



Volume 4. Forging an Empire: Bismarckian Germany, 1866-1890
Constitution of the German Empire (April 16, 1871)

A provisional constitution had been in effect since January 1, 1871, but it consisted of various components and required amendment after the proclamation of the German Empire on January 18, 1871. This new Imperial Constitution [*Reichsverfassung*] was passed on April 16, 1871, and came into effect on May 4. Based largely on the constitution of the North German Confederation from 1867, the empire's constitution was a mixture of monarchical and democratic elements, balancing centralizing and federalist features.

His Majesty the King of Prussia in the name of the North German Federation, His Majesty the King of Bavaria, His Majesty the King of Württemberg, His Royal Highness the Grand Duke of Baden and His Royal Highness the Grand Duke of Hesse and by Rhine, for those parts of the Grand Duchy of Hesse which are south of the river Main, conclude an everlasting Federation for the protection of the territory of the Federation and the rights thereof, as well as to care for the welfare of the German people. This Federation will bear the name 'German Reich', and is to have the following

CONSTITUTION.

Section I. Territory of the Federation

Art. 1

The territory of the Federation is comprised of the States of Prussia with Lauenburg, Bavaria, Saxony, Württemberg, 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 Line, Reuss Younger Line Schaumburg-Lippe, Lippe, Lübeck, Bremen, and Hamburg.

Section II. Legislature of the Reich

Art. 2

Within this federate territory the Reich exercises the right of legislation according to the stipulations of this Constitution, and with the effect that the Reich laws take precedence of the laws of the States. The Reich laws receive their binding power by their publication in the name

of the Reich, which takes place by means of a *Reich Law Gazette*. If the date of its first coming into force is not otherwise fixed in the published law, it comes into force on the 14th day after the close of the day on which the part of the *Reich Law Gazette* which contains it is published in Berlin.

Art. 3

For the whole of Germany one common nationality exists with the effect that every person (subject, State citizen) belonging to any one of the federated States is to be treated in every other of the federated States as a born native and accordingly must be permitted to have a fixed dwelling, to trade, to be appointed to public offices, to acquire property, to obtain the rights of a State citizen, and to enjoy all other civil rights under the same presuppositions as the natives, and likewise is to be treated equally with regard to legal prosecution or legal protection.

No German may be restricted from the exercise of this right by the authorities of his own State or by the authorities of any of the other federated States.

Those regulations which have reference to the care of the poor and their admission into local communities are not affected by the principles set down in the first paragraph.

Until further notice the Treaties likewise remain in force which have been entered into by the particular States of the Federation regarding the reception of persons expelled, the care of sick persons, and the burial of deceased persons belonging to the States.

What is necessary for the fulfilment of military duty in relation to the native country will be ordered by Reich legislation.

Every German has the same claim to the protection of the Reich with regard to foreign nations.

Art. 4

The following affairs are subject to the superintendence and legislation of the Reich:

1. the regulations as to freedom of movement, domicile and settlement affairs, right of citizenship, passport and police regulations for aliens, and as to transacting business including insurance affairs in so far as these objects are not already provided for by Art. 3 of this Constitution. In Bavaria, however, the domicile and settlement affairs, and likewise the affairs of colonisation and emigration to foreign countries, are herefrom excluded;
2. the customs and commercial legislation and the taxes which are to be applied to the requirements of the Reich;
3. the regulation of the system of coinage, weights and measures, likewise the establishment of the principles for the issue of funded and unfunded paper money;

4. the general regulations as to banking;
5. the granting of patents for inventions;
6. the protection of intellectual property;
7. the organisation of the common protection of German commerce in foreign countries, of German vessels and their flags at sea, and the arrangement of a common consular representation, which is to be salaried by the Reich;
8. railway affairs – excepting in Bavaria the arrangements in Art. 46 – and the construction of land and water communications for the defence of the country and for general transport;
9. the rafting and navigation affairs on waterways belonging in common to several of the States, and the condition of the waterways, and likewise the river or other water dues;
10. postal and telegraphic affairs; in Bavaria and Württemberg, however, only with reference to the provisions of Art. 52;
11. regulations as to the reciprocal execution of judgments in civil affairs and the settlement of requisitions in general;
12. likewise as to the verification of public documents;
13. the general legislation as to obligatory rights, penal law, commercial and bill of exchange laws, and judicial procedure;
14. the military and naval affairs of the Reich;
15. the measures of medicinal and veterinary police;
16. the regulations for the press and for associations.

Art. 5

The legislation of the Reich is carried on by the Federal Council and the Reichstag. The accordance of the majority of votes in both Assemblies is necessary and sufficient for a law of the Reich.

In projects of law on military affairs, on naval affairs, and on the taxes mentioned in Art. 35 the President has the casting vote in cases where there is a difference of opinion, if his vote is in favour of the maintenance of the existing arrangements.

Section III. The Federal Council

Art. 6

The Federal Council consists of the representatives of the members of the Federation, amongst which the votes are divided in such a manner that Prussia has, with the former votes of Hanover, Electoral Hesse, Holstein, Nassau, and Frankfurt, 17 votes,

Bavaria 6

Saxony 4

Württemberg 4

Baden 3

Hesse 3

Meclenburg-Schwerin 2

Saxe-Weimar 1

Mecklenburg-Strelitz 1

Oldenburg 1

Brunswick 2

Saxe-Meiningen 1

Saxe-Altenburg 1

Saxe-Coburg-Gotha 1

Anhalt 1

Schwarzburg-Rudolstadt 1

Schwarzburg-Sonderhausen 1

Waldeck 1

Reuss Elder Line 1

Reuss Younger Line 1

Schaumburg-Lippe 1

Lippe 1

Lübeck 1

Bremen 1

Hamburg 1

All together 58 votes.

Each member of the Federation can nominate as many plenipotentiaries to the Federal Council as it has votes, but the totality of such votes can only be given in one sense.

Art. 7

The Federal Council determines:

1. what Bills are to be brought before the Reichstag and on the resolutions passed by the same;
2. as to the administrative regulations and institutions necessary for the general execution of the Reich legislation, in so far as no other Reich law has decreed to the contrary;

3. as to defects which have made themselves manifest in the execution of the Reich laws or the above-mentioned measures and arrangements.

Every member of the Federation has the right to propose Bills and to recommend them, and the Presidency is bound to bring them under debate.

The decisions take place by simple majority, with the reservation of the stipulations in Art. 5, 37 and 78. Non-represented votes or votes without instructions are not counted. In equal divisions the Presidential is the casting vote.

In decisions upon affairs wherein, according to the rules of this Constitution, the whole Reich has not a common interest, only the votes of those federated States are counted which are interested in common.

Art. 8

The Federal Council forms permanent Committees from its own members:

1. for the army and fortresses;
2. for naval affairs;
3. for customs and taxes;
4. for commerce and communications;
5. for railways, post and telegraphs;
6. for affairs of justice;
7. for finances.

In each of these Committees, besides the Presidency, at least four of the federated States will be represented, and in the same each State has only one vote. In the Committee for the army and fortresses, Bavaria has a perpetual seat, the other members thereof as well as the members for the Naval Committee are nominated by the Emperor; the members of the other Committees are elected by the Federal Council. The composition of these Committees is to be renewed for every session of the Federal Council or every year, when the outgoing members may be re-elected.

Besides these in the Federal Council, a Committee for Foreign Affairs will be formed, comprised of the representatives of the Kingdoms of Bavaria, Saxony and Württemberg, and of two other representatives of other federated States, who will be elected each year by the Federal Council, in which Committee Bavaria will occupy the chair.

The necessary officials will be placed at the disposal of these Committees.

Art. 9

Every member of the Federal Council has the right to appear in the Reichstag, and must at his desire at all times be heard, in order to represent the views of his government, even when these

views have not been adopted by the majority of the Federal Council. No one may at the same time be a member of the Federal Council and of the Reichstag.

Art. 10

The Emperor is bound to afford the usual diplomatic protection to the members of the Federal Council.

Section IV. The Presidency

Art. 11

The Presidency of the Federation belongs to the King of Prussia, who bears the name of German Emperor. The Emperor has to represent the Reich internationally, to declare war and to conclude peace in the name of the Reich, to enter into alliances and other treaties with foreign powers, to accredit and to receive ambassadors.

The consent of the Federal Council is necessary for the declaration of war in the name of the Reich, unless an attack on the territory or the coast of the Federation has taken place. In so far as treaties with foreign states have reference to affairs which, according to Art. 4, belong to the jurisdiction of the legislation, the consent of the Federal Council is requisite for their conclusion, and the sanction of the Reichstag for their coming into force.

Art. 12

The Emperor has the right to summon, to open, to prorogue and to close both the Federal Council and the Reichstag.

Art. 13

The summoning of the Federal Council and of the Reichstag takes place once each year and the Federal Council can be called together for preparation of business without the Reichstag being likewise summoned, whereas the latter cannot be summoned without the Federal Council.

Art. 14

The Federal Council must be summoned whenever one-third of the votes require it.

Art. 15

The presidency of the Federal Council and the direction of the business belongs to the Reichskanzler, who is to be appointed by the Emperor.

The Reichskanzler can be represented, on his giving written notification thereof, by any other member of the Federal Council.

[. . .]

Section V. The Reichstag

Art. 20

The Reichstag is elected by universal and direct election with a secret ballot.

Until the legal arrangement reserved in § 5 of the Election Laws of 31 May 1869 (*Federal Law Gazette*, 1869, p. 145) has been made, there are to be elected: in Bavaria, 48; in Württemberg, 17; in Baden, 14; Hesse, south of the Main, 6 members; the total number of the members consists, therefore, of 382.

Art. 21

Officials do not require any leave of absence on entering into the Reichstag.

If any member of the Reichstag accepts any salaried appointment of the Reich, of any State of the Federation, or enters into any Reich or State office to which a higher rank, or higher salary is attached, he loses his seat and service in the Reichstag, and can only regain his position in the same by re-election.

Art. 22

The proceedings of the Reichstag are public.

Truthful reports of the proceedings in the public sittings of the Reichstag are free from any responsibility.

Art. 23

The Reichstag has the right to propose laws within the competency of the Reich, and to forward petitions which have been addressed to it either to the Federal Council or to the Reichskanzler.

Art. 24

The legislative period of the Reichstag is three years. For a dissolution of the Reichstag within this time, a resolution of the Federal Council, with the assent of the Emperor, is requisite.

Art. 25

In case of a dissolution of the Reichstag, the meeting of the electors must be called within a period of sixty days after such dissolution, and within a period of ninety days the Reichstag must be summoned.

Art. 26

Without the assent of the Reichstag the prorogation of the same may not be extended over thirty days, and it can never be repeated during the same session.

Art. 27

The Reichstag scrutinises the legality of the credentials of its members and decides thereon. It regulates its own method of business and discipline by means of a standing order and elects its President, Vice-Presidents, and Secretaries.

Art. 28

The Reichstag decides by an absolute majority of votes. The presence of a majority of the legal number of the members is necessary for the validity of a resolution.

In voting on a matter which, according to the stipulations of this Constitution, is not common to the whole Reich, only the votes of those members will be counted who have been elected in those federate States to which the matter is common.

Art. 29

The members of the Reichstag are representatives of the entire people and are not bound by orders and instructions.

Art. 30

No member of the Reichstag can at any time be proceeded against either judicially or by way of discipline, on account of his votes, or for statements made in the exercise of his functions, nor can he be made responsible in any other way out of the Assembly.

Art. 31

Without the assent of the Reichstag no member of the same may be placed under examination or arrested during the period of the session for any punishable deed except when taken in the fact or in the course of the following day.

The same assent is needful in arrest for debt.

At the demand of the Reichstag every correctional procedure against a member of the same and all investigations or civil arrests must be relinquished for the duration of the period of the session.

Art. 32

The members of the Reichstag must not receive any salary or expenses in that capacity.

Section VI. Customs and Commercial Affairs**Art. 33**

Germany forms one customs and commercial territory surrounded by a common customs frontier. Those separate parts of territory are excluded, which from their position are not adapted for inclusion in the customs area.

All articles of free trade in any one of the States of the Federation may be introduced into any other State of the Federation, and can only be subjected to a duty in the latter in so far as similar articles produced in that State are subject to a home duty.

Art. 34

The Hanseatic towns of Bremen and Hamburg, with so much of their own or of the adjacent territory as may be needful for the purpose, remain as free ports outside the common customs area until they apply to be admitted therein.

[. . .]

Section VII. Railways

Art. 41

Railways which are considered necessary for the defence of Germany or for the sake of common transport may, by virtue of a Reich law and even against the opposition of the members of the Federation whose territory is intersected by the railways, but without prejudice to the prerogatives of the country, be constructed on account of the Reich, or concessions to execute the works may be granted to private contractors, with the right of expropriation. Every existing railway board of direction is bound to consent to the junction of newly-constructed railways at the expense of the latter.

The legal enactments which have granted a right of denial to existing railway undertakings against the construction of parallel or competing lines are hereby, without prejudice to rights already gained, repealed for the whole of the Reich. Nor can such a right of denial be ever granted again in concessions to be issued hereafter.

Art. 42

The governments of the States bind themselves to manage the German railways as a uniform network in the interest of common transport, and likewise for this purpose to have all new railways which are to be made, constructed and fitted up according to uniform rules.

[. . .]

Section VIII. Postal and Telegraphic Affairs

Art. 48

The postal and telegraphic affairs will be arranged and administered for the entire German Reich as uniform institutions for State intercourse.

The legislation of the Reich in postal and telegraphic affairs, as provided in Art. 4, does not extend to those objects, the regulation of which, according to the principles which govern the North German postal and telegraph administration, has been left to definitive rules or administrative directions.

[. . .]

Art. 51

In making over the balance of the postal administration for general Reich purposes (Art. 49), in consideration of the previous difference in the net incomes obtained by the State postal administrations of the separate territories, the following procedure is to be observed for the purpose of a corresponding arrangement during the undermentioned period of transition: From the postal balances which have accrued in the separate postal districts during the five years from 1861 to 1865, an average yearly balance will be calculated, and the share which each separate postal district has had in the postal balance thus shown for the whole territory of the Reich, will be fixed according to percentages.

According to the proportion ascertained in this manner, the separate States will be credited for the next eight years after their entrance into the postal administration of the Reich, with such quotas as accrue to them from the postal balances produced in the Reich, in account with their other contributions for purposes of the Reich.

At the expiration of the eight years all distinctions cease, and the postal balances will flow in undivided account into the Reich Treasury, according to the principle set forth in Art. 49. From the quotas of the postal surplus thus ascertained during the before-mentioned eight years for the Hanseatic towns, one-half will be placed beforehand every year at the disposal of the Emperor, for the purpose, in the first place, of paying therefrom the expenses for the establishment of normal postal institutions in the Hanseatic towns.

[. . .]

Section IX. Shipping and Navigation

Art. 53

The war navy of the Reich is one united navy under the chief command of the Emperor. The organisation and composition thereof is the business of the Emperor, who appoints the naval officers and officials and into whose service they and the men are to be sworn.

The harbour of Kiel and that on the Jade Bight are military harbours of the Reich.

The necessary expenses for the establishment and maintenance of the war fleet, and the institutions in connection therewith, are paid from the Reich Treasury.

The whole of the maritime population of the Reich, including engineers and shipwrights, are free from service in the land forces but, on the other hand, are bound to serve in the Reich Navy.

The apportionment of the recruits is arranged according to the number of the maritime population, and the quota which each State thus contributes is deducted from the contingent to the land army.

[. . .]

Section X. Consular Service

Art. 56

The whole of the Consular service of the German Reich is under the superintendence of the Emperor, who appoints the Consuls after consultation with the Committee of the Federal Council for Commerce and Traffic.

Within the official district of the German Consuls no new Consulates for separate States may be erected. The German Consuls exercise the functions of a national Consul for any State of the Federation not represented in their district. All the existing Consulates for separate States are to be abolished as soon as the organisation of the German Consulates is so completed that the representation of the interests of all the States of the Confederation is recognised by the Federal Council as secured by the German Consulates.

Section XI. Military Affairs of the Reich

Art. 57

Every German is liable to military service and cannot have that service performed by a substitute.

Art. 58

The expenses and burdens of the whole of the military affairs of the Reich are to be borne equally by all of the States of the Federation and those belonging to them, so that no preferences, or overburdening of any single States or classes, are in principle admissible. Where an equal division of the burdens is not practicable *in natura*, without prejudice to the public welfare, the matter is to be arranged on the principles of equity by means of legislation.

Art. 59

Every German capable of service belongs for seven years to the standing army, as a rule from the completion of the twentieth to the commencement of the twenty-eighth year of his age; that is, for the first three of these years with the standards, and for the last four years in the reserve; then for the following five years of his life to the Landwehr. In those States of the Federation

wherein hitherto a longer period than twelve years of service altogether has been legal, the gradual reduction of such service can take place only in so far as regard for the readiness for war of the Reich army permits it.

With respect to the emigration of the reserve men only those regulations are to be applied which are in force for the emigration of the Landwehr men.

Art. 60

The effective strength of the German army in peace is fixed until 31 December 1871 at 1 per cent of the population of the year 1867, and the separate States of the Federation supply it pro rata thereof. Subsequently the effective strength of the army in peace will be determined by legislation of the Reichstag.

[. . .]

Art. 62

To cover the outlay necessary for the entire German army and the arrangements appertaining thereunto until 31 December 1871 there are yearly to be placed at the disposal of the Emperor as many times 225 thalers (in words, two hundred and twenty-five thalers) as the poll number of the peace strength of the army amounts to, according to Art. 60. See Section XII.

After 31 December 1871 these contributions must continue to be paid to the Reich Treasury by each State of the Federation. For the calculation thereof the effective peace-time strength, as provisionally settled in Art. 60, will be taken as the basis until it is altered by legislation of the Reichstag.

The expenditure plan of this sum for the entire army of the Reich and its arrangements will be determined on by the Estimate Law.

In settling the estimates of the military expenses the legal organisation of the Reich army, as laid down in this Constitution, will be taken as the basis.

Art. 63

The entire land force of the Reich will form a single army which in war and peace is under the command of the Emperor.

The regiments, etc., bear running numbers for the entire German Army. For their clothing, the ground colours and fashion of the Royal Prussian army are to be the model. It is left to the chiefs of the respective contingents to determine the insignia (cockades, etc.).

It is the duty and the right of the Emperor to take care that all the divisions of troops within the German army are numerically complete and utilisable for war, and that unity in the organisation and formation, in the armament and command, in the training of the men, as well as in the

qualifications of the officers, be established and maintained. For this purpose the Emperor has the right to convince himself of the condition of the separate contingents at all times by inspection, and to order the reformation of any defects thereby discovered.

The Emperor determines the effective strength, the division and arrangement of the contingents of the Reich army, as well as the organisation of the Landwehr; he also has the right to determining the garrisons within the territories of the Federation and to order the embodiment of any part of the army in a state of preparation for war.

For the purpose of keeping up the indispensable uniformity in the administration, maintenance, armament and equipment of all the divisions of troops of the German army, the orders issued thereon in future for the Prussian army will be communicated in a suitable manner, through the committee for the land army and fortresses mentioned in Art. 7 (1), to the commanders of the other contingents for observance.

Art. 64

All German troops are bound to obey the commands of the Emperor unconditionally. This duty is to be specified in the banner-oath.

The Commander-in-Chief of a contingent, likewise all officers who command troops of more than one contingent and all commanders of fortresses are appointed by the Emperor. The officers appointed by the Emperor take the banner-oath to him. The appointments of Generals and officers acting as Generals within the contingents are at all times subject to the approbation of the Emperor.

The Emperor has the right, for purposes of transfer with or without promotion, to select, for such appointments as are to be made by him in the service of the Reich, whether in the Prussian army or in other contingents, from the officers of all the contingents of the army of the Reich.

[. . .]

Art. 66

Where nothing to the contrary is stipulated by particular conventions, the sovereign heads of the Federation or the senates appoint the officers of their respective contingents, subject to the restriction of Art. 64. They are the chiefs of all the divisions of troops belonging to their territories, and enjoy the honours connected therewith. They have especially the right of inspection at all times and receive, besides the regular reports and announcements of alterations which take place, timely information, for the purpose of governmental publication, of all promotions or nominations among the respective troops.

Likewise they have the right to make use, for purposes of policing, not only their own troops, but also to make requisition for any other division of troops of the Reich army which may be located in their territories.

[. . .]

Section XII. Finances of the Empire

Art. 69

All the receipts and disbursements of the Reich must be estimated for each year, and be brought into the Reich estimates. These are to be fixed by a law before the beginning of the financial year, according to the following principles.

Art. 70

To provide for all common expenses, any balances of the preceding year are first of all employed, and likewise the common revenues derived from the duties, the common consumption taxes, and from the postal and telegraphic services. In so far as they cannot be provided for by these revenues they are, as long as Reich taxes are not introduced, to be met by contributions from the single States of the Federation, in proportion to their population, which contributions to the amount estimated in the budget will be assessed by the Reichskanzler.

Art. 71

The common disbursements are, as a rule, voted for one year; they may, however, in particular cases, be voted for a longer period.

During the time of transition mentioned in Art. 60, the estimates of the expenditure for the army, arranged under heads, are to be laid before the Federal Council and the Reichstag, only for their information and as a reminder.

[. . .]

Section XIII. Settlement of Differences and Penal Stipulations

Art. 74

Any action against the existence, the integrity, the safety or the Constitution of the German Reich, finally, insulting the Federal Council or the Reichstag, or a member of the Federal Council or of the Reichstag or any authority, or a public servant of the Reich whilst in the exercise of their vocation, or in reference to their vocation, by word, in writing, printing, symbolic, figurative or other representation, will be sentenced and punished in the separate States of the Federation according to the existing law, or the laws which may in future be enacted there, in pursuance of which a similar offence committed against that separate State of the Federation, its Constitution, its Chambers, or Diet, the members of its Chambers, or Diet, its authorities and functionaries, would be punished.

[. . .]

Art. 76

Differences between various States of the Federation, in so far as they are not of a private legal nature and therefore to be decided by the competent judicial authorities, will, at the suit of one of the parties, be settled by the Federal Council.

Constitutional differences in those States of the Federation in whose constitution no authority for settling such disputes is provided, are to be amicably arranged by the Federal Council at the suit of one of the parties, or if this should not succeed, they are to be settled by way of Reich legislation.

[. . .]

Section XIV. General Stipulations

Art. 78

Alterations in the Constitution take place by way of legislation. They are considered as rejected if they have 14 votes of the Federal Council against them.

Those provisions of the Constitution of the Reich by which certain rights are established for separate States of the Federation in their relation to the community, can only be altered with the consent of the State of the Federation entitled to those rights.

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