

THE GERMAN CONSTITUTION OF JULY 31, 1919.

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I.

WHAT is the political temper and spirit in which the new Germany is laboriously struggling to rise out of the depth of her present misery? How far has the breath of the new time touched her? In what respect does she turn over a new leaf? The question is full of psychologic interest and political significance; especially as we are aware that former pillars of the Kaiser's régime, men like Bernstorff or Ludendorff, are still prominent in the social and political life of Berlin, and that great German newspapers have seriously discussed the possible candidacy of Hindenburg for the presidency of the republic. Therefore—if for no other reasons—is it logical and profitable to delve into the mazes of the German Constitution, the most notable document that the after-war time has produced east of the Rhine.

The official text, as lying before me, is published as a pamphlet of forty-seven pages. The moment we open it we are struck by the import of the second article; the more so, because the first one—a proclamation of the republican form of government—consists of only twelve words. According to this second article the German Republic can legally extend her boundaries only if the population of the territory that is to be added so desires. Express reference is made to the right of self-determination. Evidently the Germans esteem highly at least one of Mr. Wilson's ill-fated Fourteen Points; and while opinions may differ as to whether that article evinces sound statesmanship, no one will deny that the average American citizen has expected nothing of the kind to come forth from the National Assembly in Weimar.

In addition to the desire of those who inhabit a territory the incorporation of which may be intended, changes of boundaries (barring frontier rectifications in uninhabited tracts of land) require

the passage of a special law (Article 78); and this brings us at once to a consideration of the legislative machinery as now existing in the German Republic.

The "Reichstag," which we must not confound with the "Reichsrat," is still the country's legislature. It consists of representatives of the people, whom the male and female citizens over twenty years of age have elected for four years (Articles 22 and 23). Generally speaking, "the laws of the realm are decided upon by the Reichstag" (Article 68), and no express concurrence of a council or an upper chamber is thereby required. Nevertheless the elected legislators are not always to have their sweet will. For article seventy-three prescribes:

"A law passed by the Reichstag must be referred before its proclamation for final decision to the people, if the President of the Republic so decrees within a month.

"A law whose proclamation is deferred at the request of at least one third of the Reichstag must be submitted to the people for final decision if one twentieth of the qualified voters make such proposal.

"A decision by the people shall further be resorted to if one tenth of the qualified voters have expressed the desire that a certain project of law be submitted for enactment. A fully elaborated bill must be the basis of such desire. The Government must lay this bill before the Reichstag and explain its own stand regarding it. The decision by the people shall not take place, if the desired bill is accepted by the Reichstag without alteration.

"Concerning the budget, tax laws, or salary regulations only the President of the Republic may ask for a decision by the people."

Furthermore, the Reichsrat (literally translated: Council of the Realm) has the right to protest against any law the Reichstag may pass. If such protest takes place, the law returns to the Reichstag for reconsideration. Should nevertheless no agreement be reached between the two bodies, then the President of the Republic may within three months refer the disputed points to the people for final decision. In case the President fails to make use of this prerogative, then the law is considered as *not* decided upon, unless the vote in the Reichstag against the protest of the Rat has revealed a two-thirds majority; when the majority was so great, then the President must proclaim the law within three months, or else have recourse to a plebiscite (Article 74).

In this connection we should not overlook that the power of the people to annul a decision of the national legislature does exist

only under the condition that a majority of those who have a right to cast their vote in the plebiscite actually make use of that right (Article 75).

The whole scheme is no doubt a little complicated; but it is a serious attempt to attain the best laws possible, even where opinions conflict and are difficult to reconcile.

The Reichstag does not only legislate. It may also depose the Chancellor or the ministers through an expression of lack of confidence; or if one of these should break the law of the country, the legislature may initiate impeachment proceedings against him. Even the President of the Republic may thus be impeached, and while the Reichstag cannot depose him, it may make his deposition subject matter of a plebiscite. To express lack of confidence in the government or a member of the government, a majority vote is considered sufficient. However, when bills of impeachment are in question, or the removal of the President from office, then the decisions of the Reichstag require a two-third majority (Articles 43, 54 and 59). Thus while the Reichstag still holds in its grip the pursestrings of the country, as it did (together with the Federal Council) in the times before the war, it does not need now to go to the length of refusing necessary funds in order to make its will prevail over any views within the executive branch of government.

The "Independent Socialists" have already attempted to oust the cabinet through a motion to express lack of confidence into the government. But on the 3d of July this motion was lost; there were only 64 ayes out of 379 votes.

Now how about the *Reichsrat*? This term was before the war the name for that elected legislature of *Austria* which there roughly corresponded to the Reichstag of the German Empire. But in the new German constitution "Reichsrat" designates a body of councilors that may be considered a successor to the former Bundesrat or Federal Council. In this Council, as now constituted, every one of the several States composing the Republic has at least one vote, while no State is allowed more than two fifths of all votes (Article 61); and there is a movement on foot to equalize approximately the size of the States, and consequently their representation in the Reichsrat. We should not overlook the fact that the members of this body are not elected by the people. They are sent by the State governments or (in the case of Prussia) in part by Provincial Administrations (Article 63) to represent them in the *administration* of the realm or Reich (Article 60), and at the same time to supervise *legislation* in the indicated way.

The President of the Republic is elected by popular vote (Article 41) for seven years (Article 43), and keeping in close touch with Reichstag and Reichsrat and the President, have the Chancellor and the ministers to pursue their difficult duties. As their tenure of office depends no less on the pleasure of the Chief Executive by whom they have been nominated (Article 53), than on the confidence of the Reichstag, it is easy to see the stage set for grave moments; for it is always hard to serve more than one master. But, of course, other countries are also subject more or less to serious governmental crises. The French Republic especially is known for her governmental instability.

Stability is also largely a question of leadership. Will the new Germany produce in time forceful and clear-sighted leadership—a leadership that will prevent waste of energy and possible disruption of the complex organism? Only strict economy of political energy will yield prompt spiritual and material recovery from the consequences of the war tragedy and achieve that salvation for which the masses cry from out their wretchedness.

II.

In that part of the Constitution devoted to education it is expressly stated that the schools should strive to develop the character of the pupils in the spirit of the German nation (*Volkstum*) and of international conciliation, and that care should be taken by the instructors not to hurt the sentiments of those who differ in opinion. Religious instruction is to be given under avoidance of official compulsion for either teachers or pupils, though the latter shall have to heed in this respect the decision of their parents or guardians; furthermore, at the end of his period of obligatory school attendance each pupil shall receive a printed copy of the country's constitution (Articles 148 and 149).

The last named of these provisions seems to have for purpose the attainment of so general a familiarity of the common people with the new constitution, as to make rare the violation of its terms. And the masses of course show always the greatest interest in the discussion of the political position of each individual citizen. Beside the usual guarantees relative to freedom of movement, speech, press, and assembly (Articles 111, 118 and 123), we find it laid down, for example, as a principle that the political rights and duties shall be the same for men and for women (Article 109).

There is also a passage (Article 113) for the special benefit of the non-German citizens; this article decrees that "those elements

of the people who speak a foreign language must not be impeded through legislation or administration in their free ethnical development, especially not as to use of their mother tongue in instruction, or such use in the internal administration, or in the dispensation of justice." And beside the ethnical diversity is also the people's division in social classes made an object of special mention and regard. The economically independent middle class in agriculture, industry and trade is to be assisted through legislation and in administration and "is to be protected against becoming overburdened or absorbed" (Article 164); while wage labor is put "under special protection" of the "Reich" or realm. (Article 157—Here as in many other cases the constitution does not speak of the "government," thus giving directness to the role of the Reichstag and the Reichsrat.)

It need hardly be mentioned in passing that in strong contrast to this recognition of classes and class interests are the principles of our two leading parties. Senator Harding, in his speech accepting the Republican nomination, exclaimed:

"The manifest weakness in popular government lies in the temptation to appeal to grouped citizenship for political advantage. There is no greater peril. The Constitution contemplates no class and recognizes no group. It broadly includes all the people, with specific recognition for none, and the highest consecration we can make to-day is a committal of the Republican party to that saving constitutionalism which contemplates all America as one people and holds just government free from influence on the one hand and unmoved by intimidation on the other."

True enough, our constitution knows no social classes; but they exist in fact just the same, however vague and indistinct and smudgy here or there may be the boundary lines between them. Whether or not it is best to mould the basic law of a country in the manner that gives so much satisfaction to Mr. Harding (and presumably also to Mr. Cox), whether close cooperation of all can thus be reached most safely, that is a question which the future will decide in the light of such legislative experiments as, for example, that of Germany.

But let us consider the German experiment. Before showing how over there the protection promised to the laboring class is to be carried out, we may record some blows dealt in the face of the capitalist. Namely, Article 155 of the constitution decrees the abolition of the entailed estates and makes it the duty of every landowner to work and exploit his property; it subjects the sources of exploitable power in nature and the treasures of the soil to

supervision by the state, and determines in addition to all this that "*any increase of land value, arising without investment of labor or capital, must be used in the interest of the public.*" Surely, it's a pity that Henry George is no longer among us to comment on these innovations.

Immediately thereafter (Article 156) we learn that the Reich, wherever public interest is involved, has the right of "socialization," that is to say, the right to transfer by way of legislation economic property from private to public or semi-public ownership and control. The Reich may also in case of pressing necessity decree the consolidation of certain economic enterprises or organizations for the purpose of common management on the principle of self-government, insuring all producing elements (i. e., employers and employees) participation in such management.

Much will depend on it what use the legislature and the government are going to make of these rights. Extent and detail will be closely watched by economic and political experts the world over. So far, according to press dispatches, special committees have been constituted to delve into the preparatory work for the socialization of the following industries: coal, iron, potassium, power production and building trades. But that is held to be merely the beginning of the reformation.

By the way we may perhaps point out that we have here to deal with a topic in which the American Federation of Labor has manifested intense interest. After long and animated debate the Montreal convention of last June passed a resolution in favor of state ownership and democratic management of railways. The division took place in an uproarious tumult and revealed 29,059 against 8349. Frank Morrison led the forces of the majority, while Gompers was in opposition.

To protect labor the constitution prescribes furthermore that every German should be given opportunity to work, and that in so far as that is not possible "his necessary support shall be taken care of" in a way to be defined by law (Article 163). This is an attempt to counteract an evil on which a certain I. W. W. agitator has dwelled as follows:

"If through an improved process, the use of a better machine, or overproduction, his (i. e., the wage earner's) services are no longer needed, he may be discharged; and if he can find no other master before his slender savings are exhausted, he should starve in silence and die with the dignity befitting his high estate as a free man."

A counterpart to the poor chap who would like to work but can find no job is the striker. What does the German constitution say about the right to strike? We meet here with the distinction between moral and legal duty. Morally every German has "without prejudice to his personal liberty" the duty to use his intellectual and physical strength in the interest of public welfare (Article 163); but "legal compulsion is only admissible to enforce endangered rights or to serve surpassing exigencies of the public weal" (Article 151). The text of these stipulations leaves a good deal to later interpretation by the government and the courts of justice. They read much like platform planks proclaimed by our National Conventions.

One of the most notable and novel features of the constitution is doubtless the long article 165, devoted to those Industrial Councils which are to supplement the Governmental care for the laboring classes. Within certain limits these Councils may be compared with certain industrial councils sporadically existing in our country. The article is difficult to epitomize or to translate. It may perhaps be rendered as follows:

"The workingmen and employees are called upon to take part with equal rights and in cooperation with the employers in the regulation of wages and working conditions, as well as in the whole economic development of the productive forces. The organizations of both sides and their agreements are given recognition.

"For the protection of their social and economic interests the workingmen and employees shall receive legal representation in Workers' Trade Councils as well as in Workers' District Councils (which latter shall be organized according to economic districts) and in a National Workers' Council.

"The Workers' District Councils and the National Workers' Council shall meet with representatives of the employers or otherwise interested groups in District Economic Councils and a National Economic Council, in order to discharge all economic tasks and to cooperate in the execution of the laws relative to socialization. The District Economic Council and the National Economic Council are to be formed so as to provide for representation therein of all important professional interests, according to their economic or social importance."

Then follows a paragraph explaining how the National Economic Council may influence economic legislation, after which the article continues:

"The Workers' Councils and the Economic Councils may have

conferred upon them the powers of control and administration in the fields assigned to them. Organization and task of the Workers' Councils and of the Economic Councils, as well as their relationship to other self-governing social bodies shall be exclusively within the competency of the 'Reich.'"

Evidently the makers of this constitution were anxious to prevent dictatorship or anything approaching dictatorship on the part of any class or clique whatsoever. The spirit of compromise and tolerance in which this work has been conceived will prevent oppression of those factions who are not in power; but if this spirit is carried too far—perhaps it has not been carried too far—it will deprive the government of strength and stability. We have touched already above upon this danger of instability.

In conclusion a word of warning. While the modernization of Germany should be for us an object of greatest interest, we should at the same time, not overlook that political institutions can not always be transplanted from one continent to another with impunity. The frequent appeal to the masses, and the power increase of the wage earner will possibly be good for Germany. We do not know yet. But if we should indulge in a hurry—attempt to follow suit, what undesirable influence would then be vested in the illiterate negro of our South and in other illiterates that unfortunately exist within our boundaries? We may grant that the votes of the Southern negroes are never counted; *yet sooner or later they will be counted to the deep regret of many white minorities who do not and will not want to submit to superior numbers.* Is it not so?

Therefore, whatever importance may be justly ascribed to Germany's nation-wide plebiscites or to her ubiquitous Workers' Councils, let us proceed only slowly and gradually and cautiously with any attempt to amend the constitution of these United States.