

INSTITUTE FOR GOVERNMENT RESEARCH

STUDIES IN ADMINISTRATION

THE GOVERNMENT AND ADMINISTRATION OF GERMANY

BY

FREDERICK F. BLACHLY, PH. D.

AND

MIRIAM E. OATMAN, A. M.



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DIRECTOR'S PREFACE

There are in existence a number of excellent works dealing with the government of the chief countries of Europe. These works have for their prime purpose to describe the political systems of these countries broadly viewed. In no case do they attempt to consider in any detail the internal organization and methods of procedure of these governments as operating concerns. While meeting in a reasonable way the wants of the general student of government, they largely fail to give that information regarding foreign practices which is urgently needed by those interested in the more technical problems of public administration. In studying these problems as they concern the conduct of public affairs in the United States the Institute for Government Research has, from its organization, been handicapped by its lack of knowledge regarding the manner in which foreign governments have handled them. That these governments have much of value to offer in the way of the principles adopted by them in distributing governmental powers, territorially and functionally, in providing for the determination of and in making provision for financial needs, in auditing and otherwise controlling expenditures, in accounting for the receipt and disbursement of public funds, in adjusting relations between the administration and the courts, in providing for the administration of special business enterprises, and in many other respects, there is no doubt.

To furnish such information, the Institute has undertaken the preparation of a series of volumes, of which the present is the first to be completed, having for their purpose to describe and evaluate the administrative systems of the chief countries of Europe. Though the emphasis is placed upon matters of administration, these volumes will necessarily give an account of the governmental systems of the countries considered; since the administrative system of a country can only be understood as viewed in relation to the social and political philosophy back of it, the constitutional structure within which it works, and the ways in which it is affected by political action.

These studies cover not only the central government and its administrative functions, but also all subordinate units; since it is

felt that a view of the system as a whole, and of the interrelationships of its various parts, is necessary to a clear understanding and full appreciation of the operation of any single unit of government. The present study has approached its material topically, and has endeavored to make each chapter as nearly as possible a complete exposition of a particular subject, even though this has necessitated a certain amount of repetition, since quite often the same fact is significant in several different relationships.

The authors owe thanks to many friends for criticism and helpful suggestions. They desire to acknowledge the aid and coöperation of the Congressional Library and of many members of its staff. Their thanks are due to Dr. Bertling and Dr. Grossmann of the Amerika-Institut in Berlin, for valuable assistance in gathering preliminary information for this book. They deeply appreciate the kindness of Dr. Viktor Bruns of the Institut für ausländisches öffentliches Recht und Völkerrecht, and of Dr. Friedrich Schiller, both of whom have sent them helpful ideas and important materials. Particular gratitude is due to Dr. Schüle of the same Institut, who has performed the laborious task of reading the entire manuscript, with the exception of Chapter X, and offering numerous helpful criticisms. Referentin Frau M. Wolff has kindly assisted in the difficult matter of deciding upon English equivalents for certain German titles. The friendly assistance of Dr. Walter Norden, who read Chapter X and made valuable suggestions, is gratefully acknowledged. Other friends on both sides of the Atlantic have supplied stimulating criticism and useful materials. The authors assume full responsibility, however, for both the factual content of the book, and the critical estimates of the various institutions which it examines.

An important feature of the present work, and the same will be true of the volumes to follow, is that its preparation has been based upon original sources, constitutions, statutes, ordinances, administrative orders and decisions, and the like, to which careful reference has been made in the footnotes. Though the work is specially addressed to students of administration, it should, nevertheless, be of value to students of government and politics generally, and in fact all having to do with or interested in the conduct of governmental affairs.

W. F. WILLOUGHBY.

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THE GOVERNMENT AND ADMINISTRATION OF GERMANY

CHAPTER I

HISTORICAL BACKGROUND OF THE GERMAN REPUBLIC

Germany today has a federal form of government ; or, as her own writers express it, she is a federated state (Bundesstaat), rather than a mere union of independent states (Staatenbund), or a completely unified state (Einheitsstaat).¹ Although this federation has been accomplished but recently, and as the immediate effect of an unsuccessful war and a popular revolution, yet it is the logical result of tendencies toward union which have been operating over a very long period.

Under the Holy Roman Empire there was at least an appearance of federation, even though the allegiance paid by the individual states to the Emperor was of the most equivocal sort. When the Empire was destroyed by Napoleon, there existed some three hundred petty "sovereign states," with a great variety of governmental organizations. Napoleon united many of these minute states into larger ones. The Congress of Vienna finally recognized thirty-eight states. Under authorization of the Congress, these organized themselves into a loose confederation (Deutscher Bund), the sole organ of which was a Diet composed of envoys from the governments of the various states. Though the Diet accomplished but little, since unanimity was required on important questions—an impossible condition—yet it was significant as an expression and a symbol of the growing desire for German union. A practical step toward the accomplishment of this desire was the formation of the customs union (Zollverein), which, beginning in Prussia, soon included a

¹ Meissner, Dr. Otto, *Grundriss der Verfassung und Verwaltung des Reichs und Preussens*, p. 5.

large part of Germany in a free-trade league. Meanwhile, many states were replacing their absolute governments by constitutional governments.

The revolution of 1848 resulted in an attempt to form a federated nation, to include German Austria. The proposed constitution provided for a bicameral parliament and a responsible ministry. The nation was to be an empire in form. The King of Prussia, Frederick William IV, refused the imperial crown; reactionary movements set in everywhere; the scheme of the empire collapsed. Many states lost their constitutions, but in 1850 Prussia was granted one by her king. Meanwhile, Austria had recovered her strength and had worked for the restoration of the old confederation, which she finally controlled. She looked upon Prussia as a rival to be crushed.

In 1862 Bismarck's period of power began. By "blood and iron" he secured Schleswig and Holstein in a war with Denmark in which Austria had temporarily allied itself with Prussia. The rupture with Austria led to war with that country in 1866. This war ended in the dissolution of the Germanic Confederation and the establishment of a North German Confederation under Prussian leadership, which omitted only Austria and the four states south of the River Main. Schleswig and Holstein were annexed to Prussia, as were three western states and the city of Frankfurt.

Meanwhile, Prussia had been introducing many social and administrative reforms, the latter of which have formed the foundation of her present administrative system and have served in many respects as models for the whole of Germany. The reforms of Baron von Stein, whose influence led to the abolition of serfdom in 1807 and to the reorganization of local government in the direction of greater autonomy and a broader basis of citizenship, and of Count Hardenberg, who carried social amelioration still further and strengthened and improved central administration, as well as the other reforms which were introduced in the course of the nineteenth century, unrelated and even inconsistent as these were in some particulars, have left lasting marks not only in Prussia, but throughout the Reich as well.

The war with France in 1870 aroused great patriotic fervor throughout the German states, so that those south of the Main entered the Confederation by treaty. In the prevailing enthusiasm the

idea of a German Empire was revived with success; and in 1871, during the siege of Paris, the King of Prussia was crowned as German Emperor at Versailles. Alsace-Lorraine, which was ceded by France at the end of the war, was made an imperial province. During the same year a revision of the constitution of the North German Confederation was adopted as the fundamental law of the Empire.

This constitution, which remained in effect until the Revolution of 1918, and was not formally repealed until the adoption of the present Constitution, provided for a hereditary Emperor, the king of Prussia, whose powers were very great. The Chancellor was appointed by the Emperor and responsible only to him; other ministers were mere secretaries of state. The Federal Council, or Bundesrat, represented the component states of the empire; the members voted under instruction from their governments, which remained sovereign in their own domains. The powers of this council were "not only legislative, but administrative, consultative, judicial, and diplomatic."³ The powers of the popular assembly, or Reichstag, on the other hand, were very limited. Although it could pass laws, they could be vetoed by the Bundesrat; since any law, to go into effect, required a majority in both houses. Even the power over the purse, which is commonly considered the ultimate weapon of popular houses, was lacking, since the chief sources of revenue were permanently fixed and the military appropriations, by far the most important, were voted for a period of years. The government was in no sense responsible to the Reichstag; the Chancellor might even refuse to reply to interpellations.

Despite this illiberal and autocratic form of government, the democratic principle had made considerable progress in Germany, even before the Revolution. Thus, in 1906 the members of the Reichstag were granted modest salaries; a measure which opened its seats to others than the rich. Various social reforms, especially insurance schemes against accidents, sickness, and old age, although designed by the government to prevent discontent and discourage socialistic agitation, were yet in themselves steps toward economic democracy.

³ Ogg, F. A., *The governments of Europe*, p. 217 (1913).

Before the opening of the World War, then, Germany had achieved political union and a certain measure of political and social democracy. By the Constitution of 1919 the union was knit more closely and the democratic principle was developed and emphasized.

During the course of the war attempts were made to modify the old régime in order to permit a greater popular participation in government. Late in October, 1918, a constitutional amendment was passed, making the Chancellor responsible to the Bundesrat and the Reichstag and requiring that he have the confidence of the latter body. The Chancellor was also made responsible for the political acts of the Emperor. This and other reforms, however, came too late to prevent the Revolution. On November 9, the Emperor was forced to abdicate. On the same day the Social Democrats proclaimed a German Republic, headed by one of their foremost members, Ebert.

After various endeavors had been made to organize a new government, and the usual rivalries for control had manifested themselves, a National Constitutional Assembly was elected in January, 1919. The Assembly adopted a provisional Constitution on February 10, under which Germany was governed with Ebert as President, until the permanent Constitution was adopted and promulgated in August. Ebert continued in the presidency^{*} until his death early in 1925, when the first popular presidential election was held.

The Assembly continued to sit until May, 1920, in order to write the election law and other laws which were needed to enable important constitutional provisions to become effective. The elections for the Reichstag, which were then held, completed the formal transition from the old régime to the new.

The administrative system of Germany, as of all other countries, cannot be understood without a knowledge of its constitutional basis. Such aspects of the present German Constitution as have particular significance from the standpoint of administration will, therefore, be noted briefly in the course of this study.

^{*} Article 180 of the Constitution provided that until the first national President should enter upon his duties, the office should be administered by the national President elected under the provisional government.

The first article of the Constitution declares that the German commonwealth (Reich)* is a republic, with supreme power derived from the people. This republic is governed on a parliamentary basis, with a popularly elected legislative assembly (the Reichstag), to which the Cabinet, appointed by the popularly elected President, is responsible. As will be seen, the powers of the central government are very great and those of the member states are relatively weak. The long struggle for democracy has, thus, resulted in a popularly controlled government; the struggle for unity, in a close federation with strong central powers.

* The word "Reich" will be employed in the course of this book, rather than its literal equivalents, empire, realm, or commonwealth. This usage would seem to be justified by the example of many English and American writers. It is also in harmony with the feeling of the German Constitutional Convention, which wished to retain the name Reich, not because it expressed the nature of the new government, but because of its historical associations. During the debates several other names were suggested, as, "The United States of Germany," "The German Republic," etc. Arguing for the old name "Reich", Dr. Preuss, who prepared the original draft of the Constitution, said: "But, gentlemen, the word, the thought, the principle of the Reich has for our German people such a deep rooted emotional value, that I think we could not defend the giving up of the name. To the name 'Reich' there is attached the tradition of a hundred years, there is attached the whole yearning of a divided people for a national unity, and we should be doing the greatest injury to these deep rooted feelings, without grounds and without reason, if we should give up this word which represents a unity obtained with difficulty only after long disappointments."—*Verhandlungen der Verfassungsgebenden deutschen Nationalversammlung*, Band 334, p. 285.

CHAPTER II

THE REICH AND ITS CONSTITUENT STATES

The first Article of the Constitution of the German Commonwealth declares that the Reich is a republic, with supreme power derived from the people. The second Article declares that the territory of the Reich consists of the territories of the German states (Länder). Thus the Reich is established as a federal government.

In order to prevent the political and administrative difficulties which might easily arise if some of the states composing the republic were themselves monarchies, or if the suffrage qualifications in certain states were much more stringent than in others, the Constitution provides¹ that every state must have a republican constitution; that the representatives of the people must be elected according to the principle of proportional representation, by the universal, equal, direct, and secret suffrage of all German citizens, and that they shall have the usual privileges and immunities;² and that the state cabinet must have the confidence of the representatives of the people. The last named requirement is equivalent to demanding that every state shall institute a parliamentary system of government, a demand which was perhaps inevitable under the circumstances, but which has given rise to a good deal of dissatisfaction in some quarters.³ It has been suggested that the smaller states, in particular, should have been left free to establish other forms of government, better adapted to their size and to their needs than the somewhat cumbersome parliamentary system. However, this system is now in effect in all the German states.

The Constitution requires that the principles which govern the election of the popular representatives are also to apply to municipal elections; but by state law a residence qualification of not more than one year in the municipality may be imposed for such elec-

¹ Constitution, Article 17. The Constitution (Reichsverfassung) will be referred to in this book as RV.

² Articles 36-39.

³ See the discussion of the Koch-Weser proposals, later in this chapter.