials and members of the armed forces are to take an oath to this Constitution. Details shall be provided by a decree of the Imperial President.

**Article 177.**

Wherever in the existing statutes the taking of an oath is prescribed with the use of a religious form of oath, the oath can also be taken legally by the person taking the oath declaring: "I swear," with the omission of the religious form of oath. In other respects the content of the oath provided in the statutes remains unaffected.

**Article 178.**

The Constitution of the German Empire of April 16, 1871, and the Statute concerning the Provisional Imperial Power of February 10, 1919, are abrogated.

The remaining statutes and decrees of the Empire remain in force, in so far as this Constitution does not conflict with them. The provisions of the Treaty of Peace signed on the twenty-eighth of June, 1919, at Versailles, are not affected by the Constitution.

Orders of the authorities which were legally made under hitherto existing statutes retain their validity until their abrogation by other orders or by legislation.

**NOTE**

The following sentence was added to the second Paragraph of this Article 178, by amendment of August 6, 1920:

"In consideration of the negotiations for the possession of the Island of Heligoland, deviation from the provision of Article 17, Paragraph 2, may be made in favor of its native population."

**Article 179.**

In so far as in statutes or decrees reference is made to institutions and provisions which are abrogated by this Constitution, the corresponding institutions and provisions of this Constitution take their place. Particularly, the Reichstag takes the place of the National Assembly, the Reichsrat takes the place of the States-Committee, the Imperial President elected under this Constitution takes the place of the Imperial President elected under the Statute concerning the Provisional Imperial Power.

The power to issue decrees belonging, under hitherto existing provisions, to the States-Committee is transferred to the Imperial

Government; it shall need for the issuance of the decrees the consent of the Reichsrat as laid down in this Constitution.

Article 180.

Until the convening of the first Reichstag, the National Assembly is to be considered as the Reichstag. Until the assumption of office by the first Imperial President his office shall be conducted by the Imperial President elected under the Statute concerning the Provisional Imperial Power.

Article 181.

The German people has, through its National Assembly, ordained and adopted this Constitution. It shall become effective with the day of its promulgation.

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## Part Three

### “PARALLELOGRAPH”

For ready reference and quick comparison of the different drafts of the Constitution of 1919, the writer has adopted what he calls a “Parallelograph.” In it are given under the successive Article numbers of the Constitution of 1919: first, across the page, the corresponding or relative Sections (§§) of the Preuss draft; second, to the left, the corresponding or relative Articles of the draft submitted by the “Government” to the National Assembly; third, to the right, the corresponding or relative Articles of the draft adopted by the Committee to which the National Assembly submitted the matter; fourth, in “Notes”, extending across the page, certain sidelights and helps on the text, development, history and understanding of the Constitution of 1919 during its evolution or in its final shape. These “Notes” are not comprehensive enough to be considered a commentary. In them the Cross-references are always from and to the Articles of the Constitution of 1919 as finally adopted, unless otherwise indicated.

A straight line signifies there is no corresponding or relative provision.

The two Constitutions of 1871 and 1919 are best compared or paralleled through their Indexes, which are detailed and adequate for that purpose.

## PREAMBLE.

---

### Preamble.

The German People, united in its racial branches and animated by the will to renew and consolidate its Empire upon the basis of Freedom and Justice, to safeguard Internal and External Peace, and to further Social Progress, has given itself this Free-State Constitution.

### Preamble.

The German People, united in its racial branches and animated by the will to renew and consolidate its Empire in Freedom and Justice, to serve Internal and External peace, and to further Social Progress, has given itself this Constitution.

### NOTE

The word translated "united," to the left, is **geernt**. To the right, it is **einig**. The word translated "Social", to the left, is **sozial**. To the right, it is **gesellschaftlich**. The word translated "Free-State" is **freistaatlich**.

**Einig** and **gesellschaftlich** are used in the Constitution as finally adopted. Its Preamble and the one to the right, above, are identical.

**Einig** is an adjective, meaning united, especially in agreement, harmony or concord. **Geernt** is the past participle of a verb meaning to unite, into a whole. It connotes both action and state or condition of mind. **Gesellschaftlich** refers to society in general. **Sozial** carries with it nowadays a touch of socialism. **Freistaatlich** is the adjective derived from **Freistaat**, literally, "Free-State". Its best equivalent here is "Republican".

The Constitution of 1871 was based upon a union, by treaty, of the German monarchs and Free Cities. The Revolution of 1918 produced a German people united in feeling, which proceeded to give itself, through a National Assembly elected for the purpose, a permanent constitution based upon the Sovereignty of the People. That is the way in which Bornhak looks at it.

## PART ONE.

### Division One.

The Empire and the German Free-States.

The Empire and its Component States.

Empire and Lands.

### NOTE

The word translated "Empire" is **Reich**; that translated "Free-States" is **Freistaaten**; that translated "Component States" is **Gliedstaaten**; and that translated "Lands" is **Länder**.

**Reich** and **Länder** (singular, **Land**) are the terms of the Constitution which was finally adopted. **Freistaaten** (singular, **Freistaat**) cannot here be translated generally, as "Republics", for instance, but must be

given the specific meaning of “Free-States”, because the specific states making up the Empire are designated by the term. *Gliedstaaten* (singular, *Gliedstaat*) is another such designation of those states, but conveys more the idea of a federal nature of the Empire.

As to *Reich* and *Länder*, see under Articles 1, 2.

## Article 1

### §2, Paragraph 1.

All sovereignty lies with the German People.

#### Article 2, Paragraph 1.

Sovereignty lies with the People.

#### Article 1.

(Same as Article 1 of the Constitution as finally adopted.)

#### NOTE

The word translated “sovereignty” is *Staatsgewalt*, meaning, literally, state-power or power of state, in the sense of highest or supreme power of state or political authority. *Souveränität* is not used here. Throughout the Constitution as finally adopted there seems to have been a studied effort to avoid words of foreign origin. But during the debates on the Constitution such words were freely used.

The word here and under the heading “Division One,” above, translated “Empire”, is *Reich*, which was the appellation of the Empire that came to an end with the Revolution of November 9, 1918. As to the translation of the word, see Preface, above.

The word translated “Republic” is *Republik*, which is a foreign word that was apparently retained here for special emphasis.

Bornhak's opinion of Article 1 of the Constitution as finally adopted is as follows:

“The two clauses logically should be turned about. The second clause is connected with the Preamble of the Constitution and again emphasizes the fundamental principle of the sovereignty of the people, resulting from the Revolution. The first clause determines the special form of state resulting from the sovereignty of the people—a republic. In this connection republic can mean nothing but a negation, the non-existence of a monarchy.”

## Article 2

### § 1.

The German Empire consists of its hitherto existing Component States and also of the territories whose inhabitants by virtue of the right of self-determination desire incorporation into the Empire and are incorporated by an Imperial statute.

#### Article 1, Paragraph 1.

The territory of the Empire consists of the territories of the hitherto existing German Component States and also of the territories whose inhabitants by virtue of the right of self-determina-

#### Article 2.

(Same as Article 2 of the Constitution as finally adopted.)

tion desire incorporation into the Empire, and which are made a part of the Empire by Imperial statute.

**NOTE**

The word here and under the heading "Division One", above, translated "Lands", is **Länder**. As to the translation of the word, see Preface, above.

It will be noticed that the States or Lands are not mentioned by name, as they were in the old Constitution of 1871 (Article 1). They were in a melting pot during 1918 and 1919. Some were being dismembered. Others were being merged. As to how they now exist, see the Appendix to this work.

See Articles 18 and 78 of the Constitution as finally adopted.

## Article 3

---

Article 1. Paragraph 2.

The Imperial Colors are black-red-gold.

Article 3.

The Imperial Colors are black-red-gold. The Merchant Flag shall be determined by Imperial statute.

**NOTE**

In the debates on the Imperial Colors there was a strong sentiment for the hitherto existing black-white-red. But hatred of the Prussian Colors (black-white) because they were **Prussian**, love for the colors of the democratic movement of 1848 and 1849 (black-red-gold), and an inclination towards Austria overcame that sentiment.

One of the curious compromises of the Constitution is the provision as to the Merchant Flag. It was claimed that gold was not a good color to see on the water.

## Article 4

§ 2, Paragraph 3.

The Empire recognizes the prevailing Law of Nations as a binding component part of its own law.

Article 3.

(Same as Article 4 of the Constitution as finally adopted.)

Article 4.

(Same as Article 4 of the Constitution as finally adopted.)

**NOTE**

The desire to show to the world a change of Germany's attitude at the Hague Conference had something to do with the incorporation of this clause into the Constitution. It was deemed wise politically so to incorporate it.

There was some opposition to mentioning the Law of Nations in the Constitution at all, on the ground that the whole notion of such law

is indefinite, and that at best it is only a body of rules without sanction—a *lex imperfecta*.

Cf. Article 45 of the Constitution as finally adopted.

## Article 5

### §2, Paragraph 2.

It [Sovereignty] is exercised in Imperial matters by the organs existing on the basis of the Imperial Constitution; in matters of the States, by the German Free-States in accordance with their State constitutions.

Article 2, Paragraph 2.

Article 5.

It [Sovereignty] is exercised in Imperial matters by the organs existing on the basis of the Imperial Constitution; in the matters of the States, by the organs of the German Component States in accordance with their State constitutions.

(Same as Article 5 of the Constitution as finally adopted.)

## Articles 6—12

### § 3.

Imperial matters which are exclusively subject to the legislation and administration of the Empire, are:

1. Relations with foreign countries.
2. Defence of the Empire on land, on water and in the air.
3. Customs duties.
4. Trade and commerce, including banking and bourses, and also coinage, measures and weights.
5. Public means of communication, namely, the railroads, so far as they were heretofore state railroads, inland navigation on the waterways common to several German Free-States, posts and telegraphs and traffic with power-driven vehicles on land and in the air.

### § 4.

Furthermore, the following matters are subject to the legislative power of the Empire:

1. Citizenship, freedom of travel and domicile, poor relief, passports, police supervision of foreigners and strangers, immigration and emigration.
2. Civil law, criminal law, and court procedure.
3. Labor law, particularly workers' insurance and protection of workers.
4. Law of Crafts and Industry.
5. Navigation at sea.
6. Land legislation in accordance with § 28.
7. Taxes and revenues to be collected for the Empire, and also

the establishment of institutions for carrying on Imperial purposes.

8. Expropriation for Imperial purposes.
9. The press, associations and assemblages.
10. Public health.
11. Insurance.
12. Church and School within the limits of §§ 19 and 20.

#### Article 8.

The public means of communication are, in accordance with Division Six, a matter of the Empire.

#### Article 9, Paragraph 1.

The Empire has legislative power concerning:

1. Citizenship, freedom of travel and domicile, poor relief, passports, police supervision of foreigners and strangers, and also immigration and emigration.
2. Civil law, criminal law, and court procedure, and also assistance rendered by judicial and administrative authorities.
3. Expropriation.
4. The legal relationships of workers and employees, their insurance, and the protection of workers.
5. Trade and commerce, measures and weights, coinage, the issue of paper money, banking and also bourses.
6. Crafts, industry and mining.
7. Insurance.
8. Navigation at sea.
9. The press, associations and assemblages.
10. Public health and dealing in articles of food.
11. Protection of public safety and peace, and public welfare, in so far as there is need for the issuance of uniform regulations.
12. Care for those who have taken part in war and their surviving dependents.
13. Housing.
14. The principles for land settlements, in particular for the regulation of the distribution of population and restrictions on landed property.
15. Regulation of the produc-

#### Article 6.

(Same as Article 6 of the Constitution as finally adopted.)

#### Article 8.

(Same as Article 7 of the Constitution as finally adopted.)

tion and distribution of the economic commodities for the German general economy.

16 Protection and care of the young who are discharged from school duties.

Article 7, Paragraphs 1, 2.

Legislation concerning customs and also concerning all matters touching upon the consolidation of the customs and trade districts and the freedom of transportation of merchandise, is exclusively a matter of the Empire.

Furthermore, the Empire has legislative power concerning revenues and other receipts in so far as they are claimed in whole or in part for its purposes, and also concerning the setting up of principles for the permissibility and system of collection of State revenues, in so far as they act within the limits of the Customs Union Treaty of July 8, 1867, or they are to avoid double taxation.

Article 107.

The Empire has legislative power concerning traffic with power-driven vehicles on land, on water and in the air, and also the construction of roads in the interest of the defence of the country and general traffic.

Article 7.

In so far as taxes and other revenues are claimed in whole or in part for Imperial purposes, the Empire has the exclusive legislative power. If the Empire claims taxes or other revenues which hitherto appertained to the Lands, it has to take into consideration the maintenance of the vitality of the Lands.

Article 9.

In so far as a need of the issuance of uniform regulations exists, the Empire has legislative power concerning:

1. Public welfare.
2. The protection of public peace and safety.
3. Disposal of the dead.

Article 10.

The Empire can by way of legislation set up fundamental principles for:

1. The rights and duties of religious societies.
2. The school system, includ-

ing the system of higher institutions of learning.

3. The law for officials of all public bodies.

4. Land law, land distribution, settlements and homesteads, restrictions on landed property, housing, and the distribution of population.

#### Article 11.

(Same as Article 11 of the Constitution as finally adopted, except it is "Detriments" in No. 1, and the last line reads: "or in order to preserve important social interests of the population.")

#### Article 12.

As long and in so far as the Empire does not exercise its legislative power, the Lands retain the right to legislate. This does not apply to the cases of the exclusive legislative power of the Empire.

The Imperial Government has a right of veto, with postponing effect, against Land statutes which refer to matters of Article 8, Number 13, in so far as general interests of the Empire are thereby affected.

#### NOTE

The word translated "freedom of travel and domicile" is *Freisuegigkeit*, which is a very comprehensive word, meaning freedom to move about from place to place and to live where one wills.

The word translated "police supervision of foreigners and strangers" is *Fremdenpolizei*, which is the name of a branch of the police power in Germany that travelers and guests at hotels have found unique.

In Article 11, to the right, the word translated "social" is *social*, which is here again replaced in the Constitution as finally adopted by the word meaning society in general (*Gesellschaft*).

The motion to incorporate "Disposal of the dead" in the Constitution was made by an Independent Socialist, who said he wished to see the Empire legislate against the extravagance displayed at funerals and against the impediments to cremation set up by legislation in the several German states. The motion was carried in the Committee by a majority of fifteen; with the restriction of "in so far as a need of the issuance of uniform regulations exists."

In the Prussia draft the matters of Military Organization, Means of Communication (Railroads, Posts and Inland Navigation), Customs, Trade, and Imperial Finances were expressly reserved for further consideration.

Cross-references from Articles 6-12 of the Constitution as finally adopted to other Articles of the same:

**Article 6:**

- No. 2: Cf. Article 80.
- No. 3: Cf. Articles 110-112.
- No. 4: Cf. Article 79.
- No. 6: Cf. Article 82.
- No. 7: Cf. Article 88.

**Article 7:**

- No. 6: Cf. Articles 123, 124.
- No. 7: Cf. Articles 118, 122, 119 (last paragraph).
- Nos. 8, 9: Cf. Article 161.
- No. 13: Cf. Article 12.
- No. 19: Cf. Articles 89-100.

**Article 8:** Cf. Articles 83, 84.

**Article 10:**

- No. 1: Cf. Part Two, Division Three.
- No. 2: Cf. Part Two, Division Four.
- No. 3: Cf. Articles 128-131.

**Article 12:** For exclusive legislative power, see Article 6.

Bornhak says Paragraph 1 of Article 12 puts into the written law a long recognized principle of law.

These Articles 6-12 give us examples of what the Germans call the exclusive, concurrent and normative authority of the Empire. (See Brunet, pp. 62-65.)

## Article 13

### § 5.

Imperial law supersedes State law.

**Article 10.**

Imperial law supersedes State law.

**Article 13.**

(Same as Article 13 of the Constitution as finally adopted.)

**Article 11.**

In controversies about whether a State law is consistent with Imperial law, the decision of a supreme judicial court of the Empire can be appealed to, in compliance with more specific provisions of an Imperial statute.

#### NOTE

During the debates it was generally conceded that whatever was not granted to the States or Lands by the Constitution was reserved to the Empire.

According to the wording, Paragraph 1 of Article 13 of the Constitution as finally adopted applies to both written and unwritten law. Bornhak says it does. He also informs us that a statute enacted in 1920 (April 8th) makes the Imperial Supreme Court (*Reichsgericht*) the competent court under Paragraph 2 of said Article 13. This *Reichsgericht* was carried over from the old Empire. See under Article 103 of the Constitution as finally adopted.

## Articles 14—16

### § 8.

In so far as the execution of the Imperial statutes does not appertain to the Imperial authorities, the State authorities are obliged to follow the directions of the Imperial Government.

The Imperial Government has the duty and right to supervise the execution of the Imperial statutes and can, for this purpose, send commissioners into the German Free-States, to whom records must be shown and all desired information given.

For breaches of this provision the guilty State officials can be proceeded against upon the basis of the disciplinary measures provided for the Imperial authorities.

#### Article 9, Paragraph 2.

Fundamentally, the Imperial statutes shall be executed by the State authorities.

#### Article 14.

(Same as Article 14 of the Constitution as finally adopted.)

#### Article 14.

The Imperial Government exercises supervision in the matters which are regulated by Imperial legislation.

In so far as the Imperial statutes are to be executed by the State authorities the Imperial Government has the right to issue general administrative measures for the execution of the Imperial statutes. It is empowered, for the supervision of the execution of the Imperial statutes, to send commissioners to the central State authorities.

The State Governments are bound, upon request of the Imperial Government, to remove defects arising in the execution of the Imperial statutes; in cases of differences of opinion the Imperial Government as well as the Government of the Component State involved can appeal to the decision of the High Court of Judicature.

#### Article 15.

(Same as Article 15 of the Constitution as finally adopted.)

[For officials and workers of the posts, telegraphs, railroads and administration of taxes in this column, see under Articles 83, 88 and 93 of the Constitution as finally adopted. Tr.]

Article 16.  
(Same as Article 16 of the Constitution as finally adopted.)

**NOTE**

See under Article 77 of the Constitution as finally adopted.

Cross-references:

Article 14: See Article 15.

Article 15: See Article 14.

As to the creation of the High Court of Judicature, see Articles 108, 172. As to its jurisdiction, see Articles 18, 19, 59, 90, 170, 171. This is a new court and had no counterpart in the old Empire.

**Article 17**

**§ 12.**

Every German Free-State must have a State Constitution which rests upon the following principles:

1. There must exist a popular representative body consisting of one chamber, which shall be elected by universal, direct, equal and secret suffrage, including participation by the women, in accordance with the principles of proportional representation.

2. The State Government must be responsible to this popular representative body and dependent upon its confidence.

3. The Communes and Communal Unions enjoy self-administration in their affairs. Their heads shall be elected either directly in accordance with the principle under No. 1, or by a representative body proceeding from such elections. The supervision of the State shall be confined to the regularity and purity of the administration and to the underlying principles of financial department.

4. The popular representative body and also the representative bodies of the Communes and Communal Unions have the right and, upon demand of a fifth of their members, the duty to appoint committees for the public investigation of facts, when the legality or purity of governmental or administrative measures is questioned.

5. The local police power is fundamentally a matter of the Communes or Communal Unions.

6. Every inhabited piece of land must belong to a Commune.

**Article 16.**

Every Component State must have a republican State Constitution, according to which the popular representative body shall be elected by universal, equal, direct and secret suffrage of men

**Article 17.**

(Same as Article 17 of the Constitution as finally adopted, with the omission of the second sentence in the second paragraph.)

and women in accordance with the principles of proportional representation, and according to which the State Government shall need the confidence of the popular representative body.

#### NOTE

The word here translated "republican" is *freistaatlich*, the adjective form from *Freistaat* (Free-State). It is a little awkward to translate it, to the left, "free-state", as an adjective, as the word "State" there immediately follows it. But, more to the point, "republican" here carries the emphasis better.

No. 6 of §12 was aimed at the abolishment of certain "Landed Districts" (*Gutsbezirke*) in Prussia. It was dropped, as appears from the above.

Article 17 of the Constitution as finally adopted does not fix the age of the voters.

Bornhak remarks that Paragraph 1 of Article 17 of the Constitution as finally adopted precludes in the Lands both a monarchy and the soviet system of government.

The system of proportional representation was introduced into national elections in Germany by the Statute of August 24, 1918, as to which, see above, p. 73, and above, under Article 20 of the Constitution of 1871.

Cross-reference: As to elections, see Articles 22, 125.

## Article 18

### § 11.

The German People is at liberty, without regard to the hitherto existing state boundaries, to erect new German Free-States within the Empire, in so far as the racial characteristics of the population, the economic conditions and historical relations favor the creation of such States. Newly erected Free-States are to embrace at least two million inhabitants.

The uniting of two or more Component States into a new Free-State takes place by treaty between them, which shall need the approval of the popular representative bodies and of the Imperial Government.

If the population of a part of the country wishes to free itself from the hitherto existing state complex, in order to annex itself to one or more other German Free-States or to form an independent Free-State within the Empire, a Popular Vote on the question shall be necessary. The Popular Vote shall, upon the petition of the competent State Government or of the representation of one or more self-administrative bodies, which embrace at least a fourth of the immediately interested population, be ordered by the Imperial Government and conducted by the competent State authorities.

If disputes arise about the settlement of property rights in connection with the disintegration or union of German Free-States, the High Court of Judicature for the German Empire shall decide the matter, upon application of a party.

Article 15.

The German Component States are entitled to unite themselves in whole or in part for the purpose of the formation of larger and more efficient Component States. Procedure in connection therewith is to be governed by the following considerations:

1. Small parts of the country, which stand in no geographical or economic connection with the remaining portions of their State, are to be united with one of the adjoining Component States.

2. Small parts of the country, which stand in closer economic connection with another, adjoining Component State or with parts of such State, than with their own State, are to be united with the former.

3. Small Component States are to be joined with other, adjoining or closely situated Component States, in so far as paramount economic reasons do not demand the retention of their independence.

Parts of other Component States which are not involved in this union, but stand geographically or in economic relations close to the Component States which are being united, are to be taken into the union.

4. Newly created Component States are to embrace at last one million inhabitants.

If in such cases the union is not effected in the negotiations of the parties immediately concerned, the mediation of the Imperial Government can be appealed to by the legal representative bodies of the affected States, Communes or Communal Unions. *If this mediation is without success, the matter can be settled by a constitution-*

Article 18.

The division of the Empire into Lands is to be effected in the sense of the highest economic and cultural efficiency together with all possible consideration of the will of the population concerned.

The new formation of Lands or a change in their territory by union or severance of territories shall be conditional upon the consent of the Lands immediately affected thereby and need approval by Imperial statute, if the interested Lands do not consent, such a new formation or change in territory can be effected only by a constitution-amending Imperial statute, if the new formation or change in territory is demanded by the will of the population or a paramount general interest requires it.

The will of the population is to be determined by a vote of the inhabitants of the district who are qualified to vote. The Imperial Government orders the vote. It must order such a vote if a fourth of the electors or the political or communal representative bodies of a fourth of the population affected demand it.

Should there arise, in connection with the union or severance, a dispute about the settlement of property rights, the High Court of Judicature for the German Empire, upon application of a party, shall decide the matter.

*amending Imperial Statute, upon petition of one of the parties interested.*

The formation of new States shall need approval by Imperial statute.

#### NOTE

The portion in italics, just above, to the left, was not approved by the States-Committee.

As to the "Popular Vote," see under Articles 20-22, 43 and 73 of the Constitution as finally adopted.

With monarchs and monarchy out of the way and the republican or democratic form of government adopted, this was the most important and serious question that confronted the constitution-makers. The problem was, to dismember and otherwise hamstring Prussia, in order to prevent her again becoming the predominant, arrogant and overbearing power in the Empire. Second to this, and emphasizing it, was the problem of counteracting the separatist movement or propaganda in different parts of the country. Along the Rhine, especially, there was a strong sentiment in favor of breaking away from the old relationships. Prussia was the *bête noir*. Incidentally, it was realized that reducing the power and prestige of Prussia would be an inducement for German-Austria to annex herself to Germany, which annexation was universally desired and expected by the Germans. That may help to account for Prussia's yielding on so many points. She put up a stiff fight, and many of those who favored her dismemberment acknowledged the many contributions she had made to the success, prestige and glory of the Empire that came to an end on Revolution Day, 1918.

Bouton says (pp. 273-274):

"Even the short period intervening between the first publication of the Pruss draft and its submission to the National Assembly had sufficed to bring about one important and significant development. Pruss himself was an advocate of the so-called *Einheitsstaat*, a single state on the French plan, divided into departments merely for administrative purposes. Many of his friends of the German Democratic Party and all Socialists also wanted to do away with the separate states, both for doctrinal and selfish partisan reasons. Pruss realized from the beginning the impossibility of attaining his ideal completely, but he endeavored to pave the way by a dismemberment of Prussia, the largest and dominant German state, and by doing away completely with several of the smaller states, such as Anhalt, Oldenburg, etc. His constitutional draft of January proposed the creation of sixteen 'territories of the state' (*Gebiete des Reichs*): Prussia (consisting of East Prussia, West Prussia, and Bromberg), Silesia, Brandenburg, Berlin, Lower Saxony, the three Hansa cities (Hamburg, Bremen, Luebeck), Upper Saxony, Thuringia, Westphalia, Hesse, the Rhineland, Bavaria, Baden, Wurtemberg, German-Austria and Vienna.

"It became quickly apparent that Pruss and his followers had underestimated the strength of the particularistic, localized patriotism and respect for tradition cherished by a great part of the Germans. Not only were the South Germans aroused to opposition by the implied threat of a possible eventual onslaught on their own state boundaries, but the great majority of the Prussians as well protested

mightily against the proposed dismemberment of Prussia. The unitarians saw themselves compelled to yield even in the temporary constitution by inserting a provision that ‘the territory of the free states can be altered only with their consent.’ The plan to reduce the states to mere governmental departments was thus already defeated.”

Cross-references:

Paragraphs 3-6: See Article 167.

As to the High Court of Judicature, see Cross-references under Article 15.

For changes in the states or “Lands” since the Revolution of 1918, see the Appendix to this work.

## Article 19

### § 13.

In constitutional controversies within a German Free-State and also in controversies of a non-private-law nature between different German Free-States, the High Court of Judicature for the German Empire shall decide the matter, upon application of a party.

The judgment of the High Court of Judicature shall be executed, when necessary, by the Imperial President.

### Article 17.

In constitutional controversies within a Component State which has no court for the settlement of such controversies, and also in controversies of a non-private-law nature between different Component States or between the Empire and a Component State, the High Court of Judicature for the German Empire, upon application of one of the parties to the controversy, shall decide the matter, in so far as another court of the Empire is not competent.

The Imperial President shall execute the judgment of the High Court of Judicature.

### Article 19.

In constitutional controversies within a Land in which there is no court for their settlement, and also in controversies of a non-private-law nature between different Lands or between the Empire and a Land, the High Court of Judicature for the German Empire, upon application of one of the parties to the controversy, shall decide the matter, in so far as another court of the Empire is not competent.

The Imperial President shall execute the judgment of the High Court of Judicature.

### NOTE

Cross-reference:

As to the High Court of Judicature, see Cross-references under Article 15.

## Articles 20-22

### § 30.

The Reichstag consists of two Houses, the People’s House and the House of States.

## § 31.

The People's House consists of the deputies of the united German People.

The deputies shall be elected, in accordance with the Imperial Election Statute, in universal, direct and secret elections by all men and women over twenty years old, in accordance with the principles of proportional representation, in which each voter has a vote.

The regulations of the Imperial Election Statute shall apply also to the election of the Imperial President and to Popular Votes, in so far as a difference does not arise from the peculiarity of such votes.

## § 32.

The House of States consists of the delegates of the German Free-States.

The delegates shall be elected by the diets of the German Free-States from the body of the citizens in accordance with State law.

## § 33.

In the formation of the House of States there is to be fundamentally one delegate to a million of the inhabitants of the State.

No German Free-State may be represented by more than one-third of all the delegates.

Free-States which have less than a million inhabitants must, in so far as paramount economic reasons do not demand an independent representation, for the election of a common delegate, unite with other States to which they closely stand geographically or racially or in economic relations.

If two or more Free-States are represented in common, the delegates shall be elected in a joint session, or by concurring votes, of the diets.

## § 34.

Changes in the composition of the House of States, which result from the union or cutting-up of German Free-States, shall be controlled by Imperial statute.

## § 35.

Until the new German Free-States have been formed, a provisional House of States shall be established (according to provisions whose formulation is reserved).

## § 38.

No one can be a member of both Houses at the same time.

## § 39.

The members of the Reichstag may not be bound by instructions.

Article 41.

The Reichstag consists of the deputies of the united German people.

The deputies shall be elected in universal, equal, direct and secret elections by men and women, in accordance with the principles of proportional representation.

Details shall be prescribed by an Imperial Election Statute, which also shall regulate the election of the Imperial President and the Popular Votes.

Article 44.

The members of the Reichstag may not be bound by instructions.

Article 20.

The Reichstag consists of the deputies of the German People.

Article 21.

The deputies shall be elected in universal, equal, direct and secret elections by the men and women over twenty years old, in accordance with the principles of proportional representation.

Details shall be prescribed by the Imperial Election Statute.

Article 23.

(Same as Article 21 of the Constitution as finally adopted.)

**NOTE**

The word translated “People’s House” is **Volkshaus**. That translated “House of States” is **Staatenhaus**. And that translated “Popular Votes” is **Volksabstimmungen**, as to which, see under Articles 18, 43 and 73 of the Constitution as finally adopted.

An Imperial Election Statute was enacted April 27, 1920; and an Imperial Elections-Decree was issued May 1, 1920.

The number of Deputies at present is 469. The number is fixed neither by the Constitution nor by statute, for the retention of some parts of the country in the Empire has been uncertain, and the number of deputies varies under the system of proportional representation.

Cross-references: As to elections, see, further, Articles 17, 125.

**Article 23**

§ 37.

The election period for both Houses of the Reichstag lasts three years.

Article 43.

The election period for the Reichstag lasts three years.

Article 22.

The Reichstag is elected for three years. Before the lapse thereof the new elections must take place.

The Reichstag shall assemble for its first meeting not later than the twenty-second day after the election.

**NOTE**

Bornhak is of the opinion that the life of the Reichstag begins with the day of the election. The old Reichstag was elected for five years. Up to 1888 it was elected for three years.

**Articles 24, 25**

## § 40.

The summoning, proroguing, closing and dissolving of the Reichstag appertain to the Imperial President. A repeated dissolution upon the same ground is not permissible.

## § 41.

The Reichstag shall assemble at least once every year at the seat of the Imperial Government.

The Imperial President must summon the Reichstag if at least a third of the members of the People's House or of the House of States so demand.

## § 42.

The proroguing of the Reichstag or of one of the two Houses for more than a month shall require the consent of the Reichstag or of the House in question.

The Reichstag and also each of the two Houses can adjourn itself for not to exceed a month.

## § 43.

The session periods of both Houses of the Reichstag are the same.

## § 44.

In case of dissolution the Reichstag is to re-assemble within three months.

The dissolution of one of the Houses shall result at the same time in the proroguing of the other until the re-summoning of the Reichstag.

**Article 45.**

The Reichstag shall assemble in every year on the first Wednesday of November at the seat of the Imperial Government.

The Imperial President can summon it earlier; he must do this if at least a third of the members of the Reichstag, or if the Reichsrat, so demand.

**Article 46.**

The Imperial President prorogues and closes the Reichstag. For a prorogation for more than a month he shall need the consent of the Reichstag. The Reichstag can adjourn itself for not to exceed a month.

**Article 24.**

The Reichstag shall assemble in every year on the first Wednesday of November at the seat of the Imperial Government. The Presiding Officer of the Reichstag must summon it earlier, if the Imperial President or at least a third of the members of the Reichstag so demand.

The Reichstag determines the close of a session, and the day of re-assembling.

Article 47.

The Imperial President can dissolve the Reichstag, but only once upon the same ground.

The new elections shall take place not later than the sixtieth day, and the re-convening not later than the ninetieth day, after the day of the dissolution.

Article 25.

(Same as Article 25 of the Constitution as finally adopted.)

NOTE

As to **Obmann**, the word here translated “Presiding Officer”, to the right, see under the next Article, 26.

One writer says (in the Munich “Bayerische Gemeinde-und Verwaltungszeitung,” October 10, 1920, pp. 674-675):

“The wording of the Constitution with respect to the idea of ‘session’ (**Tagung**) is not in itself clear and refers to the parliamentary practice under the old Imperial Constitution. The four-year election period (subject to being shortened, by a dissolution) falls into several sessions. The beginning of a session is the assembling or re-assembling; the close of a session is fixed by the Reichstag itself and it can also be produced by a dissolution or by an expiration of the election period. During a session the Reichstag can several times ‘adjourn’, i. e., interrupt its sittings (**Sitzungen**) for a fixed time, which can be computed according to days or weeks or, under circumstances, also some months; it nevertheless in such a case remains ‘assembled,’ and during this time all committees, even the temporary ones, can continue to deliberate, and the office force of the Reichstag continues in existence. If, on the other hand, the session is closed, the President, his Proxies and the Secretaries are to be elected anew immediately upon the re-assembling; between two sessions the Reichstag is not considered ‘assembled’—only the standing committees remain or become active—the President and his Proxies, it is true, continue their activities, but not the Secretaries. The same applies to the time between two election periods (Articles 26, 27).”

Bornhak says the close of a session puts an end to parliamentary immunity.

Article 26

§ 45.

Each of the two Houses regulates its procedure and its discipline by Standing Rules, and elects its President, Vice-Presidents and Secretaries.

The business relations between the two Houses shall be arranged by agreement of the two Houses.

Article 48.

The Reichstag elects its President, Vice-Presidents and Secretaries. It formulates its own Standing Rules.

Article 26.

The Reichstag elects its Presiding Officer, his Proxies, and its Secretaries. It formulates its own Standing Rules.

## NOTE

The word here translated "President" is **Präsident**. That translated "Vice-President" is **Vize-Präsident**. That translated "Presiding Officer" is **Obmann**. And the word translated "Proxies" is **Stellvertreter**, which officers here are the same as Vice-Presidents would be with us.

## Article 27

## § 47, Paragraph 2.

Between two session periods of the Reichstag the administrative affairs are carried on by the last President; between two election periods, by the Imperial Minister of the Interior.

## Article 50, Paragraph 2.

Between two session periods of the Reichstag the administrative affairs are carried on by the last President; between two election periods, by the Imperial Minister of the Interior.

## Article 27.

Between two session periods or election periods the Presiding Officer and Proxies of the last session continue its business.

## NOTE

Cross-reference: Under Article 35 certain standing Committees can similarly function.

## Article 28

## § 47, Paragraph 1.

The house administration is under the President of each House. He controls the receipts and expenditures of the House in accordance with the Imperial Budget, and represents the Empire in all business transactions and law-controversies which affect this administration.

## Article 50, Paragraph 1.

The house administration is under the President of the Reichstag. He controls the receipts and expenditures of the house in accordance with the Imperial Budget, and represents the Empire in all business transactions and law-controversies which affect this administration.

## Article 28.

(Same as Article 28 of the Constitution as finally adopted, except it is "Presiding Officer"—*Obmann*—instead of "President.")

## NOTE

The word translated "Imperial Budget" is **Reichshaushalt**, and "Budget" is used in the sense of a financial plan, including estimates and appropriations, fixed by statute, which statute in Germany is called **Haushaltsgesetz**.

## Article 29

### § 46.

The sessions of the Reichstag shall be public. Deliberations concerning the relations of the Empire to foreign countries can be held in secret session.

Article 49.  
(Same as § 46.)

Article 29.  
(Same as Article 29 of the  
Constitution as finally adopted.)

### NOTE

According to the Standing Rules, the Committees sit in secret, except Investigating Committees, as to which see Article 34 of the Constitution as finally adopted. But all members of the Reichstag have access to Committee meetings.

## Article 30

### § 54.

Accurate reports of the proceedings in the public sessions of the Reichstag shall remain free from any and all liability.

Article 57.  
(Same as § 54.)

Article 30.  
Accurate reports of the proceedings in the public sessions of the Reichstag, of its Committees or of a Land Diet shall remain free from any and all liability.

### NOTE

Of the Committees only the Investigating Committees fundamentally hold public sessions. See under Article 29 of the Constitution as finally adopted.

## Article 31

### § 48.

For the purpose of reviewing elections and also of reviewing the question whether a member of the Reichstag has lost the right of membership, a Court for the Review of Elections shall be established in the Reichstag. It shall consist of the requisite number of members of the Reichstag, whom each of the two Houses shall choose from its midst for the duration of the election period, and of the requisite number of members of the Imperial Administrative Court or, until its establishment, of the Imperial Supreme Court, whom the Imperial President shall appoint upon nomination by the presidency of this court.

The Court for the Review of Elections shall render judgment by a bench of three members of the Reichstag and two professional judges. In this connection, when elections to the People's House are being reviewed, as well the political party which won in the contested election, as the political party which is most interested in the setting aside of the election according to the result of the election, is to be represented by one of its members.

The conduct of the proceedings outside the transactions before the Court for the Review of Elections appertains to an Imperial Commissioner for the Review of Elections, to be appointed by the Imperial President.

In other respects the proceedings shall be regulated by the full session of the Court for the Review of Elections.

Article 51.

Paragraph 1:

For the purpose of reviewing elections and also of reviewing the question whether a member of the Reichstag has lost the right of membership, a Court for the Review of Elections shall be established in the Reichstag. It shall consist of the requisite number of members of the Reichstag, whom it shall choose from its midst for the duration of the election period, and of the requisite number of members of the Imperial Administrative Court, or, until its establishment, of the Imperial Supreme Court, whom the Imperial President shall appoint upon nomination by this court.

Paragraph 2:

The Court for the Review of Elections shall render judgment upon the basis of public, oral proceedings, by three members of the Reichstag and two professional judges.

Paragraphs 3 and 4:

(Same as Paragraphs 3 and 4 of § 48.)

Article 31.

(Same as Article 31 of the Constitution as finally adopted, except the "Imperial Commissioner" is called *Reichskommissar*—as in the other two places, in § 48 and Article 51, to the left—instead of *Reichsbeauftragter*.)

NOTE

The word here translated "Court for the Review of Elections" is *Wahlprüfungsgerecht*. That translated "Imperial Administrative Court"

is **Reichsverwaltungsgericht**. And that translated “Imperial Supreme Court” is **Reichsgericht**. The **Reichsgericht** is the supreme court of the old Empire that sat in Leipsic. It still sits there. See under Article 103 of the Constitution as finally adopted.

The translation of the names of German courts is more or less arbitrary, and is controlled in a measure by the personal preferences of the translator.

As indicated, in the Constitution as finally adopted the word translated “Imperial Commissioner” is **Reichsbeauftragter**, and in the other three places it is **Reichskommissar**. Another instance of the rejection of a word of foreign origin.

## Article 32

### § 49.

For a decision of each House of the Reichstag the participation of at least a half of the legal number of its members and a simple majority vote are requisite, in so far as the Imperial Constitution does not prescribe another vote.

For the elections by both Houses of the Reichstag the Standing Rules can allow exceptions.

### § 50.

A decision of the Reichstag can be reached only by the concurrence of both Houses.

### Article 52.

For a decision of the Reichstag the participation of at least a half of the legal number of its members and a simple majority vote are requisite, in so far as the Imperial Constitution does not prescribe another vote.

For the elections by the Reichstag the Standing Rules can allow exceptions.

### Article 32.

(Same as Article 52, opposite, with immaterial textual variation.)

### NOTE

Cross-references: For exceptions, see Articles 29, 34, 59, 72, 76.

## Article 33

### § 16.

The representatives of the Free-States are entitled to maintain in the Reichstag the standpoint of their Government in the matter under discussion, and must for this purpose be heard at any time during the proceedings upon request.

## § 72.

Each House can demand the presence of the Imperial Chancellor and the Imperial Ministers.

The Imperial Chancellor and the Imperial Ministers must be heard in the Reichstag at any time upon request.

## Article 25.

The representatives of the Component States are entitled to represent the standpoint of their Government in the Reichstag in the matter under discussion, and must for this purpose be heard at any time during the proceedings upon request.

## Article 78.

The Reichstag can demand the presence of the Imperial Chancellor and the Imperial Ministers.

The Imperial Chancellor, the Imperial Ministers and the Government representatives appointed by them have admission to the sessions of the Reichstag and its Committees and must be heard there at any time upon request.

## Article 33.

(Same as Article 33 of the Constitution as finally adopted, except the third paragraph says:

"Upon their request the representatives of the Governments must be heard at any time during the proceedings, and the representatives of the Imperial Government also outside the regular order of business.")

**NOTE**

As to the representatives referred to in §16, see under Articles 52, 60, 68 of the Constitution as finally adopted.

Bornhak reminds us that the representatives of the Lands mentioned in Article 33 of the Constitution as finally adopted do not have to be members of the Reichsrat.

**Article 34**

## § 52.

Each House of the Reichstag has the right, and, upon request of a fifth of its members, the duty, to appoint Committees to investigate facts, if the legality or purity of governmental or administrative measures of the Empire is questioned. These Committees shall take, in public hearing, the proof which they or those requesting the proceeding deem necessary.

All courts and administrative authorities are obliged to comply with the demand of these Committees to assist them in taking proof.

All official records are to be laid before these Committees upon their request.

**Article 55.**

The Reichstag has the right, and, upon request of a fifth of its members, the duty, to appoint Investigating Committees. These Committees shall take, in public hearing, the proof which they or those requesting the proceeding deem necessary.

All courts and administrative authorities are obliged to comply with the demand of these Committees to assist them in taking proof; the records of the authorities are to be laid before them upon their request.

**Article 34.**

(Same as Article 34 of the Constitution as finally adopted, except the last sentence is as follows: “The maintenance of the privacy of letters and of the mail, telegraph and telephone remains undisturbed hereby.”)

**NOTE**

Other Committees sit in secret. See under Article 29 of the Constitution as finally adopted.

Cross-reference: See Article 35.

**Article 35**

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**Article 35.**

(Same as Article 35 of the Constitution as finally adopted, except the second Paragraph reads as follows:

“The Reichstag further shall appoint a standing Committee to watch over the activity of the Imperial Government during a recess and after the termination of an election period.”)

**NOTE**

Cross-references: As to functioning between sessions, etc, compare Article 27. In connection with Paragraph 3, see Article 34.

**Article 36**

**§ 53.**

No member of the Reichstag may at any time be prosecuted in court or by way of discipline, or otherwise held to account outside the assembly, for his vote or for his utterances in the exercise of his office.

## Article 56.

(Same as § 53.)

## Article 36.

(Same as § 53, except, that to "Reichstag" is added: "or of a Land Diet".)

## NOTE

In the Constitution as finally adopted "by way of discipline" is *dienstlich*. In the other places it is *disziplinarisch*, which is of foreign origin.

## Article 37

## § 55.

No member of the Reichstag can, without the consent of the House to which he belongs, during the session period, because of a punishable offence, be subjected to an examination or arrested, unless he is apprehended in the commission of the act or in the course of the next following day.

The same consent shall be necessary in every other case of restriction of personal liberty which interferes with the exercise of the office of deputy.

Every criminal proceeding against a member of the Reichstag and every detention or other restriction of his personal liberty shall, upon demand of the House to which he belongs, be suspended for the duration of the session period.

## Article 58.

No member of the Reichstag can, without its consent, during the session period, because of a punishable offence, be subjected to an examination or arrested, unless he is apprehended in the commission of the act or in the course of the next following day.

(Second paragraph same as second paragraph in § 55.)

Every criminal proceeding against a member of the Reichstag and every detention or other restriction of his personal liberty shall, upon demand of the house, be suspended for the duration of the session period.

## Article 37.

(Same as Article 37 of the Constitution as finally adopted. Paragraph 2 is the same in all four documents.)

## Article 38

## § 56.

The members of the Reichstag shall have the right to refuse to testify about persons who have made confidential communica-

tions to them in their capacity as deputies, or to whom they have made such communications in the exercise of their office as deputies, and also about these communications themselves. And with respect to sequestration they shall enjoy the same rights as persons who have a statutory right to refuse to testify.

**Article 59.**  
(Same as § 56.)

**Article 38.**  
The members of the Reichstag and the Lands Diets shall have the right to refuse to testify about persons who make confidential communications to them in their capacity as deputies, or to whom they have made such communications in the exercise of their office as deputies, and also about these communications themselves. And with respect to sequestration of documents and also to searches they shall enjoy the same rights as persons who have a statutory right to refuse to testify.

**NOTE**

Bornhak says Article 38 of the Constitution as finally adopted settles a previously existing disputed question.

**Article 39**

§ 36.

Public officials and military persons shall need no leave of absence or furlough in order to participate in the transactions of the Reichstag.

For the preparation of their election an appropriate leave of absence or furlough is to be granted them.

**Article 42.**

Public officials and military persons shall need no leave of absence or furlough in order to participate in the transactions of the Reichstag.

If they are candidates for a seat in the Reichstag, an appropriate leave of absence or furlough for the preparation of their election is to be granted them.

**Article 39.**

Public officials and military persons shall need no leave of absence or furlough in order to participate in the transactions of the Reichstag or of the Land Diets.

If they are candidates for a seat in the Reichstag, a leave of absence or furlough for the preparation of their election is to be granted them.

**Article 40**

§ 57.

(Same as Article 40 of the Constitution as finally adopted,

except the indefinite article "a" appears before the word "remuneration.")

Article 60.

(Same as § 57.)

Article 40.

(Same as Article 40 of the Constitution as finally adopted.)

**NOTE**

It might be of interest to give here a little history from Brunet (p. 135, Note 1):

"Bismarck was always against the granting of salaries to members of the Reichstag. He hoped thereby to prevent making of politics a career. The members of the Reichstag since 1906 have been receiving compensation which, at first fixed at 3,000 marks a year, was increased in 1918 to 5,000. National Assembly members were paid 1,000 marks a month. The new Reichstag in one of its first sessions decided (1) that its members are to receive 1,500 marks a month; (2) that those of its members who, in the intervals of the Reichstag's sitting, worked on committees, should receive 50 marks a day. In addition, members of the Reichstag have the right to travel free on all railroads of the Reich."

To which we add: The members of the National Assembly were entitled to free transportation on the German railroads during the existence of the Assembly and eight days after its termination. They were entitled to the 1,000 marks a month (in advance) from February 1, 1919. For every day's attendance at a committee meeting outside a plenary session of the Assembly, a member received an additional 20 marks. But he was subject to a deduction of 30 marks a day for absence from a plenary session of the Assembly, unless absent because of attendance at a committee meeting or because of illness or of business in the interest of the Assembly. Double-compensation by reason of membership in another political body was forbidden. The statute (effective February 22, 1919) contains many other details. There were also provisions concerning deductions and double-compensation, and many other details, in the statute of 1906, referred to by Brunet.

Under the statute of 1906, the members of the Reichstag enjoyed free transportation on the railroads during the sessions of the Reichstag and for eight days preceding and following a session. That right is now unlimited. The member is entitled to the right as long as he is a member, even when the Reichstag is not in session.

## Article 41

### § 58.

The Imperial President is elected by the whole German People. Eligible is he who has completed the thirty-fifth year of his life and has been a German for at least ten years.

Elected is he who has received a majority of all the votes cast in the German Empire. If such a majority does not result, there must take place a narrower election between the two candidates

who have received the most votes. In case of a tie vote, the decision shall be by lot.

Article 61.

(Same as § 58, except in the first sentence of Paragraph 3 it is “more than a half,” instead of “a majority.”)

Article 41.

The Imperial President is elected by the whole German People.

Eligible is he who has completed the thirty-fifth year of his life and has been a German for at least ten years.

Elected is he who receives the most votes.

An Imperial statute shall provide further details.

Article 164.

In the next fifteen years members of the families of the sovereigns who reigned in the year 1918 in one of the Lands belonging to the German Empire can not be elected Imperial President.

NOTE

It will be noticed that there is no Imperial Vice-President. See Article 51 of the Constitution as finally adopted.

One does not have to be a native-born German in order to be elected President. The question of confining the office to native-born Germans was debated. The door was left open to German-Austrians. Attention was called to the fact that, if only native-born Germans were eligible, men like Liszt and Harnack would not be eligible. It was also mentioned that many great men of Prussia, as Von Stein, Scharnhorst and Moltke, were not born in Prussia.

Attempts were made to substitute some purely German word (such as *Reichsverweser*, *Reichswart*, *Obmann*) for Imperial President (*Reichspräsident*.) It was argued that “President” was a misnomer, because the man filling the office did not “preside.” To this Minister Pruess answered: “It does not so much depend upon the literal meaning of ‘President’ as upon the customary international use of language. Germany is a republic; everybody knows what president of a republic means.”

In connection with the Imperial presidency, the directoral system of Switzerland was discussed, as were also the indirect systems of France and our country. The Independent Socialists wanted no president at all, but only a collegiate Imperial Ministry.

**Ad Article 164:** The original motion in the Committee debates was to exclude the members of the reigning houses from the office of Imperial President forever. The same motion was made and adopted on the second reading in the plenary session of the National Assembly. On the third reading in that body that provision was dropped and the members of the royal families were not excluded at all, and in the Constitution as finally adopted they are not mentioned one way or the other in this connection and are thus placed on an equality with

all other Germans as far as the right to be elected Imperial President is concerned.

An Imperial statute and a decree concerning the election of the Imperial President were enacted and issued, respectively, May 4 and October 25, 1920. But they have not yet been applied, President Ebert having been kept in office ever since his election by the National Assembly in February, 1919. See under Articles 178-180 of the Constitution as finally adopted.

Cross-references: See Articles 179, 180.

## Article 42

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### Article 62.

The Imperial President upon the assumption of his office shall take the following oath before the Reichstag:

"I swear that I will in my office devote all my energy to the welfare of the German People, observe the Constitution and the other laws of the Empire, and fully discharge all duties resting upon me by virtue of my office to the best of my knowledge and conscience."

The addition of a religious form of asseveration is permissible.

### Article 42.

The Imperial President upon the assumption of his office shall take the following oath before the Reichstag:

"I swear that I will devote all my energy to the welfare of the German People, uphold the Constitution and the laws of the Empire, and conscientiously discharge all my duties."

The addition of a religious asseveration is permissible.

## Article 43

### § 67.

The term of the Imperial President lasts seven years. His reelection is permissible.

Before the expiration of the term the Imperial President can, upon application of the Reichstag, be removed from office by a Popular Vote. For the resolution of the Reichstag the same rule applies as for amendments of the Constitution. Upon the adoption of the resolution the Imperial President is precluded from the discharge of the office. The rejection of the removal by the Popular Vote shall be considered a new election.

### Article 72.

The term of the Imperial President lasts seven years; his reelection is permissible.

Before the expiration of the term the Imperial President can, upon application of the Reichstag, be removed from office by a

### Article 43.

(Same as Article 43 of the Constitution as finally adopted, except it is, in the first paragraph: "His re-election is permissible.")

Popular Vote. For the resolution of the Reichstag the same rule applies as for amendments of the Constitution. Upon the adoption of the resolution the Imperial President is precluded from the discharge of the office. The rejection of the removal by the Popular Vote shall be considered a new election and entail the dissolution of the Reichstag.

**NOTE**

Bornhak is of the opinion that the seven years begin with the day of the election.

As to the “Popular Vote,” see under Articles 18 20-22, 73 of the Constitution as finally adopted.

In connection with the “new election” produced by the rejection, by the Popular Vote, of the removal of the President, Stier-Somlo says (p. 140, note 2): “Does a new term of office begin therewith? Is he elected for another seven years calculated from the Popular Vote, or can he remain in office only until the lapse of the seven years calculated from the original election? In my opinion, it is the former.”

He seems to agree with Bornhak that the term begins with the day of the election.

**Article 44**

Article 73.

Article 44.

(Same as Article 14 of the Constitution as finally adopted.)

(Same as Article 44 of the Constitution as finally adopted.)

**Article 45**

§ 59.

The Imperial President has to represent the Empire in the Law of Nations, to conclude in the name of the Empire alliances and other treaties with foreign powers, and also to accredit and receive ambassadors.

Declaration of war and conclusion of peace take place through an Imperial statute.

Treaties with foreign states, which relate to competencies of the Imperial legislation, need the approval of the Reichstag.

As soon as a League of Nations with the aim of excluding all secret treaties is created, all treaties with the states united in the League of Nations shall need the approval of the Reichstag.

Article 63.

Article 45.

(Same as § 59.)

(Same as Article 45 of the

Constitution as finally adopted,  
with the addition of the last  
paragraph of § 59.)

**NOTE**

Cross-references:

As to the Law of Nations, see Article 4.

As to the competencies of the Imperial Legislation, see Articles 6 to 12.

**Article 46**

## § 61.

The Imperial President appoints the Imperial officials and the military officers, in so far as is not otherwise provided by statute. He is entitled to allow the right of appointment to be exercised by other authorities.

Article 66.

(Same as § 61.)

Article 46.

The Imperial President appoints the Imperial officials and the military officers, in so far as is not otherwise provided by statute, and when necessary orders their dismissal. He is entitled to allow the rights of appointment and dismissal to be exercised by other authorities.

**Article 47**

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Article 65.

(Same as Article 47 of the  
Constitution as finally adopted.)

Article 47.

(Same as Article 47 of the Con-  
stitution as finally adopted.)

**NOTE**

By a decree of August 20, 1919, the Imperial President transferred this supreme command to the Imperial Minister of Defence, in so far as the Imperial President does not issue direct orders himself.

Cross-reference: See Article 79.

**Article 48**

## § 62.

If German Free-States do not fulfil the duties laid upon them by the Imperial Constitution or the Imperial statutes, the Imperial President can hold them thereto with the aid of the armed forces.

§ 63.

The Imperial President can, if in a German Free-State the public safety and peace are disturbed or threatened to a serious extent, interfere with the aid of the armed forces and take the requisite measures for the restoration of the public safety and peace. He is obliged to secure without delay the approval of the Reichstag in this connection, and to revoke his measures if the Reichstag refuses the approval.

Article 67.

If German Component States do not fulfil the duties laid upon them by the Imperial Constitution or the Imperial statutes, the Imperial President can hold them thereto with the aid of the armed forces.

Article 68.

The Imperial President can, if in a German Component State the public safety and peace are disturbed or threatened to a serious extent, interfere with the aid of the armed forces and take the requisite measures for the restoration of the public safety and peace. For this purpose he may temporarily, in whole or in part, suspend from operation the Fundamental Rights laid down in Articles 32, 33, 35 to 38. He is obliged to secure without delay the approval of the Reichstag of these measures, and to revoke his measures if the Reichstag refuses the approval. An Imperial statute shall provide the details.

Article 48.

(Same as Paragraph 1 of Article 48 of the Constitution as finally adopted.)

Article 49.

The Imperial President can, if in the German Imperial territory the public safety and peace are disturbed or threatened to a serious extent, under the responsibility of the whole Imperial Ministry, interfere with the aid of the armed forces and take the requisite measures for the restoration of the public safety and peace. For this purpose he may temporarily, in whole or in part, suspend from operation the Fundamental Rights laid down in Articles 113, 114, 116, 117, 121, 122 and 150. He is obliged to secure without delay the approval by the Reichstag of these measures, and to revoke his measures if the Reichstag refuses the approval. An Imperial statute shall provide the details.

NOTE

It is said that under Paragraph 2 of this Article 48 the President is not limited in his measures—he need not proclaim a state of war or a state of siege, but can take such steps as he deems appropriate. All of which is, of course, subject to the Imperial statute mentioned in the last Paragraph.

Article 49

§ 64.

In so far as a right of pardon appertains to the Empire, the Imperial President exercises it. Amnesties require an Imperial statute.

**Article 69.**

In so far as a right of pardon appertains to the Empire, the Imperial President exercises it, with the principle that amnesties require an Imperial statute.

**Article 50.**

(Same as Article 49 of the Constitution as finally adopted.)

**NOTE**

It is said that since the courts are mostly Land institutions, the right of pardon exercised by the Imperial President relates to only judgments of the Imperial Supreme Court (**Reichsgericht**) and of special courts created for the Empire as such, and not to purely Land cases in Land courts; and that in these last the right of pardon is controlled by the Land constitution.

**Article 50**

## § 65.

All civil and military decrees and orders of the Imperial President need for their validity the countersignature of the Imperial Chancellor or of an Imperial Minister, who thereby assumes the responsibility.

**Article 70.**

(Same as § 65.)

**Article 51.**

All civil and military decrees and orders of the Imperial President need for their validity the countersignature of the Imperial Chancellor or of the competent Imperial Minister. By the countersignature the responsibility is assumed.

**Article 51**

## § 66.

In case of his being prevented from discharging the duties of his office, the Imperial President shall be represented by the President of the House of States. If it is probable that the disability will last longer than three months, the representation is to be regulated by an Imperial statute.

**Article 71.**

In case of his being prevented from discharging the duties of his office, the Imperial President shall be represented by the Imperial Chancellor. If it is probable that the disability will last some time, the representation is

**Article 52.**

(Same as Article 51 of the Constitution as finally adopted.)

to be regulated by an Imperial statute.

The same shall apply to the case of a premature vacancy of the office of the President until the new election is carried through.

**NOTE**

Inability (due to physical or mental illness, long journeys or absence from Germany), death, resignation and removal from office are considered instances calling for representation by the Imperial Chancellor under Article 51 of the Constitution as finally adopted.

What happens if the Imperial Chancellor dies while taking the place of the Imperial President? Stier-Somlo thinks another President must be elected immediately—p. 141, note 1, where he says another opinion is, that the Reichstag is competent to fill the gap.

**Article 52**

§ 68.

The Imperial Government consists of the Imperial Chancellor and the requisite number of Imperial Ministers.

§ 14.

The Governments of the German Free-States have the right to deputize representatives to the Imperial Government.

Article 74.

(Same as Article 52 of the Constitution as finally adopted.)

Article 53.

(Same as Article 52 of the Constitution as finally adopted.)

**NOTE**

As to the representatives mentioned in §14, see under Articles 33, 60, 68 of the Constitution as finally adopted.

An edict of March 21, 1919, established and designated the different Ministers and Departments. New ones were added by decrees of November 7, 1919, and March 30, 1920.

**Article 53**

§ 69.

The Imperial Chancellor and, upon his recommendation, the Imperial Ministers are appointed by the Imperial President.

Article 75.

The Imperial Chancellor and the Imperial Ministers are appointed and dismissed by the Imperial President.

Article 54.

(Same as Article 53 of the Constitution as finally adopted.)

**Article 54**

## § 70.

The Imperial Chancellor and the Imperial Ministers need for the conduct of their offices the confidence of the People's House. Any one of them must resign if the People's House by an express resolution withdraws from him the confidence.

## Article 76.

The Imperial Chancellor and the Imperial Ministers need for the conduct of their offices the confidence of the Reichstag. Any one of them must resign if the Reichstag by an express resolution withdraws from him the confidence.

## Article 55.

(Same as Article 54 of the Constitution as finally adopted.)

**NOTE**

Here is put into the Constitution the parliamentary system of government. The constitutional amendments of October 28, 1918, undertook to do the same. Bornhak reminds us that in other countries the parliamentary system rests upon custom only. He says, also, that no political party in Germany controls a majority in the Reichstag, so that the ministry is always a coalition one; that it has become a custom for the Imperial Chancellor, not to seek out his co-workers, but to appoint persons selected by the political parties for the portfolios assigned to them, which, he states, makes the formation of a homogeneous ministry impossible.

**Article 55—58**

## § 71.

The Imperial Chancellor bears over against the Reichstag the responsibility for the Imperial guiding political principles, every Imperial Minister independently the responsibility for the conduct of his Department.

## Article 77.

(Same as § 71.)

## Articles 56-59.

(Same as Articles 55-58 of the Constitution as finally adopted.)

**Article 59**

## § 73.

The People's House and the House of States are authorized to accuse the Imperial President, the Imperial Chancellor and the Imperial Ministers, before the High Court of Judicature for the German Empire, of being guilty of a wrongful violation of the Imperial Constitution or of an Imperial statute. The petition prefer-

ring the charge must be signed by at least one hundred members of the People's House or twenty-five members of the House of States and shall need the vote of two-thirds of the legal number of members.

Article 79.

The Reichstag is authorized to accuse the Imperial President, the Imperial Chancellor and the Imperial Ministers, before the High Court of Judicature for the German Empire, of being guilty of a wrongful violation of the Imperial Constitution or of an Imperial statute. The petition preferring the charge must be signed by at least one hundred members of the Reichstag and shall need the vote of two-thirds of the legal number of members.

Article 60.

(Same as Article 59 of the Constitution as finally adopted.)

**NOTE**

Cross-references:

As to constitutional amendments, see Article 76.

As to the High Court of Judicature, see Article 108 and under Article 15.

**Article 60**

§ 15.

In the several Imperial ministerial Departments Imperial Councils are to be formed of the representatives of the Free-States according to need, whose opinion is to be obtained before the introduction of bills in the Reichstag and before the issuance of the necessary general administrative regulations for the execution of the Imperial statutes.

Article 18.

For the representation of the German Component States in the legislation and administration of the Empire an Imperial Council shall be formed.

Article 61.

(Same as Article 60 of the Constitution as finally adopted.)

**NOTE**

The word translated “Imperial Councils” is **Reichsräte**; that translated “Imperial Council” is **Reichsrat**.

The representatives referred to in §15 are those mentioned in §14, as to which see under Articles 33, 52 68 of the Constitution as finally adopted.

The word "Reichsrat" will be retained in the rest of the translations. It should be incorporated into our language as "Reichstag" has been.

In Preuss' draft there is no such Reichsrat as is found in the other drafts. §15 stands by itself.

The present Reichsrat supplants the former Bundesrat and the later States-Committee. The great difference between it and the former **Bundesrat** is, that it has no legally deciding co-operation in either legislation or administration, and enjoys no judicial rights.

## Article 61

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### Article 19.

The right of the Component States to vote in the Reichsrat is dependent upon the number of their inhabitants according to the respective latest census. Fundamentally there shall be one vote for a million inhabitants, an excess of more than a half million being considered equal to a full million. No Component State may have more than one-third of all the votes. In so far, however, as thereby the number of Prussia's votes sinks below eighteen the proportion of votes in the Reichsrat is to be regulated anew by way of amendment of the Constitution. Component States which have fewer than a million inhabitants shall be entitled to vote only if it is recognized by Imperial statute that predominant economic reasons demand a special representation.

These provisions do not become effective until three years after the Imperial Constitution becomes of force and effect. Until then the following principles shall govern the formation of the Reichsrat:

In the Reichsrat every Component State shall have at least one vote. In the case of the larger Component States there shall be fundamentally one vote for a million inhabitants, an excess which is at least equal to the number of the inhabitants of the smallest Component State being considered equal to a full million. No Component State may be rep-

### Article 62.

#### Paragraph 1:

(Same as Paragraph 1 of Article 61 of the Constitution as finally adopted.)

#### Paragraph 2:

(Same as Paragraph 2 of Article 61 of the Constitution as finally adopted.)

resented by more than one-third of all the votes.

If German-Austria joins itself to the German Empire, it shall receive the right to participate in the Reichsrat with a number of votes proportionate to its population. Until then it shall take part with an advisory voice.

**NOTE**

This was one of the crucial measures in handling Prussia.

The States-Committee adopted this Article in the following form: “The right of the Component States to vote in the Reichsrat is dependent upon the number of their inhabitants according to the respective latest census. Fundamentally there shall be one vote for a million inhabitants, however in such wise that:

“1. An excess of more than a half million shall be considered equal to a full million.

“2. Component States of more than a million inhabitants shall not be curtailed in the right to vote accorded them under the former Imperial Constitution.

“3. Component States whose inhabitants number at least a half million shall have one vote each.

“No Component State may have more than one-third of all the votes. In so far, however, as thereby the number of Prussia's votes sinks below eighteen, the proportion of votes in the Reichsrat is to be regulated anew by way of amendment of the Imperial Constitution. Component States which have fewer than a half million inhabitants shall be entitled to vote only if it is recognized by Imperial statute that predominant economic reasons demand a representation.

“These provisions shall not become effective until three years after the Imperial Constitution becomes of force and effect. Until then the following principles shall govern the formation of the Reichsrat:

“In the Reichsrat every Component State shall have at least one vote. In the case of the larger Component States there shall be fundamentally one vote for a million inhabitants, an excess which is at east equal to the number of the inhabitants of the smallest Component State being considered equal to a full million. **However, Component States of more than a million inhabitants shall not be curtailed in the right to vote accorded them under the former Imperial Constitution.**

“If German-Austria joins itself to the German Empire, it shall receive the right to participate in the Reichsrat with a number of votes proportionate to its population. Until then it shall take part with an advisory voice.”

The differences from Article 19, on the left, will be noticed in the bold type.

The parts of Article 61 in brackets is considered void by virtue of a declaration of the German Government of September 19, 1919, because of Article 80 of the Treaty of Versailles (Cf. Article 178 of the Constitution as finally adopted). The protocol covering the nullity was signed at Versailles September 23, 1919.

“An early distribution of seats, after the adoption of the Constitution, on the basis of Article 61, gave to Prussia twenty-five votes

out of the total of sixty-three in the Reichsrat. But, as we know, after May, 1920, seven small states of Central Germany formed the State of Thuringia, which had 1,584,324 inhabitants and was entitled to two votes. By this the number of non-Prussian votes in the Reichsrat was reduced by five, which also diminished the number of votes coming from Prussia from its former twenty-five to twenty-two. So long as no new changes in the interior geographic configuration of the Reich are made, the distribution of votes in the Reichsrat will be as follows: Prussia, twenty-two; Bavaria, seven; Saxony, five; Wurtemberg, three; Baden, three; Hesse, two; Thuringia, two; other States, one each. Total, fifty-five." (Brunet, p. 189.)

## Article 62

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### Article 20.

In the Committees appointed from its members by the Reichsrat every Component State entitled to vote shall have one vote.

### Article 63.

(Same as Article 62 of the Constitution as finally adopted.)

#### NOTE

Cross-reference: See Articles 65, 67.

## Article 63

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### Article 21.

The Component States shall be represented in the Reichsrat by members of their Governments. They are entitled to send as many representatives to the Reichsrat as they have votes. The members of the Reichsrat are not bound by instructions, and the votes of a Component State can be cast only as a unit.

### Article 64.

(Same as Article 63 of the Constitution as finally adopted.)

#### NOTE

Here again Prussia was wrestled with.

The Constitution, as finally adopted, is silent as to how the votes in the Reichsrat are to be cast—whether or not as a unit, whether or not in accordance with instructions, etc. But see Article 66, last paragraph.

Cross-reference: See Article 168.

## Article 64

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### Article 22, Paragraph 2.

(Same as Article 64 of the Constitution as finally adopted.)

### Article 65.

(Same as Article 64 of the Constitution as finally adopted.)

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## Article 65

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### Article 22, Paragraph 1.

A member of the Imperial Government shall preside over the meetings of the Reichsrat and its Committees. The members of the Imperial Government have the right, and, upon demand, the duty, to take part in the proceedings of the Reichsrat, and must, upon demand, be heard at any time during the deliberations.

### Article 66.

(Same as Article 65 of the Constitution as finally adopted.)

#### NOTE

The presiding position of Prussia is gone. Notice the presiding officer has no vote.

Cross-reference: As to the Imperial Government, see Article 52.

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## Article 66

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### Article 23.

(Same as Article 66 of the Constitution as finally adopted, with this sentence added to the last paragraph:

“In the case of amendments of the Constitution the assent of two-thirds of the votes cast shall be required.”)

### Article 67.

(Same as Article 66 of the Constitution as finally adopted.)

#### NOTE

The sessions of the old Bundesrat were not public.

Cross-references:

Constitutional amendments require a two-thirds vote. See Article 76.

As to veto right of the Reichsrat, see Article 74.

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## Article 67

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### Article 27, Paragraph 2.

(Same as Article 67 of the Constitution as finally adopted.)

### Article 68.

(Same as Article 67 of the Constitution as finally adopted.)

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## Article 68

§ 51, Paragraphs 1 and 3.

For an Imperial statute the concurrence of the majority deci-

sions of both Houses of the Reichstag is required and, with the reservation of § 60, sufficient.

The right to propose statutes appertains to the People's House, to the House of States and to the Imperial Government.

**Article 53.**

The Imperial statutes are enacted by the Reichstag.

The Reichstag has the right to propose statutes.

**Article 69.**

(Same as Article 68 of the Constitution as finally adopted.)

**NOTE**

Compare §50, under Article 32 of the Constitution as finally adopted.

The provisions of §60 referred to may be seen under Articles 70 and 73 of the Constitution as finally adopted.

On the right to propose statutes (bills), see §15, under Article 60 of the Constitution as finally adopted.

**Cross-references:**

As to the right of the Reichsrat to propose legislation, see Article 69.

As to the part Workers' Councils play in Imperial legislation, see Article 165.

**Article 69**

**§ 15.**

(See this § 15 under Article 60 of the Constitution as finally adopted.)

**Article 24.**

The introduction of bills of the Imperial Government in the Reichstag needs the concurrence of the Reichsrat.

If there is lack of agreement between the Imperial Government and the Reichsrat, the Imperial Government is entitled nevertheless to introduce the bill, but in connection therewith it is obliged to present the dissenting view of the Reichsrat.

If the Reichsrat decides on a bill to which the Imperial Government is not able to assent, the latter has to introduce the bill in the Reichstag, together with an exposition of the Government's viewpoint.

**Article 70.**

(Same as Article 69 of the Constitution as finally adopted.)

**NOTE**

**Cross-reference:** As to introducing bills, see Article 68.

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## Article 70

### § 60, Paragraph 1.

The Imperial President shall promulgate in the Imperial Gazette within a month the statutes enacted by the Reichstag.

#### Article 64.

(Same as Article 70 of the Constitution as finally adopted.)

#### Article 71.

(Same as Article 70 of the Constitution as finally adopted.)

#### NOTE

The word translated “to verify” is *auszufertigen*, which means, literally, to draw up in the final shape or draft, for promulgation, but is interpreted to mean *zu beurkunden*, i. e., to verify or authenticate. This duty is said to include the ascertainment of the correctness of the text of the statutes and the ascertainment whether or not the statutes were constitutionally enacted.

The word translated “Imperial Gazette” is *Reichs-Gesetzblatt*.

Cross-reference: As to postponement of the promulgation, see Article 72.

## Article 71

### § 7.

Imperial statutes become of force with the fourteenth day after the lapse of the day on which the particular number of the Imperial Gazette is published in Berlin, if in the statute itself another time for the beginning of its effectiveness is not provided.

#### Article 12.

(Same as § 7, with indifferent textual variations.)

#### Article 72.

(Same as Article 71 of the Constitution as finally adopted.)

#### NOTE

A slap at Berlin is here seen by some persons in the change from “Berlin” to “the Imperial capital.”

## Article 72

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#### Article 73.

(Same as Article 72 of the Constitution as finally adopted.)

#### NOTE

Cross-reference: See Article 73, Paragraph 2.

## Article 73

### § 60, Paragraph 2.

If concurrence between the two Houses of the Reichstag on a bill is not reached, the Imperial President is authorized to cause a Popular Vote to be taken on the subject matter of the disagreement.

## Article 74.

*to be brought*  
 A statute can, before its promulgation by the Imperial President, ~~is to be submitted~~ to a Popular Decision within one month after the final enactment in the Reichstag.

A statute, whose promulgation is postponed upon demand of at least a third of the Reichstag, is to be submitted to a Popular Decision, if one-twentieth of those entitled to vote so petition.

A Popular Decision is also to be had when a tenth of those entitled to vote petition for the introduction of a bill. The petition must cover a fully drafted bill. The bill is to be submitted to the Reichstag by the Government, together with a presentation of its attitude. The Popular Decision is not had if the desired bill is adopted by the Reichstag without change.

As to the Budget, tax statutes and salary regulations for the Imperial officials, the Imperial President alone can cause a Popular Decision to be had.

An Imperial statute shall regulate the procedure connected with the Popular Petition and with the Popular Decision.

### NOTE

The word translated "Popular Vote" is **Volksabstimmung**. That translated "Popular Decision" is **Volksentscheid**. That translated "Popular Petition" is **Volksbegehren**.

**Volksentscheid** is our Referendum. **Volksbegehren** is our Initiative. But the popular vote on an initiated bill is called **Volksentscheid**. Thus a Referendum always follows the Initiative, unless the initiated bill is adopted by the Reichstag without change.

During the debates the words **Referendum** and **Initiative** were

freely used, but when it came to the official text the words of foreign origin were studiously avoided.

As to the “Popular Vote,” see under Articles 18, 20-22, 43 of the Constitution as finally adopted.

The word translated “Budget” is **Haushaltsplan**. The foreign words “Budget” and “Etat” were avoided.

“Budget” is here used in the sense of a financial plan of receipts, appropriations and disbursements, embodied in a statute, and not in the sense as usually understood in England. See Article 85 of the Constitution as finally adopted.

In connection with § 60 see §§ 31, 51, under Articles 20-22, 68, 76 of the Constitution as finally adopted.

It puzzles Bornhak to know how the Imperial President, under the parliamentary system, would undertake to submit to a Popular Decision a statute enacted by the Reichstag.

## Article 74

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### Article 26.

#### Paragraph 1:

(Same as Paragraph 1 of Article 74 of the Constitution as finally adopted.)

#### Paragraph 2:

The veto must be announced to the Imperial Government within two weeks after the day of the enactment of the statute by the Reichstag and be supplied with reasons.

#### Paragraph 3:

In case of a veto the statute shall be laid before the Reichstag for reconsideration. If thereby no agreement between the Reichstag and the Reichsrat is reached, the Imperial President can order a Popular Vote on the subject of the disagreement, or promulgate the statute as enacted by the Reichstag, if it therein has obtained the majority prescribed for amendments of the Constitution.

### Article 75.

(Same as Article 74 of the Constitution as finally adopted.)

### NOTE

Cross-reference: See Article 85, Paragraph 5.

## Article 75

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**Article 76**

## § 51, Paragraph 2.

Amendments of the Constitution can be had only if in both Houses of the Reichstag at least two-thirds of the legal number of members are present and at least two-thirds of those present vote for them. After the lapse of five years after this Constitution becomes effective every amendment of the Constitution shall require adoption by a Popular Vote.

**Article 23, Paragraph 4,**

## Sentence 2.

In the case of amendments of the Constitution the assent of two-thirds of the votes cast [in the Reichsrat] shall be required.

**Article 54.**

Amendments of the Constitution can be adopted only if at least two-thirds of the legal number of members of the Reichstag are present and at least two-thirds of those present vote for them.

**Article 76.**

Amendments of the Constitution can be adopted only if at least two-thirds of the legal number of members of the Reichstag are present and at least two-thirds of those present vote for them.

And in the Reichsrat two-thirds of the votes cast are required for an amendment of the Constitution.

If in cases of bills amending the Constitution a concurrence of the Reichstag and the Reichsrat is not reached, the Imperial President has to promulgate the statute enacted by the Reichstag or to order a Popular Decision. He is obliged to order the Popular Decision if the Reichsrat so demands.

**Article 77****Article 13.**

The Imperial Government shall issue the decrees necessary for the execution of the Imperial statutes.

**Article 27, Paragraph 1.**

The Imperial Government shall need the consent of the Reichsrat for the issuance of decrees for the execution [of the Imperial statutes].

**Article 77.**

(Same as Article 77 of the Constitution as finally adopted.)

**NOTE**

See under Articles 14-16 of the Constitution as finally adopted.

Cross-reference: As to the Imperial Government, see Article 52.

## Article 78

(See § 3 under Articles 6 to 12 of the Constitution as finally adopted.)

### Article 4.

The relations with the foreign states are, in legislation and administration, exclusively a matter of the Empire.

In matters whose regulation is within the competency of State legislation, the Component States can make treaties with foreign states; the treaties need the approval of the Empire.

In order to safeguard the representation of interests which result to individual Component States from their particular economic relations with, or their proximity to, foreign states, the Empire has to adopt the necessary arrangements and measures in an understanding with the Component States concerned.

### Article 78.

(Same as Article 78 of the Constitution as finally adopted.)

### NOTE

See under Articles 6-12 of the Constitution as finally adopted.

Bornhak says Article 78 of the Constitution as finally adopted does not affect relations with the Papal See, because it is not a "state."

## Article 79

(See § 3 under Articles 6 to 12 of the Constitution as finally adopted.)

### Article 5.

The defence of the Empire on land, on water and in the air is an Imperial matter. The military organization of the German People is to be regulated uniformly by an Imperial statute.

Legislation in this sphere belongs exclusively to the Empire. The administration shall be conducted by the Imperial Minister of Defence in accordance with detailed provisions of an Imperial statute, which is to be enacted, concerning the shaping of the forces of defence.

By virtue of this statute there are to be assigned to the highest

### Article 79.

The defence of the Empire on land, on water and in the air is an Imperial matter. The military organization of the German People shall be regulated uniformly by an Imperial statute.

The administration shall be conducted by the Imperial Minister of Defence. There are to be assigned to the highest commands in the several Lands and parts thereof independent rights of administration directed towards the cultivation of the special racial fitness and local characteristics, the exercise of which rights shall be subject to the su-

commands in the several Component States and parts thereof independent rights of administration directed towards the cultivation of the special racial fitness and local characteristics, the exercise of which rights shall be subject to the supervision of the Empire.

In so far as, according to the constitutional principles hitherto prevailing, independent State military administrations have existed, the respective States may not, without their consent, be restricted in their special rights flowing therefrom. The thus continued State administrations shall remain, however, immediately responsible to the Empire. The special rights of Bavaria in the sphere of the army growing out of the treaty of alliance of November 23, 1870 (Imperial Gazette, 1871, page 9), can be abolished or restricted only with its consent, but Bavaria shall account to the Empire for the use of the Imperial funds apportioned to it.

supervision of the Empire.

An Imperial statute shall regulate the details.

#### NOTE

See under Articles 6-12 and 47 of the Constitution as finally adopted.

### Article 80

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#### Article 6.

Colonial affairs are, in legislation and administration, exclusively a matter of the Empire.

#### Article 80.

(Same as Article 80 of the Constitution as finally adopted.)

#### NOTE

See under Articles 6-12 of the Constitution as finally adopted.

Article 80 of the Constitution as finally adopted is the previously existing law.

### Article 81

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#### Article 106.

All German merchant ships form a unified merchant marine.

#### Article 81.

All German merchant ships form a unified merchant marine.

The Empire is authorized to determine the principles of ship measurements, and also to regulate the ship registers and to fix the conditions upon which the license to navigate a sea-going vessel is dependent.

In the seaports and upon all natural and artificial waterways of the individual Component States all German ships shall be admitted and treated alike.

**NOTE**

To the left and right the word translated “merchant marine” is **Handelsmarine**. In the Constitution as finally adopted **Handelsflotte** is preferred. Compare Article 54 of the Constitution of 1871, where it is **Handelsmarine**.

Cross-reference: See Article 101.

## Article 82

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### Article 80.

(Paragraphs 1 and 2 same as Paragraphs 1 and 2 of Article 82 of the Constitution as finally adopted.)

Paragraphs 3, 4, 5:

Foreign states or parts of foreign states can be incorporated in the customs area by virtue of treaties or agreements (Customs Inclusions) According to special need, parts can be excluded from the customs area, and also annexed to a foreign customs area by treaties or agreements (Customs Exclusions).

In Bremen and Hamburg there shall remain, concerning the Free-Ports, the regulation based upon Article 34 of the Constitution of the German Empire of April 16, 1871.

All products of nature and also of industry and art (merchandise), which are in the free commerce of the Empire, may be transported across the boundaries of the Component States and Communes into, from or through them. Exceptions can be ordered, for objects of state monopoly and also for military or police reasons, for the entire Imperial territory or a part thereof.

### Article 82.

(Same as Article 82 of the Constitution as finally adopted.)

**NOTE**

See under Articles 6-12 of the Constitution as finally adopted.

In the Pruss draft the matters of Customs and Trade were expressly reserved for future consideration.

Bornhak tells us that the customs frontier on the sea (the shore, instead of the international-law boundary) corresponds to the Customs Union Statute of July 1, 1869. He also says:

"As Customs Inclusions there still remain the Austrian Communes of Jungholz and Mittelberg. On the other hand the Grand Duchy of Luxemburg is withdrawn, by virtue of the Peace Treaty of Versailles. The following are Customs Exclusions: of Prussia, the Island of Helligoland and the port facilities of Geestemünde; several Communes of Baden; and the Free-Port districts of Hamburg and Bremen. The last no longer constitute a Reserved Right that cannot be annulled against the will of the states concerned. For the annulment a constitution-amending statute is sufficient. The same applies to Geestemünde and Helligoland. Other changes of the customs frontier take place through an ordinary statute."

**Article 83****Article 7, Paragraphs 3 to 6.**

The customs duties and excises on articles of consumption shall be collected and administered by Imperial authorities; the other Imperial revenues, by the Component States.

By Imperial legislation the collection and administration of the indirect Imperial revenues not falling under Paragraph 3 can also be transferred to Imperial authorities.

The collection and administration of Imperial revenues in so far as they do not appertain to Imperial authorities under Paragraphs 3 and 4, and also of State revenues, can, upon application of a Component State, be transferred to Imperial authorities.

In filling the places of the Imperial financial authorities charged with the collection and administration of the revenues, the appointment of the citizens of the Component States is to be the rule in the case of the officials active in the Component States.

**Article 83.**

(Same as Article 83 of the Constitution as finally adopted.)\*

\* Here and in Article 83 of the Constitution as finally adopted a foreign word (*Industrie*) crept in.

**NOTE**

In the Preuss draft the matter of Imperial Finances was expressly reserved for future consideration.

Bornhak says Imperial legislation in the fall and winter of 1919 set up the following principle:

“The Imperial taxes are administered by the Imperial authorities (finance authorities). As Imperial taxes are considered all revenues which are raised in whole or in part in favor of the Empire”; basing its constitutionality upon Article 14 of the Constitution.

Cross-references: See Articles 8, 16, 84 and 169.

**Article 84**

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**Article 81.**

The regulations of a fundamental character for the organization of administration, required for the unified and uniform execution of the Imperial tax statutes, and the powers of the Imperial supervisory authorities, and also the regulations for the settling of accounts and the reimbursement of the expenses of administration shall be prescribed by Imperial statutes.

**Article 84.**

(Same as Article 84 of the Constitution as finally adopted.)

**NOTE**

Cross-references: See Articles 8, 88.

**Article 85**

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**Article 82.**

(First three paragraphs same as the first three paragraphs of Article 85 of the Constitution as finally adopted. A fourth paragraph reads as follows:

“Disbursements not provided in the Budget bill or increases of disbursements provided in the bill, which have been adopted by the Reichstag, can be abrogated finally by the Reichsrat.”)

**Article 85.**

(Same as Article 85 of the Constitution as finally adopted, except the Article referred to in the last paragraph is Article 75, and the word for “Budget” is *Haushalt*, instead of *Haushaltsplan*, which latter occurs in Article 82, opposite here, and in Article 85 of the Constitution as finally adopted.)

**Article 83.**

If up to the beginning of a fiscal year the Budget is not fixed by statute, the Imperial Govern-

ment is empowered, until it becomes effective, to make all expenditures which are necessary for the fulfilling of legally authorized obligations of the Empire or for the maintenance of legally existing institutions or for the execution of legally adopted measures; further, to continue construction work, supplies and other performances, for which appropriations have already been made by the Budget of a preceding year, and to render further assistance, under the same conditions, to construction work, supplies or other performances, and also to issue treasury warrants, in so far as the receipts from the special statutory taxes, revenues and other sources are not sufficient for the making of the aforesaid expenditures.

**NOTE**

Cross-reference: See Article 73.

**Article 86**

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Article 84.

For the discharge of the Imperial Government from responsibility, an accounting for the disposition of all receipts of the Empire is to be made by the Imperial Minister of Finance to the Reichsrat and the Reichstag in the following fiscal year. The auditing of the account shall be regulated by Imperial statute.

Article 86.

(Same as Article 86 of the Constitution as finally adopted.)

**Article 87**

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Article 85.

(Same as Article 87 of the Constitution as finally adopted, except immaterial textual variations.)

Article 87.

(Same as Article 87 of the Constitution as finally adopted.)

**NOTE**

The word for "security" in Article 85, to the left, is "Garantie," which was dropped for the purely German "Sicherheitsleistung" to the right and in Article 87 of the Constitution as finally adopted.

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**Article 88**

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**Article 86.**

The postal service and the telegraph service, including the telephone service, are, in legislation and administration, exclusively a matter of the Empire.

Decrees of every kind shall be issued by the Imperial Government, with the consent of the Reichsrat; this power can be transferred to the Imperial Minister of Posts.

The officials and workers of the postal and telegraph administration are, at their request, to be employed in the territory of their home State, in so far as the possibility to use them there exists and urgent considerations of the postal and telegraph service do not stand in the way.

**Article 88.**

The postage stamps are to be common for the entire Empire.

**Article 88.**

The postal service and the telegraph service, including the telephone service, are exclusively a matter of the Empire.

The postage stamps shall be uniform for the whole Empire.

The Imperial Government shall issue decrees of every kind, with the consent of the Reichsrat; the Imperial Government can, with the consent of the Reichsrat, transfer this power to the Imperial Minister of Posts.

Treaties covering service with foreign countries shall be concluded by the Empire exclusively.

**NOTE**

See under Articles 6-12 of the Constitution as finally adopted.

For the Preuss draft, see under Articles 6-12 of the Constitution as finally adopted.

**Cross-references:**

As to Bavaria and Württemberg, see Article 170.

Compare Article 91.

As to advisory boards, compare Articles 93, 98.

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**Article 89**

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**Article 90.**

It is a task of the Empire to take over into its administration the railroads serving the general traffic. The taking over can take place only by way of treaty, with compensation.

**Article 89.**

(Same as Article 89 of the Constitution as finally adopted, with an unimportant textual variation.)

**NOTE**

For the Preuss draft, see under Articles 6-12 of the Constitution as finally adopted.

Bavaria's previous Reserved Right as to railroads has disappeared.

Cross-references: See Article 7, No. 19; Article 171.

**Article 90**

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**Article 91.**

If the Empire has, within a certain territory, taken over into its administration the railroads serving the general traffic, there shall belong to it, within this territory, the right of expropriation and the exercise of the state prerogatives relating to railroads. In case of dispute the High Court of Judicature shall decide the extent of these rights.

**Article 90.**

(Same as Article 90 of the Constitution as finally adopted.)

**NOTE**

As to the High Court of Judicature, see under Article 15 of the Constitution as finally adopted.

**Article 91**

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**Article 89.**

The Empire has the right of legislation over the railroads, in so far as the general traffic and the defence of the country are concerned.

The Imperial Government shall issue, with the consent of the Reichsrat, the decrees controlling the construction, management and traffic of the railroads (Construction-, Management-, Traffic-, Signal-Regulations, etc.)

**Article 91.**

The Imperial Government shall issue, with the consent of the Reichsrat, the decrees which control the construction, management and traffic of the railroads.

**NOTE****Cross-references:**

As to Paragraph 1 of Article 89, to the left, see Article 7, No. 19, and the corresponding provision in the Committee's draft (Article 8, No. 19).  
Compare Article 88.

**Article 92**

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**Article 92.**

The Imperial railroads are (according to commercial princi-

**Article 92.**

(Same as Article 92 of the Constitution as finally adopted.)

ples)—regardless of the estimates and verification of their receipts and disbursements and their proceeds in the budget and accounts of the Empire—to be administered as an independent economic enterprise, which itself has to meet its expenditures, including interest on, and a sinking fund for, the railroad debt, and to accumulate a railroad reserve fund. The amount of the sinking fund and the reserve fund and the purposes for which the latter may be used are to be regulated by special statute.

**NOTE**

Bornhak says Article 92 of the Constitution as finally adopted is a transference of previous Prussian principles of administration to the Empire.

**Article 93**

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Article 93.

In the case of railroads administered by the Empire, railroad advisory boards shall, in accordance with a more specific decree of the Reichsrat, be created for co-operation in matters of railroad traffic questions.

Article 93.

(Same as Article 93 of the Constitution as finally adopted.)

Article 94.

The officials and offices of the Imperial railroad administration shall bear the designation of the Component State in whose territory they have their headquarters. The local places of employment shall be named after the Component State in whose territory they are located.

The officials and workers of the Imperial railroad administration are at their request to be employed in the territory of their home State, in so far as the possibility to use them there exists and urgent considerations of the railroad management do not stand in the way.

**NOTE**

Bornhak says Article 93 of the Constitution as finally adopted is a generalization of the Prussian system of railroad boards, placed upon a constitutional basis.

Cross-references: Cf. Articles 16, 88, 98.

**Article 94****Article 95.**

If the Empire has, within a certain district, taken into its administration the general-traffic railroads, new general-traffic railroads can be constructed within this district only by the Empire or with its consent. If by the construction of new, or the change of existing, Imperial railroads there arises a contact with the jurisdiction of the State police power, the decisions of the Imperial railroad administration may be made only after first hearing the State authorities.

In districts in which the Empire has not yet taken the railroads over into its administration, it is authorized to build railroads deemed necessary for the general traffic or for the defence of the country, by virtue of an Imperial statute and contrary to the objection of the Component States whose territory is traversed, without prejudice to the State prerogatives, at its own expense, or to turn the construction over to some one else—together with the grant, if necessary, of the right of expropriation.

Every railroad administration must allow a connection with other roads at the expense of the latter.

**Article 94.**

(Same as Article 94 of the Constitution as finally adopted, with immaterial textual variation.)

**NOTE**

In Bornhak's opinion, Paragraph 1 of Article 94 of the Constitution as finally adopted secures for the future an Imperial railroad monopoly.

**Article 95****Article 96.**

Railroads of general traffic, which are not administered by

**Article 95.**

(Same as Article 95 of the Constitution as finally adopted.)

the Empire, are subject to supervision by the Empire.

The supervision shall be exercised by the Committee of the Reichsrat on Railroads. The business of the Committee is to be prepared beforehand by the Imperial Railroad Department. The Committee can transfer the exercise of its powers in certain branches of business to the Imperial Railroad Department.

Article 97.

The roads subject to the Imperial supervision are to be constructed and equipped according to uniform principles fixed by the Empire. These roads and those administered by the Empire are to be operated as a single system for the advancement of the general traffic.

The railroad administrations therefore have particularly:

1. To serve and conduct uniformly the traffic, with exclusion of uneconomic competition.
2. To render mutually effective assistance in operation.
3. To issue as far as possible concurring regulations for material and personal services.
4. To advance uniformity in technical arrangements.
5. To render uniform as far as possible the conduct of business.

Article 98.

The railroads are to be kept in condition safe for operation and to be developed and equipped to meet the demands of traffic. The passenger and freight traffics are to be served and equipped in keeping with the requirements of traffic.

Article 99.

Uniform and low railroad rates are to be aimed at in the supervision of the tariffs.

In emergencies, especially in cases of unusual high prices for the necessaries of life, the railroads have to introduce from time to time a lower exceptional tariff, according to the need, for

the transportation particularly of grain, flour, legumes and potatoes. The tariff shall be fixed by the Committee of the Reichsrat on Railroads; it may not fall below the lowest rate applied on the road to raw materials.

## Article 96

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### Article 100.

The railroads not serving general traffic also have to meet the demands of the Empire for the use of the railroads for the defence of the country.

The military forces and all military supplies are to be transported at reduced rates.

### Article 96.

#### Paragraph 1:

(Same as Paragraph 1 of Article 96 of the Constitution as finally adopted.)

#### Paragraph 2:

Troops and military supplies are to be transported at reduced rates.

## Article 97

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### Article 101.

The Empire has the power of legislation for inland navigation, in so far as general traffic and the defence of the country are concerned.

### Article 102.

It is a task of the Empire to take over into its administration the inland waterways serving general traffic. The taking over can take place only by way of treaty, with compensation.

The Empire is authorized, in the interest of general traffic or of the defence of the country, by virtue of an Imperial statute, and against the objection of the Component States involved, without prejudice to the State prerogatives, to construct new inland waterways or to extend existing ones. In this connection the interests of agriculture and water-economics are to be conserved; and their advancement is also to be taken into consideration. The Component States can demand that the Empire take over the

### Article 97.

(Same as Article 97 of the Constitution as finally adopted, except it is "interests"—instead of "needs"—of agriculture and water-economics in Paragraph 3.)

inland waterways which, together with an inland waterway to be built new or extended, constitute a single stream area or system of waterways, if their economic value is considerably influenced by the new waterway.

Every administration of waterways has to allow a connection with other inland waterways at the expense of the latter. The same obligation exists for the making of a connection between inland waterways and railroads.

Article 103.

It is a task of the Empire to take over into administration the sea waterways to Emden, Bremen, Hamburg-Harburg, Lübeck, Stettin, Dantzig and Königsberg. The taking over can take place only by treaty, with compensation.

**NOTE**

In the Pruss draft the matter of Inland Navigation was expressly reserved for future consideration.

Bornhak says Article 97 of the Constitution as finally adopted contains a new administrative task of the Empire, transferred to it from the individual States, and that, accordingly, in the place of the merely treaty union for the associations for the construction of waterways there is the sovereign right of the Empire.

Cross-references:

As to Article 101, to the left, see Article 7, No. 19, and the corresponding provision in the Committee's draft (Article 8, No. 19).

See Article 171.

## **Article 98**

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Article 98.

(Same as Article 98 of the Constitution as finally adopted.)

**NOTE**

Cross-references: Compare Articles 88, 93.

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## Article 99

### Article 104.

(Same as Article 99 of the Constitution as finally adopted, with unimportant textual variations.)

### Article 99.

(Same as Article 99 of the Constitution as finally adopted, with two indifferent textual variations in Paragraph 1.)

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## Article 100

### Article 105.

By Imperial statute, there can also be called upon, to meet the costs of the maintenance and construction of inland waterways, those who receive, from the construction of dams for the feeding or leveling of the water stage of the ways for navigation, a benefit otherwise than from the navigation thereof, if more than one Component State are concerned or the Empire bears the costs.

### Article 100.

(Same as Article 100 of the Constitution as finally adopted, with an indifferent textual variation.)

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## Article 101

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### NOTE

Cross-references: See Articles 81 and 171.

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## Article 102

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### Article 101, Paragraph 2.

(Same as Article 102 of the Constitution as finally adopted.)

### NOTE

In the Pruss draft the matter of Administration of Justice was expressly reserved for future consideration.

See also under Article 103 of the Constitution as finally adopted.

Article 102 of the Constitution as finally adopted is a repetition of a former statutory provision.

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## Article 103

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### Article 108.

The ordinary jurisdiction shall be exercised by independent courts, which are subject to only the law.

### Article 101, Paragraph 1.

(Same as Article 103 of the Constitution as finally adopted.)

#### NOTE

By “ordinary jurisdiction” is meant the usual civil and criminal jurisdiction—the *jurisdictio ordinaria* of the Canon Law. (Bornhak.)

The word translated “Imperial Supreme Court” is *Reichsgericht*. That court and the “courts of the Lands” were taken over from the former Empire. Their existence and activities remained unbroken by and after the Revolution on November 9, 1918. The *Reichsgericht* has always sat, and still sits, at Leipsic.

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## Article 104

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### Article 109.

The judges are appointed for life.

### Article 102.

(Same as Article 104 of the Constitution as finally adopted.)

### Article 110.

Judges can, against their will, be permanently or temporarily deprived of their office or transferred to another position or retired only by virtue of a judicial decision and only on the grounds and in the manner provided by the statutes.

The statutory provisional suspension from office is not hereby affected.

In case of a change in the organization of the courts or of their territorial jurisdictions, involuntary transfers to another court or removals from office with retention of the full stipend can be ordered by the State Administration of Justice.

### Article 111.

For property-right claims of judges, growing out of their professional services, especially to stipend, fee for attendance or pension, the due process of law may not be excluded.

### Article 112.

The provisions of Articles 109-

111, do not apply to judges of the Industrial Courts, Assessors and Jurymen.

**NOTE**

Article 104 of the Constitution as finally adopted contains repetitions of former statutory provisions.

## Article 105

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### Article 103.

Exceptional courts are not allowed. No one may be deprived of the judge provided for him by law. The provisions of law concerning Courts-Martial, including the drumhead variety, are not hereby affected.

**NOTE**

Bornhak reminds us that the abolishment of military courts of honor does not exclude military disciplinary courts.

## Article 106

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### Article 104.

The jurisdiction of military courts is to be abolished, except for times of war. An Imperial statute shall prescribe the details.

**NOTE**

The statute referred to was enacted August 17, 1920.

## Article 107

### § 9.

An Imperial statute shall control the law of Administration in questions of Imperial law, and also the establishment of administrative courts of the Empire.

### Article 113.

(Same as § 9, with the use of *Einsetzung*, instead of *Errichtung*, for "establishment.")

### Article 105.

(Same as Article 107 of the Constitution as finally adopted.)

**NOTE**

Bornhak says Article 107 of the Constitution as finally adopted compels the introduction of administrative courts in the Lands in which they have not previously existed.

**Article 108**

§ 10, Paragraph 1.

(Same as Article 108 of the Constitution as finally adopted, with an indifferent textual variation.)

Article 114, Paragraph 1.

Article 106.

(Same as Article 108 of the Constitution as finally adopted.) (Same as Article 108 of the Constitution as finally adopted.)

**NOTE**

The word translated “High Court of Judicature” is **Staatsgerichtshof**. See under Articles 14-16 of the Constitution as finally adopted.

Cross-reference: See under Article 15 of the Constitution as finally adopted.

An interesting question is: Is the jurisdiction of the High Court of Judicature limited to cases specifically mentioned in the Constitution? That court is not mentioned as one of the courts of ordinary jurisdiction. See Article 103 of the Constitution as finally adopted

**Article 109**

§ 18.

All Germans are equally entitled before the law. All privileges or legal disadvantages of birth, rank, calling or belief are removed; their re-instatement by statute or administration is contrary to the Constitution.

Article 107.

The Fundamental Rights and Fundamental Duties constitute a guidance and bounds for legislation, the usual administration and the administration of justice in the Empire and in the Lands.

Article 28.

All Germans are equally entitled before the law. All public-law privileges or disadvantages of birth or of rank are to be removed; their re-instatement by statute or administration is contrary to the Constitution.

Article 108.

(Same as Article 109 of the Constitution as finally adopted, except some immaterial textual variations and the material difference that in Paragraph 3 the privileges and disadvantages “do not exist”.)

**NOTE**

It will be noticed that, according to the Constitution as finally adopted, the privileges and disadvantages of birth or rank are not abolished by the Constitution itself.

The privileges and disadvantages affected are only those of a public-law nature. The privileges of a private-law nature belonging to the nobility, e. g., the right of admission to certain charitable foundations for persons of rank, are not affected.

Bornhak tells us that the principle of equality before the law was previously expressed in the constitutions of the several states in Germany, but is now incorporated in the Imperial Constitution and therein carried out to the extreme. By it an end is put to the special rights of the high nobility, of the mediatised houses, and of the families of the recently reigning houses, except those of a private-law nature, as already pointed out.

Bornhak says: "The orders already bestowed remain unaffected. In the future, however, no more orders will be bestowed by the state. That a former sovereign may further bestow them as memorials, still remains his right. Only from a foreign state no German can accept a title or order."

For orders and decorations bestowed for services during the War of 1914-1918, see Article 175 of the Constitution as finally adopted.

As to the equality before the law, compare Article 134 of the Constitution as finally adopted.

**Articles 110—112****§ 17.**

The citizens of every German Free-State have in all other German Free-States the same rights and duties as their own citizens.

**Article 29.**

The citizens of every Component State have in all other Component States the same rights and duties as their own citizens. The exercise of political rights can be made dependent upon the possession of citizenship.

As against foreign countries, all Germans have the same claim to the protection of the Empire.

**Article 109.**

(Same as Article 110 of the Constitution as finally adopted.)

**Article 110.**

(Same as Article 111 of the Constitution as finally adopted.)

**Article 111.**

(Same as Article 112 of the Constitution as finally adopted.)

**NOTE**

As to Article 110 of the Constitution as finally adopted, Bornhak reminds us that Paragraph 1 contains nothing new, the statute of July 22, 1913, concerning citizenship in the Empire and that in the States not being affected thereby, and Paragraph 2 corresponds to Article 3 of the old Imperial Constitution. He also says Article 111 is a repetition of the existing legal condition of affairs. (But here it is constitutional and not merely statutory.) And he tells us of Article 112, that Paragraph 1 is a repetition of the old truth: What is not forbidden, is permitted; and the provisions of the

Treaty of Versailles, adopted by the same National Assembly, are to be compared with Paragraphs 2 and 3.

Cross-references:

See Article 6, No. 3.

As to the Treaty of Versailles, see Article 178.

## Article 113

### § 29.

The foreign-language elements of the population within the Empire may not be restricted by legislation and administration in their own ethnological development, especially in the use of their mother tongue in education, nor in internal administration and the administration of justice in the parts of the country inhabited by them.

Article 40.

The foreign-language elements of the population of the Empire may not be restricted in their free, ethnological development, nor in the use of their mother tongue.

Article 112.

(Same as Article 113 of the Constitution as finally adopted.)

### NOTE

Article 40 was approved by the States-Committee in the following form:

“Consideration is to be given to the foreign-language elements of the population of the Empire in legislation and administration of the Empire and of the Component States in connection with their ethnological peculiarity, particularly in connection with their mother tongue.”

Bornhak says existing provisions concerning German as the official language (*Staatssprache*) are not affected by Article 113 of the Constitution as finally adopted.

## Article 114

### § 24.

The freedom of the person is inviolable.

A German may be arrested only upon a judicial warrant, in writing and stating the grounds of the arrest. If he is caught in the act, he is to be brought within twenty-four hours before the competent judge, who passes upon his arrest.

Article 35.

The freedom of the person is inviolable. It may be restricted by statute only.

Article 113.

(Same as Article 114 of the Constitution as finally adopted.)

**NOTE**

Bornhak says Article 114 of the Constitution as finally adopted restates the existing law. (But as it existed in statutory form.)

The Socialists made a strong and persistent effort to have the abolishment of the death penalty included in the Constitution. It was decided to leave the matter to a promised reform of the criminal law.

Cross-reference: See Article 48, Paragraph 2.

**Article 115**

§ 25.

The home is inviolable.

Searches of houses may be made only in accordance with an Imperial statute.

Article 36.

The home is inviolable. Forcible entrance into the home and also searches of houses are permissible only upon statutory grounds.

Article 114.

The home of every German is for him an asylum and inviolable. Forced entrance into a home and also searches of houses and attachments are permissible only upon statutory grounds.

**NOTE**

Cross-reference: See Article 48, Paragraph 2.

**Article 116**

Article 115.

(Same as Article 116 of the Constitution as finally adopted.)

**NOTE**

Bornhak says Article 116 of the Constitution as finally adopted is a repetition of a principle of the long existing statutory criminal law

**Article 117**

§ 27.

The privacy of the mail is inviolable.

Exceptions can be allowed only by an Imperial statute.

Article 38.

The privacy of the mail, telegraph and telephone is inviolable.

Exceptions can be allowed only by an Imperial statute.

Article 116.

(Same as Article 117 of the Constitution as finally adopted.)

**NOTE**

Already statutory law, says Bornhak.

Cross-reference: See Article 48, Paragraph 1.

**Article 118**

**§ 21.**

Every German has the right to express his opinion freely by word of mouth, writing, printing or picture, in so far as there are no provisions of the criminal law to the contrary.

A censorship is not had.

**Article 32.**

Every German has the right to express himself freely by word of mouth, writing, printing or picture, in so far as there are no provisions of the criminal law to the contrary.

A censorship and, especially, a previous exhibition of theatrical and moving-picture productions are not had. The protection of young persons in cases of moving-picture productions and other public performances remains left to statutory regulation.

**Article 117.**

(Same as Article 118 of the Constitution as finally adopted.)

**NOTE**

Cross-references: See Article 48, Paragraph 2; Article 7, No. 7.

**Article 119**

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**Article 118.**

Marriage stands, as the foundation of the German family life and as the original source of the preservation and increase of the nation, under the special protection of the Constitution.

The wholesomeness, the keeping pure, and the social advancement of the family are a task of the population-policy of the state and of the Commune. Families of many children have a claim to financial relief.

**NOTE**

Bornhak says of Article 119 of the Constitution as finally adopted: "In law meaningless; moreover, in contradiction of the provisions of the Civil Code, which excludes the equality of the two sexes. How the constitutional protection of marriage is to be reconcilable with the guaranteed equality of the illegitimate children in Article 121 remains undiscoverable."

Cross-reference: As to last Paragraph of Article 119, see Article 7, No. 7.

**Article 120**


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Article 119.

(Same as Article 120 of the Constitution as finally adopted.)

**NOTE**

See remarks under Article 119 of the Constitution as finally adopted.

**Article 121****NOTE**

See remarks under Article 119 of the Constitution as finally adopted.

Bornhak here adds:

"As to how this squaring of the circle is to be solved, the lawgiver says nothing. And an annotation cannot help him out of his dilemma."

The status of illegitimate children and the mothers of them was the subject of much discussion in the debates. Shall the illegitimate child bear the name of the father? Shall it have the same right as a legitimate child to support, education and heirship against father and mother? Shall its mother be called "Mrs."? These were among the questions that were discussed. The second reading in the National Assembly resulted in a provision that the mother of an illegitimate child had the right to demand that she be called "Mrs.", even in official life.

**Article 122**


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Article 120.

Young persons are to be pro-

tected against exploitation and also against moral, mental or physical neglect. The Lands have to adopt the necessary measures.

Rules for care by way of compulsion can be made by virtue of statute only.

**NOTE**

Bornhak remarks that this is current law, “but in this generality void of substance.”

Cross-reference: See Article 7, No. 7.

**Article 123**

§ 22, Paragraph 1.

All Germans have the right, without special permission, to assemble peaceably and unarmed or to form societies.

Article 33, Paragraph 1.  
(Same as § 22, Paragraph 1.)

Article 121.  
(Same as Article 123 of the Constitution as finally adopted.)

**NOTE**

Previously the right of assemblage was much restricted. Special permission had to be obtained for meetings in the open. The matter was regulated by statute, especially by an Imperial statute of April 19, 1908. Now only a notice of such meetings can be required, when they are not forbidden in case of immediate danger to the public safety.

Cross-references: See Article 48, Paragraph 2; Article 7, No.

**Article 124**

§ 22, Paragraph 1.

(See this under Article 123 of the Constitution as finally adopted.)

Article 33, Paragraph 1.  
(See this under Article 123 of the Constitution as finally adopted.)

Article 122.  
(Same as Article 124 of the Constitution as finally adopted, except it is “or” instead of “and” in the last sentence of the first paragraph.)

**NOTE**

The expression translated “right of incorporation” is *Erwerb der Rechtsfähigkeit*, which means, literally, “acquisition of legal status.”

Bornhak tells us that the first sentence of Paragraph 1 of Article 124 of the Constitution as finally adopted is a repetition of an

existing statutory provision. He also says that local state legislation relating to religious orders, in the interest of the Roman Catholic Church, is now abolished, and such orders are now under the general, Imperial law governing societies and associations; also that religious societies can now be incorporated like other societies.

Cross-references: Article 48, Paragraph 2; Article 7, No. 6; Article 137, Paragraph 2.

## Article 125

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Article 123.

(Same as Article 125 of the Constitution as finally adopted.)

### NOTE

Cross-references: See Articles 17, 22.

## Article 126

§ 23.

Every German has the right to petition, in writing, with requests or complaints, the popular representative body or the proper authorities.

Article 39.

(Same as Article 126 of the Constitution as finally adopted, with unimportant textual variations.)

Article 124.

(Same as Article 126 of the Constitution as finally adopted.)

### NOTE

Bornhak considers the right of petition an innate right of man.

## Article 127

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Article 125.

(Same as Article 127 of the Constitution as finally adopted.)

### NOTE

Bornhak remarks: "Already law; moreover, void of substance; so what's the use?"

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## Article 128

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### Article 126.

All citizens without distinction are eligible for public offices in accordance with the statutes and according to their ability and their attainments. The underlying principles of official relationships are to be regulated by Imperial statute.

#### NOTE

Bornhak says, of Article 128 of the Constitution as finally adopted, that Paragraph 1 states previously existing law; that Paragraph 2 does away with the so-called marriage clause, according to which marriage ended the employment and a claim to a pension; that Paragraph 3 is a repetition of Article 10, No. 3.

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## Article 129

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### Article 127.

#### Paragraph 1:

(Same as Paragraph 1 of Article 129 of the Constitution as finally adopted.)

#### Paragraph 2:

The officials can be dismissed, temporarily or permanently retired, or transferred to another office with a lower salary or rank only in conformity with the statutory requirements and forms.

#### Paragraph 3:

For every disciplinary judgment there must be open an instance by way of appeal. In the personal record of the official, notations of facts unfavorable to him are to be made only after an opportunity has been given him to express himself about them. The notation is to be communicated to the official.

#### Paragraph 4:

(Same as Paragraph 4 of Article 129 of the Constitution as finally adopted.)

**NOTE**

Bornhak believes a superior official can never be prevented from making and passing on to his successor secret service-documents.

**Cross-references:**

See Article 10, No. 3.

As to swearing in officials, see Article 176.

**Article 130**


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Article 128.

(Same as Article 130 of the Constitution as finally adopted.)

**NOTE**

Bornhak says Paragraph 3 of Article 130 of the Constitution as finally adopted carries out the principle of organization for a body of officials.

**Article 131****NOTE**

Bornhak tells us that this provision repeats the statutory law of the Empire and of Prussia, and the significance of the Article therefore is that it extends that law to all the German Lands. (Of course, it is now constitutional, and not merely statutory.)

**Article 132**


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Article 129.

(Same as Article 132 of the Constitution as finally adopted.)

**NOTE**

**Cross-reference:** See Article 133, Paragraph 1.

**Article 133**


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Article 130.

(Same as Article 133 of the Constitution as finally adopted, with slight textual variations.)

**NOTE**

In the Preuss draft the matter of **Military Organization** was expressly reserved for further consideration.

**Article 134**

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Article 131.

(Same as Article 134 of the Constitution as finally adopted.)

**NOTE**

Cross-reference: Cf. Article 109, Paragraph 1.

**Articles 135—137**

§ 19.

Every German has full freedom of religious belief and conscience. The free exercise of religious ceremonies is guaranteed within the limits of morality and public peace. No one may be forced into a church ceremony or celebration.

No one is obliged to reveal his religious conviction or his membership in a religious society. The authorities have not the right to ask about them.

Every religious society orders and administers its affairs independently, but is subject to the general laws. No religious society enjoys privileges over others at the hands of the state. An Imperial statute shall set up principles for the adjustment between state and church, whose execution shall be a matter of the German Free-States.

**Article 30.**

There exists full freedom of religious belief and conscience.

No one is obliged to reveal his religious conviction.

The authorities have the right to ask about membership in a religious society only so far as rights and duties are dependent thereon.

The enjoyment of civil and civic rights and also the admission to public offices are independent of religious belief.

The free exercise of religious ceremonies is guaranteed within the limits of public peace. No

**Article 132.**

(Same as Article 135 of the Constitution as finally adopted, except the first sentence, which reads as follows:

“All inhabitants of the Empire enjoy full freedom of religious belief, conscience and thought.”)

**Article 133.**

(Same as Article 136 of the Constitution as finally adopted.)

**Article 134.**

Paragraphs 1, 2, 3 and 4:

(Same as the first four paragraphs of Article 137 of the Con-

one may be forced into a church ceremony or celebration.

The freedom to form religious societies is guaranteed. No stop may be put to civil or civic duties by the exercise of religious freedom.

stitution as finally adopted.)

Paragraph 5:

The religious societies remain public corporations in so far as they were such heretofore. Other religious bodies are to be granted like rights, if they become religious societies and, by the time of their existence and the number of their members, offer a guaranty of permanence.

Paragraph 6:

The religious societies are authorized to tax their members, upon the basis of the civil tax lists.

Paragraph 7:

(Same as Paragraph 7 of Article 137 of the Constitution as finally adopted.)\*

Paragraph 8:

The execution of these provisions appertains to the Land legislation.

\* This Paragraph is said to refer to Religious Orders, the "Monks' Union" and similar organizations.

#### NOTE

Bornhak says Article 135 of the Constitution as finally adopted states the law as it has existed, under statute, since 1869.

In connection with Paragraphs 1 and 2 of Article 136 of the Constitution as finally adopted, Bornhak refers to his said remarks on the preceding Article, 135. He adds: "Also Paragraphs 3 and 4 were already previously existing law. New is only, at the end, that no one can be compelled to use a religious form of oath, which embraces also swearing by God."

As to Paragraph 3 of Article 136, Brunet says (p. 223) membership in a religious society may be inquired into, for instance, in connection with church tithes, or in the matter of guardianship or instruction.

Brunet comments on Paragraph 6 of Article 137 as follows (p. 225):

"The Constitution does not expressly state of what the rights of public corporations consist, for these rights result from provisions made in the legislation of the various states. In a general way, however, public corporations, in addition to the legal standing that private law gives them, are under the special protection of the State. Their organizations are indirectly public agencies, and they have the right to levy taxes. This right, practically the most important of those accorded public corporations, is expressly emphasized and guaranteed in the Constitution.

"Religious denominations that are public corporate bodies have the right to **levy taxes** on the bases of the lists established for the collection of civil taxes. The right to levy the taxes granted to public religious denominations is limited, as a rule, to their members.

They may, however, in exceptional cases levy on certain other taxables, particularly corporations and joint stock companies, etc., to the same extent as on their co-religionists, if the laws of the particular State authorize this."

**Cross-references:**

As to religious societies, see Article 10, No. 1.

As to Paragraph 2 of Article 137 of the Constitution as finally adopted, see Article 124.

### **Article 138**

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Article 135.

(Same as Article 138 of the Constitution as finally adopted.)

**NOTE**

Cross-reference: See Article 173.

### **Article 139**

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Article 136.

(Same as Article 139 of the Constitution as finally adopted, with an unimportant textual difference.)

### **Article 140**

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Article 137.

(Same as Article 140 of the Constitution as finally adopted.)

### **Article 141**

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Article 138.

(Same as Article 141 of the Constitution as finally adopted.)

**NOTE**

Bornhak calls attention to the fact that, while the state no longer supports the religious institutions, it permits them to function as here provided.

**Articles 142—149****§ 20.**

Science and the teaching of it are free.

Education is to be open to all Germans on an equal basis according to ability.

**Article 31.**

Art and science and the teaching of them are free.

Instruction in the public elementary schools is to be free of charge.

The education of young persons and of the whole people is to be provided for adequately by means of public institutions.

The system of schools and education is to be so arranged in all Component States that the education in the intermediate and higher educational institutions shall be built up upon instruction in the elementary school.

The system of education stands under state supervision.

**Article 139.**

(Same as Article 142 of the Constitution as finally adopted.)

**Article 140.**

(Same as Article 143 of the Constitution as finally adopted.)

**Article 141.**

(Same as Article 144 of the Constitution as finally adopted.)

**Article 142.**

(Same as Article 145 of the Constitution as finally adopted, with the exception that only elementary schools are mentioned in the last sentence.)

**Article 143.**

Paragraph 1:

(Same as Paragraph 1 of Article 146 of the Constitution as finally adopted.)

Paragraph 2:

Legislation shall determine whether and to what extent, in the organization of the elementary school, children of the same confession can be united upon application of those entitled to the education.

Paragraph 3:

For the admission of those without means to the intermediate and higher schools, public means are to be furnished.

**Article 144.**

The establishment of private schools is permissible; it shall need the approval of the state. Private schools are under the Land statutes. Private elementary schools are to be permitted only if they do not stand below the public schools in their internal organization.

Article 145.

In all schools personal and civic efficiency and moral training upon a German-national basis and in the spirit of the reconciliation of nations are to be aimed at.

In the instruction in the public schools care is to be taken not to hurt the feelings of persons of a different way of thinking.

Civics is to be taught in the schools. Every pupil shall receive a copy of the Constitution upon completion of the compulsory education.

National universities are to be fostered.

Article 146.

Religious instruction is a regular subject of the school curricula. The imparting of it is regulated within the limits of the school legislation. The religious instruction is imparted in conformity with the principles of the respective religious society, without prejudice to the right of supervision of the state.

The imparting of religious instruction and the use of church forms are optional with the instructors. Against the will of him who is entitled to instruction, no pupil may be compelled to attend religious instruction or to participate in church festivities and ceremonies.

The theological faculties in the universities remain in existence.

NOTE

The word translated "elementary school" is **Volksschule**; that translated "continuation school" is **Fortbildungsschule**; that translated "primary school" is **Grundschule**; that translated "preparatory school" is **Vorschule**; and that translated "National universities" is **Volkshochschulen**. In Article 149 of the Constitution as finally adopted the word (in the last paragraph) translated "universities" is **Hochschulen**, while in the corresponding place in Article 146, to the right, it is **Universitäten**.

The word translated "view of the world" is **Weltanschauung**, which is becoming incorporated into our language, as more expressive than a literal translation or a circumlocution.

The word translated "those entitled to instruction" is **Erziehungsberechtigte**, which means parents, guardians, etc. The clause in Paragraph 2 of Article 149 of the Constitution as finally adopted

was made to read as it does because, it was argued, business guardians or trustees are not always those who have to determine the religious education of children.

Articles of the Constitution as finally adopted:

**Ad Article 143:** Bornhak says, new is the intervention of the Empire in educational matters; from which flows the uniformity of education of teachers.

**Ad Article 144:** Bornhak calls attention to the fact that clause two of this Article removes religious or church supervision of education.

**Ad Article 145:** Bornhak says this is essentially existing law, the only new feature being the furnishing of school supplies free of charge. Brunet says (p. 228): "Formerly the obligation to attend school was only for seven years for the public schools. Supplementary instruction, therefore, thus becomes an essential part of public education in all the Reich."

**Ad Article 146:** Bornhak says this is the establishment of the principle of the so-called unified school (**Einheitsschule**), with the removal of the preparatory schools (**Vorschulen**), as the foundation.

**Ad Article 147:** Bornhak remarks: "Since the public school system is built up upon the common primary school (**Grundschule**), private schools are, with the exception in Paragraph 2, not permissible for the first school years as substitutes for instruction in the elementary schools (**Volksschulen**)." The schools referred to in the last paragraph of this Article are such as commercial and professional schools, according to Brunet (p. 232).

**Ad Article 149:** Bornhak says:

"One distinguishes:

"I. Church Schools (**Kirchliche Schulen**), supported by the Church, with or without assistance from the state.

"II. State Schools (**Staatsschulen**).

"(a) Denominational (**Konfessionelle**), with religious instruction in a certain confession, with whose spirit the rest of the instruction is inspired, and to which the teachers must belong.

"(b) Udenominational (**Konfessionslose, Simultane**), with religious instruction in different confessions, while the other instruction has nothing to do with a confession, and the teachers, apart from the consideration of the religious instruction, may belong to all confessions.

"(c) Non-religious (**Religionslose**), here called non-confessional (**bekennnisfrei**) or secular (**weltlich**), without religious instruction or consideration of a confession.

"Church Schools play a part only as private schools.

"As for the rest, the Article is the result of a compromise between the Social Democrats and the Center, like Article 146. In the future, therefore, there will be the non-confessional school without religious instruction and the school with religious instruction. But neither the imparting of religious instruction nor the participation therein can be compelled. As a result there will be: in Protestant parts of the country, non-religious schools; in Catholic, schools with religious instruction."

The question of education or schools was a weighty one with the constitution-makers. The provisions of the Constitution as finally adopted are a compromise, after a prolonged controversy, between the Center and the Conservatives, on the one hand—they wanted re-

ligious schools—and the Socialists, on the other—they wanted secular schools. (See Brunet, pp. 226-227.)

An Imperial statute concerning the primary schools and the abolishment of the preparatory schools became effective May 7, 1920.

**Cross-references:**

As to Education and Schools, see Article 10, No. 2.  
As to Article 146, see Article 174.

## Article 150

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Article 147.

(Same as Article 150 of the Constitution as finally adopted.)

**NOTE**

Borzhak considers the first clause a self-evident proposition without legal significance, and the second clause a sensible innovation.

## Article 151

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Article 148.

(Same as Article 151 of the Constitution as finally adopted.)

## Article 152

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Article 149.

(Same as Article 152 of the Constitution as finally adopted.)

**NOTE**

Borzhak says this is a repetition of existing statutory law.

## Article 153

§ 26.

Property is inviolable.

Expropriation can be had only for the common welfare upon statutory grounds.

Article 37.

Property is inviolable.

Article 150.

(Paragraphs 1 and 3 same

Expropriation can be had only for the common welfare, with compensation, upon statutory grounds.

as Paragraphs 1 and 3 of Article 153 of the Constitution as finally adopted.)

Paragraph 2:

Expropriation can be had only for the common welfare and upon statutory grounds. It is had with adequate compensation, in so far as an Imperial statute does not otherwise provide.

**NOTE**

Cross-reference: See Article 48, Paragraph 2.

## Article 154

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Article 151.

(Same as Article 154 of the Constitution as finally adopted.)

**NOTE**

Bornhak says this is self-evident and superfluous.

## Article 155

§ 28.

For the re-population of the flat country, for the multiplication of the forces of labor engaged in agriculture and also for the increase of the agricultural productivity of the soil, the existing distribution of ownership in land is to be changed by way of comprehensive internal colonization in those districts in which a sound mixture of large, medium and small ownership does not yet exist. Wastefully used landed estates, especially those under legal restrictions, are to be cut up for establishing rural homesteads; if necessary, by way of expropriation. Medium and small ownership of land are to be fortified by protection against being sucked up and against usurious treatment.

Article 152.

(Paragraphs 1, 2 and 3 same as Paragraphs 1, 2 and 3 of Article 155 of the Constitution as finally adopted, except the last sentence of Paragraph 3 ends with: "is to fall to the community," instead of: "is to inure to the benefit of the community.")

Paragraph 4:

All treasures of the ground and forces of nature stand under the supervision of the state.

**NOTE**

The word translated “entailments” is **Fideikommiss** (singular, **Fideikommiss**), which is taken over from the Roman law. Perhaps it would have been better to translate it here “**fideicommissa**,” because we have no exact equivalent for it in our legal terminology.

“**Entailments** are [to be] dissolved. This provision is an obligatory prescription imposed on the legislatures of the States, which obliges them to put an end to entailments, for this matter is given over by the Civil Code to the rights of States. By entailments is understood the legal institution by which a partimony, particularly holdings of land, because of the limitation of the right to sell and the establishment of a certain succession provided by a testament, creates for the owning family in the person of the holder of the entail an economic position of security and thereby of increased advantage. These entails often go back considerably in time, but they are very frequent in Germany, to such an extent that land holdings subject to this legislation comprise, for example, in Prussia about seven per cent of all the landed properties, with about two and a half million hectares. In certain sections entailed property represents about twenty-two per cent of the whole agricultural service.” (Brunet, pp. 207-208.)

Up to the time Brunet wrote, the Lands had not complied with this constitutional order to abolish entailments.

An Imperial Land-Settlement Statute was enacted August 11, 1919, and an Imperial Homestead Statute May 20, 1920. An Imperial Decree of July 31, 1919, applied to small gardens and small-farm leases.

See end of remarks under Article 165 of the Constitution as finally adopted.

## Article 156

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### Article 153.

(Same as Paragraphs 1 and 2 of Article 156 of the Constitution as finally adopted.)

**NOTE**

The word translated “socialization” is **Vergesellschaftung**; that translated “common-economics” is **Gemeinwirtschaft**. This **Gemeinwirtschaft** is a sort of collectivism. Young and some others translate it “collectivism.” The word translated “self-administration” is **Selbstverwaltung**. Some translate it here “administrative autonomy,” and speak of the bodies as “autonomous bodies.” Another word used during the Revolutionary Period for “socialization” was **Verstaatlichung**. **Nationalization** (Nationalization) was also used.

Here we have the “socialization” provision of the Constitution. It expresses the final solution of a problem that hung over Germany

continuously after the crisis on Revolution Day. There was a universal recognition of the fact that there had to be some sort of socialization. All political parties and near-parties, that were really active, set up their ideas on the subject in their platforms and other party documents and pronouncements. The "Cabinet" "created, November, 1918, a 'Committee on Socialization' which was not to be an official organ but a free scientific committee charged with the drawing up of reports and proposals on the question of socialization. It consisted of eleven members with Kautsky as chairman." (Brunet, p. 270.) (Its membership and functions were increased in May, 1920. See Brunet, pp. 270-275.) There was a widespread, genuine fear of the demand of the Spartacans for the socialization of all industrial means of production. The saner and cooler heads were willing to concede socialization of those industries that were "ripe" therefor or "adapted" thereto, especially mining, harnessing nature, and industries that had created monopolies and there was a very general desire on their part to allow compensation in appropriate cases. There was an earnest, serious fight between individualism, private enterprise and private initiative, on the one hand, and absolute collectivism, on the other. But a calm survey of the developments, situations and facts as they actually were seems to justify the belief that the Spartacans at no time had a real chance of prevailing. Article 156 of the Constitution as finally adopted can hardly be called a compromise. The Spartacans got nothing, except what others asked for. "Adapted" is the keyword to the positions assumed by practically all, if not all, of the other parties. They got what they asked for.

A general Socialization Statute became effective March 23, 1919. It laid down general principles. Coal mines became socialized on the same day.

On April 24, 1919, the potash industry was socialized.

Production of electricity was socialized by an Imperial statute of December 31, 1919.

## Article 157

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Article 34.

(Same as Paragraph 1 of Article 157 of the Constitution as finally adopted.)

Article 154.

(Same as Article 157 of the Constitution as finally adopted.)

## Article 158

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Article 155.

(Same as Article 158 of the Constitution as finally adopted.)

### NOTE

Bornhak says this is a repetition of already existing law.

### Article 159

§ 22, Paragraph 2.

The freedom of coalition may be restricted in no way.

Article 33, Paragraph 2.  
(Same as § 22, Paragraph 2.)

Article 156.  
(Same as Article 159 of the  
Constitution as finally adopted.)

#### NOTE

Bornhak says this is a recognition of the previously existing guaranty of the right of coalition, under Imperial statute.

### Article 160

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Article 157.  
(Same as Article 160 of the  
Constitution as finally adopted.)

### Article 161

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Article 158.  
For the conservation of health and the ability to work and for the protection against the economic results of old age, infirmity and the vicissitudes of life, the Empire shall create a comprehensive system of insurance, under dominant co-operation of the insured.

#### NOTE

Bornhak recalls the Kaiser's announcement of November 17, 1881, and says: "What the Republic promises for the future is already accomplished work of the Monarchy in the Imperial Insurance Ordinance of July 19, 1911." (But here we have a constitutional provision.)

Cross-references: See Article 7, Nos. 8, 9.

### Article 162

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Article 159.  
(Same as Article 162 of the  
Constitution as finally adopted.)

**NOTE**

Bornhak says this had already taken place under the Kaiser's announcement of February 9, 1890.

**Article 163**


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Article 160.

(Same as Article 163 of the Constitution as finally adopted.)

**Article 164**


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Article 161.

In legislation and administration the independent middle class in agriculture, crafts, industry, trade and commerce is to be fostered and protected against exploitation and being sucked up.

**Article 165**


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Article 162.

(Paragraphs 1, 2, 3, 5, 6 same as Paragraphs 1, 2, 3, 5, 6, respectively, of Article 165 of the Constitution as finally adopted, except in the last sentence of Paragraph 3 it reads "the most important" instead of "all important" business groups.)

Paragraph 4:

Socio-political and economic bills of fundamental importance are, before their introduction, to be submitted by the Imperial Government to the Imperial Economic Council for its opinion. The Imperial Economic Council itself has the right to propose to the Reichstag such statutes, which are to be treated like proposals of the Imperial Government. It can in this connection appoint representatives, who can take part in the deliberations of the Reichstag like representatives of the Reichsrat.

**NOTE**

The word translated "Factory Workers' Councils" is *Betriebsarbeitserräte*, which councils are the first or lowest unit in the system here

established for the representation of the workers alone; that translated "District Workers' Councils" is **Bezirksarbeiterräte**, which councils are the next higher unit in said system; and that translated "Imperial Workers' Council" is **Reichsarbeiterrat**, which council is the highest unit in said system.

The word translated "District Economic Councils" is **Bezirkswirtschaftsräte**, which councils are the first or lower bodies in which the workers and employers (and "other interested circles of the people") work together; and the word translated "Imperial Economic Council" is **Reichswirtschaftsrat**, which council is the higher and last body in which said work in common is carried on.

Here we have the so-called "anchoring" of the Workers' Councils (**Arbeiterräte**; singular, **Arbeiterrat**) in the Constitution. It expresses and defines the final outcome of a really earnest and serious contest, that arose with Revolution Day. It is the solution of a situation that caused all classes of society in Germany many anxious moments, and even worried the Allies considerably and seriously. Who constituted a government through which sovereignty was expressed and with which peace and treaties could be made? That was a question that worried Germany no less than it did the Allies. Before and after Revolution Day, Workers' Councils and Soldiers' Councils sprang up all over the country like mushrooms overnight. Being of Russian origin, it was naturally expected that these Councils would adopt the then prevailing Russian theories, ideas, claims, aims, methods and tactics. In other words, the specter of Bolshevism loomed over Germany. Only the Spartacans went the limit, more or less supported by the Independent Socialists. While it now appears that the great mass of the people, including the workers and soldiers themselves, were safely non-bolshevistic all the time, there existed grave fear for months that Germany would go the way of Russia. The Majority Socialists contended they were not advocates of a class-rule and were opposed to domination by any one-class. But the so-called middle-class or bourgeois parties (**Bürgerliche Parteien**) did not exactly trust them.

The Councils claimed they were the bearers of sovereignty. And this claim was recognized by the People's Commissioners, the Cabinet, the Government or by whatever name one designates the persons who operated the executive and legislative machinery of the country styled "German Empire." These persons never released their hold on these functions, and the Councils satisfied themselves with a function of "control" over them. Although the Councils were the recognized "bearers of sovereignty," yet they exercised only a function of "control." Theoretically, they held all political power, yet did not exercise it, but only a "control" over those who exercised it. It turned out to be nothing but a theory. The Councils were for the most part like the incarnation of the wording or ideas of a constitution, walking about in human form or forms, incapable of any action in and of itself. Their "control" was subjective. Such a theory and such a legal phantom vanished in the real world of practice, which gradually but eventually reduced the Councils from political power to an almost purely economic power, and the workers from independent action to co-operation with employers and "other interested circles of the people."

Commenting on Article 165 of the Constitution as finally adopted, Bornhak says:

"The Workers' Councils are confined to the economic field, under exclusion of all political and administrative functions. The sole political function is the right to propose bills. But under the parlia-

mentary system it is impossible for such a bill to go through against the will of the Imperial Government."

But this right to propose bills does not rest with a **Workers' Council**, but with an **Economic Council**, in which the **Workers** do not act independently.

And under said Article 165 control and administrative functions can be bestowed upon **Workers' Councils**. Indeed, the last Paragraph of that Article opens up extensive possibilities for both the **Workers' Councils** and the **Economic Councils**.

In this evolution of the Councils the **Soldiers' Councils** disappeared more and more as demobilization went on, compulsory military service became abolished, and disarmament progressed. They were not mentioned in the Constitution when it was finally adopted. By that time, apparently, they had politically and economically ceased to exist.

Labor in Germany had been gaining freedom and liberty under statutes, decrees and ordinances, and possibly under some constitutions, but the Revolution of 1918 completed the disenfranchisement, and this freedom and liberty are now secured by **constitutional guaranties**, in the **Imperial Constitution**.

And the Revolution and the Imperial Constitution brought relief to the peasant and farming class from many of its burdens—at least by way of promise. The redemption of the promise is left to legislation. See Article 155 of the Constitution as finally adopted.

An Imperial statute concerning the **Factory Workers' Councils** was enacted February 4, 1920, and amended May 12, 1920. An Ordinance for the convening of a provisional Imperial Economic Council was issued June 20, 1920.

For a larger account of the Councils, see above, pp. 116-137.

## Article 166

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Article 163.

(Same as Article 166 of the Constitution as finally adopted.)

### NOTE

(In the Preuss draft the matter of Transitional Provisions was expressly reserved for future consideration.)

Cross-reference: See Article 31.

## Article 167

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## Article 168

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Article 165.

(Same as Article 168 of the Constitution as finally adopted, except it is Article "64", instead of "63".)

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Article 169

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Article 115.

In Bavaria, Saxony, Württemberg, Baden, Hesse, Bremen and Hamburg the matter of the collecting and administration of the customs-duties and excises remains as under the provision of Article 36, Paragraph 1, of the Constitution of the German Empire of April 16, 1871.

Article 116.

In Bavaria, Württemberg and Baden the matter of the taxation of domestic beer shall remain as under the provisions of Article 35, Paragraph 2, and Article 38, Paragraph 4, of the Constitution of the German Empire of April 16, 1871, until a Component State expresses its consent to the effectiveness of Article 7, Paragraph 2, for its territory and the Imperial Government consents to the effectiveness.

Article 117.

§ 259, Paragraph 2, of the Distilled-Spirits-Monopoly Statute of July 26, 1918 (Imperial Gazette, page 948), remains unaffected.

Article 118.

If the Empire takes over the system of insurance of real property against fire, an extension of the Imperial administration over Bavaria can be had only with its consent.

**NOTE**

The word translated “real property” in the last Article, to the left, is **Immobiliar**, property in German law being classified generally into **Immovables (Immobiliar, Immobilien)** and **Movables (Mobiliar, Mobilien)**, which corresponds generally to our classification into real property and personal property.

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Article 170

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Article 87.

The Empire can take over into

Article 167.

The postal and telegraphic ad-

its own administration the postal and telegraph systems of Bavaria and Württemberg by way of treaty, with compensation. Until the transfer, the hitherto existing rights and duties of Bavaria and Württemberg shall remain in force, with the proviso that the postal and telegraphic traffic with the neighboring foreign states shall be regulated exclusively by the Empire.

ministrations of Bavaria and Württemberg shall be transferred to the Empire.

The transfer shall take place by way of agreement not later than April 1, 1921. In so far as an agreement is not reached by October 1, 1920, an Imperial statute shall decide as to the conditions of the transfer. The statute shall assign the fixing of the amount of the compensation to a Court of Arbitration.

(Paragraph 3 same as the last Paragraph of Article 170 of the Constitution as finally adopted.)

#### NOTE

Cross-references:

See Article 88.

As to Paragraph 2, cf. Article 171.

As to the High Court of Judicature, see under Article 15.

## Article 171

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### Article 168.

The transfer to the Empire of the state railroads serving the general traffic and of the waterways serving the general traffic shall take place by way of agreement not later than April 1, 1921. In so far as an agreement is not reached by October 1, 1920, the procedure prescribed in Article 167 shall be followed.

#### NOTE

Cross-references:

See Articles 89, 95, 97, 101.

As to Paragraph 2, cf. Article 170.

As to the High Court of Judicature, see under Article 15.

## Article 172

### § 10, Paragraph 2.

Until this statute [the Imperial Statute creating the High Court of Judicature] becomes effective, its [the High Court of Judicature's] functions shall be exercised by a Senate of seven members, which the Imperial Supreme Court in plenary action elects from its members. The proceedings before this Senate shall be regulated by plenary action of the Imperial Supreme Court.

Article 114, Paragraph 2.  
(Same as § 10, Paragraph 2.)

Article 169.  
(Same as Article 172 of the  
Constitution as finally adopted.)

**NOTE**

The “Imperial Supreme Court” is the old **Reichsgericht**.

**Cross-reference:**

As to the High Court of Judicature, see under Article 15.

**Article 173**

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**Article 174**

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**Article 175**

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**Article 176**

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**NOTE**

Such a decree was issued August 14, 1919, the day the Constitution was promulgated.

**Article 177**

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**Articles 178—180**

§ 6.

The hitherto existing Imperial statutes remain in force, in so far as this Constitution does not conflict with them.

The functions, which according to the hitherto existing Imperial statutes appertained to the German Emperor, are transferred to the Imperial President under responsible co-operation of the Imperial Ministers; the administrative functions of the Bundesrat, to the competent Imperial Ministerial Departments, which they are to exercise after hearing the Imperial Councils. The functions which the hitherto existing Reichstag had are transferred to the People's House and the House of States.

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Article 170.

The Constitution of the German Empire of April 16, 1871 (Federal Gazette, page 63), and the Statute concerning the Provisional Imperial Power of February 10, 1919 (Imperial Gazette, page 169) are abrogated.

The remaining statutes and decrees of the Empire remain in force, in so far as this Constitution does not conflict with them.

Article 171.

(Same as Article 179 of the Constitution as finally adopted.)

Article 172.

(Same as Article 180 of the Constitution as finally adopted.)

**NOTE**

The Statute concerning the Provisional Imperial Power, enacted February 10, 1919, is translated above, page 138.

Bornhak comments on Article 179 of the Constitution as finally adopted:

"Since, according to §3 of the Interim Act of [March] 4, 1919, the States-Committee takes the place of the Bundesrat, in so far as reference is made to it in statutes and decrees, the Bundesrat is now supplanted by the Reichsrat."

"President Ebert's tenure of office was prolonged, on October 24, [1922,] by the Reichstag's adoption of the Constitutional amendment, declaring the Provisional President elected by the National Assembly to be the first legal President of the German Republic until June 30, 1925. The vote was 310 to 77. Handsome pension provisions were also passed for Herr Ebert and future Presidents of the Republic. The disturbed political and economic conditions of the country since Ebert's provisional election by the General National Assembly at Weimar, in 1919, had made elections inadvisable." (Current History, December, 1922, p. 515.)

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**Article 181**

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Article 173.

(Same as Article 181 of the  
Constitution as finally adopted.)

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The Preuss draft closed with the following:

“Reserved are a reference to the future Military Organization and also the special Divisions of the draft of the Constitution:

“a) concerning the means of communication (Railroads, Posts and Inland Navigation),

“b) concerning Customs-Duties and Trade,

“c) concerning the Imperial Finances,

“d) concerning the Administration of Justice;

“finally, the Transitional Provisions”.

**NOTE**

The Constitution was adopted by the National Assembly, at Weimar, on July 31, 1919; was signed, at Schwarzburg, by the Imperial President and Imperial Ministers, on August 11, 1919, after being drafted into final shape; and was promulgated on August 14, 1919. Under the provisions of its last Article, 181, it became effective with the day of its promulgation, namely, August 14, 1919. But it is generally referred to by the Germans as the Constitution of August 11, 1919, which was the day on which it was signed as aforesaid.

**TABLE 1.**

This Table shows where the Sections (§§) of the Pruess Draft may be found in the "Parallelograph," under the Article Numbers of the Constitution of 1919 as finally adopted.

A—Constitution of 1919 as finally adopted.

B—Pruess Draft.

B	A	B	A	B	A
§	Art.	§	Art.	§	Art.
1	2	26	153	51	68, 76
2	1, 4, 5	27	117	52	34
3	6-12 78, 79	28	155	53	36
4	6-12 78, 79	29	113	54	30
5	13	30	20-22	55	37
6	178-180	31	20-22	56	38
7	71	32	20-22	57	40
8	14-16	33	20-22	58	41
9	107	34	20-22	59	45
10	108, 172	35	20-22	60	70, 73
11	18	36	39	61	46
12	17	37	23	62	48
13	19	38	20-22	63	48
14	52	39	20-22	64	49
15	60, 69	40	21, 25	65	50
16	33	41	24, 25	66	51
17	110-112	42	24, 25	67	43
18	109	43	24, 25	68	52
19	135-137	44	24, 25	69	53
20	142-149	45	26	70	54
21	118	46	29	71	55-58
22	123 124 159	47	27, 28	72	33
23	126	48	31	73	59
24	114	49	32	Close	181
25	115	50	32	.....	.....

**TABLE 2.**

This Table shows where the Articles of the Government's Draft may be found in the "Parallelograph," under the Article Numbers of the Constitution of 1919 as finally adopted.

A—Constitution of 1919 as finally adopted.

C—Government's Draft.

C	A	C	A	C	A	C	A	C	A
Art.	Art.	Art.	Art.	Art.	Art.	Art.	Art.	Art.	Art.
1	2, 3	26	74	51	31	76	54	101	97
2	1, 5	27	67 77	52	32	77	55- 58	102	97
3	4	28	109	53	68	78	33	103	97
4	78	29	110- 112	54	76	79	59	104	99
5	79	30	135- 137	55	34	80	82	105	100
6	80	31	142- 149	56	36	81	84	106	81
7	6-12 83	32	118	57	30	82	85	107	6-12
8	6-12	33	123 124 159	58	37	83	85	108	103
9	6-12 14 16	34	157	59	38	84	86	109	104
10	13	35	114	60	40	85	87	110	104
11	13	36	115	61	41	86	88	111	104
12	71	37	153	62	42	87	170	112	104
13	77	38	117	63	45	88	88	113	107
14	14- 16	39	126	64	70	89	91	114	108 172
15	18	40	113	65	47	90	89	115	169
16	17	41	20- 22	66	46	91	90	116	169
17	19	42	39	67	48	92	92	117	169
18	60	43	23	68	48	93	93	118	169
19	61	44	20- 22	69	49	94	93	.....	.....
20	62	45	24 25	70	50	95	94	.....	.....
21	63	46	24 25	71	51	96	95	.....	.....
22	64 65	47	24 25	72	43	97	95	.....	.....
23	66 76	48	26	73	44	98	95	.....	.....
24	69	49	29	74	52	99	95	.....	.....
25	33	50	27 28	75	53	100	96	.....	.....

TABLE 3.

This Table shows where the Articles of the Committee's Draft may be found in the “Parallelograph,” under the Article Numbers of the Constitution of 1919 as finally adopted.

A—Constitution of 1919 as finally adopted.

D—Committee's Draft.

D	A	D	A	D	A	D	A	D	A	D	A	D	A
Art.	Art.	Art.	Art.	Art.	Art.	Art.	Art.	Art.	Art.	Art.	Art.	Art.	Art.
1	1	26	26	51	50	76	76	101	102, 103	126	128	151	154
2	2	27	27	52	51	77	77	102	104	127	129	152	155
3	3	28	28	53	52	78	78	103	105	128	130	153	156
4	4	29	29	54	53	79	79	104	106	129	132	154	157
5	5	30	30	55	54	80	80	105	107	130	133	155	158
6	6-12	31	31	56	55-58	81	81	106	108	131	134	156	159
7	6-12	32	32	57	55-58	82	82	107	109	132	135-137	157	160
8	6-12	33	33	58	55-58	83	83	108	109	133	135-137	158	161
9	6-12	34	34	59	55-58	84	84	109	110-112	134	135-137	159	162
10	6-12	35	35	60	59	85	85	110	110-112	135	138	160	163
11	6-12	36	36	61	60	86	86	111	110-112	136	139	161	164
12	6-12	37	37	62	61	87	87	112	113	137	140	162	165
13	13	38	38	63	62	88	88	113	114	138	141	163	166
14	14-16	39	39	64	63	89	89	114	115	139	142-149	164	41
15	14-16	40	40	65	64	90	90	115	116	140	142-149	165	168
16	14-16	41	41	66	65	91	91	116	117	141	142-149	166	169
17	17	42	42	67	66	92	92	117	118	142	142-149	167	170
18	18	43	43	68	67	93	93	118	119	143	142-149	168	171
19	19	44	44	69	68	94	94	119	120	144	142-149	169	172
20	20-22	45	45	70	69	95	95	120	122	145	142-149	170	178-180
21	20-22	46	46	71	70	96	96	121	123	146	142-149	171	178-180
22	23	47	47	72	71	97	97	122	124	147	150	172	178-180
23	20-22	48	48	73	72	98	98	123	125	148	151	173	181
24	24, 25	49	48	74	73	99	99	124	126	149	152	.....	.....
25	24, 25	50	49	75	74	100	100	125	127	150	153	.....	.....

## Appendix

### I.

#### AREA AND POPULATION OF THE GERMAN EMPIRE BEFORE THE WORLD WAR.

States. In order of Geographical Size	Area. Square Miles	Population. Dec. 1, 1910
1. Prussia	134,663.9	40,165,219
2. Bavaria	29,293.5	6,887,291
3. Württemberg	7,531.8	2,437,574
4. Baden	5,818.6	2,142,833
5. Saxony	5,788.8	4,806,661
6. Alsace-Lorraine	5,606.9	1,874,014
7. Mecklenburg-Schwerin	5,068.3	639,958
8. Hesse	2,969.5	1,282,051
9. Oldenburg	2,482.3	483,042
10. Brunswick	1,417.8	494,339
11. Saxe-Weimar	1,393.8	417,149
12. Mecklenburg-Strelitz	1,131.1	106,442
13. Saxe-Meiningen	952.8	278,762
14. Anhalt	887.8	331,128
15. Saxe-Coburg-Gotha	763.2	257,177
16. Saxe-Altenburg	511.0	216,128
17. Lippe	469.4	150,937
18. Waldeck	432.8	61,707
19. Schwarzburg-Rudolstadt	363.0	100,702
20. Schwarzburg-Sondershausen	332.9	89,917
21. Reuss, Younger Line,	319.2	152,752
22. Hamburg	160.0	1,014,664
23. Schaumburg-Lippe	131.4	46,652
24. Reuss, Elder Line,	122.1	72,769
25. Lübeck	114.9	116,599
26. Bremen	99.0	299,526
<b>Total</b>	208,825.8	64,925,993

## II.

AREA AND POPULATION OF THE GERMAN EMPIRE  
SINCE THE WORLD WAR.

On December 21, 1918, the two Reuss States organized a common administration, and on April 4, 1919, they became fused into one state.

Coburg broke away from Saxe-Coburg-Gotha after the Revolution, and established itself as an independent state. It became a part of Bavaria, by Imperial statute, on April 30, 1920.

Saxe-Weimar, Saxe-Meiningen, Saxe-Altenburg, Saxe-Gotha, Schwarzburg-Sondershausen, Schwarzburg-Rudolstadt and Reuss became, by virtue of an Imperial statute, on April 30, 1920, consolidated into one state, called Thuringia.

That leaves, after the losses under the Treaty of Versailles, eighteen states or Lands, listed below according to geographical size, together with the population on October 8, 1919:

"Lands".	Area.	Population.
In order of Geographical Size	Square Miles	Oct. 8, 1919
1. Prussia	113,746	36,696,151
2. Bavaria (with Coburg)	29,506	7,140,333
3. Württemberg	7,532	2,518,773
4. Baden	5,819	2,208,503
5. Saxony	5,789	4,663,298
6. Mecklenburg-Schwerin	5,068	657,330
7. Thuringia	4,542	1,508,025
8. Hesse	2,968	1,290,988
9. Oldenburg	2,482	517,765
10. Brunswick	1,418	480,599
11. Mecklenburg-Strelitz	1,131	106,394
12. Anhalt	888	331,258
13. Lippe	469	154,318
14. Waldeck	401	55,999
15. Hamburg	168	1,050,359
16. Schaumburg-Lippe	130	46,357
17. Lübeck	115	120,568
18. Bremen	99	311,266
<b>Total</b>	<b>182,271</b>	<b>59,858,284</b>

These figures are taken from the New International Year Book, 1923, pages 282-283, where are also given the losses, in territory and population, suffered under the Treaty of Versailles, as well as the regions subject to plebiscite under that treaty and the results of some of those plebiscites.

The figures for Prussia and Thuringia include the Saar Basin, which, with an area of 742 square miles and a population of 652,818, is to be under the League of Nations for fifteen years, and is then to determine its future status by plebiscite.





