



Volume 4. Forging an Empire: Bismarckian Germany, 1866-1890

Bismarck's "Putbus Dictations" on Germany's Future Constitution (October-November 1866)

As the historian Otto Pflanze has noted, the idea that Bismarck drafted the constitution of the North German Confederation in just two days in early December 1866 is among the first myths that fuelled Germany's Bismarck cult. As this document shows, the prehistory of the constitution was somewhat longer, though its most intensive phase was in October and November 1866. The combination of foreign crisis, war, and domestic political maneuvering in the spring and summer of 1866 had shattered Bismarck's nerves, and to restore his health he had retired to the village of Putbus on the Baltic coast. There, he received, edited, and combined initial drafts sent or brought to him by a team of aides and associates. As his thinking evolved, Bismarck dictated his thoughts to his amanuensis Robert von Keudell. As we read in the following excerpts from those dictations, Bismarck's foremost concern was the distribution of power – to Prussia's advantage, but in ways that reconciled the forces of German nationalism and particularism and left the path open for the southern German states to join the new Germany. The constitution that we see here in embryonic form was then drafted between December 1 and 8, after Bismarck returned to Berlin. But Bismarck's full powers of persuasion were required before it was passed, with many amendments, by the Reichstag of the North German Confederation in the spring of 1867. This constitution was adopted, with minor changes, by the German Empire after unification in 1871.

I. Thoughts on the Formation¹ of the North German Confederation [Bismarck's Putbus Memorandum, October 30, 1866]

Is [Karl von] Savigny familiar with the current drafts of the constitution of the North German Confederation? [. . .]. By consulting them, he could gain a clear idea of what he may find objectionable in them. They are too biased toward a centralized federal state to allow the future accession of the South Germans. In form, it will have to tend more toward a confederation of states; in practical terms, however, it can be given the character of a federal state through the use of elastic terms that are seemingly inconspicuous but actually far reaching in implication. A Federal Council², not a ministry, will act as the central authority; and here I believe we will fare rather well if we initially follow the system of voting used in the old German Confederation.

We will have to act fast to transfer to the central institutions those matters that fall under their legislative jurisdiction. We will adhere to the program announced before the war, i.e., that

¹ *Gestaltung*: also in the sense of molding/shaping the structural configuration of the Confederation – ed.

² *Bundestag*: here Bismarck refers to what by 1867 had been renamed the *Bundesrat*, also translated as Federal Council – ed.

federal laws shall be enacted by agreement between the majority of the Federal Council and the representative body of the people.³

The more one adheres to earlier forms, the easier the whole affair will be arranged; whereas any attempt to spring a fully formed Minerva from the head of the Presidium would lead us into the quicksand of professorial arguments. [. . .]

One can form federal ministries *à fur et à mesure* [step by step], so that their areas of responsibility come into being on a practical level; one will have to start with the ministry of war by temporarily transferring the work to the Prussian Ministry of War until the federal constitution is completed, and this interim solution can be perpetuated infinitely. In my view, the remaining central authorities for trade, customs duties, railways, etc., will best be staffed by specialist commissions comprised of three to five members appointed by the governments and elected by the Federal Council. These commissions will edit the materials for legislative processing and for the votes of the Federal Council and the Reichstag. Allowing the latter to consist of two chambers would make the mechanism too cumbersome as long as a Federal Council also exists alongside it as a voting assembly, not to mention the plethora of state parliaments [*Landtage*].

I would instead suggest that the members of a single assembly [the Reichstag] be chosen through different election processes, perhaps something along these lines: half of the representatives to this body can be elected by the 100 most highly taxed persons in any given election district, with each district being expanded to include 200,000 constituents; the other half can be elected in direct elections. I do not give these matters first priority, however. The essential thing to me is: no per diem payments for [parliamentary] deputies, no members of an electoral college⁴, and no census⁵, unless it extends as far as suggested above.

II. “Tentative⁶ Views on the Constitution” [Memorandum of Bismarck (Putbus), November 19, 1866]

The composition of the Federal Council under the new German constitution will depend on whether the King of Prussia is to be granted the position of Head of the Reich or that of *primus inter pares*, first among equals in relation to the other members of the Confederation. In the former case, one could think of turning the King of Prussia into an independent factor in federal legislation, like the monarch of a constitutional state, and of giving the Federal Council (to be formed with minimal or no participation from Prussia) the status of an upper chamber within the state structure. Formally, establishing a monarchical federal state or German *Kaiserreich* will be

³ That is, the Reichstag. It is misleading to think of the Federal Council and the Reichstag as “upper” and “lower” houses in a classic bicameral parliament, as Bismarck’s subsequent remarks make clear – ed.

⁴ That is, no system of indirect voting, as in Prussia – ed.

⁵ That is, no threshold for enfranchisement based on annual taxes paid to the state – ed.

⁶ *Unmaßgebliche*: also in the sense of non-binding or preliminary – ed.

more difficult than implementing the second system, which will follow traditional federal conceptions. Therefore, the latter will be accepted more easily by the participants, even if it secures the same dominant position for Prussia. This would already be virtually accomplished if we were to link the distribution of votes not to the smaller council but rather to the plenum of the Federal Diet [of 1815-1866]. In the latter instance, Prussia would have 17 votes (if the votes of the recently annexed states were added), while the rest of the states in the North German Confederation (provided that Darmstadt kept one of Upper Hesse's original three plenary votes) would have a total of 26 votes, putting the entire number of votes at 43 and the absolute majority at 22. Thus, Prussia would attain this majority as soon as five of the smaller states voted with it. The danger that the Prussian government would, on any major issue, find itself in the minority in both the Reichstag and the Federal Council is not very likely owing to the numerical superiority of the Prussian deputies in the Reichstag; however, as an additional precaution, one also could stipulate that the consent of the federal commanders-in-chief and a two-thirds majority is required in all military matters and for changes to the constitution. According to the arrangement outlined above, these two thirds are not attainable without Prussia. In case the South Germans eventually join the confederation, this ratio would have to be maintained by increasing the number of Prussian votes to 20.

The advantages of this system consist in its dependence on traditional arrangements, which, being familiar and natural, will be more easily accepted by the governments than any new combination. The latter would have to bear an arbitrary character, just as arbitrary as the distribution of plenary votes originally was, unless one were to distribute the votes according to populations [represented] in the Federal Council as well. Such a distribution would leave the remaining governments completely silenced vis-à-vis Prussia.

If one formed a plenum of 43 votes in the manner outlined above, the governments could then nominate as many members of the assembly as they have votes, without the right to vote being made dependent on the presence of the corresponding number of delegates. Thus, Prussia would be able to nominate 17 delegates but would still be in a position to exercise 17 votes even if only one of the delegates were present. This would provide an opportunity to channel into the Federal Council (apart from the actual diplomatic representatives) the experts that it requires for each aspect of its legislative work. For example, in addition to our existing envoy to the current Federal Diet, who would act as President and perhaps be a member of our Prussian State Ministry, I am thinking of people in the league of Voigts-Rhetz, Jachmann, Delbrück, Dechend, Günther, Camphausen, a high-ranking post and telegraph official, a prominent member each of the aristocratic, industrial, and commercial circles, and others as Prussian members of the Federal Council, which would stand against the Reichstag as a ministerial bench with 43 members. By using existing institutions and the customary nomenclature, I believe that we could avoid the difficulties involved in setting against the Reichstag a ministry whose appointment might well involve competition from the German governments allied to us. Naturally, the Prussian delegates would always have to agree on how to vote, and they would jointly represent the views of the government. It would, however, still be possible for the minority of the Federal Council to plead its views publicly before the Reichstag, if it diverged from the

official bills of the majority. Indeed, under certain circumstances, Prussia might need to do this. Ministerial solidarity, of course, cannot be binding upon the representatives of the various governments, each of which may recall its delegates at its own discretion.

I do not consider the bicameral system⁷ applicable to the federal situation. The machinery would become too cumbersome, since, aside from the large number of state parliaments [*Landtage*], we will not be able to avoid having the sovereigns represented in the affairs of the Reich. As a result, with the bicameral system, the Reich would have three bodies voting by majority, and in addition to them, an executive and a military high command with independent powers. A further development of the Federal Council along the lines of an upper house may perhaps evolve historically in the future; this would have to be accompanied, however, by a sharpening of the profile of the institution of Kaiser [*Kaiserdom*] in the place of the powers exercised by the executive and commander-in-chief.

Some elements of executive power that have previously been exercised by the Federal Assembly would already have to be transferred to our King as commander-in-chief and executive authority [*Oberfeldherrn und Präsidialmacht*]. Thus, apart from the purely military powers mentioned among the original essentials, this would include the power over war and peace, mobilization, the hiring of common public officials in the customs, postal, tax, and telegraph systems; it would entail, to be sure, competition from the state governments in the form of the right to make proposals, but it would nevertheless involve an oath to the Confederation as well as discipline in the hand of the executive.

Source: “Überlegungen zur Gestaltung des Norddeutschen Bundes” [“Thoughts on the Formation of the North German Confederation”], Putbus, October 30, 1866, and “Unmaßgebliche Ansichten über Bundesverfassung” [“Preliminary Views on the Constitution”] Putbus, November 19, 1866, in Otto von Bismarck, *Die gesammelten Werke* [*The Collected Works*], ed. Gerhard Ritter and Rudolf Stadelmann, Friedrichsruh ed., 15 vols. vol. 6, nos. 615, 616, Berlin, 1924-1935, pp. 167-68, 168-70.

Original German text reprinted in Otto von Bismarck, *Werke in Auswahl. Jahrhundertausgabe zum 23. September 1862* [*Selected Works. Centennial Edition for September 23, 1862*], ed. Gustav Adolf Rein, et al., 8 vols. Darmstadt: Wissenschaftliche Buchgesellschaft, 2001, vol. 4, *Die Reichsgründung* [*The Founding of the Empire*] pt. 2, 1866-1871, ed. Eberhard Scheler, pp. 7-10, with additions provided from the private papers of Robert von Keudell as published in Otto Becker, *Bismarcks Ringen um Deutschlands Gestaltung* [*Bismarck's Struggle to Give Shape to Germany*], ed. Alexander Scharff. Heidelberg: Quelle & Meyer, 1958, pp. 241-42.

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⁷ That is, with a bicameral Reichstag as well as a Federal Council – ed.