TENURE AND POWERS OF THE GERMAN EMPEROR.

PROBABLY there is no subject of public law which stands in greater need of scientific statement to the American public than the tenure and powers of the German Emperor. I do not mean, of course, from the standpoint of practical interest, but of scientific knowledge. It is not an easy topic to treat. The commentaries of von Rönne, Mayer, Zorn, Laband and Schulze make it possible, however, to gain a clear and reasonably complete view of the subject.

The Tenure of the Emperor.

I take, as my point of departure, the proposition that the German *imperium* is not a sovereignty but an office. The sovereignty, according to the most authoritative commentators upon the constitution, is in the Federal Council (*Bundesrath*), not in the Emperor.[1] The Imperial office was created by a conscious and deliberate agreement between the German princes (*i.e.* the monarchs of the twenty-two states), the representatives of the three free cities, and the representatives of the people. It owes its legal existence to a clause in the Imperial constitution, which reads: "The presidency of the Union belongs to the King of Prussia, who bears the name German Emperor."[2] An amendment to the constitution, in the manner prescribed therein for such a case, may therefore deprive the King of Prussia of this office. Article 78 of the constitution provides that amendments to the constitution may be made by agreement of the Federal Council and the Imperial Diet (*Reichstag*), provided less than fourteen of the fifty-eight voices in the Federal Council object to the propositions. In the case of a right expressly reserved by the constitution to a state, the consent of that

[1] Laband, Staatsrecht des deutschen Reiches, I, 197.

[2] Reichsverfassung, Art. 11: "Das Präsidium des Bundes steht dem Könige von Preussen zu, welcher den Namen Deutscher Kaiser führt."

state is also necessary to an amendment affecting such right.[1] Now the King of Prussia is represented in the Council, casting seventeen of the fifty-eight votes in that body. He can not, therefore, as a fact, be amended out of the Imperial office, without his own consent, by the sovereign power as organized in the constitution. Over against that power, then, he is not merely officer; he holds as against it by his own right. We must go down beneath the constitution to the sovereignty which originally formed it to find the organization of the German state over against which the Emperor is but officer. That (constituent) organization, however, has now no legal existence; and the King of Prussia may always prevent its reorganization by legal means. If it should reappear, it must, therefore, be by his consent or by revolution. The Emperor thus holds his office from the nation below the constitution, but by the tenure of his own right within the constitution. This status and relation result from the indissoluble connection of the Imperial office with the Prussian crown and the possession by the Prussian King of a sufficient number of votes in the Federal Council to prevent any amendment to the Imperial constitution.

The inalienable right to the Imperial office — inalienable, that is, as against every existing legal organization of the German state — is thus seen to be in the Prussian crown, and the succession to the Imperial office must necessarily follow the law of succession of the Prussian crown. The Imperial constitution recognizes this principle by making no provision for the succession to the Imperial office further than what is included in the simple declaration that "the presidency of the Union belongs to the King of Prussia."

In order, then, to learn the law of succession to the Imperial office, we must have recourse to those provisions of the Prussian constitution which regulate the succession to the Prussian

[1] Reichsverfassung, Art. 78: "Veränderungen der Verfassung erfolgen im Wege der Gesetzgebung. Sie gelten als abgelehnt, wenn sie im Bundesrathé 14 Stimmen gegen sich haben. Diejenigen Vorschriften der Reichsverfassung, durch welche bestimmte Rechte einzelner Bundesstaaten in deren Verhältniss zur Gesammtheit festgestellt sind, können nur mit Zustimmung des berechtigten Bundesstaates abgeändert werden."

crown. Article 53 of the Prussian constitution provides that the crown is, according to the royal house-laws, hereditary in the male branch of the royal house, by right of primogeniture and agnatic lineal succession.[1] The royal house-laws, here referred to and adopted as constitutional law, provide that the heir to the crown must be a descendant of the first wearer of the crown; must be the son of a father capable himself of wearing the crown according to the same laws; must be born in regular wedlock of a mother of equal rank with the father and from a marriage approved by the reigning head of the house.[2] Frederick I of Hohenzollern was the first King of Prussia, and the year 1701 is the date of his assumption of the crown.[3] So long, then, as male descendants from him exist, possessing the above mentioned qualifications, Prussia has a constitutional heir to the throne and consequently the German Empire has a constitutional successor to the Imperial office. If, however, these should fail, the Prussian constitution makes no further provision for the succession. There exists a *pactum confraternitatis* between the princely houses of Brandenburg, Saxony and Hesse, dating from the year 1457 and confirmed, for the last time, in the year 1614, which provides that in case of the extinction of the male line of any of these houses the other two shall succeed to its land and subjects. If this fate befall Hesse, two-thirds shall go to the princes of Saxony and one-third to the Brandenburg house. If it befall Saxony, two-thirds shall go to the Hessian house and one-third to the Brandenburg house. If it befall Brandenburg, one-half shall go to each of the others.[4] It will be seen that the last ratification of this agreement antedates by nearly a century the establishment of the Prussian kingdom by the Brandenburg house, and by nearly two and a half centuries the establishment of the present constitution of

[1] Verfassungsurkunde für den preussischen Staat, Art. 53: "Die Krone ist, den königlichen Hausgesetzen gemäss, erblich in dem Mannsstamme des königlichen Hauses nach dem Rechte der Erstgeburt und der agnatischen Linealfolge."

[2] Schulze, Lehrbuch des deutschen Staatsrechts, Erstes Theil, 213 ff.

[3] Droysen, Preussische Politik, IV, 1, 153; von Rönne, Preussisches Staatsrecht, I, 1, 149.

[4] Von Rönne, Preussisches Staatsrecht, I, 1, 153, Anmerkung.

Prussia (1850). It will be found, also, that it conflicts with articles 1, 2 and 55 of that constitution, which consolidate all of the territories subject to the Brandenburg-Prussian house into the state of Prussia, declare that the boundaries of the state so constituted can be changed only by a law, and that without the consent of both chambers of the legislature the King of Prussia cannot be, at the same time, ruler of another state.[1] This *pactum confraternitatis* would, therefore, require for its validity, now at least, ratification by both branches of the Prussian legislature. Should this come to pass and Prussia be divided between Saxony and Hesse, the Empire would be obliged to make a new disposition of the Imperial office. There is no probability that the Prussian legislature would ratify this old agreement. The more natural and probable course would be so to amend the Prussian constitution as to allow the male descendants of the female line of the present house to succeed, or the descendants of the male line from an ancestor back of Frederick I, or to place a new house upon the throne. In all of these eventualities the new King would be, *ipso jure*, German Emperor. Whether, if the Prussian constitution should be so amended as to make the female line capable to succeed to the crown or to make the Prussian kingship an elective office, with or without a change of title, the queen or elected king or president would be, *ipso jure*, German Empress or Emperor, is a question which has not, so far as I know, been seriously considered by the German publicists, and I do not venture to suggest any solution of my own.

By and upon the death of the reigning King, the crown passes, *ipso jure*, to the legal successor without any form or ceremony of accession, possibly even without the knowledge, at the moment, of the new King. "'Der Todte erbet den Lebendigen,' 'Der König stirbt nicht," are the general principles of the public law of Prussia and of all the princely states of Germany upon

[1] Verfassungsurkunde für den preussischen Staat, Art. 1: "Alle Landestheile der Monarchie in ihrem gegenwärtigen Umfange bilden das preussische Staatsgebiet." Art. 2: "Die Grenzen dieses Staatsgebiets können nur durch ein Gesetz verändert werden." Art. 55: "Ohne Einwilligung beider Häuser des Landtags kann der König nicht zugleich Herrscher fremder Reiche sein."

this point.[1] In fact there have never been but two coronations in Prussia. The first was that of Frederick I in 1701, and the second that of William I in 1861.[2] The 54th article of the Prussian constitution requires of the King that he take his oath, in the presence of the two legislative chambers, to govern in accordance with the constitution and the laws. Von Rönne undertakes to support the proposition that should the King refuse to do this, his government would not be legal, his acts would be without binding force, and he might be dealt with by the chambers as a violator of the constitution.[3] Laband, on the other hand, considers this interpretation as extravagant and contradictory to the general principles of the royal system of government. He declares that von Rönne's doctrine would result in the assertion of a right on the part of the Chambers to dethrone the King.[4] There is no doubt that Laband's view is correct. The failure of the King to take his oath would lead to an earnest constitutional question, but in no event could the punishment therefor be so grave as his dethronement or the rendering of his government illegal.

The transfer of the Imperial office follows these same principles. The death of the King of Prussia makes his legal successor German Emperor without any act, form or ceremony executed by or upon the latter.

The King may abdicate, provided he be capable of making such a disposition; but his abdication can only be in behalf of his legal successor and it must be entire, not partial.[5] His abdication of the Prussian throne would work, at the same instant, his abdication of the Imperial office. He cannot hold the latter without the former. The plain words of the Imperial constitution are, that the presidency of the Union belongs to the *King* of Prussia, *i.e.* to the existing bearer of the royal power.

[1] Von Rönne, Preussisches Staatsrecht, I, 1, 159.
[2] Von Rönne, Preussisches Staatsrecht, I, 1, 161.
[3] *Ibid.*, I, 2, 588 ff.
[4] Laband, Staatsrecht des deutschen Reiches, I, 205. Von Rönne holds, in another connection, that the King cannot be dethroned; I, 1, 165.
[5] Von Rönne, Preussisches Staatsrecht, I, 1, 164 ff.

The last and most difficult question in regard to the succession to the Imperial office is presented by the case of a regency in the kingdom of Prussia. Articles 56 to 58 (inclusive) of the Prussian constitution make thorough provision for such an event in the Prussian state, as follows:

When the King is a minor, or is otherwise permanently prevented from ruling, the adult agnate standing nearest to the crown shall assume the regency. He shall immediately call the legislative chambers together, and they, in joint assembly, shall determine the question of the necessity of a regency. If there should be no adult agnate and if no law shall have been made to meet the case, the ministry shall call the chambers together and the chambers, in joint assembly, shall elect a Regent [if, that is, they decide a regency to be necessary]. Until the Regent so chosen shall assume the government, the existing ministry shall govern. The Regent shall exercise the royal powers in the King's name. He shall, after the establishment of the regency, take oath, in the presence of the united chambers, to hold the constitution inviolable and govern in accordance with the constitution and the laws. Until the taking of the oath by the Regent, the existing ministry remains responsible for all governmental acts.[1]

The King attains majority at the age of eighteen; the princes of the royal house on the other hand at the age of twenty-four. Neither the constitution nor the laws of the land nor those of the royal house prescribe the age which the prince must attain in order to be eligible to the regency. Neither have we any direct precedent to guide us. Von Rönne holds that the com-

[1] Verfassungsurkunde für den preussischen Staats, Art. 56: "Wenn der König minderjährig oder sonst dauernd verhindert ist, selbst zu regieren, so übernimmt derjenige volljährige Agnat, welcher der Krone am nächsten steht, die Regentschaft. Er hat sofort den Landtag zu berufen, der in vereinigter Sitzung beider Häuser über die Nothwendigkeit der Regentschaft beschliesst." Art. 57: "Ist Kein volljähriger Agnat vorhanden und nicht bereits vorher gesetzliche Fürsorge für diesen Fall getroffen, so hat das Staatsministerium den Landtag zu berufen, welcher in vereinigter Sitzung einen Regenten erwählt. Bis zum Antritt der Regentschaft von Seiten desselben führt das Staatsministerium die Regierung." Art. 58: "Der Regent übt die dem Könige zustehende Gewalt in dessen Namen aus. Derselbe schwört nach Einrichtung der Regentschaft vor den vereinigten Häusern einen Eid, die Verfassung des Königreichs fest und unverbrüchlich zu halten, und in Uebereinstimmung mit derselben und den Gesetzen zu regieren. Bis zu dieser Eidesleistung bleibt in jedem Falle das bestehende gesammte Staatsministerium für alle Regierungshandlungen verantwortlich."

pletion of the eighteenth year qualifies, in this respect, for the assumption of the regency, on the ground that no higher qualification can be required in the Regent than in the King.[1]

The establishment of the regency in the case of minority is not a matter of special difficulty. The constitution undoubtedly authorizes the prince, whom it designates for the regency, to take the initiative, assume the government and call the chambers together, for the purpose of determining the question as to whether the regency is necessary; but the prince must do this in the manner prescribed by the constitution, in article 44, for all the royal acts, *viz.* through the existing ministry.[2] Whether the chambers may constitutionally decide, despite the fact that the King is a minor, that no necessity exists for a regency, *i.e.* that the minor King may rule, is a question of some difficulty. It would certainly be a useless trouble to establish a regency if the King lacked only a few days or weeks of attaining his majority. Von Rönne inclines to the view that the chambers have this power.[3]

The other case mentioned in the constitution as authorizing the regency is one of more difficulty, *viz.*, when the King is permanently prevented from governing. A variety of exigencies of this character may arise. The King may be a prisoner of war or long absent for some other reason. He may become insane or physically impotent. He may become subject to influences which rob him of all independence of thought and act. The delicate question of public law is: How shall it be determined when these exigencies require a regency? It would be impossible to provide in detail, by constitutional law or by statute, how insane or how long sick or absent a King must be in order to make a regency necessary. The Prussian constitution has hit upon the true solution of the problem, by designating an organ, or rather organs, for determining, with full discretion, each case as it may arise. It authorizes the adult prince standing next to the crown in regular order of succession to seize the initiative (in understanding, of course, with the existing minis-

[1] Von Rönne, Preussisches Staatsrecht, I, 1, 490, Anmerkung.
[2] *Ibid.* [3] *Ibid.*

try), assume the government, call the chambers, submit to them the question of the necessity for the regency, and, if they in joint assembly approve, to exercise the royal powers until the regency is legally terminated. This is one of the most important provisions of the Prussian constitution. It furnishes a legal way out of many difficulties heretofore considered insurmountable in states having kingly government. It may be applied in directions probably unsuspected by its originators. Let us suppose, for example, that the Guelph family-surrounding of the present King should persistently take advantage of his weak and helpless physical condition to dragoon him into acts and agreements highly perilous to the welfare and even existence of the state, contrary to his own best judgment. I do not see why, in such a case, this constitutional provision does not furnish the means of escape from such danger. If the conviction should become universal that the danger was extreme, and if the desire to avoid it were equally universal and intense, what constitutional or legal obstacle would stand in the way of the Crown Prince, in agreement with the ministry, assuming the regency, calling the Chambers, submitting the question to them and, with their approval, removing the royal powers from the King to himself? The constitution confides everything, in regard to this matter, to the unlimited discretion of these three organs; and if they should agree to interpret the state of things above assumed as permanently hindering the present King from governing, who could legally gainsay them?

Von Rönne calls attention to two other eventualities which would require a regency, but which are not expressly provided for in the constitution, *viz.:* when the King dies without existing male descendants, but leaving a pregnant widow; or when the legal successor to the King dies without male descendants, but leaving a pregnant widow, and the King then dies before the birth of the child.[1] It is the presumption of the German law that the child will be a male and therefore heir to the crown. In place of the crown passing on, then, immediately upon the death of the King to the next qualified person in existence, a

[1] Von Rönne, Preussisches Staatsrecht, I, 1, 489.

regency must be established and the Regent must govern, at least until birth determines the sex of the child. If it should be a male, the regency would continue to his majority; if a female, the Regent would become King.

Of course, the King, the prince entitled by the constitution to the regency and the chambers of the legislature may come to an agreement concerning the regency before the death of the King or in view of the King's inability to govern, but the King can do nothing *ex parte* impairing the constitutional rights of the prince entitled to the regency.[1] The King may also authorize any one to transact certain business for him, *e.g.* to sign certain royal decrees; but this must not go so far as to become a regency, and the arrangement is only valid during the lifetime of the King who makes it and gives no rights to the agent against the King.

The 57th article of the constitution, which provides for the case of failure of an adult agnate without legal provision having been made for the regency, is one of great importance, and stamps the Prussian system with a thoroughly legal character. It authorizes the existing ministry to seize the initiative and summon the chambers. The chambers then, in joint assembly, are vested with discretionary power in determining the necessity for a regency. In case they decide this question affirmatively, they are directed by the constitution to elect the Regent, without being limited to any family, race, or class.[2] The only limitation is that they shall elect a single person Regent, not a board or directory; and this limitation is not expressed in the constitution, but is implied from the general principles of the system and from the language of the 57th article.[3]

The Regent must in all cases take his oath to govern in accordance with the constitution and the laws. If he should refuse or neglect to do so, I hardly think his government should be considered illegal,[4] but he could not exercise any power over

[1] Von Rönne, Preussisches Staatsrecht, I, 1, 491.

[2] Schulze, Das Staatsrecht des Königreichs Preussen, S. 48 ff.

[3] *Ibid.*; von Rönne, Preussisches Staatsrecht, I, 1, 492.

[4] Von Rönne says this would amount to a relinquishment of the regency; Preussisches Staatsrecht, I, 1, 493.

the constitution of his ministry. The existing ministry, appointed by his predecessor, is, by the constitution, continued in power and made responsible for all governmental acts until he shall have taken the prescribed oath. Whether, in case the chambers called by the qualified agnate should decide against the necessity of a regency, the governmental acts committed by this person before the decision had been reached would be regarded as illegal, I have not been able to learn either from the constitution, laws, precedents, or opinions of commentators.

The regency terminates naturally through the cessation of its occasion. If it should be doubtful whether the occasion has ceased, or if the Regent should undertake to hold on to the government beyond the legal period, neither the constitution nor the laws prescribe the mode of procedure to be employed in meeting the case, nor are there any precedents. The analogies of the constitution would indicate, however, that the King himself, in agreement with the ministry, might call the chambers in joint assembly and submit the question to their decision. Of course, the Regent himself may submit the question, if he will, to the chambers, and when the regency terminates by the Regent himself becoming King, no difficulties in regard to this matter would be felt.[1]

The Regent exercises all of the political and governmental powers of the King, but does not bear the title or possess the personal majesty of the King.[2] He is, however, inviolable and irresponsible while Regent, and cannot be held responsible for his acts during the regency after the termination of the same.[3]

The question pertinent to our subject, to which this somewhat extended explanation is preparatory, is now whether the Regent of Prussia is also Regent of the Empire. The way in which the rule is worded, in the Imperial constitution, does not absolutely compel this interpretation; and von Rönne is of the opinion that, in case of a regency in Prussia, the Imperial question must be determined by an Imperial law. Von Rönne main-

[1] Von Rönne, Preussisches Staatsrecht, I, 1, 494.
[2] Von Rönne, Preussisches Staatsrecht, I, 1, 493 ff. and Anmerkung.
[3] Schulze, Staatsrecht des Königreichs Preussen, S. 50.

tains that the acts of the Prussian legislature in deciding the necessity of a regency or electing the Regent, or those of the Prussian ministry in convoking the legislature and exercising the royal powers until the Regent is elected, cannot be taken as having any validity for the Empire.[1] On the other hand, Laband holds that the right to the Imperial office is a prerogative of the Prussian crown, inseparable from the other prerogatives of the crown save by the process of amending the Imperial constitution; that the question who shall exercise the prerogatives is a question purely internal to the Prussian state; and therefore that the person, who by the constitution and laws of the Prussian state is vested with the exercise of these prerogatives, permanently or temporarily, exercises, *ipso jure*, the powers of the Imperial office.[2] This is undoubtedly the sound view. Any other would not only violate sound juristic reasoning, but would lead into a maze of practical difficulties. For example: if, in case of a Prussian regency, the Regent did not hold the Imperial powers, then no one would until the Imperial constitution should have been so amended as to meet the case; but the Regent of Prussia would certainly instruct the seventeen voices of Prussia in the Federal Council to resist any project for an amendment which would exclude him from the Imperial office, and these seventeen votes would prevent any such amendment. That is, the Regent could legally produce a permanent *interregnum* in the Empire should his government therein be denied. This would be true also in reference to the administration of the Empire by the Prussian ministry, in case no adult agnate should be at hand and the ministry should be thus compelled to administer the government of the Prussian state until the Regent should be chosen by the chambers and take his constitutional oath.

Whether the Emperor-King could cause himself to be temporarily represented by one person in the government of Prussia and by another in the government of the Empire is a question which I do not find anywhere treated. I should think not, how-

[1] Von Rönne, Deutsches Staatsrecht, I, 225 ff.
[2] Laband, Staatsrecht des deutschen Reiches, I, 203 ff.

ever, since this would impair the fundamental principles of monarchic institutions. The constitution and the laws of the Empire and those of the Prussian state are equally silent upon this subject, and the only precedent we have, *viz.* that of June 4 to Dec. 5, 1878, is one in which the representation in both spheres was conferred upon the same person — and upon the person who was entitled, by law, to the regency, in case of necessity for the same in the lifetime of the Emperor-King, and to the throne of Prussia and the office of Emperor after his death.

The Powers of the Emperor.

These may be considered under three general divisions: first, his powers as representative head of the Empire over against foreign states; second, his powers in legislation; and third, his powers of internal administration.

I. *International Relations.* The Emperor is vested, by article 11 of the Imperial constitution, with the power to represent the Empire internationally, and for this purpose to send and receive ambassadors, to make agreements, treaties and alliances with foreign powers, and to declare war and make peace. But if the treaties touch any subject already regulated by an Imperial law, constitutional or statutory, then the consent of the Federal Council is necessary to their conclusion and of the Diet also to their validity; and to every declaration of offensive war the consent of the Federal Council is necessary.[1] These are most important and thoroughgoing limitations upon the treaty-making and the war powers of the Emperor. They provide, in the first place, against any conflict which might arise

[1] Reichsverfassung, Art. 11: ". . . . Der Kaiser hat das Reich völkerrechtlich zu vertreten, im Namen des Reichs Krieg zu erklären und Frieden zu schliessen, Bündnisse und andere Verträge mit fremden Staaten einzugehen, Gesandte zu beglaubigen und zu empfangen. Zur Erklärung des Krieges im Namen des Reichs ist die Zustimmung des Bundesrathes erforderlich, es sei denn, dass ein Angriff auf das Bundesgebiet oder dessen Küsten erfolgt. Insoweit die Verträge mit fremden Staaten sich auf solche Gegenstände beziehen, welche nach Art. 4 in den Bereich der Reichsgesetzgebung gehören, ist zu ihrem Abschluss die Zustimmung des Bundesrathes und zu ihrer Gültigkeit die Genehmigung des Reichstages erforderlich.

between the treaties and the constitution and laws, by requiring the consent of the amending power to such treaties as may touch upon a provision of the constitution and of the legislative power to such as may touch upon a provision of the statute law.[1] A treaty cannot change a law in the Imperial system, without the consent of the law-making power, but a law may change a treaty without the consent of the Emperor. There is, thus, no chance for arbitrary action on the part of the Emperor in the exercise of this power.

The Emperor is likewise most heavily handicapped in the exercise of the power of declaring offensive war. He can act only in agreement with the majority of the Federal Council. As King of Prussia he controls, as we have seen, seventeen voices in the Federal Council, and he may cast these votes in favor of the declaration (or against it, of course), but the constitution requires thirty votes, *i.e.* thirteen more than Prussia possesses, to legalize the act. Only one other state possesses as many as six votes in the Federal Council, *viz.* Bavaria. Most of them possess but one. An agreement between the princely heads of at least three states besides Prussia, and probably of many more, would thus be necessary to a declaration of offensive war. Now these German princes are, for the most part, very conservative men, hostile to centralization of power in the Imperial government, and they know that war tends to that; many of them are old men; many of them are connected by intermarriage with the dynastic interests of almost all the reigning houses of Europe and many of them act, in the instruction of their delegates to the Federal Council, through ministries subject to legislative control in their respective states; while the interests of the three free cities represented in the Federal Council, being commercial, would as a rule be upon the side of peace. If here are not sufficient safeguards against arbitrary, ill-considered, or unnecessary declarations of war, I must confess that I do not know how they could be devised.

The independent prerogative of the Emperor, as international representative of the Empire, consists, thus, only of the powers to appoint and receive ambassadors, other public ministers and

[1] Schultze, Lehrbuch des deutschen Staatsrechts, Zweites Theil, S. 328.

consuls,[1] to negotiate all treaties, to conclude treaties of peace and such as do not conflict with the constitution and the laws, and to wage defensive war. The president of a republic should not be intrusted with less.

II. *The Powers of the Emperor in Legislation.* The constitution confers upon the Emperor the powers to call, open, adjourn and prorogue both the Federal Council and the Diet and to dissolve the Diet. It imposes, however, the following limitations upon the exercise of these powers: the Emperor must call the two bodies annually; he cannot call the Diet without the Federal Council, but may call the latter without the former; he must call the Federal Council when this is demanded by one-third of the voices in that body; he can adjourn the Diet only once during the same session and for no longer than thirty days, except it consent to another or a longer adjournment; he can dissolve the Diet only by consent of the Federal Council, and, in case of dissolution, he must order new elections within sixty days and reassemble the Diet within ninety days. Moreover, the annual voting of the budget requires the yearly assembly of the legislature.[2]

The Emperor is empowered to appoint the chairman of the

[1] The Emperor can appoint the consuls only upon hearing the committee of the Federal Council for commerce and intercourse; Reichsverfassung, Art. 56.

[2] Reichsverfassung, Art. 12: "Dem Kaiser steht es zu, den Bundesrath und den Reichstag zu berufen, zu eröffnen, zu vertagen und zu schliessen." Art. 13: "Die Berufung des Bundesrathes und des Reichstages findet alljährlich statt und kann der Bundesrath zur Vorbereitung der Arbeiten ohne den Reichstag, letzterer aber nicht ohne den Bundesrath berufen werden." Art. 14: "Die Berufung des Bundesrathes muss erfolgen, sobald sie von einem Drittel der Stimmenzahl verlangt wird." Art. 26: "Ohne Zustimmung des Reichstages darf die Vertagung desselben die Frist von 30 Tagen nicht übersteigen und während derselben Session nicht wiederholt werden." Art. 24: ". . . Zur Auflösung des Reichstages während derselben [der Legislaturperiode von drei Jahren] ist ein Beschluss des Bundesrathes unter Zustimmung des Kaisers erforderlich." Art. 25: "Im Falle der Auflösung des Reichstages müssen innerhalb eines Zeitraumes von 60 Tagen nach derselben die Wähler und innerhalb eines Zeitraumes von 90 Tagen nach der Auflösung der Reichstag versammelt werden." Art. 69: "Alle Einnahmen und Ausgaben des Reichs müssen für jedes Jahr veranschlagt und auf den Reichshaushalts-Etat gebracht werden. Letzterer wird vor Beginn des Etatsjahres nach folgenden Grundsätzen durch ein Gesetz festgestellt." Art. 71: "Die gemeinschaftlichen Ausgaben werden in der Regel für ein Jahr bewilligt, können jedoch in besonderen Fällen auch für eine längere Dauer bewilligt werden."

Federal Council, the members of the standing committee for naval affairs, and, with the exception of one voice, the members of the standing committee for the army and fortifications, with the limitation, however, that four states besides Prussia must be represented in both. On the other hand, he is bound to submit the propositions of each member of the Union to deliberation in the Federal Council and to lay before the Diet the resolutions of the Federal Council in the exact form and wording given to them by the Council.[1]

This is the sum and substance of the powers and duties of the Emperor in legislation. It will be seen from this that he has no immediate power to initiate legislation either in the Federal Council or the Diet, nor to veto the acts of either of these bodies. His powers in legislation would be altogether too weak to sustain his own prerogatives, except for the fact that, as King of Prussia, he is represented in the Federal Council. As King of Prussia he may, like any other German prince, initiate legislation in the Federal Council, through his delegates in that body, but not in the Diet. His delegates, like those of any other member of the Union, may appear in the Diet and explain to this body the views of the government sending them. As King of Prussia, his seventeen votes in the Federal Council enable him to veto any amendment to the constitution; and, like any other member of the Union, he can prevent the change of any of the guaranteed rights of his own state. As King of Prussia he has the casting vote in case of a tie in the Federal Council. Finally, as King of Prussia, he can veto, in the Federal Council, all projects of law which propose a change in the existing military,

[1] Reichsverfassung, Art. 15: "Der Vorsitz im Bundesrathe und die Leitung der Geschäfte steht dem Reichskanzler zu, welcher vom Kaiser zu ernennen ist . . ." Art. 8: ". . . In dem Ausschuss für das Landheer und die Festungen hat Bayern einen ständigen Sitz, die übrigen Mitglieder desselben, sowie die Mitglieder des Ausschusses für das Seewesen, werden vom Kaiser ernannt. . . . In jedem dieser Ausschüsse werden ausser dem Präsidium mindestens vier Bundesstaaten vertreten sein . . ." Art. 7: ". . . Jedes Bundesglied ist befugt, Vorschläge zu machen und in Vortrag zu bringen, und das Präsidium ist verpflichtet, dieselben der Berathung zu übergeben . . ." Art. 16: "Die erforderlichen Vorlagen werden nach Massgabe der Beschlüsse des Bundesrathes im Namen des Kaisers an den Reichstag gebracht, wo sie durch Mitglieder des Bundesrathes oder durch besondere von letzterem zu ernennende Kommissarien vertreten werden."

naval, customs or excise system and arrangements, or in the existing administrative ordinances for the execution of the customs and excise laws.[1] The meaning of all this is simply that the King of Prussia can prevent the existing instruments of power confided, by the constitution and laws of the Empire, to the Emperor, from being withdrawn from the latter. These are very wise provisions, under existing conditions. I do not see how the Emperor would be able to discharge his great duties to the nation without them.

In the promulgation of the laws, the constitution confers upon the Emperor the powers of furnishing the bills passed by the Federal Council and the Diet with the formula of command and of proclaiming the same as law.[2] At first view these would appear to be only ministerial functions. From a consideration of the provision, alone and apart from the remainder of the instrument, one would naïvely conclude that the Emperor *must* furnish with the form of law, and proclaim as law, all bills whose passage through the Federal Council and Diet had been regularly attested by the proper officers of these bodies. But if this interpretation of the provision be the true one, then the simple majority in the Federal Council and the Diet could render nugatory the veto power of the King of Prussia in the Federal Council against attempted changes in the constitution and in the laws regulating the military, naval, customs and excise sys-

[1] Reichsverfassung, Art. 7: "Jedes Bundesglied ist befugt Vorschläge zu machen und in Vortrag zu bringen. . . . ." Art. 9: "Jedes Mitglied des Bundesrathes hat das Recht im Reichstage zu erscheinen und muss daselbst auf Verlangen gehört werden, um die Ansichten seiner Regierung zu vertreten." Art. 78 [cited above, p. 335, note]. Art. 7: ". . . Bei Stimmengleichheit giebt die Präsidialstimme den Ausschlag . . ." Art. 5: ". . . Bei Gesetzesvorschlägen über das Militairwesen, die Kriegsmarine und die im Art. 35 bezeichneten Abgaben giebt, wenn im Bundesrathe eine Meinungsverschiedenheit stattfindet, die Stimme des Präsidiums den Ausschlag, wenn sie sich für die Aufrechthaltung der bestehenden Einrichtungen ausspricht." Art. 37: "Bei der Beschlussnahme über die zur Ausführung der gemeinschaftlichen Gesetzgebung (Art. 35) dienenden Verwaltungsvorschriften und Einrichtungen giebt die Stimme des Präsidiums alsdann den Ausschlag, wenn sie sich für Aufrechthaltung der bestehenden Vorschrift oder Einrichtung ausspricht." — Art. 35 refers to the customs and excises in regard to which the Federal Council and the Diet may legislate.

[2] Reichsverfassung, Art. 17: "Dem Kaiser steht die Ausfertigung und Verkündigung der Reichsgesetze . . . zu."

tems of the Empire, by simply calling the measures effecting these changes ordinary legislation. On the other hand, if the prerogative of the Emperor to formulate the bills as law contains the power to determine, from their content, whether they are ordinary or extraordinary legislation and to leave them unpromulgated when and in so far as, in his opinion, they have not received the majority in the Federal Council prescribed by the constitution for the class to which he may decide they belong, then we concede to the Emperor the means of blocking any bit of ordinary legislation which may be distasteful to him, by simply declaring it to be a constitutional amendment, which he, as King of Prussia, may always prevent. The commentators do not yet agree as regards the interpretation of this provision. Von Rönne, for example, holds that the question as to whether a project belongs to the class of ordinary or to that of extraordinary legislation is itself a preliminary question of constitutional interpretation and, as such, is to be determined by the Federal Council and Diet by the course of ordinary legislation, *i.e.* by simple majority, with no power of veto against it, either in the Emperor or the King of Prussia, except in case of a tie vote, when the voice of Prussia would be decisive.[1] On the other hand, Laband and Schulze teach that the guardianship of the constitution lies ultimately with the Emperor, and that the prerogative of furnishing the bills of the Council and Diet with the form of law contains the power and the duty to determine whether or no the bills have been constitutionally passed by these bodies, and of ignoring them if, in his opinion, they have not.[2] This conflict of ideas has not progressed beyond the academic stage. We await with much interest a practical issue involving the point. It appears to me that the framers of the constitution did not have this question consciously in mind and did not consciously make any provision in regard to it, but I agree with Laband and Schulze that Prussia would not at all have her proper power and position in the Imperial system if the Emperor could not exercise, in this respect, the power which they ascribe to him.

[1] Von Rönne, Deutsches Staatsrecht, II, 35.

[2] Laband, Staatsrecht des deutschen Reiches, I, 549 ff; Schulze, Lehrbuch des deutschen Staatsrechts, Zweites Theil, S. 119.

The power of proclaiming the laws is limited by a provision of the constitution, which prescribes that they must be published in an Imperial governmental gazette and come into force fourteen days from the day of their publication, unless otherwise provided in the particular law. The Emperor has no power to delay the publication.[1]

III. *The Administrative Powers of the Emperor.* The general principle upon this subject is contained in article 17 of the constitution, which provides that the supervision of the execution of the Imperial laws shall be the right and duty of the Emperor.[2] The immediate administration of the laws, generally and in first instance, is not conferred upon the Emperor by this provision. As far as this provision goes, the Imperial laws must be primarily and immediately administered by the different state governments, under the superintendence of the Emperor. In the execution of this general power, the Emperor cannot issue his commands to the subordinate officials of the state governments. He must address himself wholly to the executive heads of these respective governments, and, if these refuse or resist or ignore the Imperial commands, he has only the remedy provided in article 19 of the constitution, which ordains that, when members of the Union fail to fulfil their constitutional duties to the Union, they may be coerced thereto. Coercion must, however, be voted by the Federal Council, before the Emperor can proceed to execute it.[3] Any immediate powers of administration, in first instance, possessed by the Emperor

[1] Reichsverfassung, Art. 2: ". . . Die Reichsgesetze erhalten ihre verbindliche Kraft durch Verkündigung von Reichswegen, welche vermittelst eines Reichsgesetzblattes geschieht. Sofern nicht in dem publicirten Gesetze ein anderer Anfangstermin seiner verbindlichen Kraft bestimmt ist, beginnt die letztere mit dem vierzehnten Tage nach dem Ablauf desjenigen Tages, an welchem das betreffende Stück des Reichsgesetzblattes in Berlin ausgegeben worden ist.

[2] Reichsverfassung, Art. 17: "Dem Kaiser steht . . . die Ueberwachung der Ausführung derselben [*i.e.* der Reichsgesetzen] zu."

[3] Reichsverfassung, Art. 19: "Wenn Bundesglieder ihre verfassungsmässigen Bundespflichten nicht erfüllen, können sie dazu im Wege der Execution angehalten werden. Diese Execution ist vom Bundesrathe zu beschliessen und vom Kaiser zu vollstrecken." *Cf.* Laband, in Marquardsen's Handbuch, Staatsrecht des deutschen Reiches, S. 102 ff.

are exceptions to the general rule and must be found in special provisions of the constitution or in the laws of the Imperial legislature made in accordance with the constitution.[1] These extraordinary powers in the domain of the civil administration comprehend:

(1) The supervision of the collection of the imperial taxes. The constitution provides, upon this subject, that the Emperor shall supervise the collection of the Imperial taxes by the state officials through Imperial officials, whom he may co-ordinate with the state officials. That is, the Emperor is not confined to transactions between himself and the heads of the respective state governments in the collection of the taxes, but may, through his own agents, inspect the operations of the state officials and make report thereof to the Federal Council, in order that this body, in case it should become necessary to coerce a state to the proper discharge of its duties to the union, may be placed in possession of the necessary information from Imperial sources.[2] This provision does not apply to the collection of the excise duties upon whiskey and beer in Bavaria, Württemberg and Baden. In these states, the Emperor can supervise the administration, in this respect, only according to the general rule as above stated, if at all.[3]

(2) The direction of the postal and telegraphic administration of the Empire. The constitution provides that the Emperor shall have the "superior direction" of the postal and telegraphic administration of the Empire; that he shall have the power to make the rules and regulations for the same; that he shall appoint all the officers necessary to administer this superior

[1] Laband, in Marquardsen's Handbuch, Staatsrecht des deutschen Reiches, S. 102 ff.

[2] Reichsverfassung, Art. 36: "Die Erhebung und Verwaltung der Zölle und Verbrauchssteuern bleibt jedem Bundesstaate, soweit derselbe sie bisher ausgeübt hat, innerhalb seines Gebietes überlassen. Der Kaiser überwacht die Einhaltung des gesetzlichen Vefahrens durch Reichsbeamte, welche er den Zoll- oder Steuerämtern und den Direktivbehörden der einzelnen Staaten, nach Vernehmung des Ausschusses des Bundesrathes für Zoll- und Steuerwesen, beiordnet. Die von diesen Beamten über Mängel bei der Ausführung der gemeinschaftlichen Gesetzgebung (Art. 35) gemachten Anzeigen werden dem Bundesrathe zur Beschlussnahme vorgelegt."

[3] Reichsverfassung, Art 35: ". . . In Bayern, Württemberg und Baden bleibt die Besteuerung des inländischen Branntweins und Biers der Landesgesetzgebung vorbehalten . . ."

direction; and that all the officers employed in the service are bound to obey the Imperial orders. On the other hand, the constitution reserves to the states the appointment of all other officers of the postal and telegraphic service not included under the class of superior directive officers.[1] Again, Bavaria and Württemberg, except in time of war, are exempted from the administrative powers of the Emperor.[2]

(3) The Emperor may fix the railroad tariffs upon certain articles of food in time of famine and distress. The constitution provides, in this respect, that in times of distress, especially when food becomes extraordinarily dear, the railroads shall transport grain, flour, potatoes and other vegetables at special low rates fixed by the Emperor, upon recommendation of that committee of the Federal Council in whose sphere the subject falls. The rates cannot, however, be placed lower than the lowest charge made by the particular road for raw products.[3] Bavaria, again, is exempted from this power of the Emperor.[4]

[1] Reichsverfassung, Art. 50: "Dem Kaiser gehört die obere Leitung der Post- und Telegraphenverwaltung an . . . Dem Kaiser steht der Erlass der reglementarischen Festsetzungen und allgemeinen administrativen Anordnungen, sowie die ausschliessliche Wahrnehmung der Beziehungen zu anderen Post- und Telegraphenverwaltungen zu. Sämmtliche Beamte der Post- und Telegraphenverwaltung sind verpflichtet, den kaiserlichen Anordnungen Folge zu leisten. Diese Verpflichtung ist in den Diensteid aufzunehmen. Die Anstellung der bei den Verwaltungsbehörden der Post und Telegraphie in den verschiedenen Bezirken erforderlichen oberen Beamten (z. B. der Direktoren, Räthe, Ober-Inspektoren), ferner die Anstellung der zur Wahrnehmung des Aufsichts- u. s. w. Dienstes in den einzelnen Bezirken als Organe der erwähnten Behörden fungirenden Post- und Telegraphenbeamten (z. B. Inspektoren, Kontroleure) geht für das ganze Gebiet des deutschen Reichs vom Kaiser aus, welchem diese Beamten den Diensteid leisten . . . Die anderen bei den Verwaltungsbehörden der Post und Telegraphie erforderlichen Beamten, sowie alle für den lokalen und technischen Betrieb bestimmten, mithin bei den eigentlichen Betriebsstellen fungirenden Beamten u. s. w. werden von den betreffenden Landesregierungen angestellt."

[2] Reichsverfassung, Art. 52: "Die Bestimmungen in den vorstehenden Art. 48 bis 51 finden auf Bayern und Württemberg keine Anwendung . . ."

[3] Reichsverfassung, Art. 46: "Bei eintretenden Nothständen, insbesondere bei ungewöhnlicher Theuerung der Lebensmittel, sind die Eisenbahnverwaltungen verpflichet, für den Transport, namentlich von Getreide, Mehl, Hülsenfrüchten und Kartoffeln, zeitweise einen dem Bedürfniss entsprechenden, von dem Kaiser auf Vorschlag des betreffenden Bundesraths-Auschusses festzustellenden, niedrigen Specialtarif einzuführen, welcher jedoch nicht unter dem niedrigsten auf der betreffenden Bahn für Rohprodukte geltenden Satz herabgehen darf . . ."

[4] Reichsverfassung, Art. 46: ". . . Die vorstehend, sowie die in dem Art. 42 bis 45 getroffenen Bestimmungen sind auf Bayern nicht anwendbar."

The constitution empowers the Imperial legislature to authorize the construction of Imperial railways for defence and general intercourse. Such railways would naturally be administered immediately by the Emperor, but an act of the legislature would be necessary to confer upon him this power.[1]

(4) The extraordinary powers of the Emperor in civil administration comprehend, lastly, the immediate local government of Alsace-Lorraine. This power of the Emperor does not rest upon a provision of the constitution, but upon a law passed by the Imperial legislature on the 9th of June, 1871, which provides that the Emperor shall exercise the powers of government in Alsace-Lorraine.[2] By virtue of this Imperial law, the Emperor controls the special legislation for Alsace-Lorraine, in so far as it is not exercised by the Imperial legislature itself, and directs immediately the local administration therein.[3]

The Emperor appoints and dismisses all the officials employed in his ordinary or extraordinary administration;[4] but all of his orders to them or acts in regard to them must be issued in the name of the Empire and require for their validity the signature of the Chancellor — a rule which preserves the irresponsibility of the Emperor.[5] The exception to this general principle is the case of the judicial officers of the Empire. These are appointed by the Emperor, but upon nominations made by the Federal Council; and they hold, as against the Emperor, for life.[6]

[1] Reichsverfassung, Art. 41: "Eisenbahnen, welche im Interesse der Vertheidigung Deutschlands oder im Interesse des gemeinsamen Verkehrs für nothwendig erachtet werden, können kraft eines Reichsgesetzes auch gegen den Widerspruch der Bundesglieder, deren Gebiet die Eisenbahnen durchschneiden, unbeschadet der Landeshoheitsrechte, für Rechnung des Reichs angelegt . . . werden."

[2] Reichsgesetzblatt, 1871, No. 25, S. 212: "Die Staatsgewalt in Elsass und Lothringen übt der Kaiser aus."

[3] Leoni, Staatsrecht der Reichslande Elsass-Lothringen, in Marquardsen's Handbuch des öffentlichen Rechts, S. 230 ff.; Schulze, Lehrbuch des deutschen Staatsrechts, Zweites Theil, 377 ff.

[4] Reichsverfassung, Art. 18: "Der Kaiser ernennt die Reichsbeamten, lässt dieselben für das Reich vereidigen, und verfügt erforderlichen Falls deren Entlassung . . ."

[5] Reichsverfassung, Art. 17: ". . . Die Anordnungen und Verfügungen des Kaisers werden im Namen des Reichs erlassen und bedürfen zu ihrer Gültigkeit der Gegenzeichnung des Reichskanzlers, welcher dadurch die Verantwortlichkeit übernimmt."

[6] Gerichtsverfassungsgesetz, § 127: "Der Präsident, die Senatspräsidenten und die Räthe werden auf Vorschlag des Bundesrathes von dem Kaiser ernannt." *Ibid.*, § 6: "Die Ernennung der Richter erfolgt auf Lebenszeit.

The Emperor's power to appoint the judges rests upon a law made by the Imperial legislature, not upon the constitution. The constitutional provision in reference to this subject simply empowers the Imperial legislature to establish the judicial system of the Empire.[1]

In the sphere of military administration, the constitution is more generous to the Emperor. This is both natural and necessary. In the military organization of the state, federalism is out of place. Here the strictest centralization is the true principle of a rational and practical polity. Nevertheless this principle has not yet been fully realized in the German system.

(1) The constitution vests in the Emperor the command of the army of the whole Empire in time both of war and peace.[2] It binds the entire soldiery to render unconditional obedience to the commands of the Emperor.[3] It empowers the Emperor to organize the army,[4] to appoint all the officers commanding a contingent or more than one contingent or a fortification, and makes the appointment of the generals within the contingents by the governments of the respective states dependent upon the Emperor's approval.[5] Officers lower than generals are appointed by the state governments independently. These are the general rules, but there are exceptions to them in the cases both of Bavaria and of Württemberg.

The Bavarian troops form one consolidated component part of

[1] Reichsverfassung, Art. 4, alinea 13: "Der Beaufsichtigung Seitens des Reichs und der Gesetzgebung desselben unterliegt . . . das gerichtliche Verfahren."

[2] Reichsverfassung, Art. 63: "Die gesammte Landmacht des Reichs wird ein einheitliches Heer bilden, welches in Krieg und Frieden unter dem Befehle des Kaisers steht . . ."

[3] Reichsverfassung, Art. 64: "Alle deutsche Truppen sind verpflichtet, den Befehlen des Kaisers unbedingte Folge zu leisten . . ."

[4] Reichsverfassung, Art. 63: ". . . Der Kaiser bestimmt den Präsenzstand, die Gliederung und Eintheilung der Kontingente des Reichsheeres, sowie die Organization der Landwehr, und hat das Recht, innerhalb des Bundesgebietes die Garnisonen zu bestimmen . . ."

[5] Reichsverfassung, Art. 64: "Der Höchstkommandirende eines Kontingents, sowie alle Offiziere, welche Truppen mehr als eines Kontingents befehligen, und alle Festungskommandanten werden von dem Kaiser ernannt. . . . Bei Generalen und den Generalstellungen versehenden Offizieren innerhalb des Kontingents ist die Ernennung von der jedesmaligen Zustimmung des Kaisers abhängig zu machen.

the German Army. The Bavarian King appoints all the officers thereof, independent of Imperial ratification. The Bavarian troops are under the exclusive command of the Bavarian King in time of peace, but from the beginning of mobilization for war they come under the superior command of the Emperor and are bound to render absolute obedience to the Emperor from such moment until the re-establishment of peace.[1] Mobilization proceeds upon order from the Emperor, but the order must be addressed to the Bavarian King, and made by him immediately to the Bavarian troops.[2] If the Bavarian King should refuse or fail to transmit the Imperial order, the only remedy in the hands of the Emperor is that provided in article 19 of the constitution, to which I have already referred, *viz.* coercion voted by the Federal Council and executed by the Emperor. The Emperor has the power and the duty to inspect the Bavarian troops at any time.[3]

The Württemberg troops form one consolidated army corps under the immediate command of the King of Württemberg, but under the superior command of the Emperor in time both of war and peace. The King of Württemberg appoints all the officers of this corps, except the commanders of fortifications, but his appointments of the commanders-in-chief must be ratified by the Emperor. The Württemberg troops owe unqualified obedience to the commands of the Emperor; but, in time of peace, the Emperor has no power to order the Württemberg troops out of Württemberg or other troops into Württemberg, without the consent of the King of Württemberg, except for the purpose of garrisoning South-German or West-German fortifications. The Emperor has the power and duty to inspect the Württemberg troops at any time.[4]

(2) The constitution vests in the Emperor the superior command of the navy. It empowers him with the authority to

[1] Bündniss-Vertrag mit Bayern von 23 Nov. 1870, dem Art. 68 der Reichsverfassung zugesetzt.

[2] *Ibid.* [3] *Ibid.*

[4] Militair-Konvention mit Württemberg, von 21 und 25 Nov. 1870, dem Art. 68 der Reichsverfassung zugesetzt.

organize the navy, to appoint all of its officers and to require from all the officers and men the oath of obedience.[1]

(3) The constitution confers upon the Emperor the power to establish fortifications within the territory of the Empire,[2] except in Bavaria.[3]

(4) The constitution empowers the Emperor, in case of insurrection or rebellion in any part of the Empire, to declare that part in a state of siege, *i.e.* to govern therein, for the time being, as commander-in-chief of the army and through the officers of the army.[4] Bavaria is exempted from the operation of this power.[5]

Such is the character of the German *imperium*. It impresses us, in some respects, as a strong organ of centralized government; in others, as a weak organ of confederatized government. It is full of the spirit of conservatism, and well regulated by law. Its constitution guards it well against personal arbitrariness or vacillation on the part of the Emperor or the princes, or fickleness and violence on the part of the people. It is Europe's best guaranty of peace through the power to enforce peace. In a sentence, it is a constitutional presidency; and if it needs any reform, it is in the direction of more strength rather than less.

JOHN W. BURGESS.

[1] Reichsverfassung, Art. 53: "Die Kriegsmarine des Reichs ist eine einheitliche unter dem Oberbefehl des Kaisers. Die Organization und Zusammensetzung derselben liegt dem Kaiser ob, welcher die Offiziere und Beamten der Marine ernennt, und für welchen dieselben nebst den Mannschaften eidlich in Pflicht zu nehmen sind . . ."

[2] Reichsverfassung, Art. 65: "Das Recht, Festungen innerhalb des Bundesgebietes anzulegen, steht dem Kaiser zu . . ."

[3] Bundniss-Vertrag mit Bayern von 23 Nov. 1870.

[4] Reichsverfassung, Art. 68: "Der Kaiser kann, wenn die öffentliche Sicherheit in dem Bundesgebiete bedroht ist, einen jeden Theil desselben in Kriegszustand erklären . . ."

[5] Bundniss-Vertrag mit Bayern von 23 Nov. 1870.

REVIEWS.

Das englische Armenwesen in seiner historischen Entwicklung und in seiner heutigen Gestalt. Von Dr. P. F. ASCHROTT, Gerichts-Assessor in Berlin. [Staats- und socialwissenschaftliche Forschungen, herausgegeben von Gustav Schmoller, V, 4.] 1886. — 450 pp.

Die deutsche Armengesetzgebung und das Material zu ihrer Reform. Von Dr. EMIL MÜNSTERBERG, Gerichts-Assessor in Berlin. [Staats- und socialwissenschaftliche Forschungen, herausgegeben von Gustav Schmoller, VI, 4.] 1887. — 570 pp.

Professor Schmoller has rendered a great service to all who are interested in poor laws by publishing these two valuable treatises in his *Forschungen*. Dr. Aschrott's book is the most complete treatment of the English poor law since Sir George Nicholls' history, published in 1854, while Dr. Münsterberg's book is a still more thorough and detailed investigation of certain phases of the German poor laws.

The scope of the two books, as indicated by the titles, is somewhat different. Dr. Aschrott has aimed to give an objective, impartial view of the English poor law and its development. It is only in exceptional cases that he makes any criticisms or suggestions of his own. Dr. Münsterberg, on the other hand, is critical throughout, and devotes more than a third of his space to a discussion of the various plans that have been recently proposed for the reform of the law.

Dr. Aschrott has followed for the English poor law the method adopted by Professor Gneist for the treatment of the general administration in the earlier editions of his *Englisches Verwaltungsrecht;* that is to say, he first gives an historical account of the gradual development of the present law, and then treats systematically of the law in its present condition. There is, therefore, a certain amount of repetition in the book. In many cases the contents of the same act are summarized in both parts. This, however, is not a blemish, for it adds greatly to the clearness of the treatment. In the historical part very little space is given to English legislation before the act of the 43d of Elizabeth. This whole subject is, in fact, treated so fully by Sir George Nicholls that a repetition in the present work was unnecessary, and the author was able to give more attention to recent legislation.

The history of the English poor law has that peculiar fascination which attaches to the history of all English institutions, in that legislation