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Z. Dekelbaum

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# THE CONSTITUTION OF THE UNITED STATES COMPARED WITH THE CONSTITUTIONS OF MEXICO, GERMANY AND RUSSIA

*By* Z. DEKELBAUM

In the constitution of a people are reflected the fears, hopes and ideals of such people. There we can find the institutions that gave them trouble which they are trying to overcome with a hope for betterment. Constitutions are therefore usually adopted after a revolution. A constitution is not alone a proper gage by which to measure the progress of the people adopting it, but it is also a proper gage by which to measure the progress of the race generally; for as a rule, the constitution of no people is entirely original with them, different elements and provisions in the constitution are borrowed from other nations.

It may not be amiss at this time to set forth the general objects intended to be attained by the adoption of a constitution.

1. The first object is to form a governmental machinery by which public affairs are to be conducted.

2. The second object is to promulgate the most elementary principals of right and wrong prevailing in the minds of the people at that time. And since particular ideas prevailing in the minds of the majority as set forth in their constitution is bound to be the result of a conflict of interests and ideals, it therefore offers a convenient measure by which the historian interprets the spirit of the times.

As you are well aware, the constitution of Mexico, Germany and Russia have all been adopted within the last few years, and as products of our own times we must not approach them with levity. On the contrary, some of the provisions in those new instruments were framed in the light of experience that we have had with constitutions formed years ago. The short-comings and defects of the older constitutions must undoubtedly have been in the minds of the framers of the new constitutions. By that I do not mean to convey that those new constitutions are perfect or that time may not prove them deficient in a number of partic-

ulars. But I do firmly believe that some of the provisions contained in those new documents will undoubtedly prove beneficial reforms which will serve humanity in its course of progress.

In my comparing the constitutions of those different countries, I mainly had in mind the two divisions already mentioned, namely, first, the plan of the political machinery providing for the operation of the government, and second, that part which deals with the elementary principles of right and wrong applicable to the general welfare of the people.

### MEXICAN CONSTITUTION

I shall first endeavor to compare the Mexican constitution with that of our own because these constitutions resemble each other more than the others. Their plans of government are very much like our own. I shall not elaborate on the plan of government of our own constitution, indulging in the presumption that all of us are more or less acquainted with its frame work.

The plan of government as provided under the Mexican constitution adopted in 1917, like our own, consists of three departments, namely, the Legislative, Executive and Judicial. Their legislative department, like our own, consists of a House of Representatives and Senate. A law cannot be passed unless with the concurrence of both houses. Bills or proposed laws may originate in either house, excepting that all taxation laws must originate and first be passed upon by the House of Representatives. The power of their congress differs from ours in these:

While pardons for federal offenses can only be granted by our president and while our president, with the approval of our senate, appoints all federal judges; under the Mexican constitution congress and the president each have independent and concurrent power to grant pardons for federal offenses, excepting in the case of impeachment of a public official, in which event no pardon can be granted.

The Mexican House of Representatives elect the judges of the Supreme Court (eleven in number) from candidates nominated by the State Legislatures, and the supreme court thus elected in turn appoint all the federal judges of the lower courts throughout the land.

The president of the republic is elected for four years but cannot be re-elected. Among other qualifications for president

and judge for the supreme tribunal is that they must not be clergymen and must have severed all military connection at least ninety days prior to their election.

Like the German and Russian constitutions, the Mexican congress, before adjournment, appoints a committee to perform duties during the time congress is not in session with the object of guarding the executive against exercising power not given to him by the constitution.

Presidential orders, decrees or regulations require the signature of the cabinet officer of the department to which such order, decree or regulation pertains, and without such signature, the presidential orders have no validity. Each of the cabinet officers is obliged to report to congress and may be called upon to attend congressional sessions. In this respect, you will note that there is at least a connection formed between the cabinet and the legislative department; while under our plan, the cabinet officers need not report to nor attend sessions of congress and are responsible to the president alone.

The Mexican President, while being the head of the naval and military forces, cannot dispose them in different parts of the country or use them in any way without the consent of the Senate, and when the senate is not in session, he must receive the consent of the congressional committee before mentioned. You will thus see that our president has power of appointments, disposition of our military and naval forces within the country and to issue his own orders over his own signature without the need of having any of his cabinet officers countersign it, all of which powers are lacking with the Mexican president.

The Mexican Constitution provides for no vice-president. The House of Representatives elects a president in case of disability or death of the regularly elected president during the last two years of his term, and elects a temporary president in case of disability or death during the first two years of the term, in which latter event a special election for president is held to serve for the unexpired term.

Amendments to their constitution can be made by  $\frac{2}{3}$  vote of the members of congress present and ratified by a majority of the State legislatures, thereby making their constitution easier to amend than our own which requires ratification by three-fourths

of our legislatures or three-fourths of state conventions.

Unlike the American and German constitutions, the Mexican constitution first starts out with setting down certain fundamental principles of right and wrong and in the latter part it provides for the machinery of government. The principal efforts of the constitution is directed against slavery or peonage, freedom from church control, equitable distribution of land, precaution against the usurpation of government by the military forces, and protection for labor.

Provision is made for division and distribution of large estates by giving the right to the several states to expropriate the land of large property owners and to pay with state bonds, at the price of 10% in excess of the valuation that the property may have been given in for taxation purposes, plus such amount as experts may determine for all improvements made thereon between the adoption of the constitution and the time of expropriation.

The Mexican constitution provides that eight hours shall be the maximum limit of a day's work. And the maximum limit for night work or night shifts must not exceed seven hours. Women and children are not to be employed in dangerous occupations or for night work. The day work for children under the age of sixteen, must not exceed six hours. Women workers are protected by giving them a liberal vacation prior to and after the birth of a child. Principles of minimum wage laws are provided for in the constitution and the measure is such that it must provide for a wage sufficient to insure the workingman with reasonable comforts of life, including the requirements of supplying his children with an elementary education, as well as reasonable pleasures. For that purpose, the different localities are to create boards under the supervision of the state governments to determine the minimum wages employers are to pay within that locality and also the extent to which labor is to share in the profits of the employer. The employer is made absolutely liable for accidents and occupational diseases. In this respect, they go much further in the protection of labor than does our workingmen's compensation laws, because our compensation laws only cover accidents but not disability from occupational diseases.

Their organizations of labor and the right to strike is guaranteed by their constitution. The employer is likewise given the

right to combine and the power to lockout. But lockouts are only allowed when there is an over production and then only pursuant to orders from a Board of Reconciliation and Arbitration. The right to strike is also limited to the extent that strikers must use no unlawful force against person or property. But striking becomes unlawful only when the majority of the strikers use such unlawful methods. This provision is undoubtedly intended to guard against judges who may declare a strike unlawful because of isolated cases of unlawful force, as is quite common in our own country. An employer must not discharge an employee because of political opinion or affiliation with labor organizations or because of previous engagements in a strike. An employee has a claim against an employer, not only for discharging him for such grounds, but also if he mistreats him or mistreats any of his parents or children for such reasons.

The Mexican Constitution provides that all natural resources and subsoils, such as minerals, metals, water falls, etc. are to be the property of the nation, and is not subject to private ownership.

Provision is made for a national system of education from which, by the way, the clergy are entirely excluded, education being entirely secularized. Higher institutions of learning such as universities, trade schools, libraries, observatories, museums and other institutions of higher learning are declared to be the proper undertaking of the nation. However, this is not to be exclusive, but individuals may likewise be engaged in such worthy undertakings.

Thus you will see that in so far as provisions for a national educational system, the nationalization of natural resources, equitable distribution of land ownership and protective labor laws, are features entirely lacking in our own, but are cared for under the Mexican Constitution. (For reference see annals of the American Academy of Political and Social Science for May, 1917, and Mexican year book for 1920-21.)

#### GERMAN CONSTITUTION.

I shall next proceed to compare the German constitution effective August 11th, 1919. (For reference see Current History

of October, 1919, page 86, also see the new German Constitution by Rene Brunet.)

The plan of government under the German constitution is only similar in appearance to our own but in reality is far different. Theirs is a parliamentary form of government. The German plan of government, like our own, is also divided into three departments, namely, the Legislative, Executive and Judicial. But in their spheres of authority those three departments are not as distinct from each other like it is with us. In their distribution of power, they have given most of it to the legislative branch which corresponds closest to our house of representatives. Their Legislative department is also composed of two houses, one is called the Reichstag, corresponding to our house of representatives and the other is called Reichsrat, corresponding somewhat to our senate but is lacking most of the senate. The Reichstag is elected by a direct secret vote of the German people, men and women of twenty-one years of age and over; while the Reichsrat is appointed from the cabinet officers of the different states composing the German Reich. The members of the Reichstag are elected for four years. The Reichstag is the only body that enacts laws for Germany. The Reichsrat co-operates with the executive department, by way of deliberating and advising with the national cabinet ministers to propose new bills for the Reichstag and also shares with the cabinet by way of advice in the administrative part of the government. The Reichsrat also has the veto power over bills passed by the Reichstag, but such veto can be overridden by two-thirds vote of the Reichstag and published by the national president. If the president should side in with the Reichsrat in its veto and refuse to publish that law, after it passed by two-thirds vote of the Reichstag, the same must go to a referendum of the German people. And since the president can only retain his cabinet ministers through the confidence of the Reichstag, it is most likely that the president will side with the latter in most instances and it would therefore seem to me that the veto power of the Reichsrat can be very seldom resorted to. The members of the Reichstag are elected on the basis of proportionate representation, and are not the representatives of any particular state or locality, but are the representatives of the en-

tire people; while the members of the Reichsrat represent the respective states.

The basis of proportionate representation differs from our own in this; in our country when a political party is defeated, it is liable to have either no representatives at all or a number of representatives far less than the proportionate number of votes cast for the defeated party; that is, supposing that the popular vote cast for the defeated party amounted to twelve millions, while the Republican vote amounted to thirteen millions, under our system it will not necessarily follow that the Democrats will have 12/25 of the representatives and the Republicans 13/25. Especially is this true with the smaller parties who have a popular vote of a million or more and yet not have a single member in our house of representatives. While under the German proportionate representation system the minority parties are given sufficient representation approximately in accordance with the size of their vote.

The German president is elected for seven years and may be re-elected, but he may also be recalled by a popular referendum without having committed any offense; and he can also be impeached like our own president for having been derelict in his duties or for having committed a crime.

The cabinet officers, unlike our own, are officers provided for in the constitution. The president appoints his prime ministers and at the prime minister's suggestion appoints the other officers of the cabinet, and no order of the president is binding unless counter-signed by the prime minister or the minister whose department is affected by that order. The prime minister, as well as the other cabinet officers, are accountable for their actions to the Reichstag. The Reichstag, may, at any time, demand the presence of the prime minister or national chancellor, as they call him, or any members of his cabinet to attend sessions of the Reichstag and to be questioned on matters of government, and upon majority vote of the Reichstag censoring the prime minister or any of his subordinate cabinet officers, the entire cabinet or the officer censored must resign. The prime minister also has the right, if he wishes, to attend sessions of the Reichstag and be heard on certain questions. The president can make treaties but

with the approval of the Reichstag. He can dissolve the Reichstag once for the same cause, in which case a new election takes place.

Thus it can be seen that the powers of the German president is far less than that of the president of the United States, and the power of the German house of representatives is far in excess of that of the American house of representatives. In fact, the German Reichstag alone has the combined power of the house of representatives and senate and also additional power which with us is vested in the president.

The German constitution provides for no vice-president. In case of temporary disability of the president, the national chancellor fills his place, and in the event of a permanent disability of the president or vacancy of his office, the Reichstag is given the power to provide by law for someone to take the place of the President.

The president of the Reichstag, together with some other members elected by the Reichstag from its membership constitutes a standing committee who are to carry on the work of the Reichstag during adjournment or while the Reichstag is not in session.

The constitution itself can be amended by a two-thirds vote of the members present in the Reichstag and in which case  $\frac{2}{3}$  of the entire membership of the Reichstag must be present. A popular majority vote of the people by a referendum can likewise amend the constitution. The German people are also guaranteed by their constitution to have laws referred to them for their vote and they can also initiate laws. Elections must be held on Sundays or other public holidays when the people are not engaged in their every day labor.

Each of the German states is guaranteed a republican parliamentary form of government and equal secret suffrage on the basis of proportionate representation.

The German constitution recognizes the universal principals of the laws of the nations as binding elements of the laws of Germany. It also provides for the socialization of natural treasures and economic undertakings and the supervision of production, organization, distribution and the valuation of economic goods for the common-wealth. It is made the duty of the national govern-

ment to take over all railroads and all water ways.

It is interesting to note that the question with us of the judiciary having the power to declare a state or national law as conflicting with our constitution and thereby declaring it void can not be a vexatious problem under the German constitution. For one reason, although I am not acquainted with the interpretation of that point by German jurists, I am of the opinion that under the German constitution the question of the unconstitutionality of a law cannot be raised by an individual litigant, but must be raised either by proper state authorities or by the administrative department of the national government. The constitution expressly gives authority to the judiciary to declare a state law unconstitutional when it conflicts with the national constitution while it is utterly silent upon a conflict between the national law and the national constitution. For the second reason, the easier method of amending their constitution makes the declaring of a law as unconstitutional less important, because a constitutional amendment can readily override such judicial decision.

Their constitution also provides for direct responsibility of the national, state or municipal governments to anyone injured by the agents of those governmental divisions. That is directly opposite to our laws. By way of illustration, if a city policeman in our country should make a lawful or an unlawful arrest and in the course of such arrest inflict serious injuries upon the citizen, all that the injured can do is sue the policeman perpetrating that wrong, but he can have no claim against the city; while under their constitution such an injured citizen may obtain damages from the city.

The German citizen is guaranteed freedom of thought and speech and the sacredness of private communication such as post or telegram. Labor is guaranteed the freedom of thought and speech to the extent that an employer may not discharge an employee for giving expression to his thoughts which may not be in harmony with that of his employer. A special representation is given to the economic forces of the nation by an organization equally representative of employer and employee, which body is called the economic councils. Those national economic councils have the right to propose laws to the Reichstag and through their co-operation with the National cabinet have the views of such

economic councils presented to the Reichstag. Their constitution also provides for workingmen's councils which are exclusively representative of the workingmen only. The workingmen's councils are given the opportunity to help supervise the administration of social welfare laws covering labor. Provision is also made for the insurance of labor against unemployment or old age. It is made the duty of the states and nation to supply every able bodied German with a gainful employment and in the absence thereof to supply him or her with the necessary needs of life.

The German constitution proceeds upon the philosophy that every German is morally bound to so use his energy and ability not only to advance his own individual interest but also to advance the national welfare. It is therefore no more than fair that the nation should in exchange undertake the obligation to either supply its citizens with an opportunity of earning a livelihood or upon failure to furnish such opportunity to secure him with the means of life.

Children of the poor are nationally secured to receive an elementary and higher education and the minimum compulsory school age provided by the German constitution is eighteen years of age.

It is also provided that any increase in the value of land without expenditure of labor or capital shall belong to the nation, and all economic enterprises adopted for socialization may be taken over by the state. The nation is given the power to organize the entire buying and selling, importations and exportations of various industries into one national unit. In connection with this power, I may remark that recent information would show that the German government makes good use of this power as a means of successful competition in the markets of the world with other nations.

On the questions of sacredness of contracts and property rights which play so important part in our constitution, I can do no better than quote a part of the actual provisions of the German constitution on those subjects. "Freedom of contract prevails in economic relation in accordance with the laws." "Property-rights imply property-duties. Exercise thereof shall at the same time serve the general welfare."

To those of us who are acquainted with the almost reverence with which our courts look upon these two subjects in light of our own constitution, will note an entirely different spirit in those provisions of the German constitution.

Labor is guaranteed the right of combination for its own protection and welfare and all agreements and arrangements limiting this right is declared illegal.

#### UNION OF SOCIALIST SOVIET REPUBLICS.

(Documents of the American Association for international conciliation for January and April, 1920, The Nation Volume 116 page 129 and volume 117, page 173.)

The constitution for the Union of the Socialist Soviet Republics was adopted by their tenth union congress July 6th, 1923, The Union Socialist Soviet Republics is a federation of republics and its constitution partakes partly of a national constitution and partly that of a covenant or treaty between nations and is somewhat similiar to the covenant for the league of nations. It is modeled after the constitution adopted by the Russian Federated Socialist Soviet Republics in 1918, a short time following the Bolshevik Revolution, which is a federation within a federation.

The Union of the Socialist Soviet Republics is composed of the following members:

1. The Russian Socialist Federated Soviet Republics (R. S. F. S. R.)
2. Ukeranian Socialist Soviet Republic (U. S. S. R.)
3. White Russian Socialist Soviet Republic (B. S. S. R.)
4. Transcaucasian Socialist Federated Soviet Republics, consisting of the Republics of Georgia, Azerbaijan and Armenia.
5. Uzbek Socialist Soviet Republics.
6. Turcoman S. S. R.

When we come to compare the constitution of the union of the Socialist Soviet Republics with our own, we find very little similiarity between the two documents, either in their general plan of government or in their welfare provisions. Their system is too complicated and I doubt the utility of setting it forth in full. I shall therefore limit myself to giving a general idea of the system rather than a detailed account.

The word Russia is left out completely from the name of the United Republics. Their constitution is drafted on a rather am-

bitious hope that non-Russian countries will join their union by adopting the Socialist Soviet plan of government, and it is so stated in their constitution. It is stated plainly in their constitution and emphasized several times that any member of the union has the right to secede, although no special plan is provided in the document for an orderly withdrawal.

Their suffrage right is limited to those who are usefully engaged. Their motto is "he shall not eat who does not work." This restriction deprives the merchant, wealthy persons who live from interest or profits or other ready means of income without labor or clergymen from the right to vote or to hold office.

All the lands, forests, minerals, metals, factories, mills and banks are made national property.

Their highest governing power is placed in their union congress which meets once a year, excepting when called in extra session either by the Union Central executive committee or by any two of the component republics. Delegates to congress are elected either at the congresses of each state or the republics that have not a state division, then at the congress composing about 1500 members are allotted on the basis of one for every 25,000 of the actual city votes cast and one for every 125,000 of the rural population. Cities of less than 10,000 are considered rural. The right to vote is given to males and females of 18 years and over.

The Union congress can alter or change the constitution at any of its meetings by a majority vote and also elects the union central executive committee which is the actual governing body of the union of soviet republics.

The executive committee consisting of about 400 members enacts laws, appoints the supreme court and also appoints commissars corresponding to our cabinet officers, each commissar being the head of a department of government. The Union Central executive committee is elected by and from the members of the union congress and the executive committee in turn likewise elects all its officials from its own members. Each commissar appoints assistants to help him in his department. All orders of the commissars must be carried out but his assistants may complain of it either to the entire council of the people's commissars or to the union central executive committee. Under that system of government, the council of people's commissars is directly ac-

countable to the union central executive committee, who in turn is absolutely responsible to the union congress, and congress is ultimately responsible to the local soviets.

The entire governmental structure is based upon village soviets, factory workers soviets and soldier's soviets. The village inhabitants get together and elect their soviet and such soviet governs the affairs of the village and also elects delegates from their own members to the county soviets. The county soviets does likewise govern the county and also elects members to the state soviet. The state soviet repeats the same operation by governing the affairs of the state and elects delegates from its own members to the soviet of the republic, as well as to the union congress of the United Socialist Soviet Republics.

#### CONCLUSION.

To an American conversant with his constitution, it is quite striking that none of those foreign constitutions saw fit to adopt our scheme of a vice-president. And those foreign constitutions are more flexible than our own in the sense that they are more responsive to the mood of the people by being able to amend their constitution with less difficulty than we can.

The main point of difference between the new constitutions and our own is that all those new constitutions recognize (some more and some less) the rights of the nation to its own resources which heretofore were considered entirely as individual or private property; while our own constitution does not recognize such principle. The innumerable case declaring general welfare laws unconstitutional on the ground that they violate the provisions in our constitution guaranteeing the rights of private property and the sanctity of contract, can hardly arise under any of these foreign constitutions. Our constitution emphasizes individual rights; their constitution lays greater stress on social rights.

These foreign constitutions, in one form or another, recognize the struggle between capital and labor and attempt to solve it or ameliorate it; while our own constitution having been formed at a time when that struggle was practically non-existent could not have possibly taken account of it.

It is my opinion that the difference between our constitution and those foreign constitutions does not lie so much in the differ-

ence of our circumstance or temperaments but rather in point of time. Our own constitution was adopted at a time when the fashionable revolutionary thought was directed against excessive power of an inherited aristocracy or nobility, while the recent revolutions are directed against the power of excessive wealth whether inherited or acquired.

From my study of constitutions, it is my conclusion that to study documents of that nature from a purely legalistic viewpoint, is a study of but one angle or a question. To study them merely from the viewpoint of efficiency of government is likewise a limited view. In order to get a comprehensive understanding, it is necessary to keep in mind that constitutions are the resultants of strife between various social forces. That no constitution is perfect even at the time of its adoption and much less for all future time.