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The Legislature of the German Reich

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I.

The first session of the German Reichstag[1] took place under circumstances that were most inconducive to the peaceful work of legislature. The war had only recently ended, without its after-effects having been concluded. Important bills requiring careful preparation could not, such was the nature of things, be brought before the Reichstag. If there were complaints from various quarters, including among the parliamentary representatives of the Reich itself, that the Reichstag had been convened earlier than seemed expedient in view of the state of the preparations, the following must be taken into account regarding the *first* session of the German Reichstag, while acknowledging the reasons which gave rise to such complaints: that it was of great importance to constitute the German Reich in the newly secured form of its existence in a manner clearly visible to foreign countries as soon as possible after the conclusion of the peace preliminaries. The mere existence of a Reichstag, one driven in great predominance by national sentiments, was in itself an advantage. In France, in particular, people had been mistaken about the value of those protests which had taken place within Germany to demonstrate against the secession of the border provinces. Even among the most perceptive Frenchmen, the opinion was widespread that German liberalism, blinded by the illusions of the plebiscite, would oppose the annexation of Alsace and Lorraine in the Reichstag. The rapid refutation of such erroneous assumptions about the attitude of the German Reichstag was a matter of some importance. Upon examining the series of laws that subsequently came into being, it is indubitably noteworthy that, immediately after the appointment of the Reichstag, an agreement could be reached within the Bundesrat on a number of far-reaching legal provisions. The efficiency of a confederation, such as that of the federal states united in the German Reich, must not be measured unequally against the conditions of a unitary state. Nevertheless, even if this standard is applied, it may be

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[1] Translator's note: All emphases in the original. Where possible and reasonable, German terms such as Reichstag, Bundesrat, or Reich itself have been left untranslated. A brief appendix of critical translations which may prove as an aid to the reader can be found at the end of the text. All following footnotes appear in the original text.

argued that the legislative achievements – within a period of three years – of the former North German Confederation are unprecedented.

They are all the more resplendent not only in comparison with other codifications of more recent times, but especially in comparison with the achievements of a unitary state such as Prussia, whose energies in the field of legislation had seemed paralysed for twenty years. Even the history of the French Empire proves that the ease with which recalcitrant elements in the so-called popular representation there were suppressed, that disposing arbitrarily over the majorities of a legislative body and of the senate, that the handling of a bureaucracy submissive to the point of blindness is not synonymous with the fruitfulness of legislative achievements.

In France, legislation under the now overthrown Empire was the *imposition* of a mechanically ruling autocracy whose will was tempered by nothing but secretive fears and dynastic preoccupations. In *North America,* legislation operates on the principle of a simple force of majorities expressed in Congress. In the German Reich, legislation cannot take the form of *imposition*, but only that of *consensus.* Even in the preparation of the bills, the necessity will arise that the already-existing twenty-fivefold diversity be compared at all turns according to the characteristics of each element's intrinsic value, in order to appreciate the strengths of conflicting interests. Naturally, the effect of traditional customs, of attachment to that which already exists, is more strongly represented in the *Bundesrat* than within a conservative party, which is not faced with the exertions arising from the introduction of a new state of affairs, nor with the redirection of governmental practice in a technical sense. If, in the case of this necessary *consensus*, there is in any way a *hegemony* of leading forces within the activities of the federation, it can only be maintained in the long term through consideration for the *formal* sovereignty of the individual governments represented in the Bundesrat. Furthermore, a *consensus* is necessary with the main inclinations of political life, insofar as these find expression in the Reichstag. This task, too, is a difficult one in Germany, because the simple opposition between central and autonomous forces, which constitutes the basic nature of the Swiss and North American party formations, is undermined in Germany by admixtures of the ecclesiastical and political, and by the passing down of the traditions of those party formations which have spread from the various *regional governments* to the Reich itself. It is possible that it is precisely the *plurality* of such congregations that ultimately facilitates their reciprocal understanding. Nevertheless, it remains important that the fundamental form of the legislature of the German Reich, rooted as it is in the principle of *consensus*, be understood everywhere. The attempt to constitute a simple, binding power by means of party formation within the Bundesrat or the Reichstag for the purpose of *imposing* the consequences of a political, constitutional principle on the momentarily weaker part, without any further consideration, could have only detrimental consequences. As long as the immediate after-effects of great national successes are felt everywhere, such a danger does not lie close at hand. In the more distant future, however, much will depend on whether the Bundesrat maintains its legislative initiative in the sense that it, perceiving the needs of the time at the right moment, may intercede in the steady

further development of legislation without waiting for that stage of urgency at which arises the appearance of necessity or weakness. The greatest mistake of which the conservative ministerial politicians of the last twenty years have been guilty has been their adherence to negative traditions, according to which it invariably seemed wise to wait until the last moment, in order to then be praised for one's adaptability when the reforms had become imperative. The extent of the difficulties arising in the legislature of the German Reich, which lie in the complexity of the circumstances, corresponds to the extent of the obligations incumbent on the Bundesrat to meet the suggestions arising in the Reichstag, solely according to their intrinsic value, by way of the execution of vigorous legislative activity.

How the relationship of the Reichstag to the envisaged *larger* legislative works, in particular the *procedural codes,* will develop, is a matter to be considered seriously by all those who are concerned not only with uniform legislation in German Reich, but also with legislation which is as close to the ideal as possible in its function. On the one hand, there is the desire expressed by the Reichskanzler for *short* sessions of the Reichstag, with which, incidentally, the *general* interest of the German people is entirely in agreement insofar as excessively long sessions would also weaken the political participation of the people. On the other hand, there is the demand that extensive bills be thoroughly examined.

In connection with these considerations, there was a motion introduced by representative Lasker concerning the technical handling of an unusually long bill.[2] The petitioner suggested that: *with the approval of the Bundesrat, commissions of the Reichstag be elected for similarly extensive bills, which would remain in existence after the end of the sessions and, freed from the principle of discontinuity, would enable the continuation of the examination in an advisory capacity of bills from one session to the next.* Such an institution, for all that it would formally be regarded as a constitutional amendment, is not new in Germany. Following the example of the committees of the existing constitutions, regional government committees are also permissible and customary under the constitutional law of the German Länder. The fact that these institutions were not considered in detail during the deliberations on the imperial constitution was essentially due to the preponderance of Prussian representatives and the exemplary nature of the Prussian constitution in those sections which relate to the rights of the chambers and the members of the chambers. From the history of German criminal legislation, numerous examples could be cited of the useful effect of such "legislative committees", although it is self-evident that the experience gained in smaller circumstances cannot necessarily be transferred to the grand dimensions of the German imperial body. The political question is: would such committees be conducive to the achievement of larger pieces of legislation or not? Would they potentially make the ultimate consensus with the federal governments more difficult through an excess of critical activity? Could – or could not – the concentration of expert elements in special, permanent commissions significantly

[2] First consultation on 10 May (Cf. Records of the Reichstag No. 80).

impair the natural influence of the government representatives in the plenary of the Reichstag? The most common prognosis would be this: In the intermediate stage *before* the appointment of the Reichstag, the Bundesrat would come to an agreement on a comprehensive bill with the permanent Reichstag commission; then, in all probability, under this double weighting, a great deal of interest in the plenary session of the Reichstag would be lost; the purpose of the discussion, to explain and justify the most important legislative acts on the podium before the people as a whole, would be less fully achieved. And if, on the other hand, an agreement between the legislative committees and the federal governments could *not* be reached, would it not often appear to be a *question of honour* to represent the doctrines and opinions of the expert committee members in the Reichstag and to counteract the tendency towards an agreement in the plenary?

It remains doubtful, for example, whether the Bavarian legislative committees furthered the completion of the currently existing Bavarian criminal legislation of 1861, or whether they did not. There are different judgements to be heard on the matter.

The bill's petitioner himself, noting the deliberations on the civil liability act which concerned the compensation of those injured on railways, in mines, etc., referred to the irregularities of the previous legislative method, which are indeed impossible to deny. He did not consider the adoption of his proposal a change in the constitution, but rather a transformation of the previous modalities of legislative deliberation.[3] Whatever the case may be, it will be difficult to prove that such an *exceptional procedure,* agreed between the Reichstag and the Bundesrat in *individual cases,* might somehow entail a more serious danger for the present order of powers and competencies. On the contrary, those arguing for the primacy of the *principle* should accede to the rationale of functional expediency. For, especially in the case of the more extensive codifications – with the exception, for example, of the code of criminal procedure or questions of the constitution of the courts – it would be difficult to imagine a genuine conflict of political significance that goes beyond considerations either technical or legal. It depends in its entirety upon whether, in the practice of legislation, one imagines the permanent intermediate committees as an exception or as the rule, albeit it must be admitted that what was initially meant as an exception can, in slow and gradual transitions, become the rule. From the point of view of constitutional politics, it can be deduced with equal degrees of probability and improbability that legislative committees, when they have become practice, can be just as deleterious to parliaments and their influence on legislation as they are to state governments; how the matter would actually come to pass is a question that, at least regarding longer periods of time, is impossible to answer. The next concern of the petitioners seemed, too, to be

[3] Against this proposal: Windthorst. Also against the motion: von Blanckenburg, von Unruhe (Bomst). In agreement with the petitioner: Braun (Gera) and Schwarze; Reichensperger (Krefeld), Hölder. Undecided: Wagener (Neustettin).

directed only towards the civil and criminal procedure code.[4] In the *second* reading, representative *Gneist* spoke out most decisively against the motion.[5] He feared that the intermediate commissions would make it more difficult to pass major organisational laws, and emphasised that in the absence of collegial collaboration only the critical individualism of the separate members of such commissions would come to the fore; he worried further that the imperial government would gradually lose the initiative in legislation, considering as he did the principle of discontinuity to be an essential part of parliamentary government.

Ultimately, the motion was rejected. Nevertheless, one remnant of the debates has persisted, namely the widespread view that the preparation of major legislative acts must be carried out in a different way than in the case of the German criminal code, whose discussion was primarily determined by the preponderance of political points of view. In place of the thus-rejected intermediate commissions, permanent institutions might be created. It is conceivable that an Imperial Council could assume the functions formerly performed by the Prussian Council of State. The Bundesrat could also appoint such experts to the advisory commissions who are a part of parliamentary life. The most important thing is that large bills are *not immediately* brought before the Imperial Council upon their completion, but are first left to free examination. If the Bundesrat publishes comprehensive organisational laws long before the beginning of the session in which they are to be discussed, the voice of the experts has time to be heard and the political parties have it in their hands to form free commissions with regard to major legislative works, which would be responsible for obtaining expert opinions on important points either through their own professionally trained members or through other experts. Abroad, it has sometimes been suggested that larger legislative works be divided into sections and treated as independent laws to be debated in their individual sessions, the revision of which is permitted until the final law has been voted on. The Belgian penal code was developed in such a way, and the history of French legislature also knows such examples. In itself, there is nothing to prevent the external dissolution of one codification into a series of independent laws. Such a procedure will seldom prove expedient; however, experience has shown that the laws on judiciary organisation and the constitution of the courts can be separated from the trial procedure itself, once the latter's basic features have been agreed upon.

II.

If one considers the legislative acts passed in the *first* session of the German Reichstag, it is easy to distinguish certain material categories.

[4] Cf. the Commission Report No. 150 of the records.

[5] Shorthand note, p. 965.

A *first class* of laws has been devised to aid the transition of the legislature of the former North German Confederation into the new state of the German Reich. This task has not yet been wholly consummated. The introduction of formerly North German laws as imperial laws with binding authority for the southern part of Germany will, in all probability, continue to occupy the imperial legislature in its coming sessions.

A *second class* of laws is rooted in the fact of the Franco-Prussian war. These are provisions on the use of the initial instalments of French war reparations and on a conclusive sanction for the border provinces that were returned to Germany.

A *third class* of laws regulates the imperial finances with regard to the situation in the wake of the war and the ongoing needs of the administration.

Finally, some developments regarding private or economic law can be observed.

III.

The first class of *transitional laws* includes the following:

1) *Law* concerning the constitution of the German Reich. From 16 April 1871 (Federal Law Gazette 16. No. 628, p. 63).

The present state of the German imperial constitution has already been reported upon in what has preceded. If one compares the current text as created by the law of 16 April with the original version, it emerges that *one of* the earlier articles (the final clause relating to southern Germany) has been discarded. Conversely, two sections of the constitution have been furnished with concluding provisions which determine the inapplicability of certain provisions to Bavaria. If one disregards the mere change in terminology, by virtue of which the terms "Kaiser" and "Reich" have been generally implemented, it emerges that 22 articles of the constitution have undergone some, mostly quite insignificant, changes in their provisions. It is clear to see that this new redrafting of the constitution of the German Reich is of great importance, the reason being that the common comprehensibility of a document is an essential prerequisite for both general political interest and for the popular sense of community. The inequality of legal relations among the individual federal states, the system – a natural result of the circumstances – of exemptions of southern German states, especially Bavaria, the inclusion of numerous purely regulative provisions concerning the procedures of customs settlement; all make the imperial constitution in considerable parts difficult to understand for the mass of the people, even now. A fuller understanding, will, now and in future, necessitate a re-examination of the state treaties, especially of the North German-Bavarian treaty of 23 November 1870: for the military, there are also the special conventions between Prussia and a number of medium-sized and smaller states. For a foreigner, it will be difficult to obtain from the constitution itself a clear picture of the prevailing legal relationships in Germany. This

is not intended as a condemnation of the legislation: the new drafting does, for the time being at least, represent a remarkable advancement towards formal clarity.[6]

2) *Law* concerning the *introduction of North German federal laws in Bavaria.* From 22 April 1871. (Imperial Law Gazette 17 No. 632, p. 87.)

The treaty concluded with Bavaria on its accession to the German Reich on 3 November 1870 had stipulated under III. § 8 that, in view of the considerable urgency and the necessity of manifold changes to other laws and institutions connected with the subject of the federal constitution, only the electoral law of 31 May 1869 was to become valid with immediacy, while the introduction of other (formerly) North German federal laws in the Kingdom of Bavaria was to remain reserved for *federal legislation.* In the transitional provisions of the same treaty, 27 laws had originally been designated for immediate introduction at the same time as the constitution of the Reich. Seven other laws were to come into force on 1 July 1871. The bill which reached the Reichstag on 31 March,[7] and was soon adopted, correlates with these arrangements. The following are to be introduced as imperial laws in Bavaria:

I. *Upon the day of the law's passing* (issued in Berlin on 29 April 1871) 12 laws: namely 1) The law on the postal system of 12 October 1867. 2) The law concerning the nationality of merchant ships of 28 October 1867. 3) The law on freedom of movement of 1 November 1867. 4) The law concerning the abolition of debtors' imprisonment of 29 May 1868. 5) The law concerning the granting of life-long pensions and allowances to officers and military officials of the former army of Schleswig-Holstein. 6) The law concerning the closure and restriction of public gambling houses of 1 July 1868. 7) The law concerning the securities of federal civil servants of 2 June 1869. 8) The law concerning the introduction of the German bill of exchange system, the Nuremberg amendments, and the general German commercial code as federal laws of 5 June 1869. 9) The law concerning the confiscation of wages and salaries of 21 June 1869. 10) The law concerning the equal rights of the confessions in civil and federal matters of 3 July 1869. 11) The law concerning the granting of lifelong pensions and assistance to military personnel of the lower ranks of the former army of Schleswig-Holstein, as well as to their widows and orphans, of 3 March 1870. 12) The law concerning marriage and the certification of the civil status of federal citizens overseas of 4 May 1870.

II. *From 1 July 1871* onward: The law on the elimination of double taxation of 13 May 1870.

[6] New editions of the imperial constitution: v. Rönne, "Die deutsche Reichsverfassung" 1871 (Berlin: Guttentag. Text edition with notes.) Biester, "Verfassung des Deutschen Reichs, mit dem Einführungsges. vom 16. April 1871, Hinweisen auf die ergänzenden Vertragsbestimmungen nebst deren Wortlaut und auf die Gesetzgebung des Deutschen Reichs bzw. des Norddeutschen Bundes; sowie dem Gesetz über die Vereinigung von Elsaß und Lothringen." With detailed index. 1871 (Berlin: Kortkampf).

[7] Records No. 14. First reading: 31/3. Second reading: 12/4. Third reading 14/4.

III. *From 1 January 1872* onward: The law on the issue of banknotes of 27 March 1870.

IV. In its further content, the law decrees the introduction of a series of federal laws, *amending* individual provisions either with special regard to Bavaria or in relation to the entire Reich. These are:

The law of 8 November 1867, concerning the federal consulates (additional provision to § 24). Effective date concurrent with the present law.

The law of 10 June 1869, concerning the bill stamp tax (additional provision to § 18 concerning Bavaria). Effective date 1 July 1871.

The law concerning the establishment of a Supreme Court for commercial matters of 12 June 1869 (additional provision to § 18 concerning Bavaria). Effective date 1 July 1871.

The law concerning the granting of legal assistance of 21 June 1869 (addition to § 39 concerning the Bavarian civil procedure code). Effective date 1 July 1871.

The criminal code of 31 May 1870. (Amendment of § 4 of the introductory act concerning Bavarian military criminal law.)

The law on levies from log driving, of 1 June 1870 (amendment of § 2). Effective date concurrent with the present law.

The law on the acquisition and loss of federal and national citizenship of 1 June 1870 (exception § 1 al. 2 and § 8 al. 3, § 16). Effective date concurrent with the present law.

The law concerning partnerships limited by shares and joint stock companies (provision concerning entries in the registers for joint stock companies made at the Bavarian district courts). Effective date concurrent with the present law.

The law on copyright in writings, illustrations, etc. of 11 June 1870 (subject to the continuing validity of Art. 68 of the Bavarian law on the protection of copyright of 28 June 1865).

The fact that the Bavarian government had limited to this selection its acceptance of the accelerated introduction of the former North German federal laws was widely criticized. The Bavarian minister of state *von Lutz* explained his government's position on this matter by emphasising that it seemed unfair to sacrifice individual advantages of the Bavarian special legislation to formal unity without closer examination. In particular, he alluded to the provisions of the Bavarian law on cooperative societies, which differs in the point of liability, and in the greater freedoms regarding the attraction of interest. At the same meeting, minister *von Mittnacht* also expressed his opinion on the introduction of the law on cattle plague and the law on auxiliary residences and trade regulations, which were yet to be concluded in Württemberg.

Finally, it is worth mentioning that, during the second reading, rep. *Lesse* recalled a resolution passed during the deliberations upon the tax act of 5 July 1865, as a result of which the Bundeskanzler was called upon to revise the provisions of the introductory acts to the general bill of exchange and to the general German commercial code, as well as the latter codes themselves.

This reminder was prompted by the reference in the notices of the draft law to the continuing validity of those variations which are established in Bavaria by the relevant introductory acts to the general bill of exchange of 25 July 1850, to the commercial code of 10 November 1861 and in the introductory act to the civil procedure ordinance of 29 April 1869 (Art. 3. 7. 10).

Still to be concluded, to date, is the:

3) *Draft law* concerning the *postal system of the German Reich.*[8]

Regarding the bill itself, the Postmaster General, in his capacity as federal plenipotentiary, remarked that it had not been brought about by a necessity directly related to the essence of the matter at hand. The *North German postal act* of 1867 had proven itself *admirably* in practice; the reason for the proposal was external, more formal, given the extension of the German postal legislature to southern Germany. In its *most important* parts, the German postal legislature will also be extended to southern Germany, hence the need to create a general postal code in place of the North German one. *Changes* to the former North German postal law had only been made where they had turned out to be genuine improvements according to the unanimous opinion of the experts involved.

One notable conclusion of the debates was that, according to a statement by a South German representative (*Elben*), imperial law would regulate matters which had hitherto been regarded in individual South German states as a matter for their governments to legislate on and which had therefore given rise to conflicts of competence with the regional parliaments. In Württemberg, the chamber has attempted for ten years in vain to enact a postal law; a right of the public to use the post has not been recognised there (rep. *Hölder*). The main *question* in the debates on the imperial stage was whether or not the *monopoly* on (or the *obligatory* nature of) delivering newspapers by post should be maintained.[9] *Elben*'s motion to restrict the postal monopoly was rejected. Conversely, another motion (*v. Fischer*) was adopted, according to which the postal obligation should not extend to the carriage of *political* newspapers between places that are not *more than two miles* apart, and to the carriage of papers and political newspapers against payment by express messengers or transports, provided

[8] Records No. 87. 100. 103. 107. 110. 111. 119. – First reading: 5/5 (Stenographic Reports, p. 546.) – Second reading 12/5 (Stenographic Reports, p. 658) and 13/5 (Stenographic Reports, p. 680 ff.). – Third reading: 16/5 (Stenographic Reports, p. 729).

[9] Evidence on the volume of newspaper carriage operated by the post office in the speech of the postmaster general (St. B. p. 663 from 12/5).

that beyond the distance of two miles, such an express messenger is only employed by *one* sender and neither takes postal items from others nor returns them to others.

A motion put forward by rep. *Becker*, which was also adopted, obliges the general post office to accept items handed over to it for carriage (in accordance with the law and the regulations). Other less important amendments to the government bill will be elided at this juncture. In accordance with the draft of the law, the Reichstag adopted a resolution (*v. Below*) with the following content:

The Reichstag expresses its expectation that the general post office will attend particularly to the transmission of money, so that the postal service will be used more extensively than before by the public to settle payments.

A second *"draft law on the* postal tax system in the territory of the German Reich"[10] relating to the same matter remains to be concluded.

Among the provisions of the bill, deserving of attention is the change in postal weights. The previous weight for a simple letter (16 2/3 grams) was reduced to 15 grams. A considerable difference arose in relation to the discontinuation of the special order fee for regional letters. Although the federal commissioner noted that this would result in a very significant reduction in revenue – he estimated the number of regional letter carriers at 9,000 – the Reichstag nevertheless decided to abolish the order fee, which briefly seemed to endanger the very passing of the law.[11]

4) *Law* concerning the *recodification of the criminal code for the North German Confederation as the criminal code for the German Reich.* Of 15 May 1871 (Imperial Law Gazette 24. No. 651).[12]

The criminal code for the North German Confederation of 31 May 1870 has been recodified, in which version it became effective as the criminal code for the German Reich on 1 January 1872. It came into force in Baden, Württemberg and Bavaria on 1 January 1872. It was the government of the latter state that initiated this alteration, albeit being content with the changes in wording corresponding to the founding of the Reich, and forgoing any material changes to the criminal code itself.[13] It was doubtful whether, for §§ 102 and 103, a mere change in the wording would be agreed upon, but when it came to the voting itself there were no reservations. The introduction of the criminal code for the Reich in Alsace and Lorraine was generally regarded as imminent, with the consequence that, with regard to political crimes, a much greater leniency than that of the Code pénal would apply if such crimes were committed against the German imperial government.

[10] Records of the *Reichstag.* No. 88. – First reading: 5/5 (Stenographic Reports, p. 554). Second reading: 13/5 (p. 962 ff.). Third reading: 25/5 (Stenographic Reports, p. 877).

[11] Statement by the federal commissioner Privy Legation Councillor Hofmann: 25/5.

[12] Records No. 69. First reading: 5/5, second reading: 8/5, third reading: 9/5.

[13] New paperback editions of the text with brief notes by Rüdorff (3rd edition) and by Rubo, both published in Berlin.

5) *Law* concerning the declaration of § 1 of the law of 4 July 1868 (Federal Law Gazette page 415.)[14] From 19 May 1871 (Imperial Law Gazette 21, No. 639.)

In accordance with the above, § 1 of the law on cooperative societies is to be declared in the future: The thus designated societies do not lose the character of cooperatives in the sense of the above law by dint of the fact that they are permitted in their statutes to extend their business operations to persons who do not belong to their members.

No objection was voiced.

The transition to the second main group of laws, which will follow presently, comprises

6) the *law* concerning the *unification of Alsace and Lorraine* with the *German Reich.* From 9 June 1871. (Imperial Law Gazette 25, No. 654.)[15]

Contrary to the concerns expressed in the daily press that a part of Alsace should be ceded to Bavaria as territorial compensation, and contrary to the wishes of those who wanted the parts of territory ceded by France to be united with Prussia, it transpired that the final decision was for Alsace and Lorraine to be united with Germany as *Imperial Territory of Alsace-Lorraine.*

The constitution of the *German* Reich shall come into effect for Alsace and Lorraine on 1 January 1873. This date comprises the middle value between the government's draft, which envisaged 1 January 1874, and those proposals which set a date of 1 January 1872. By imperial decree (with the approval of the Bundesrat), *individual* parts of the constitution may be introduced earlier: *Amendments* and *additions* to the constitution require the consent of the Reichstag. Article 3 of the constitution (*indigenisation*) shall come into force immediately.

The Kaiser exercises the *authority of the state*; in regard to legislative faculties, he is limited by the Bundesrat until the introduction of the imperial constitution, and furthermore by the right of consent of the Reichstag in the one case where the taking out of loans or the assumption of guarantees results in a burden on the Reich. However, the Reichstag has the right to receive annual reports on the course of legislation and "*general* decrees."

This will change after the introduction of the imperial constitution (1 January 1873), insofar as then the Reichstag – until otherwise regulated by imperial law – has to participate in decision-making in matters of legislature for Alsace and Lorraine. The

[14] Records of the *Reichstag.* No. 101. First and second reading, 12/5. Third reading, 13/5.

[15] Records No. 61. 133 Amendments 141. 152. 169. First reading: 2/5, referred to a commission of 28 members. Second reading 20/5 (reported by Lamey) 22/5. Third reading 25/5 (referred back to the Commission) 3/6.

Reichskanzler assumes responsibility for the exercise of imperial governmental rights by countersignature.[16]

This is the content of the law. There can be no doubt as to the essentially provisional character of these very general decrees. Alsace and Lorraine will for the foreseeable future be the *proving ground* of an experimental politics. The actions of the imperial government will remain essentially dependent upon circumstances the development of which are beyond any reliable estimate at the time when the law was being discussed. The decisive factor will be the attitude of the population of the new Imperial Territory itself in relation to the German Reich. For a longer period of time, the duration of which is uncertain, it is to be expected that the activities of the Alsatians and Lorrainers will depend essentially on 1) the course of foreign relations with France and the prospect of the continuation of peace. 2) The internal development of the French state. 3) The speed which with the transfer of the industrial interests of Alsace and Lorraine to the new alliance with Germany takes place. 4) The use which the clergy and the government intend to make, against each other, of their means of power.

Dependent on these facts is in particular the question as to the degree to which local autonomy can be left to the organs of administration in the communal associations: to what extent a centralist orientation must be pursued in the interest of the Reich.

When the bill was put forward by the Reichskanzler on 2 May, the hostile mood against Germany had lessened in the Imperial Territory, under the influence of the events in Paris and the communist uprisings. In his speech, the Reichskanzler expressed his understanding that Alsace and Lorraine would remain alienated from the German Reich for quite some time to come, but at the same time, with confidence in the persistently German characteristics of the population, he expressed his intention to grant the Imperial Territory a greater degree of independence than was possible under the French administrative tradition. In the meantime, with the defeat of the Paris Commune, the mood in the Imperial Territory had changed again, and the municipal elections were held under relatively unfavourable conditions.

Under such circumstances, it seems to be an advantage of the law that the imperial government is to be given a free hand for the time being. Only time will tell whether the date for the introduction of the imperial constitution is the right one. But even now it should be considered whether the entry of representatives from Alsace and Lorraine into the Reichstag should not be made dependent on their prior allegiance to the German imperial constitution. A resignation of protesting deputies from the Reichstag, immaterial under other circumstances, could have alarming effects because of its *international* impact on France as a significant factor contributing to continuing disquiet.

[16] The Supreme Decree issued on 29 June of this year concerning the establishment of a military school in Metz and the holding of academic courses for young officers (German Imperial Gazette, 11 July) has not been counter-signed by the Reichskanzler.

It is also doubtful whether the Reichstag, after the introduction of the imperial constitution in Alsace and Lorraine, will be able to exercise the right to legislate in relation to the Imperial Territory over a longer period of time; to the same extent as it extends the object of its competence, the danger of a diminished capacity in the matters of legislation grows. This will apply to the Reichstag to the same extent as, according to the statement of the representative *v. Treitschke, "*it is beyond human capacity to *manage the affairs of the Reichskanzler and the Regent of Alsace at the same time.*" Nevertheless, in the opinion of the same speaker, legislation in Alsace and Lorraine should unquestionably remain in the hands of the Reichstag, although it is clear that an excess of administrative business could be managed more easily by one significant person through the right selection of supporting forces as well as through delegation, than an excess of legislative business by an assembly that decides indivisibly. On the other hand, the warning must be heeded not to create *legislative* assemblies in Alsace and Lorraine, which would be all the more inclined to particularism, as the imperial influence, at such a remove, would not be able to create a counterbalance through direct personal influence on a reluctant population.

7) Law concerning the appointment of the federal supreme commercial court as the supreme court for Alsace-Lorraine. Of 14 June 1871 (Imperial Law Gazette 34).

The bill on the appointment of the federal supreme commercial court as the supreme court for *Alsace* and *Lorraine,* which reached its first reading in the session of 7 June, referred to the constitution of the courts in Alsace and Lorraine, the regulation of which was expected at the beginning of July and has since been carried out. The debates essentially reproduced from the opposing side the same reasons that had been put forward *against the* establishment of the Leipziger Court in the first place. In addition to these reasons, it was pointed out that among the members of the court, knowledge of French law would probably be poorly represented and that there would be a lack of those who were sufficiently familiar with criminal practice to be able to decide such cases properly. Here and there, the mood that subordination to the Leipziger Court might create in the Imperial Territory was also taken into consideration. Following the statements of the federal commissioner (Dr. *Falk*), after careful consideration, the decision was made in favour of the selection of the Leipziger Court, eliminating as impractical the two other available options:

either to designate an already existing court of a federal state,

or to establish a supreme court within the Imperial Territory itself

The relationship of the Imperial Territory of Alsace and Lorraine to the Reich itself could, inevitably, only have been inappropriately expressed through subordination to one of the highest regional courts: whether the Leipziger Court meets the expectations placed upon it, the future will reveal. If this does not come to pass, there still remains the possibility of supplementing the court's jurisdiction in an appropriate manner, taking into account the circumstances of the Imperial Territory. Where one side (*Reichensperger*) has pointed out that it is the absolute ruin of every supreme court if the majority of the members have to study the cases that occur *in causum*, then it must

be replied that this has less of a detrimental effect in supreme courts, which are staffed with select faculty, than in lower courts. Moreover, it can only serve the jurisprudence of the highest court if it knows that it is being closely supervised by expert critics in advance. And this is certainly the case with the Leipziger Court: it knows that high demands are placed on it and that it must be prepared to see its decisions challenged not only by Alsatian jurists out of political jealousy, but also by experts from the Rhineland. In any case, the selection of the Leipziger Court gives German legislation a new opportunity to have the merits and shortcomings of French law assessed by men who able to judge simultaneously according to French and German law. This is certainly an indirect advantage for the final settlement of the question of the extent to which the institutions of French procedure should be incorporated into the German code of civil procedure, which was not intended when the Leipziger Court was established, but which is nevertheless to be appreciated in such an important matter as the establishment of a German code of civil procedure. Of the problems to consequently be expected, the role of the *public prosecutor*'s *office* in civil proceedings has already been mentioned on occasion of this debate. The contrast between the preference in the Rhineland for the civil procedural functions of the public prosecutor's office and the opposition expressed in the German Jurists' Conference came to the fore and it is worth noting that the minister of justice himself, Dr. *Leonhardt,* otherwise inclined to regard the French institutions as worthy of imitation in this respect, was nevertheless unable to avoid explicitly and publicly recognising the strength of the current of public opinion in the German legal profession in contrast to the institution of the public prosecutor in the French Rhineland.

IV.

An important group of laws relates to the use of war costs to be borne by France.

These *war reparations*, the payments of which were determined by the Peace of Frankfurt in a manner more favourable to Germany than the Versailles Preliminaries, were not specifically liquidated with regard to the French government. In principle, it would be preferable for the victor to *prove* his financial requirements in the peace agreement and to impose obligatorily upon the defeated party the compensation of those disadvantaged by the war. By protecting the defeated against excessive demands, such a procedure would at the same time be suitable for making the injustice committed during the war, or as a result of the war, clearly visible to the defeated. However, there are weighty reasons *against* such a procedure for the special liquidation of war costs, above all the concern of impracticability. Private individuals involved would be placed in considerable difficulties in pursuing their rights before an ill-intentioned foreign government. In addition, the amount of damage at the end of a major war can hardly be summarized. If one wanted to subject the conquered nation to control in the execution of its obligations, it would be difficult to avoid encroachments on its natural independence. For reasons of expediency, therefore, it is preferable for

the victorious state to assume the role of mediator, to itself claim all compensations, and to see to their further distribution to the interested parties, without being obliged to render an account to the defeated state afterwards. On the other hand, it would be desirable under all circumstances that the account of the costs of war in the conclusion of peace should be justified not only by reference to the general losses, but also by emphasising the obligations of the defeated party which are rooted in particular violations of rights. The imperial government acknowledges that the war reparations to be paid by France should only be disposed of with the consent of the Reichstag. Apart from the compensation for the expenses incurred by the Germany's military and the losses suffered by the states themselves, it already seems certain that any surplus will only be used for *imperial purposes.* A general legal principle is yet to be established regarding the compensation to be paid to *individuals* by Germany on France's behalf. On the whole, however, the endeavour to restrict the grounds and the extent of compensation to a narrower field has become apparent in the legislation to date. Among the reasons for the granting of allowances from the French war compensation funds, the following *entitlements* should be emphasised: The *entitlement to obligatory compensation*, which is partly an independent one, existing even without payment of the war costs (such as that to which invalids are entitled), and partly one obtained from the enemy upon conclusion of peace (such as that to which shipping is entitled); the entitlement to extraordinary *state aid to* be granted in recognised states of emergency, out of equity, and for the sake of general utility (such as in cases of Germans expelled from France); the *entitlement to generosity* (in the sense of donations), and finally the *entitlement to the use of money* for the benefit of the Reich (such as in respect of the advance made to the Alsace-Lorraine railway company). In addition to these already asserted entitlements, the title of *restitution* will have to be added in the further course of events, if it is a matter of repaying war loans or renewing lost war materiel.

1) *Law* concerning the *compensation of war damages and war benefits.* From 14 June 1871 (Imperial Law Gazette 27, No. 660).[17]

Apart from a few cases of damages within the former German territory (as in Kehl), the provisions of the law apply to Alsace and Lorraine. This law determines: 1) for which damages compensation is to be paid (Art. 1) and 2) how this is to be undertaken (Art. 3 – 4). The *objects* of compensation are immovable and movable assets in the event of their destruction or damage, based on the value at the time of the damage and deducting any sums insured. *Subjects* as recipients of compensation are 1) with regard to immovable property, everyone without distinction of nationality, subject to a security required according to circumstances for the restoration of the property; 2) with regard to movable items, only those who are resident in Germany at the time of the promulgation of this law and foreigners if they can prove reciprocity in their state for the same case.

[17] Cf. Records no. 168, 181, first reading 2/5, in favour: Kieser, Miquel, second reading 9/6. Motion by Bähr, Lamey and Benda carried. Third reading: 10/6.

The cause of the damage is destruction by bombardment or fire for military purposes, regardless of which army caused it. The war contributions levied by the *German* military authorities in Alsace and Lorraine shall also be considered, whereby the compensation shall be made according to the scale applicable to war contributions in the North German Confederation.

The *proceedings* are to take place definitively – i. e. without the right to a judicial hearing – before commissions which are instructed by the Bundesrat, appointed by the respective state government, or (for Alsace-Lorraine) by the Reichskanzler and equipped with the right to hear judicial evidence. The possible damage to be compensated (excluding that caused in the vicinity of Metz) was estimated at 57,000,000 Fr.

2) *Law regarding reparations to German shipping.* From 14 June 1871 (Imperial Law Gazette 27. No. 661).[18]

The law (in three articles) determines for which purposes compensation is to be paid and for which it is not, as well as the procedure for determining compensation in a similar manner as the law of the same date enacted for war damage on land. Entitled to claim are: *German* owners and *German* crews of such ships and cargoes, respectively, which were taken by France during the war and have not been restituted or, if restituted, have been reduced in value. In the case of insurance against the risk of war, only the insurance premium shall be paid. A liquidation commission elected by the Bundesrat and consisting of six members and four deputies shall have the judicial power to determine the facts of the case, with a quorum of three, including the chairman or deputy chairman elected by it. This commission orders its own course of business and decides without being bound by rules of evidence. However, the tax principles for sailing ships built of wood are arranged in a tax scale (Imperial Law Gazette, p. 251) and, moreover, the general principles of determining the value are established by law. An independent reason for compensation, apart from removal, is the detention in non-German ports or the compulsion to enter such ports, if either be caused by *enemy threats. The* demands of the German shippers had gone further in this respect and had been aimed at obtaining compensation for forced immobilisation in *German* ports. According to the estimate adopted by the Bundesrat, the value of the ships either destroyed or retained by France amounts to three million Thaler. The *Imperial Liquidation Commission* has since been formed.

3) *Law* concerning the *retirement and pensions of military personnel of the Imperial Army and the Imperial Navy, as well as the allowances for the dependants of such persons.* From 27 June 1871 (Imperial Law Gazette No. 31, 671).[19]

[18] Records. No. 566. First reading, 2/5, federal commiss. Dr. Falck. (In favour: Schmidt-Stettin, van Freeden, Löwe. Second reading: 9/6 (motion Wolffson in Records. 181, II accepted. Motion Büsing 171, II, van Freeden 171, III. rejected). Third r. 10/6.

[19] Cf. no. 96 of the Records. First reading 13/5. Second reading 5/6.–7/6. Third reading 12/6. (Without Commission.)

Although, at the time of the announcement of the bill, very serious reservations had been expressed from various quarters against the association of the claims to allowances arising from the war itself with the pensions determined in the state of peace, the imperial government maintained the inseparability of the matters. The mood of the Reichstag, being particularly favourable to the army, and the consideration of a common order for the Bavarian army corps may have been decisive in this. The Prussian war minister Graf *v. Roon* explained the bill: "The rates awarded to the pension recipient are always only a moderate compensation, by no means an equivalent; they have been assessed according to equitable principles, dependent on the rank, the length of service, the nature of the invalidity, the monetary value at the present time and the various degrees of hardship."

With one exception, the law itself did not meet with serious opposition. On the other hand, numerous proposals for improvement (Records No. 145 – 163: 172, 173) related in part to the extent of the policies, in part to the method of calculation, in part to the persons to be taken into account, and in part to the procedure of determination. Among the most important provisions of the law are the shortening of the period of service on which the pension entitlement is based to 10 years (formerly 15 years in Prussia). An attempt to limit this entitlement to those cases in which incapacity to serve appears to be a permanent consequence of physical infirmity or due to a lack of mental or physical capacity to continue active military service (motion *Dickert*, *Herz* and Gen.) failed. Besides wounds and other service-related injuries, the entitlement to pension is already acquired by the fact that someone has become "incapable" of continuing active military service and is therefore discharged. Compared to the original government bill, the amounts for pensions have been reduced in some parts by a motion put forward by rep. v. Bonin. More important were the amendments passed by the Reichstag, which relate to the admissibility of legal action.

4) *Law* concerning the *granting of aid to Germans expelled from France.* From 14 June 1871 (Imperial Law Gazette 17. No. 663).[20]

The law contains 117 §§. Its main sections are: *Title I:* Officers and Military Doctors of Officer Rank in the A. Imperial Army (§§ 2 – 47) B. Imperial Navy (§§ 18 – 57). *Title Two:* Provision for military persons of the lower ranks, and their dependants. A. Non-commissioned officers and soldiers, B. lower military officers, C. allowances for dependants, D. common provisions. *Title Three:* General provisions. The amount of aid to be granted to Germans expelled from France during the war from the most readily available war reparation funds shall be standardised at two million Thaler. The distribution shall be undertaken by the individual German governments according to the instructions of the *Bundesrat.* Any advances already made by the governments may be taken into account.

[20] First reading 2/5. Against the draft law v. Patow, in favour Bamberger (who estimated the number of Germans settled in Paris in 1867 at 35,000). Second reading 9/6 (Records no. 177. II). Amendment by Bamberger and Benda against the distribution according to the head count of the reclamants, adopted. Third reading 10/6.

The appointment of a central liquidation commission, as in the cases of compensation concerning shipping, was precluded by the nature of the circumstances. The *question of the neediness* of those to be supported can only be appropriately examined in the local environment of those regions to which the expellees have returned: presumptively their home country before they had settled in France.

It remains doubtful whether the sum spent will be sufficient to meet the existing needs. Familiar with the situation, rep. *v. Patow* described it as negligible compared to the general expectations. The Reichskanzler, on the other hand, noted with reproach the exaggerated way in which the expellees had expected one billion before the conclusion of peace. With regard to the question of principles, he denied an *obligation* on the grounds of an unlawful act committed by France against international law by conceding to the belligerents the right to expel hostile subjects from their territory, while disapproving of the cruelty and harshness demonstrated by the French people; for this reason it was only a matter of *assistance*, the definitive measure of which remained open.

5) *Law* concerning the *granting of aid to members of the Reserve and the Territorial Army.* From 22 June 1871 (Imperial Law Gazette 30. No. 669).[21]

The law, which consists of one clause, provides the state governments with a sum of four million Thaler, which is to be taken from the war reparations and distributed according to the directions of the Bundesrat, insofar as, with regard to the circumstances of the individual states, a need arises to make the resumption of their civilian occupation as easy as possible for the officers, physicians, and enlisted men of the reserve and territorial army who have been *particularly* severely injured in their employment by their conscription into the armed forces.

The draft law originated from a motion submitted by Rep. *v. Bunsen* and others,[22] which the Federal Governments had initially opposed, emphasising the difficulties associated with its implementation. The Reichskanzler explained that, in the view of the federal governments, the administration and accounting of the funds made available by the Reich would take place within the constitutional regulations of each federal state.

[21] Records No. 198. First reading 12/6. Second reading 14/6. Third reading 15/6.

[22] The urgent motion made at the meeting of 23 May by v. Bunsen, v. Bonin, Schultze, Frh. v. Unruhe-Bomst, Dr. Niegolewski and v. Mallinckrodt, was to the effect that the Reichskanzler should be asked to exert an influence on the federal governments to the effect that, when the share of the French war reparations to be transferred to them by imperial law is decreed, the communal associations, which are responsible for the support of the territorialists' and reservists' families, should receive a proportionate share of the French war reparations, in order to be able to fulfil their task even more equitably and adequately in the future and, in urgent cases of emergency, to be able to grant aid to individual families of the territorial army and reservists who have endured particular hardship in the war.

6) *Law* concerning the *award of endowments in recognition of outstanding merit acquired in the last war.* From 22 June 1871.[23]

The draft of this law, containing one article, was introduced close to the end of the session as superficially related to the bill concerning the allowance to be granted to members of the territorial army and the reserve. The original intention was to consider as recipients of the allowance only those *German military leaders* who had made a distinguished contribution to the auspicious outcome of the last war. A commission, to which the draft had been referred for confidential (not public) preliminary consultation, however, proposed – and the Reichstag approved – that, in addition, *German statesmen* who had contributed in a distinguished manner to the national successes of the war should also be taken into account in the distribution of the sum of *four* million made available to the Kaiser. – The sum is to be taken from the outstanding war reparations.

The Reichskanzler explained the draft law, making passing reference to "the usefulness that can lie in not diminishing, in the mean life of a soldier, the hope of an unusually grand remuneration through calculated meanness at the moment when the army comes home sore, bleeding and victorious." However, he placed full emphasis on the duty of gratitude to the Kaiser and the army. "Forget for a moment the position of the representatives who are to grant to the sums, and think of satisfying this need of the Kaiser's heart; give him the satisfaction he has earned by his devotion, by his courage for Germany."

The Progressive Party and some members of the *Zentrum* party voted *against* the law. Their objections related partly to the principle of endowments in general, partly to the assertion that the character of a "national reward" demanded the designation of the persons to be endowed in the bill. The Reichskanzler rejected this, giving the Commission only a few broad indications regarding the categories envisaged for the endowment.

7) *Law* concerning *the war memorial coin for the armed forces of the Reich.* From 24 May 1871 (Imperial Law Gazette 22. No. 642).[24]

Supreme Decree from 20 May 1871, concerning the *creation of a war memorial coin* for the campaigns of 1870 and 1871.

Comp. *Supreme Decree* from 22. May 1871. –

In view of the financial expenditure, a bill was submitted to the Reichstag which required the authorisation of 250,000 Thalers. At the second reading, it was decided, at the request of rep. *v. Bernuth,* also to dedicate the war memorial coin to the Imperial Navy and not only to the Imperial Army. *The Supreme Decree does not require the*

[23] Imperial Law Gazette No. 676. First reading 13/6., second reading 14/6., third reading 15/6. In favour v. Bennigsen, Lasker v. Loß, Kiefer, Graf Rittberg, Graf Spee, Reichensperger, against: Löwe, v. Leuthe, Schulze, Schröder, Krüger.

[24] Records of the *Reichstag.* 86. First reading 5/5. Second reading 8/5. Third reading 9/5.

consent of the Reichstag. Later, in two further decrees, the Kaiser went beyond the limits set out in the statute of 20 May, in that (on 22 May) he also allowed non-combatants from the army who had not been in France, and nurses, pastors, medics, etc. to be rewarded with the war memorial coin. As insignificant as the decree itself is in terms of imperial law, it does have constitutional significance. The German imperial constitution lacks a provision authorising the Kaiser to confer orders on behalf of the Reich. Since the *war memorial coin* is based on the consent of the Bundesrat and the Reichstag, it must be assumed that there is no need for the individual federal governments to *consent to* or *authorise* the acceptance of the war memorial coin for non-Prussian subjects. *With regard to* persons of the Imperial Army, the conferral of the war memorial coin may be considered to be the purview of the imperial supreme command. On the other hand, the matter is different with regard to subsequently designated categories of medical non-combatants, insofar as their participation was voluntary and they were not part of the military administration. Here, the question arises as to whether they require the approval of their state government to accept a distinction awarded to them by the Kaiser and King of Prussia. According to a publication in the *Imperial Law Gazette,* it seems as if the Kaiser considers the conferral of the war memorial coin to civilians as an act of the imperial government, which is independent of the approval of the individual state governments. It would indeed be difficult to reconcile with the nature of the Reich the acceptance of a war memorial coin awarded by the Kaiser in his capacity as commander-in-chief being bound to the approval of a state government. On the other hand, considering the wording of the constitution, the matter remains uncertain. It might be of interest if, with the growth of the imperial civil service, the awarding of orders (for the time being with Prussian insignia) for *meritorious* services to the Reich were to increase. In the absence of an imperial law, it will have to be maintained that the Kaiser can only confer Prussian orders on imperial officials in his capacity as King of Prussia and that their creation will remain dependent on the possible consent of the sovereigns of other German states.

8) *Law* concerning the *procurement of resources for the railways in Alsace and Lorraine.* – From 14 June 1871 (Imperial Law Gazette 27, No. 662).[25]

As above, five million Thaler have been allocated "in advance" so that the Reichskanzler might expedite, from the most readily available funds of the French war reparations, the procurement of the equipment needed for those railways in Alsace and Lorraine that have been ceded to Germany. This advance payment was made because the operating materials for these railways had not been ceded to Germany in kind. The peace treaty stipulates that the materials belonging to the French Eastern Railway be returned to France. Nothing was stipulated as to the time and manner of restitution; the intention was to leave this question open. There is no doubt, however, that the railway lines ceded by France are to be regarded as *imperial railways.* They are not the property of the re-acquired border provinces, but of the entire Reich and will therefore,

[25] Cf. Records No. 176. First and second readings 9/6. Third reading 10/6.

in the absence of any special legislation to the contrary, be subject to the financial oversight of the Reichstag after the introduction of the imperial constitution. The rail workers operating on these lines thus have the status of imperial civil servants.

V.

Among the financial laws of the past session, the characteristics of which are to be discussed elsewhere, are:

1) Law concerning the establishment of the budget of the German Reich for the year 1871, from 31 May 1871 (Imperial Law Gazette 23, No. 648).

The budget established for 1871 by the law of 15 May 1870 is increased in revenue and expenditure by 557,959 Thaler.[26]

2) *Law* concerning the *alternative determination of the matriculatory contributions to finance the total expenditure for the year 1869* of 5 May 1871 (Imperial Law Gazette 20, No. 63); (decreed under consideration of the provisions of the law of 18 March 1869, that the matriculatory contributions to the expenditure of the North German Confederation for the year 1869 shall be determined at 23,548,205 Thaler. The calculation of the amounts apportioned to the individual states in an appendix (Imperial Law Gazette, p. 99).

3) *Law* concerning the *procurement of further funds to meet the extraordinary expenses caused by the war.* From 26 April 1871 (Imperial Law Gazette 18, No. 633, p. 91).

Authorisation of the Reichskanzler to raise further liquid funds up to the amount of 120 million Thaler by way of credit (bonds and treasury notes).

4) *Law* concerning the *extension of the official buildings of the Imperial Chancellery.* From 14 June 1871 (Imperial Law Gazette 27, No. 664).

Allocation of *one hundred thousand Thaler* as the first instalment of costs for 1871. The funds are to be raised by the individual federal states according to their population.[27] Following the declaration of the President of the Imperial Chancellery, the final decision on the construction of a parliamentary building, which was originally to have been associated with the site of the Imperial Chancellery, should not be pre-empted in any way.

[26] First reading 27/1 referred to commission, rapporteur v. Wedell-Malchow. Federal Commissioners: Government Councillor Dr. Michaelis; Leg.-R. v. Bülow. Second reading 15/5. ff. Third reading 23.

[27] Cf. Records No. 157. First reading 1/6. Second reading 9/6. Third reading 10/6.

VI.

The legislation of private law and, in part, economic policy includes:

1) *Law* concerning the *liability to pay compensation for deaths and bodily injuries caused during the operation of railways, mines etc.* From 7 June 1871 (Imperial Law Gazette 25 No. 652).[28]

This law belongs to the few products of the legislature which are not determined by the circumstances arising from the war or the founding of the Reich. It was prompted by accidents which had aroused considerable public attention, especially in the Kingdom of *Saxony,* and had been drawn to the attention of the North German Confederation by way of a petition. The content of the law will be explained elsewhere. From the history of its development, let it be emphasized that the deliberations were directed more towards individual improvements than in the case of other bills. It was precisely the unusually large number of amendments, which often confused the debate and made it difficult to follow, that conferred upon the government bill, which was defended with great skill, superiority over the countermotions.

The main questions in dispute related to the comparative increase in the liability of the railways, the lesser burden on the mining industry, the meaning to be attached to the term "*factory*", the definition of "force majeure," and a number of other points which the government bill had rightly reserved for judicial decision and found unsuitable for legislative treatment. The law undoubtedly represents progress because, honouring as it does the inequality of social circumstances, it elevates the obligation to pay damages to a provision of *public* law and precludes any private agreement to the contrary.[29] It has been emphasised in various quarters that the major railway lines, as long as they are protected against the conferral of concessions to concurrent railways, have the nature in certain regions of a transport monopoly. Moreover, after the experiences made in England, one should not entertain the hope that the increased obligation to compensate for damages of the large, publicly listed enterprises will considerably reduce the number of accidents; it would be very wrong to conclude that the preventive measures with which the railway, mining and factory police are tasked might be reduced in this way. On the contrary, it has recently been recognised, especially among the English, that the German railway police are more effective in preventing accidents than the (alleged) partisanship of the English jury, which so often gives its verdict *against the* entrepreneurs in compensation suits.

The extension of the competence of the federal supreme commercial court to decide on legal disputes arising from this law, which was decided upon at the request of *Schwarze,* is not without political significance. The Leipziger Court of Justice is

[28] Cf. Records No. 16. 65. 70, 71. 74. 76. 78. 82 First reading 14/4. Federal Plenipotentiary: Privy Councillor Dr. Falck. Privy Councillor Dr. Achenbach (2nd reading). Second reading 28/4, 29/4, 1/5. Third reading 8/5, 9/5.

[29] Cf. the Prussian Law from 3 May 1869.

thus increasingly losing its original character of a tribunal judging only in commercial matters and is approaching the requirements for it being established as a supreme imperial court. In addition, it is in the nature of things that, in dealing with the claims arising from this law, the question of fact and evidence comes very decisively to the fore. In recognition of this, the free submission of evidence to the judge (§ 1) is permitted; a further indication is thus given of the direction in which decisions regarding evidence will probably take according to the recently announced German civil procedure code. A series of resolutions on the draft law regarding the obligation to pay damages was adopted on 12 May.

2) Law concerning bearer securities with premiums.[30] From 8 June 1871 (Imperial Law Gazette. 25, No. 652).

The law can be seen as emerging from those economic and moral views which oppose, on the one hand, the perniciousness of gambling and, on the other, the development of modern stock exchange trading. The main opinions which clashed in the debate were these: Prohibition of premium bonds, distribution of concessions by the Bundesrat in accordance with certain normative conditions, authorisation of premium bonds by an act of imperial legislation. The fact that equally serious reservations could be raised *against* each proposal in the debate shows that this legislative act was premature compared to the state of opinion, which is yet to be universally established. The final decision leaves the impression of a result determined more by coincidences and aversions than by convictions.

VII.

Finally, some *legislative motions* resulting from the initiative of the Reichstag should be mentioned:

1) Rep. *Schulze-Delitzsch*, in collaboration with others,[31] proposed the regulation of the *private legal status of associations*, which have hitherto not been considered legal persons. An earlier bill introduced by the petitioner had been adopted by the North German Reichstag without the Bundesrat having declared its support. While this matter has already been regulated in *Bavaria* and *Saxony*, other states, including

[30] Records 33 – 112. First reading 24/4. Second reading 15/5, 16/6. Third reading 19/5. Commissarius: Dr. Michaelis.

Announcement of 19 June 1871, concerning the regulations (issued by the Bundesrat) for the implementation of the imperial law of 8 June 1871 on bearer securities with premiums.

Announcement of 1 July 1871, concerning the supplementation of the regulations issued under the 19 June for the implementation of the imperial law of 8 June on bearer securities with premiums.

Announcement of 10 July 1871, concerning the second supplement to the regulations issued under the 19 June for the implementation of the imperial law of 8 June 1871 (No. 678).

[31] Records of the Reichstag No. 45. 151. First deliberation: 26th/4th (Stenographic Reports, p. 396). Second deliberation: 26th/5th (quorum not present).

Prussia, lack the relevant norms, although the activities of associations – even outside the economic cooperative societies – are interwoven with very considerable interests in property law. The cumbersome way of granting corporate rights to individual societies is not suitable for satisfying these interests. If there were ever any reservations against such laws regarding divisions of competence (which, incidentally, is most unlikely), then there can now be no doubt that the Reich, given that the regulation of associations has been assigned to it, must also intervene here in a regulatory manner. The petitioner noted the great importance of *educational* associations (gymnastics, singing and other associations) in addition to the already legally constituted cooperative societies; they too must be granted property and legal capacities, subject to the state's right to prohibit individual types of associations altogether for reasons of public welfare. Here, too, it will be crucial to establish certain *normative conditions,* based on the system of concessions. The bill was referred to a commission. In the later stages, the Bundesrat declared that there had been fundamental reservations about the earlier draft adopted by the North German Reichstag because the *religious*, political and trade union associations had been included in the draft. No specific statement was made on the position to be taken on the new draft. Further pursuit of the matter was truncated by the end of the session.

2) After rep. *Wiggers* withdrew a bill he had tabled concerning the obligation of political journals to post securities, a motion tabled by delegate *Völk* along the same lines was adopted in a vote by name at the second reading and by a large majority at the third reading (by 227 votes to 37). According to this, the provisions of the states' laws shall be repealed which oblige the publishers of newspapers or periodicals to post securities or which prescribe or permit the withdrawal of the right to operate a trade independently in the event of an offence committed by the press.[32]

In connection with this was a resolution of the Reichstag, proposed by representative *Biedermann,* which called on the Reichskanzler to submit the expected draft of an imperial law on the press to public criticism in good time. If it has been customary in the case of more extensive legislative acts to call on expert jurists for criticism, it is, certainly, equally appropriate to give the political press – initially involved as it is – time to express its opinion on the legislation of the press. It is of the utmost importance to refute the opinion, widespread abroad to the detriment of Germany, that the press in general, especially in Prussia, is "*gagged,*" and to see to it that *freedom of the press* is realised to the greatest feasible extent without damaging the paramount interests of the state. From the political perspective, it can be asserted that no state in Europe is able to grant such a high degree of freedom of the press without disadvantage as the German Reich; for nowhere is the separation of thought and action so wide, nowhere is the counterbalance of a fundamentally effective popular education against the abuse of the press so strong, as here.

[32] Cf. Records of the *Reichstag.* No. 104.

3) A motion submitted by Dr. *Prosch* and *Braun* (Gera) for *the proposal of a law concerning the levying of taxes to be paid by travelling tradesmen*[33] was withdrawn after the explanations of the plenipotentiary of the Bundesrat. The motion itself was to request the Reichskanzler to submit a bill to the Reichstag in its next session, according to which the taxes to be paid in the individual federal states by travelling tradesmen would be levied as an imperial tax within the jurisdiction of the trade ordinance of 21 June 1869, according to uniform regulation.

4) A bill proposed by rep. *Wilmanns* and his colleagues concerning the taxation of broker's notes, etc. in the territory of the German Reich,[34] was eliminated by simple point of order.

Appendix of Critical Translations

Council of State – Staatsrat

Federal Chancellor – Bundeskanzler

Federal Council – Bundesrat

Federal Law Gazette – Bundesgesetzblatt

German Imperial Gazette – Deutscher Reichsanzeiger

Government Councillor – Regierungsrat

Imperial Council – Reichsrat

Imperial Law Gazette – Reichsgesetzblatt

Imperial Territory of Alsace-Lorraine – Reichsland

Privy Councillor – Geheimrat

Privy Legation Councillor – Geheimer Legationsrat

Shorthand Note – Stenographischer Vermerk

Stenographic Reports – Stenographische Berichte

[33] Cf. Records of the *Reichstag.* No. 18.

[34] Records of the *Reichstag.* No. 48. Consultation 2./5 (Stenographic Reports, p. 524).