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HOW GERMANY IS GOVERNED

Democratic Theory Nullified by Autocratic Practice--The Real Meaning of the Reichstag and Bundesrat.

By George M. Priest, in "The Nation"

RECENT months have called forth many queries and many opinions concerning the German system of government. The queries spring in part from a spontaneous, unprejudiced desire for information, in part from a confusion worse confounded by the divergence of opinions that have been expressed, by the conflict of two assertions, apparently irreconcilable, that Germany enjoys a democratic form of government and that it is ruled by the iron hand of an autocrat. In view of the present conditions, it may be well to re-examine the chief factors in German government—German suffrage, the rights and the power of the Reichstag, of the Bundesrat, and of the Emperor—and thus at once to offer useful information to the inquiring and to reconcile the conflict of divergent opinions. We shall see that this conflict has arisen, chiefly, because the authors of the one or the other assertion have considered only the theory or only the practice of German government. For it can be proved, like a problem in mathematics, that in theory the German Imperial Constitution grants the principle, and affords the means, of representative popular government, but that in practice Germany to-day is virtually an absolute monarchy.

I. Suffrage in Germany is of two kinds, national and state. The people of Prussia, for example, use one system of suffrage in electing their representatives in the Prussian legislature and another in electing members of the national popular assembly, the Reichstag. Only German, or national, suffrage concerns us here.

Between 1867 and 1871 the states of Germany were divided into 397 electoral districts equal in population and in their representation in the Reichstag; each district contained 100,000 inhabitants, and each received the right to elect one representative. At the same time, it was established that the representatives of all districts should be elected by the direct universal suffrage and secret ballot of male citizens over twenty-five years of age. Thus, German suffrage was not restricted by any qualification of property or education, and such restrictions have never been placed upon it. The principle which underlies it is extremely liberal. But in the course of time the value and power of the individual vote have fallen or risen according to shifting conditions within the electoral districts. These districts are still equal in their representation in the Reichstag—each still elects one representative—but the principle of one representative to every 100,000 inhabitants obtains no longer, because the boundaries of the electoral districts have never been altered and the population of many districts has increased or decreased enormously. Urban districts have grown and, owing chiefly to removals from the country to the city, many rural districts have lost thousands of their former inhabitants. Neither increase nor decrease has affected representation in the Reichstag. Berlin's population has risen since 1867 from 600,000 to well over 2,000,000, but Berlin still elects only six representatives. A Berlin district, once of 100,000, now of 697,000 inhabitants, has only one representative in the Reichstag; another (rural) district, once of 100,000 now of 59,000 inhabitants, also has one. A vote in the Berlin district has less than one-eleventh of the power which a vote in the other districts enjoy. Discrepancies like this exist in various parts of the Empire.

When champions of German suffrage assert that Germany enjoys a democratic type of suffrage, they see only the principal, theoretically employed, of universal suffrage without the property or educational qualifications laid down in other countries. In practice German suffrage is not democratic in the sense of "equal for all" so long as the value of the vote varies as we have seen. Indeed, while the electoral districts remain unchanged, the German system grows less and less democratic, because the relative power of the few who continue to live in the winning rural districts is increasing constantly.

By means of this suffrage the German people elect their 397 representatives in the Reichstag, or "Imperial Parliament," for a term of five years; these representatives form the one body in German government which re-

presents and expresses the popular will. The Reichstag enjoys in theory various rights of possible importance which it either fails to, or cannot, exercise with effect. It has a right to initiate legislation, but in actual practice it almost never does. It has a right to ask the Government for reports, but no means of enforcing compliance with its request. It has a right to express its opinion on the management of affairs, but it cannot compel a consideration of its opinion, because it has no control over those in power. The Emperor rules by right of heredity, liable to no processes of law for any offence, and he appoints and dismisses solely in accordance with his own volition, the Imperial Chancellor and the other chief Imperial officers; ministerial responsibility to the people through the popular assembly does not exist in Germany. Thus these rights of the Reichstag have no practical value.

But the Reichstag does possess rights of fundamental importance. Its consent is necessary to all loans, to all treaties which involve legislation, and to the budget. The Reichstag must give its consent before any bill can become law. In theory, therefore, the representatives of the people can make themselves masters of any situation. They can formulate a bill to suit their own tastes and force the adoption of their bill by refusing meanwhile to consider any other proposals. The German people, through their representatives in the Reichstag, have it in their power to dictate any and all legislation in the German Empire. The idea of popular sovereignty is to this extent a corporate part of the German Constitution.

On the other hand, if the Reichstag refuses to pass a bill proposed by the Government, the Bundesrat and the Emperor, on mutual agreement, may dissolve the Reichstag and order new elections on the chance of obtaining a more amenable assembly. If the newly-elected Reichstag should also prove rebellious, it, too, may be dissolved, and so on indefinitely; there is no constitutional limit to the number of possible dissolutions. But an amenable assembly has always been chosen after a single crisis of this kind. The Reichstag was dissolved in 1878, 1887, 1893, and 1906, and after each dissolution a new assembly was elected which passed the bill that wrecked its predecessor. Thus the theory of popular sovereignty has repeatedly broken down in German practice.

Since the German people can, through the Reichstag, control all Imperial legislation, the people themselves are responsible for their government. If they do not exercise control, if in practice they reject the opportunity of self-government granted to them by the German Constitution, they force us to draw striking conclusions concerning them. In the first place, they prefer to trust the wisdom of a few who compose the Government rather than to trust their own collective wisdom. They affirm in this way their satisfaction with, and their belief in, a form of government which concentrates power in the hands of a few; over these few, as we shall see, the people have no direct control whatever. Above all, in voting to accept the will of a few rather than to assert and accomplish their own will, the German people make manifest that they prefer to be governed rather than to govern themselves.

II.

The Bundesrat, or "Federal Council," differs from the Reichstag in many respects. The Reichstag, arising from the people and chosen directly by the people, is the German congress to the idea of popular sovereignty. The Bundesrat preserves the monarchical principle, though in a modified form. The Bundesrat is composed of representatives, not of the people nor of the state legislatures, but of the rulers of the various German states; that is, in twenty-two of the twenty-six states, of an hereditary monarch; in Alsace-Lorraine, of the Imperial Viceroy, who is appointed by the German Emperor; in the Imperial free cities, Bremen, Hamburg and Lubeck, of the Senate, which is elected directly or indirectly by the people. Each of these rulers appoints to the Bundesrat a certain number of representatives in accordance with provisions of the Imperial Constitution, and each ruler gives his

representatives exact instructions on how they are to vote on every question that is to come up in the Bundesrat. As each ruler naturally gives the same instructions to all his representatives, the votes of each state are cast as a unit; the Imperial Constitution further insures this method of procedure by requiring each state to vote thus. The Bundesrat represents, or personifies, as it were, in an assembly, the whole body of German rulers.

If a proposal is laid down the Bundesrat on a subject not included in the instructions, the representatives must refer the subject to the rulers of their states and must await further instructions before they cast their votes. It is inconceivable that a representative should ever vote contrary to his instructions because, in the first place, his office which depends in every feature of its tenure entirely upon the will of his ruler, would in such case be terminated immediately, and, secondly, because the Imperial Constitution requires that a representative shall vote as he has been instructed. The actual voting members of the Bundesrat are, therefore, diplomats, not Senators in the American sense. They form in theory a body which in the usual meaning of the words is not a debating or a deliberating assembly. Nor is it such in practice. The German world hears occasionally of lively discussions in the Bundesrat, but there is no reason to think that members of the Bundesrat have ever expressed themselves, much less voted, contrary to the instructions previously given by the rulers of their states. In short, to all intents and purposes the Bundesrat merely registers the will of the German rulers individually and collectively.

The Bundesrat and the Reichstag differ from each other not only in their origins; they differ also, and even more strikingly, in the relative powers of the two bodies. The Reichstag is only a legislative body, while the Bundesrat exercises legislative, executive, and judicial functions. Furthermore, even in the making of laws the power vested in the Bundesrat surpasses that given to the Reichstag. Each body has the right to initiate legislation, but whatever the source of a bill may be, the last act in its adoption as law is the approval by the Bundesrat. Thus, if a bill arises in the Bundesrat, it is discussed first by that body and, if approved, is then laid before the Reichstag. If the popular assembly also approves it, the bill must, even if no change has been made in it, be referred back to the Bundesrat and formally passed by that body. In consequence of this provision of the Imperial Constitution, members of the Reichstag hardly ever initiate legislation, because it is obviously futile for them to discuss a bill before they know the opinion of the Reichstag. If we remember the attitude of the German people towards legislation in the critical dissolutions of the Reichstag, it is hardly going too far to say that German laws as they are finally shaped are not the work and the will of the German people through their representatives in the Reichstag, but that they are the work and will of the rulers of the German states through their representatives in the Bundesrat.

The relative powers of these rulers in the Bundesrat varies greatly, unlike the dual representation of the States in the American Senate. The Bundesrat does not represent a federation of states of equal power, but a confederated state with its power distributed very unequally. Prussia has 17 votes, Bavaria 6, Saxony and Wurtemberg 4 each, Baden, Hesse, and Alsace-Lorraine 3 each, Brunswick and Mecklenburg-Schwerin 2 each, and all the other seventeen states one each—26 states and 61 votes in all. This allotment of votes is based, with two exceptions, one the number of votes allotted to the individual states in the Diet of the German Confederation, which came to an end in 1866. In that Diet Bavaria had only four votes, but she demanded and received two more when she joined the new Empire. Prussia, too, had formerly only four votes; but Prussia absorbed six states which opposed her in the Austro-Prussian War of 1866, and when it came to the formation of a new Germany, Prussia added to her

(Continued on page 7)

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