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EDMUND J. JAMES, Ph.D., Editor.

NO. 7.

THE FEDERAL CONSTITUTION

OF

GERMANY

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AN HISTORICAL INTRODUCTION

TRANSLATED

BY

EDMUND J. JAMES, Ph.D.,
Professor in the University of Pennsylvania.

PHILADELPHIA.

1890.

For Sale by T. & J. W. Johnson, 535 Chestnut St., Philadelphia; Porter & Coates,
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WITH

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NOTE —The first English translation of the following instrument, which has come under the editor's notice, was made in 1871 for the United States Ministry at Berlin, and transmitted to the State Department at Washington under date of May 6, 1871. It was printed in the volume entitled "Foreign Relations of the United States," Washington, 1871, pp. 383-393.

The second, based on the preceding, was sent to the State Department in 1877, and printed in the volume on Foreign Relations for that year under "Germany." The first has been also reprinted as an Appendix to Lowe's Life of Bismarck.

The following is a revised and in many points corrected copy of the last. The Historical Introduction is essentially a translation of the corresponding section in v. Rönne's "Verfassung des deutschen Reichs," Berlin, 1886.

E. J. JAMES.

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HISTORICAL INTRODUCTION.

[VON RÖNNE'S VERFASSUNG.]

IN the articles of peace at Presburg (December 26, 1805,) Austria recognized the newly-created kingdoms of Bavaria and Wurtemberg, and the complete independence of these States and of Baden. On the 17th of July, 1806, the representatives of sixteen German princes signed the Rhine Confederation Act of the 12th of July, 1806, and thus formally separated themselves from the German Empire. On the 6th of August, 1806, Emperor Francis I. resigned the crown of the Holy Roman Empire of the German Nation, and declared the office and dignity of German Emperor to have come to an end. In the articles of peace signed at Passau December 11, 1806, Saxony joined the Rhine Confederation, and the other smaller States of United Germany followed her example. By the decree of Napoleon (December 7, 1807,) the newly-created kingdom of Westphalia was added to the Rhine Confederation, which now included all the German States except Austria, Prussia, Swedish Pomerania and Holstein. This confederation, however, quietly dissolved, in consequence of the agreement between Prussia and Russia made at Kalisch, February, 28, 1813.

In the sixth article of the Peace of Paris (May 30, 1814,) it was declared "that the States of Germany should be independent and united by a federative bond." Although in the Proclamation of Kalisch (March 13, 1813,) it was promised in the name of the rulers of Russia and Prussia that the venerable German Empire should be resuscitated, nothing of the sort occurred. On the contrary, at the Congress

of Vienna, opened November 1, 1814, the German Federal Pact of June 8, 1815, was established, and in consequence of further ministerial conference, held at Vienna, the so-called Final Act of Vienna was adopted May 15, 1820, which was acknowledged by resolution of the Federal Assembly of June 8, 1820, to be equal to the Federal Pact in power and validity.

The attempt made in consequence of the "March days" of 1848 to convert the German Confederation into a German Federal State was unsuccessful. The Federal Assembly ordered by the resolution of April 7, 1848, the election of members of the "German National Assembly." But the constitution promulgated by this body April 28, 1849, could not go into effect because the King of Prussia, who had been elected by the body to be the hereditary Emperor, declined to accept this dignity.

The attempt then made by the various German governments to found a German Federal State by agreement among the various States was also unsuccessful, and ended in the resuscitation of the old Federal Assembly, and the complete restoration of the Confederated Constitution of 1815.

The further attempt made by Austria in 1863 to effect a reform of the German Confederation was equally a failure.

The development of the Schleswig-Holstein affair then led to an open conflict between Prussia and Austria. After the majority of the Federal Assembly, in the sitting of June 14, 1866, against the protest of Prussia, had accepted the proposition of Austria to "mobilize the army of the Confederation with the exception of the Prussian contingent," the Prussian deputy declared in the name and by command of the king, that Prussia regarded the Federal Pact as broken by this action, and no longer in force, and would act accordingly. At the same time he added the further declaration that the king by no means wished to regard the national basis on which the Confederation had rested as de-

troyed by the dissolution of the Federal Pact, but that on the contrary Prussia would hold fast to this basis and to the unity of the German Nation, independent of temporary forms, and that it regarded it as an unavoidable duty of the German States to find some corresponding expression therefor. With these words Prussia submitted for her part the outline of a new union adapted to the circumstances of the time (made June 10, 1866); and declared herself ready to enter a new union on this basis with such states as chose to accept these terms.

The victory of Prussia over Austria and her allies led to the acknowledgment of the "Dissolution of the German Confederation" by the Emperor of Austria in the Preliminary Articles of Peace signed at Nicholsburg July 26, 1866, and afterwards in the Peace of Prague, August 23, 1866. The Emperor agreed further to a "Reconstruction of Germany," based on the exclusion of Austria, and promised to recognize the closer "Federal Relation" which the King of Prussia proposed to establish north of the Main line. He also gave his consent to the plan by which the German States lying south of the Main should enter a union which should have an individual and independent existence, and whose nearer relation to the North German Confederation should be settled by future negotiation.

In the place of the previous "German Confederation" was now established the "North German Confederation." Prussia, which had annexed the Kingdom of Hanover, the Electorate of Hesse, the Duchy of Nassau, the Duchies of Schleswig and Holstein, the Free City of Frankfort, and the portions of territory ceded by Bavaria and the Grand Duchy of Hesse, concluded (August 18, 1866,) a treaty of alliance with Saxe-Weimar, Oldenburg, Brunswick, Saxe-Altenburg, Saxe-Coburg-Gotha, Anhalt, Schwarzburg-Sondershausen, Schwarzburg-Rudolstadt, Waldeck, Reuss Younger-Line, Schaumburg-Lippe, Lippe, Lübeck, Bremen and Hamburg. Mecklenburg-Schwerin and Mecklenburg-Strelitz

joined the alliance August 21, 1866. In this treaty it was agreed to draft a Federal Constitution on the basis of the proposals of June 10, 1866, with the consent of a Parliament to be summoned by the contracting parties in common. The terms of this treaty were accepted by the government of the Grand Duchy of Hesse for those portions of its territory lying north of the Main, and by the government of Saxe-Meiningen and Reuss Elder Line, and finally by the king of Saxony, in the treaties made with them.

In consequence of this agreement among the allied governments, uniform election laws, based on the election laws of the German National Assembly (April 12, 1849), were promulgated in all the different States, and after the election had taken place on February 12, 1867, the King of Prussia (February 13, 1867) summoned the Parliament to meet in Berlin on the 24th of February, 1867. In the session of the 4th of March, 1867, a "Draft of the Constitution of the North German Confederation," which had been agreed upon by the allied governments, was submitted to this Parliament for action. The draft having been amended in fifty-one points by the Parliament, was accepted in the modified form by 230 votes against 53. The Allied Governments accepted the proposals of the Parliament, and thereupon in the sessions of the Parliament of the 17th of April, 1867, the President of the State Delegates, then in assembly in Berlin, declared in the name of the King of Prussia and by virtue of the power delegated to him by the Allied Governments, that this Constitution had been accepted by the Governments Allied in the North German Confederation.

After the Legislatures of the various States of the Confederation had given their constitutional consent, the official publication of the Federal Constitution took place in all the States of the Union. On the 26th of July, 1867, the Federal Presidency proclaimed that this Constitution having been agreed upon between the Federal Parliament, summoned for this purpose, on the one hand, and the King of

Prussia and all the other princes of the allied States and the Senates of the Free Cities on the other, had been promulgated on the 25th of June, 1867, and had gone into effect on July 1, 1867. At the same time, by a Note to this proclamation, the King of Prussia declared that he accepted for himself and his successors in the Prussian crown all the rights, privileges and duties entrusted to him by the Constitution of the North German Confederation.

Article 79 of this Constitution provided that the relations of this Confederation to the South German States should be regulated by treaty, and that their admission to the North German Confederation should be effected by Federal legislation whenever proposed by the Presidency of the Confederation.

As a result of the Franco-Prussian war of 1870 the South German government resolved to negotiate with the "North German Confederation," with a view to establishing a "German Confederation." The results of these negotiations were:

1. The agreement of November 15, 1870, between the North German Confederation and Baden and Hesse, upon the establishment of a German Confederation and the acceptance of the Federal Constitution.

2. The treaty of November 23, 1870, concerning the adhesion of Bavaria to the Constitution of the German Confederation.

3. The treaty of November 25, 1870, between the North German Confederation, Baden and Hesse on the one side, and Wurtemberg on the other, concerning the adhesion of Wurtemberg to the Constitution of the German Confederation.

Before the Diet, summoned November 24, 1870, these treaties and the papers relating to them were laid by the Federal Presidency, with the statement that the Federal Council had ratified them with the constitutional majority. They were accepted by the Diet.

The Federal Council of the North German Confederation, with the consent of the Governments of Bavaria, Wurtemberg, Baden and Hesse, now proposed to the Diet the "establishment of the German Imperial Dignity." On the 9th of December, 1870, the Chancellor of the North German Confederation proposed that the German Confederation should bear the name German Empire, and the King of Prussia, as Federal President, the name of German Emperor. This was accepted by the Diet on the 10th of December, 1870. The proclamation of the establishment of the Imperial Dignity was made by the King of Prussia at Versailles January 18, 1871, and was published in Germany on the same day.

After the Constitution of the German Empire was in this way agreed upon and fixed between the legislative power of the North German Confederation and the governments of the South German States, it was also approved by the Legislatures of the South German States, in accordance with the provisions of their Constitutions.

In accordance with the order of the German Emperor issued January 3, 1871, general elections were held throughout the Empire on March 3, 1871, to the first German Diet, on the basis of the election law of May 31, 1869. This Diet was summoned by Imperial proclamation of 26th of February, 1871, to meet in Berlin on March 20, 1871, when it was opened by the German Emperor in person.

The course of the negotiations leading to the establishment of the new Empire had resulted in the anomalous condition that the provisions of its Constitution were to be found scattered through four documents—the Constitution of the North German Confederation and the three treaties mentioned above, which by their acceptance had modified the Constitution very materially. In order to remedy this state of things and to introduce uniformity of terminology into the instrument, the Federal Chancellor, in the name of the Emperor, proposed to the Diet on March 21, 1871, the

“draft of a law concerning the Constitution of the German Empire,” to which was appended a revised draft of the instrument. The proposed revision and law for its introduction were accepted by the Diet without modification. The revised instrument does not contain any material modification of the provisions then existing except in the provisions in Article 8, in regard to the Committee of Foreign Affairs. Various provisions of the treaties relating to temporary and intermediate conditions are omitted from the instrument, as also some agreements in the treaties partly of temporary, partly of explanatory, and partly of administrative character. These agreements form, however, undoubtedly for all practical purposes, part and parcel of the instrument, as appears from section 3 of the Introductory Law.

The draft of the Introductory Law, together with the appended Constitution, having received the approval of the Federal Council and Diet, was enacted into law by the act of April 16, 1871. Number 16 of the Imperial Gazette, containing this law, was published April 20, 1871.

By the Federal law of June 9, 1871, the territories of Alsace and Lorraine, ceded by France to Germany, were incorporated into the German Empire, and the Constitution of the Empire went into effect in those territories from January 1, 1874.

LAW

CONCERNING THE

CONSTITUTION OF THE GERMAN EMPIRE

OF THE 16 APRIL, 1871.

We, William, by the Grace of God, German Emperor, King of Prussia, etc., hereby ordain, in the name of the German Empire and with the consent of the Federal Council and Diet, what follows:

§ 1. The appended Constitution of the German Empire takes the place of the "Constitution of the German Confederation," agreed upon by the North German Confederation and the Grand Duchies of Baden and Hesse, as well as the place of the treaties concluded on the 23 and 25 November, 1870, with the Kingdoms of Bavaria and Wurtemberg, concerning their adhesion to the aforesaid "Constitution of the German Confederation."

§ 2. The provisions in Article 80 of the aforesaid Constitution of the German Confederation, and in III, § 8 of the Treaty of November 23, 1870, with Bavaria, and in Article 2, Number 6 of the Treaty with Wurtemberg of November 25, 1870, concerning the introduction into these States of the Laws passed by the North German Confederation, remain in force

The there mentioned laws are laws of the Empire. Wherever mention is made in the same of the North German Confederation, its Constitution, territory, members or

States, citizenship, constitutional organs, subjects, officers, flag, etc., the German Empire and its corresponding relations are to be understood.

The same thing is true of those laws adopted in the North German Confederation, which may be introduced in the future within any of the States mentioned.

§ 3. The agreements in the protocols accepted at Versailles, November 15, 1870; in the negotiations at Berlin of November 25, 1870, and in the final protocol of November 23, 1870, as well as those under IV in the treaty with Bavaria of the 23 November, 1870, are not affected by this law.

Given at Berlin, April 16, 1871.

[L. S.]

WILHELM,
PRINCE VON BISMARCK.

THE IMPERIAL CONSTITUTION.

His Majesty, the King of Prussia, in the name of the North German Confederation, His Majesty the King of Bavaria, His Majesty the King of Wurtemberg, His Royal Highness the Grand Duke of Baden, and His Royal Highness the Grand Duke of Hesse and by Rhine for those parts of the Grand Duchy of Hesse which are situated south of the Main, conclude an eternal alliance for the protection of the territory of the Confederation, and of the laws of the same, as well as for the promotion of the welfare of the German people. This Confederation shall bear the name of the German Empire, and shall have the following Constitution :

I. TERRITORY.

Article 1. The territory of the Confederation shall consist of the States of Prussia (with Lauenburg), Bavaria, Saxony, Wurtemberg, Baden, Hesse, Mecklenburg-Schwerin, Saxe-Weimar, Mecklenburg-Strelitz, Oldenburg, Brunswick, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, Anhalt, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reuss (elder branch), Reuss (younger branch), Schaumburg-Lippe, Lippe, Lubeck, Bremen, and Hamburg.

II.—LEGISLATION OF THE EMPIRE.

Article 2. Within this territory the Empire shall exercise the right of legislation according to the provisions of this Constitution ; and the laws of the Empire shall take precedence of those of each individual State. The laws of

the Empire shall be rendered binding by Imperial proclamation, such proclamation to be published in a journal devoted to the publication of the laws of the Empire (*Reichsgesetzblatt*—Imperial Gazette). If no other period shall be designated in the published law for it to take effect, it shall take effect on the fourteenth day after its publication in the Imperial Gazette at Berlin.

Article 3. There shall be a common citizenship (*In-digenat*) for all Germany, and the members (citizens or subjects) of each State of the Confederation shall be treated in every other State thereof as natives, and shall consequently have the right of becoming permanent residents; of carrying on business; of filling public offices; of acquiring real estate; of obtaining citizenship, and of enjoying all other civil rights on the same conditions as those born in the State, and shall also have the same usage as regards civil and criminal prosecutions and the protection of the laws.

No German shall be limited in the exercise of this privilege by the authorities of his native State, or by the authorities of any other State of the Confederation.

The regulations governing the care of paupers, and their admission into the various local unions; shall not, however, be affected by the principle enunciated in the first paragraph.

In like manner those treaties shall remain in force which have been concluded between the various States of the Confederation in relation to the custody of persons who are to be expelled, the care of sick, and the burial of deceased citizens.

With regard to the performance of military service in the various States, the necessary laws will be passed hereafter by the Empire.

All Germans in foreign countries shall have equal claims upon the protection of the Empire.

Article 4. The following matters shall be under the supervision and legislative control of the Empire:

1. Regulations relating to migration within the Empire; matters of domicile and settlement; the right of citizenship; the issuing and examination of passports; surveillance of foreigners; trade and industry, including insurance, so far as these matters are not already provided for by Article 3 of this Constitution (in Bavaria, however, exclusive of matters relating to domicile and settlement), and finally matters relating to colonization and emigration to foreign countries.

2. Legislation concerning customs-duties, commerce, and such taxes as are to be applied to the uses of the Empire.

3. Regulation of weights and measures; of the coinage; and of the emission of "funded and unfunded" paper money. *

4. General banking regulations.

5. Patents for inventions.

6. The protection of intellectual property.

7. The organization of a general system of protection for German trade in foreign countries; of German navigation, and of the German flag on the high seas; likewise the organization of a general consular representation to be maintained by the Empire.

8. Railway matters (subject in Bavaria to the provisions of Article 46), and the construction of land and water ways for the purposes of public defence, and of general commerce.

9. Rafting and navigation upon those water ways which are common to several States, and the condition of such waters; also the river and other water dues.

10. Postal and telegraph affairs; but in Bavaria and Wurtemberg these shall be subject to the provisions of Article 52.

11. Regulations concerning the reciprocal execution of

* "Funded and unfunded" seems intended to include bank-notes and paper money. The terms in German are not precise see Wagner's *Zettlebank-politik*, p. 10 A.

judicial sentences in civil matters, and the fulfillment of requisitions in general.

12. The authentication of public documents.

13. General legislation with respect to the law of obligations and notes; and to criminal and commercial law, including legal procedure. *

15. Police regulation as to medical and veterinary matters.

16. Laws relating to the press, and to the right of association.

Article 5. The legislative power of the Empire shall be exercised by the Federal Council and the Diet (*Reichstag*). A majority of the votes of both bodies shall be necessary and sufficient for the passage of a law.

When a law is proposed in relation to the army, or navy, or to the imposts specified in Article 35, the vote of the *presidium* † shall decide in case of a difference of opinion in the Federal Council, if said vote be in favor of the of the retention of existing arrangements.

III.—FEDERAL COUNCIL.

Article 6. The Federal Council shall consist of the representatives of the members of the Confederation, among which the votes shall be divided in such manner as that Prussia (including the former votes of Hanover, the Electorate of Hesse, Holstein, Nassau and Frankfort) shall have 17 votes; Bavaria, 6 votes; Saxony, 4 votes; Wurtemberg, 4 votes; Baden, 3 votes; Hesse, 3 votes; Mecklenburg-Schwerin, 2 votes; Saxe-Weimar, 1 vote; Mecklenburg-Strelitz, 1 vote; Oldenburg, 1 vote; Brunswick, 2 votes; Saxe-Meiningen, 1 vote; Saxe-Altenburg, 1 vote; Saxe-Coburg-Gotha, 1 vote; Anhalt, 1 vote; Schwarzburg-Rudolstadt, 1 vote; Schwarzburg-Sondershausen, 1 vote;

* Amended December 20, 1873, to read: Uniform legislation as to the whole domain of civil and criminal law, including legal procedure.

† *i. e.* Prussia.

Waldeck, 1 vote; Reuss (elder branch), 1 vote; Reuss (younger branch), 1 vote; Schamburg-Lippe, 1 vote; Lippe, 1 vote; Lubeck, 1 vote; Bremen, 1 vote; Hamburg, 1 vote—total, 58 votes. Each member of the Confederation may appoint as many delegates to the Federal Council as it has votes, but the votes of each State must be cast as a unit.

Article 7. The Federal Council shall take action upon—

1. The measures to be proposed to the Diet, and the resolutions passed by the same.

2. The general provisions and arrangements necessary for the execution of the laws of the Empire, so far as no other provision is made by law.

3. The defects which may be discovered in the execution of the laws of the Empire, or of the provisions and arrangements heretofore mentioned.

Each member of the Confederation shall have the right to make propositions and introduce motions, and it shall be the duty of the *presidium* to submit them for deliberation.

Legislative action shall take place by simple majority, with the exceptions of the provisions in Articles 5, 37 and 78. Votes not represented or not instructed shall not be counted. In the case of a tie, the vote of the *presidium* shall decide.

When legislative action is taken upon a subject which according to the provisions of this Constitution, does not concern the whole Empire, the votes only of those States of the Confederation interested in the matter in question shall be counted.

Article 8. The Federal Council shall appoint from its own members Permanent Committees.

1. On the army and the fortifications.
2. On marine affairs.
3. On duties and taxes.
4. On commerce and trade.
5. On railroads, posts and telegraphs.

6. On affairs of justice.

7. On accounts.

In each of these Committees there shall be representatives of at least four States of the Confederation, besides the presidium, and each State shall be entitled to only one vote in the same. In the Committee on the army and fortifications, Bavaria shall have a permanent seat; the remaining members of it, as well as the members of the Committee on marine affairs, shall be appointed by the Emperor; the members of the other Committees shall be elected by the Federal Council. These Committees shall be newly formed at each session of the Federal Council, *i. e.*, each year. The retiring members shall, however, again be eligible.

There shall also be appointed in the Federal Council a Committee on Foreign Affairs, over which Bavaria shall preside, to be composed of the plenipotentiaries of the Kingdoms of Bavaria, Saxony and Wurtemberg, and of two plenipotentiaries of other States of the Empire, who shall be elected annually by the Federal Council.

The necessary employees and officials shall be placed at the disposal of the Committees.

Article 9. Each member of the Federal Council shall have the right to appear in the Diet, and be heard there at any time he shall so request, to represent the views of his Government, even when the same shall not have been adopted by the majority of the Council. No one shall be at the same time a member of the Federal Council and of the Diet.

Article 10. The Emperor shall afford the customary diplomatic protection to the members of the Federal Council.

IV.—THE PRESIDENCY.

To the King of Prussia shall belong the Presidency of the Confederation, and he shall have the title of German

Emperor. The Emperor shall represent the Empire among nations, declare war and conclude peace in the name of the same, enter into alliances and other conventions with foreign countries, accredit ambassadors and receive them.

For a declaration of war in the name of the Empire, the consent of the Federal Council shall be required, except in case of an attack upon the territory of the Confederation or its coasts.

So far as treaties with foreign countries refer to matters which, according to Article 4, are to be regulated by imperial legislation, the consent of the Federal Council shall be required for their conclusion, and the approval of the Diet shall be necessary to render them valid.

Article 12. The Emperor shall have the right to convene the Federal Council and the Diet, and to open, adjourn, and close them.

Article 13. The convocation of the Federal Council and the Diet shall take place annually, and the Federal Council may be called together for the preparation of business without the Diet; the latter, however, shall not be convoked without the Federal Council.

Article 14. The convocation of the Federal Council shall take place whenever demanded by one-third of the total number of votes.

Article 15. The Chancellor of the Empire, to be appointed by the Emperor, shall preside in the Federal Council, and supervise the conduct of its business.

The Chancellor of the Empire shall have the right to delegate the power to represent him to any member of the Federal Council. This delegation must be made in writing.

Article 16. The necessary bills shall be laid before the Diet in the name of the Emperor, in accordance with the resolutions of the Federal Council, and these shall be advocated in the Diet by members of Federal Council, or by special commissioners appointed by the said Council.

Article 17. It shall be the duty of the Emperor to prepare and publish the laws of the Empire, and to supervise their execution. The decrees and ordinances of the Emperor shall be made in the name of the Empire, and require for their validity the signature of the Imperial Chancellor, who thereby takes upon himself the responsibility for them.

Article 18. The Emperor shall appoint imperial officials, require them to take the oath of allegiance to the Empire, and dismiss them when necessary.

Officials of any one of the States of the Confederation, who shall be appointed to any imperial office, shall enjoy the same rights as those to which they are entitled in their native States by virtue of their official position, provided no other legislative provision shall have been made previous to their entrance into the service of the Empire.

Article 19. If the States of the Confederation do not fulfill their Constitutional duties, they may be compelled to do so by "execution." This "execution" shall be ordered by the Federal Council, and carried out by the Emperor.

V.—THE DIET (REICHSTAG.)

Article 20. The members of the Diet shall be chosen in a general election and by direct secret ballot.

Until regulated by the law, which according to Section 5 of the Election Law of May 31, 1869, is to be promulgated, 48 deputies shall be elected in Bavaria, 17 in Wurtemberg, 14 in Baden, 6 in Hesse, south of the River Main, and the total number shall consequently be 382.*

Article 21. Government officials shall not require leave of absence in order to enter the Diet.

When a member of the Diet accepts a salaried office of the Empire, or a salaried office in one of the States of the Confederation, or accepts any office of the Empire or of a State involving higher rank or salary, he shall forfeit his

* Including, that is to say, those deputies returned by the States of the North German Confederation.



seat and vote in the Diet, but may recover his place in the same by a new election.

Article 22. The proceedings of the Diet shall be public.

Truthful reports of the proceedings of the public sessions of the Diet shall subject those making them to no responsibility.

Article 23. The Diet shall have the right to propose laws within the jurisdiction of the Empire, and to refer petitions, addressed to it, to the Federal Council or the Chancellor of the Empire.

Article 24. The Diet shall be elected for three years. It may be dissolved during that time by a resolution of the Federal Council, with the consent of the Emperor.

Article 25. In the case of a dissolution of the Diet, new elections shall take place within a period of sixty days, and the Diet shall be called together within a period of ninety days after its dissolution.

Article 26. Unless by consent of the Diet, an adjournment of that body shall not exceed the period of thirty days, and shall not be repeated during the same session without such consent.

Article 27. The Diet shall examine into the legality of the election of its members, and decide thereon. It shall regulate its mode of transacting business, as well as its own discipline, by establishing rules therefor, and elect its president, vice-presidents and secretaries.

Article 28. The Diet shall take action by absolute (simple) majority. To render action valid, the presence of a majority of the statutory number of members shall be required.

In matters which according to this Constitution do not concern the entire Empire, only such members shall vote as are elected from States whose interests are affected by the proposition. (Repealed by act of February 24, 1873.)

Article 29. The members of the Diet are the representatives of the people as a whole, and shall not be bound by orders and instructions from their constituents.

Article 30. No member of the Diet shall at any time suffer legal or disciplinary prosecution on account of his vote, or on account of utterances made while in the performance of his functions, or be held responsible outside the Diet for his course within it.

Article 31. Without the consent of the Diet, none of its members shall be tried or arrested during the session for any penal offence committed, except when arrested in the act of committing the offense, or in the course of the following day.

The same rule shall apply in the case of arrests for debt.

At the request of the Diet, all criminal proceedings instituted against one of its members, and likewise detention or arrest, shall be suspended during its session.

Article 32. The members of the Diet shall not be allowed to draw any salary, or be compensated as such.

VI.—CUSTOMS AND COMMERCE.

Article 33. Germany shall form a Customs and Commercial Union, having a common frontier for the collection of duties. Such territories as cannot, by reason of their situation, be suitably embraced within the said frontier, shall be excluded.

It shall be lawful to introduce all articles of commerce of any State of the Confederation into any other State of the Confederation without paying any impost thereon, except as far as similar articles are subject to internal taxation therein.

Article 34. The Hanseatic cities, Bremen and Hamburg, shall remain free ports outside of the common boundary of the Customs Union, retaining for that purpose a suitable district of their own, or of the surrounding territory, until they shall request to be admitted into the said Union.

Article 35. The Empire shall have the exclusive power to legislate concerning everything relating to the customs; to the taxation of salt and tobacco manufactured or raised

in the territory of the Confederation; to the taxation of domestic brandy and beer, and of sugar and syrup prepared from beets or other domestic products. It shall have exclusive power to legislate concerning the mutual protection (against fraud) of all taxes upon articles of consumption levied in the several States of the Empire, as well as concerning the measures which are required in the territory, outside the customs lines, for the security of the common customs frontier.

In Bavaria, Wurtemberg, and Baden, the matter of imposing duties on domestic brandy and beer is reserved for the legislation of each State. The States of the Confederation shall, however, endeavor to bring about uniform legislation regarding the taxation of these articles also.

Article 36. The administration and collection of customs duties and of the excise on articles of consumption (Article 35) is left to each State of the Confederation within its own territory, so far as this has been done by each State heretofore.

To ensure observance of imperial law by the State administration, the Emperor shall [after consulting the committee of the Federal Council on customs and revenues] appoint certain imperial officers in the custom or excise offices of the several States.

Reports made by these officials as to defects in the execution of the laws of the Empire (Article 35) shall be submitted to the Federal Council for action.

Article 37. In taking action upon the rules and regulations for the execution of the laws of the Empire (Article 35), the vote of the presidium shall decide whenever it shall pronounce for upholding the existing rule or regulation.

Article 38. The amounts accruing from customs and from the other revenues designated in Article 35, so far as the latter are subject to imperial legislation, shall go to the treasury of the Empire.

This amount is made up of the total receipts from the customs and other revenues, after deducting therefrom—

1. Tax rebates and reductions in conformity with existing laws or general administrative regulations.

2. Reimbursements for taxes unlawfully collected.

3. The costs of collection and administration, viz :

a. In the department of customs, the costs which are required for the protection and collection of customs on the frontiers and in the frontier districts.

b. In the department of the duty on salt, the costs which are used for the pay of the officers charged with collecting and controlling this duty in the salt works.

c. In the department of taxes on beet sugar and tobacco, the compensation which is to be allowed, according to the rules of the Federal Council, to the several State Governments for the cost of managing these duties and taxes.

d. Fifteen per cent. of the total receipts from other taxes.

The territories situated outside of the common customs-frontier shall contribute to the expenses of the Empire by paying an *aversum* (lump sum, or sum of acquittance).

Bavaria, Wurtemberg, and Baden shall not share in the revenues from duties on brandy and beer, which go into the Treasury of the Empire, nor in the corresponding portion of the aforesaid *aversum*.

Article 39. The quarterly summaries to be regularly made by the revenue officers of the Federal States at the end of every quarter, and the final statement (to be made at the end of the year, and after the closing of the account-books) of the receipts which have become due in the course of the quarter, or during the fiscal year, from customs and from the other revenues which (according to Article 38) belong to the Treasury of the Empire, shall be arranged by the administrative officers of the various States, after a preliminary audit, in general summaries, in which the result of every impost is to be shown separately ; these summaries shall be transmitted to the Committee of Audit of Federal Council.

The latter (taking as a basis these summaries), fixes provisionally every three months the amount due to the Treasury of the Empire from the Treasury of each State, and it shall inform the Federal Council and the Federal States of the amount so fixed; furthermore, it shall submit to the Federal Council annually the final statement of these amounts with its remarks. The Federal Council shall take action upon the work of the committee.

Article 40. The terms of the Customs-Union Treaty of July 8, 1867, remain in force, so far as they have not been altered by the provisions of this Constitution, and as long as they are not altered in the manner designated in Articles 7 or 78.

VII.—RAILWAYS.

Article 41. Railways, which are considered necessary for the defence of Germany, or in the interest of general commerce, may by imperial law be constructed at the cost of the Empire, even in opposition to the will of those members of the Union through whose territory the railroads run, without prejudice, however, to the sovereign rights of that country; or private persons may be charged with their construction, and receive rights of expropriation.

Every existing railway company is bound to permit new railroad lines to be connected with it, at the expense of the latter.

All laws granting existing railway companies the right of injunction against the building of parallel or competitive lines are hereby abolished throughout the Empire, without detriment to rights already acquired. Such rights of injunction cannot be granted in concessions to be given hereafter.

Article 42. The Governments of the Federal States bind themselves in the interest of general commerce, to have the German railways managed as one system, and for this purpose to have all new lines constructed and equipped according to a uniform plan.

Article 43. Accordingly, as soon as possible, uniform arrangements as to management shall be made, and especially shall uniform regulations be adopted for the police of the railroads. The Empire shall take care that the various railway administrations keep the roads always in such condition as is required for public security, and that they be equipped with such rolling stock as the wants of trade demand.

Article 44. Railway companies are bound to run as many passenger-trains of suitable velocity as may be required for through traffic, and for the establishment of harmony between time-tables; also to make provision for such freight trains as may be necessary for the wants of trade, and to organize a system of through booking both in passenger and freight traffic, permitting the wagons to go from one road to the other for the usual remuneration.

Article 45. The Empire shall have control over the tariff of charges. It shall endeavor to cause

1. Uniform regulations to be speedily introduced on all German railway lines.

2. The tariff to be reduced and made uniform as far as possible, and particularly to secure low long-distance rates for the transport of coal, coke, wood, minerals, stone, salt, crude iron, manure, and similar articles, as demanded by the interests of agriculture and industry. It shall endeavor in the first instance to introduce a one pfennig tariff as soon as practicable.

Article 46. In case of public distress, especially in case of an extraordinary rise in the price of provisions, it shall be the duty of the railway companies to adopt temporarily a low special tariff suited to the circumstances, which shall be fixed by the Emperor, on motion of the competent committee of the Federal Council, for the forwarding of grain, flour, vegetables, and potatoes. This tariff shall, however, not be less than the lowest rate for raw produce existing on the said line.

The foregoing provisions, and those of Articles 42 to 45, shall not apply to Bavaria.

The Imperial Government, however, has the power, with regard to Bavaria also, to prescribe by means of legislation uniform rules for the construction and equipment of such railways as may be of importance for the defence of the country.

Article 47. The managers of all railways shall be required to obey, without hesitation, requisitions made by the authorities of the Empire for the use of their roads for the defense of Germany. In particular shall troops, and all material of war, be forwarded at uniform reduced rates.

VIII.—POST AND TELEGRAPH.

Article 48. The post and telegraph system shall be organized on a uniform plan, and managed as State institutions throughout the German Empire. The legislation of the Empire in regard to post and telegraph affairs, provided for in Article 4, shall not extend to those matters whose control is left to governmental ordinance or administrative regulation, according to the principles which have prevailed in the North German administration of post and telegraph.

Article 49. The receipts from post and telegraph throughout the Empire, shall belong to a common fund. The expense shall be paid from the general receipts. The surplus goes into the imperial treasury. (Section 12.)

Article 50. The Emperor has the supreme supervision of the administration of post and telegraph. The authorities appointed by him are in duty bound and authorized to see that uniformity be established and maintained in the organization of the administration and in the transaction of business, as also in regard to the qualifications of employes.

The Emperor shall have the power to issue governmental ordinances and general administrative regulations, to issue general instructions, and also the exclusive right to regulate

the relations which are to exist between the post and telegraph offices of Germany and those of other countries.

It shall be the duty of all officers of the Post-office and Telegraph Department to obey the orders of the Emperor. This obligation shall be included in their oath of office.

The appointment of such superior officers as shall be required for the administration of the post and telegraph in the various districts, such as directors, counselors, and superintendents; also the appointment of officers of the post and telegraph acting in the capacity of supervisors for the aforesaid authorities in the several districts, such as inspectors or controllers, shall be made throughout the Empire by the Emperor, to whom they shall take the oath of office. The Governments of the several States shall receive timely notice of the aforementioned appointments, as far as they may relate to their territories, so that they may confirm and publish them.

Other officials required in the administration of the post and telegraph, as also all officials employed for local and technical purposes, including therefore all subordinate officials in the office, shall be appointed by the respective Governments of the States.

Where there is no independent State administration of post or telegraph, the terms of the various treaties are to be enforced.

Article 51. In consideration of the differences which have heretofore existed in the net receipts of the Post-Office Departments of the several districts, and for the purpose of securing a suitable equalization during the period of transition below named, the following procedure is to be observed in assigning the surplus of the Post-office Department to the Treasury of the Empire for general purposes. (Article 49.)

From the postal surpluses which accumulated in the several postal districts during the five years from 1861 to 1865, a yearly average shall be computed, and the share which every separate postal district has had in the surplus

resulting therefrom for the whole territory of the Empire shall be expressed in a percentage.

In accordance with the ratio thus ascertained, the several States shall be accredited on the account of their other contributions to the expenses of the Empire, with their quota accruing from the postal surplus in the Empire, for a period of eight years subsequent to their entrance into the Post-office Department of the Empire.

At the end of the said eight years the distinction shall cease, and any surplus in the Post-office Department shall go, without division, into the Treasury of the Empire, according to the principle enunciated in Article 49.

Of the quota of the Post-office Department surplus resulting during the afore-mentioned period of eight years in favor of the Hanseatic towns, one-half shall every year be placed at the disposal of the Emperor, for the purpose of providing for the establishment of the necessary post-offices in the Hanseatic towns.

Article 52. The stipulations of the foregoing Articles 48 to 51 do not apply to Bavaria and Wurtemberg. In their stead the following stipulations shall be valid for these two States of the Empire.

The Empire alone is authorized to legislate upon the privileges of the Post-office and Telegraph Departments, on the legal relations of both institutions toward the public, upon the franking privilege and rates of postage and telegraphic charges; excepting, however, the adoption of administrative regulations and of postal and telegraph tariffs for domestic communication within Bavaria and Wurtemberg respectively.

In the same manner the Empire shall regulate postal and telegraphic communication with foreign countries, excepting the immediate intercourse of Bavaria and Wurtemberg with their adjacent foreign States, the regulation of which is subject to the stipulation in Article 49 of the postal treaty of November 23, 1867.

Bavaria and Wurtemberg shall not share in the postal and telegraphic receipts which belong to the Treasury of the Empire.

IX.—MARINE AND NAVIGATION.

Article 53. The navy of the Empire is a united one, under the supreme command of the Emperor. The Emperor is charged with its constitution and organization; he shall appoint the officers and officials of the navy, and in his name these and the seamen shall be sworn in.

The harbor of Kiel and the harbor of the Jade are Imperial war-harbors.

The expenditure required for the establishment and maintenance of the navy and the institutions connected therewith shall be defrayed from the Treasury of the Empire.

All seafaring men of the Empire, including machinists and hands employed in ship-building, are exempt from serving in the army, but are obliged to serve in the imperial navy.

The distribution of requisitions to supply the ranks of the navy shall be made according to the actual seafaring population, and the number furnished in accordance herewith by each State shall be deducted from the number otherwise required for the army.

Article 54. The merchant vessels of all States of the Union shall form the commercial marine of the Empire.

The Empire shall determine the process for ascertaining the tonnage of sea-going vessels, shall regulate the issuing of tonnage-certificates and of ship-certificates in general, and shall fix the conditions on which a permit for commanding a sea-going vessel shall be issued.

The merchant vessels of all the States of the Union shall be admitted on equal footing to the harbors, and to all natural and artificial water-courses of the several States of the Union, and all shall be entitled to sim-

ilar treatment. The duties which shall be collected in the harbors of sea-going vessels, or levied upon their freights as fees, for the use of marine institutions, shall not exceed the amount required for the ordinary construction and maintenance of these institutions.

On all natural water-courses, duties may only be levied for the use of special establishments, which serve for facilitating commercial intercourse. These duties, as well as the duties for navigating such artificial channels as are property of the State, shall not exceed the amount required for the ordinary construction and maintenance of the institutions and establishments. These rules apply to rafting, so far as it is carried on along navigable water-courses.

The levying of other or higher duties upon foreign vessels or their freights than those which are paid by the vessels of the Federal States or their freights, does not belong to the various States, but to the Empire.

Article 55. The flag of the war and merchant navy shall be black, white and red.

X.—CONSULAR AFFAIRS.

Article 56. The Emperor shall have the supervision of all consular affairs of the German Empire, and he shall appoint consuls, after hearing the committee of the Federal Council on Trade and Commerce.

No new State consulates are to be established within the jurisdiction of the German consuls. German consuls shall perform the functions of State consuls for the States of the Union not represented in their district. All the State consulates now existing shall be abolished as soon as the organization of the German consulates shall be completed in such a manner, that the representation of the separate interests of all the Federal States shall be recognized by the Federal Council as satisfactorily secured by the German consulates.

XI.—MILITARY AFFAIRS OF THE EMPIRE.

Article 57.—Every German is subject to military duty, and in the discharge of this duty no substitute can be accepted.

Article 58. The costs and the burden of all the military system of the Empire are to be borne equally by all the Federal States and their subjects, and no special privileges or burdens upon the several States or classes are admissible. Where an equal distribution of the burdens cannot be effected *in natura* without prejudice to the public welfare, the equalization shall be effected by legislation in accordance with the principles of justice.

Article 59. Every German capable of bearing arms shall belong for seven years to the standing army (ordinarily from the end of his twentieth to the beginning of his twenty-eighth year); the first three years in active service, the last four years in the reserve; and during the next five years he shall belong to the Landwehr (national guard). In those States of the Union in which heretofore a longer term of service than twelve years was required by law, the gradual reduction of the required time of service shall take place only so far as is compatible with a due regard to the war-footing of the army of the Empire.

As regards the emigration of men belonging to the reserve, only those provisions shall be in force which apply to the emigration of members of the Landwehr.

Article 60. The number of the German army in time of peace shall be fixed until the 31st of December, 1871, at 1 per cent. of the population of 1867, and shall be furnished by the several Federal States in proportion to their population. After the above date the strength of the army in time of peace shall be fixed by legislation.

Article 61. After the publication of this Constitution the complete Prussian system of military legislation shall be introduced without delay throughout the Empire, both the statutes themselves and the regulations, instructions, and or-

dinances issued for their execution, explanation or completion ; thus, in particular, the military penal code of April 3, 1845 ; the military system of penal procedure of April 3, 1845 ; the ordinance concerning the courts of honor of July 20, 1843 ; the regulations with respect to recruiting, time of service, matters relating to the care and subsistence, to the quartering of troops, claims for damages, mobilizing, etc., in times of peace and war. The military code relating to religious observance is, however, excepted.

When a uniform organization of the German army for war purposes shall have been established, a comprehensive military code for the Empire shall be submitted to the Diet and the Federal Council for their action, in accordance with the Constitution.

Article 62. For the purpose of defraying the expense of the whole German army, and the institutions connected therewith, the sum of 225 thalers shall be placed yearly at the disposal of the Emperor until the 31st of December, 1871, for each man in the army on the peace-footing, according to Article 60. (See Section 12.)

After the 31st December, 1871, the payment of these contributions by the several States to the Imperial Treasury must be continued. The strength of the army in time of peace, which has been temporarily fixed in Article 60, shall be taken as a basis for calculating the amounts due until it shall be altered by a law of the Empire.

The expenditure of this sum for the Imperial army and its establishments shall be determined by a budget law.

In determining the budget of military expenditure, the lawfully established organization of the Imperial army, in accordance with this Constitution, shall be taken as a basis.

Article 63. The total land force of the Empire shall form one army, which in war and in peace, shall be under the command of the Emperor.

The regiments, &c., throughout the whole German army shall bear continuous numbers. In adopting a uniform,

the principal colors and cut of the Prussian uniform, shall serve as a pattern for the other contingents of the army. It is left to commanders of contingent forces to choose the external badges, cockades, &c.

It shall be the duty and the right of the Emperor to take care that throughout the German army, all divisions be kept full and ready to take the field, and that uniformity be established and maintained in regard to organization and formation, equipment and command; in the training of the men, and in the qualifications of the officers. For this purpose the Emperor shall be authorized to satisfy himself at any time by inspection, of the condition of the several contingents, and to order the correction of existing defects.

The Emperor shall determine the strength, composition and division of the contingents of the Imperial army, and also the organization of the Landwehr, and he shall have the right to determine the garrisons within the territory of the Union, as also to mobilize any portion of the army.

In order to maintain the necessary unity in the administration, care, arming and equipment of all divisions of the German army, all orders hereafter issued for the Prussian army shall be communicated in due form for their observance to the commanders of the remaining contingents through the Committee on the Army and Fortifications, provided for in Article 8, No. 1.

Article 64. All German troops are bound implicitly to obey the orders of the Emperor. This obligation shall be included in the military oath.

The commander-in-chief of a contingent, as well as all officers commanding troops of more than one contingent and all commanders of fortresses, shall be appointed by the Emperor. The officers appointed by the Emperor shall take the military oath to him. The appointment of generals, or of officers performing the duties of generals, in a contingent, shall be in each case subject to the approval of the Emperor.

In the transfer of officers, with or without promotion, to positions which are to be filled by him in the service of the Empire, be it in the Prussian army or in other contingents, the Emperor has the right to select from the officers of all the contingents of the army of the Empire.

Article 65. The right to construct fortresses within the territory of the Empire shall belong to the Emperor, who shall ask (according to Section 12) for the appropriation of the means required for that purpose, if not already included in the regular appropriation.

Article 66. In the absence of special agreement, the Princes of the Empire and the Senates shall appoint the officers of their respective contingents, subject to the restriction of Article 64. They are the chiefs of all the troops belonging to their respective territories, and are entitled to the honors connected therewith. They shall have the right to hold inspections at any time, and shall receive, besides the regular reports and announcements of changes, timely information of all promotions and appointments concerning their respective contingents, in order to provide for their publication by State authority as required.

They shall also have the right to employ, for police purposes, not only their own troops, but all other divisions of the army of the Empire which are stationed in their respective territories.

Article 67. The unexpended portion of the military appropriation shall under no circumstances fall to the share of a single government, but at all times to the Treasury of the Empire.

Article 68. The Emperor shall have the power, if public security within the Federal territory demands it, to declare martial law in any part of the Empire; and until the publication of a law regulating the occasions, the form of announcement, and the effects of such a declaration, the provisions of the Prussian law of June 4, 1851, shall be considered in force.

FINAL PROVISION OF SECTION XI.

The provisions contained in this section are to be applied in Bavaria, according to the provisions of the treaty of Nov. 23, 1870; in Wurtemberg, according to provisions of the military convention of November 21-25, 1870.

XII.—FINANCES OF THE EMPIRE.

Article 69. All receipts and expenditures of the Empire shall be estimated yearly, and included in the budget. The latter shall be fixed by law before the beginning of the fiscal year, according to the following principles:

Article 70. The surplus of the previous year, the common revenues derived from customs duties, from the common excise duties, and from the postal and telegraph service, shall be applied to the defrayal of all general expenditures. In so far as these expenditures are not covered by the receipts, they shall be provided for, as long as no taxes of the Empire shall have been established, by assessing the several States of the Empire according to their population, the amount of the assessment to be fixed by the Chancellor of the Empire in accordance with the budget agreed upon.

Article 71. The general expenditures shall be, as a rule, granted for one year; they may, however, in special cases, be granted for a longer period. During the period of transition fixed in Article 60, the financial estimate, properly classified, of the expenditures of the army shall be laid before the Federal Council and the Diet merely for their information.

Article 72. For the purpose of discharge an annual report of the expenditure of all the receipts of the Empire shall be rendered, through the Imperial Chancellor, to the Federal Council and the Diet.

Article 73. In cases of extraordinary requirements, a loan may be contracted by imperial law, or a guarantee assumed in the name of the Empire.

FINAL PROVISION OF SECTION XII.

Articles 69 and 71 apply to expenditures for the Bavarian army, subject to the provisions of the treaty of November 23, 1870 (mentioned in the final provision of Section XI.) and Article 72 only so far as it is required to inform the Federal Council and the Diet that the sum necessary for the Bavarian army has been assigned to Bavaria.

XIII.—SETTLEMENT OF DISPUTES AND PENAL PROVISIONS.

Article 74. Every attempt against the existence, the integrity, the security, or the Constitution of the German Empire; finally, any offence committed against the Federal Council, the Diet, a member of the Federal Council, or of the Diet, a magistrate or a public official of the Empire, while in the execution of their duty, or with reference to their official position, by word, writing, printing, drawing, pictorial or other representations, shall be judged and punished in the several States of the Empire according to the laws therein existing, or which shall hereafter exist in the same, by which provision is made for the judgment of similar offences against any one of the States of the Empire, its constitution, legislature or estates, members of its legislature or its estates, authorities, or officials.

Article 75. For those offences specified in Article 74 against the German Empire, which, if committed against one of the States of the Empire, would be deemed high treason, the superior Court of Appeals of the three free Hanseatic towns at Lübeck shall be the competent deciding tribunal in the first and last resort.

More definite provisions as to the competency and the procedure of the Superior Court of Appeals shall be made by imperial law. Until the passage of a law of the Empire, the existing competency of the courts in the respective States of the Empire, and the provisions relative to the procedure of those courts, shall remain in force.

Article 76. Disputes between the different States of the

Union, so far as they are not of a private nature, and therefore to be decided by the competent judicial authorities, shall be settled by the Federal Council, at the request of one of the parties.

In disputes relating to constitutional matters in those States of the Union whose Constitution does not designate an authority for the settlement of such differences, the Federal Council shall, at the request of one of the parties, attempt to bring about an adjustment, and if this cannot be done, the matter shall be settled by imperial law.

Article 77. If in one of the States of the Union justice shall be denied, and no sufficient relief can be procured by legal measures, it shall be the duty of the Federal Council to receive substantiated complaints concerning denial or restriction of justice, which are to be judged according to the constitution and the existing laws of the respective States of the Union, and thereupon to obtain judicial relief from the State Government which shall have given occasion to the complaint.

XIV.—AMENDMENTS.

Article 78. Amendments of the Constitution shall be made by legislative enactment. They shall be considered as rejected when fourteen votes are cast against them in the Federal Council.

The provisions of the Constitution of the Empire, by which certain rights are secured to particular States of the Union in their relation to the whole, shall only be modified with the consent of the States affected.



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