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# The Constitution of the Republic of Estonia

1925

Tartu Ülikooli Raamatukogu: Est.A-3678

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# THE CONSTITUTIONAL REVIEW

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A Quarterly Magazine Advocating the Maintenance of  
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JANUARY, 1925

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# NATIONAL ORATORICAL CONTEST

## On The Constitution

RANDOLPH LEIGH

National Director

The National Oratorical Contest on the Constitution, in which approximately a million secondary school pupils participated during the Spring of 1924, will be repeated upon an even larger scale during the Spring of 1925. The project will be treated throughout as a newspaper contribution toward better citizenship.

Any bona-fide secondary school pupil, under 19 years of age on February 1, 1925, is eligible. The orations must not require more than ten minutes for delivery and must be on the Constitution or the relation thereto of Washington, Hamilton, Jefferson, Marshall, Madison, Webster, or Lincoln. For the 1925 Contest the nation will be divided into seven major zones, which will be subdivided into newspaper territories. The seven zone, or sectional zone, champions will compete in Washington on May 8th for the National awards totaling \$5,000. In addition, several thousand dollars will be distributed by the sponsoring newspapers as territorial prizes.

The Advisory Committee for the Contest is made up of Frank B. Noyes, Washington Star; Victor F. Lawson, Chicago Daily News; W. L. McLean, Jr., Philadelphia Bulletin; F. I. Thompson, Birmingham Age-Herald; R. E. Stout, Kansas City Star and Harry Chandler, Los Angeles Times.

President Coolidge described the project as follows: "The National Oratorical Contest on the Constitution represents the most effective method of enlisting the interest of the young men and women of America in the study of our governmental institutions."

Hon. R. E. L. Saner, former President of the American Bar Association, said: "It is the most distinguished and disinterested newspaper service of a decade."

Last July the Executive Committee of the American Bar Association adopted a resolution requesting the newspapers to repeat the Contest, "to the end that the boys and girls in our schools,—the hope of America—thoroughly grounded in the principles of American government, intelligently informed as to the provisions of its Constitution, appreciating their heritage, may become not only its valiant defenders, but missionaries bringing to all our people a better conception of American ideals and American Institutions."



## **The Constitution of the Republic of Esthonia**

*By Antonius Piip*

Minister of Esthonia to the United States

### **1. CONSTITUTIONAL DEVELOPMENT**

The Republic of Esthonia, on the Baltic shores, is one of the new states which have arisen in Europe since the World War. Its area is 18,354 square miles, with 1,107,393 inhabitants in 1922. The population represents a fairly homogeneous group of the Finnish-Ugrian race, distinctly different from her neighbors, the Russians and Letts. A new comer into the international political life of today, Esthonia, as her sister republic Finland, has her own ancient history and democratic political traditions. Before the invasion by Danes in the north (1219) and by the Knights of Portglaves in the south in the thirteenth century, Esthonia had formed an independent state with very marked warlike tendencies. Among the leaders of that time the most famous was Lembit, who fell in 1217 in battle against the Knights. After the Danes had sold their possession in 1346 to the Livonian Order, the present day Esthonia was divided into many independent states, bishoprics and lands of the Order of the Livonian Knights. In the sixteenth century all these states were united under the Great Master Plettenberg into one state, Livonia. In 1561, the state of Livonia ceased to exist, and the present day Esthonia was divided between the Swedes in the north and the Poles in the south. In the seventeenth century the southern part of Esthonia was also conquered by the

Swedes, and, so reunited, the Esthonian territory remained under Swedish rule until 1721, when it was ceded to Russia finally by the Nystadt Peace Treaty.

Although the Esthonian territory was incorporated in the Russian Empire, the ancient laws and customs and self-government were preserved. There remained a distinct Baltic autonomous province during the Russian Czars' rule. The theory of the Baltic constitution was predominant, according to which it was argued that Esthonia, Livonia, and Courland were constitutional states in personal union with Russia, owing allegiance only to the Russian Czar. In the nineteenth century their autonomous life and institutions were greatly destroyed by the Russian central government, because of the Russification policy, carried to such an extent that, on the eve of the twentieth century, Esthonia and the other Baltic provinces became in many respects an integral part of the Russian administrative system, but still preserved their own institutions, their own civil law, and Protestant religion. The Russian Zemstvo had never been introduced into Esthonia.

Generally speaking, Esthonia has very little in common with the political and administrative development of Russia. Her union with Russia was for only a short period, and it did not succeed in destroying her own individuality.



When the Russian revolution broke out in March, 1917, and the Russian parties considered it their task to "deepen the revolution," and go on with improvements only by means of violence, the Esthonian people pursued quite a different method in politics. A new constitution of Esthonia was elaborated, and confirmation obtained from the Russian Provisional Government under Prince Lvoff on April 12, 1917. By this constitution a provisional Esthonian National Council was formed, and the territory occupied by Esthonians was united into one administrative province. Accordingly a new Esthonia was created from the former province or "government" of Estland (Esthonia), the northern districts of the province of Livland (Livonia), and the western parts of the province of Petrograd (Narva), into one administrative self-governing unit. (Later, 1920, by the peace treaty of Tartu, the Petseri district of Pskoff province was also incorporated.) This temporary constitution empowered the Provisional National Council to draw up a new permanent constitution, in order that the autonomous Esthonia could be governed by the Esthonian people themselves. A new administration was appointed by the named National Council in July, 1917.

After the Russian Provisional Government had been overthrown by the Bolsheviks on November 7, 1917, the Esthonian National Council, being strongly opposed to political extremities, proclaimed itself to be the supreme power in the country, November 28, 1917. From that date

the existence of an independent Esthonian state is considered. On February 24, 1918, an Esthonian Republic was declared, the constitution of April 12, 1917, remaining still in power, with proper amendments resulting from the declaration of independence. The chief innovation consisted in the construction of a central government. The sovereignty was considered to be vested in the Provisional National Council, the executive power being in the hands of the Provisional Government headed by the Prime Minister and eight other ministers responsible to the National Council. The German occupation, from March to November, 1918, prevented the functioning of the Esthonian government, but did not bring any change in the constitution. The Esthonian Government re-entered into power on November 11, 1918.

During the war with Russia a Constituent Assembly was elected, which met on April 23d, 1919, and on May 19th issued a declaration of independence, confirming the previous manifestations for independence, especially the declaration of the National Council of November 28, 1917, regarding its sovereignty, and the manifesto of February 24, 1918, proclaiming Esthonia to be an independent republic.

The Constituent Assembly accepted a new provisional constitution on June 4, 1919. This constitution consisted of eight divisions, viz., (1) general dispositions, (2) rights and duties of citizens, (3) the powers, (4) Constituent Assembly, (5) the Government of the Republic, (6) the



rights of the members of the Constituent Assembly and Government of the Republic, (7) the force of laws and regulations, and (8) the inauguration of the provisional constitution and its changes. The provisional constitution, which had great influence on the present Constitution of Estonia, passed by the Constituent Assembly on June 15, 1920, is a remarkable document, which was still very much under the influence of the years of revolution and war during which it was created. The stipulations of the provisional constitution of 1919 are very liberal.

Division I declares as the general rule that "Estonia is an independent autonomous democratic republic." The territory and boundaries of the republic are defined.

Division II is very enumerative. The equality of all citizens is recognized. The Estonian language is declared "to be the state language, but the minorities have the right to use their own language in local self-government, and they have the right to address the Central Government in their own language." The minorities include Germans, 1.7 per cent; Russians, 8.2 per cent; Swedes, 0.7 per cent; and Letts, 0.3 per cent.

Elementary education for all children of school age is proclaimed to be obligatory and without charge, each citizen having the right to education in his mother tongue (Art. 5.) The civic freedoms are guaranteed, especially the right to inviolability of the home, secrecy of correspondence, freedom of conscience and of religion, the right to strike and to form

labor unions, and also the right to freely change residence (Art. 8). The most interesting is the provision in Article 7 which states that "in the Estonian Republic, to all citizens are secured the rights of a standard of living worthy of human beings. The liberty and rights of citizens can be restricted and special obligations imposed only by virtue of the law establishing a state of war and in the limits of such state of war."

The third division, consisting of one article, states that "in the Estonian Republic the supreme power belongs to the people of the Estonian Republic. On behalf of the people and by their choice, the supreme power is executed through the Constituent Assembly." The President of the Constituent Assembly was at the same time proclaimed to be the Head of the State, and in questions of representing the state, he was empowered to have from the Government of the Republic corresponding facilities. By authorization of the Constituent Assembly and under its supervision, the governing power was to be executed by the Government of the Republic. The supreme judicial power was to be executed by the State Court elected by the Constituent Assembly. The Constituent Assembly, Government of the Republic, and State Court were to execute the power given to them "unceasingly keeping and defining the external independence and safety of the Republic, the rights of the people, their welfare, the internal public order and safety, as also the rights and liberties of the citizens."



The foregoing provisions of the Constitution of 1919 have now only historical interest, and a reference to them is made in order to show more clearly the points of difference between them and those of the present Constitution of 1920, marking the evolution after one year's experience of the Provisional Constitution.

## II. THE PRESENT CONSTITUTION OF 1920.

The constitution now in effect was passed by the Constituent Assembly June 15, 1920, and entered into power December 12, 1920. The basic principles of the present Esthonian Constitution are: (a) There are only two distinctly independent branches of government, the legislative, consisting of one house, and the judicial; the third branch, the executive, must enjoy the confidence of a majority of the legislative body, and occupies consequently a subordinate position to the legislature. Nevertheless it has independence in carrying out the executive functions. (b) The President is elected by the State Assembly, not for a fixed term; he remains in power so long as he enjoys the confidence of the legislature. (c) The sovereignty is vested in the people, and the legislature, elected by universal suffrage, is their representative. (d) The rights of the people are guaranteed in the Constitution. (e) International law is a part of the laws of the country.

In framing the new constitution, the Commission of the Constituent Assembly under the chairmanship of Mr. J. Poska (died March 7, 1920)

and Mr. A. Anderkopp, has been very much influenced by the constitutions of Switzerland, the new constitutions of central Europe, and especially by the Constitution of the United States of America. In the construction of the executive branch, the Swiss Constitution was accepted. In this review the system of the Constitution is being followed, as the system in itself is a scientific one.

The Constitution of 1920 consists of a preamble and ten divisions, containing articles numbered 1-89. Similar to the preamble of the Constitution of the United States of America, the introduction of the Esthonian Constitution declares that "The Esthonian people, with unshaken faith and the resolute will to create a state based on justice, law, and liberty, for the defense of external and internal peace, and as a pledge for the social progress and general welfare of present and future generations, has drawn up and accepted through the Constituent Assembly the Constitution." Note the reference to the people, justice, welfare, liberty, and posterity, common to the preambles of both constitutions. As a matter of fact, the introduction to the Esthonian Constitution is nothing else than a rewritten preamble of the American Constitution.

The first division, called "General Dispositions," declares that "Esthonia is an independent, autonomous Republic, in which the power of the state is in the hands of the people." (Art. 1.) (The official translation of the Constitution is followed, as reprinted in "The New Constitutions



of Europe," by Howard Lee McBain and Lindsay Rogers. New York, Doubleday, Page and Company, 1922, pages 452-464.) As seen therefrom, the theoretical basis of the Esthonian Constitution is the constitutional theory of Jellinek, accepting the difference between external and internal sovereignty, whereas the "independent" relates to external, and the "autonomous" to internal. Further, the existing territory of Esthonia is fixed, whereas one difference of the Provisional Constitution of 1919 is that the sea frontiers were not indicated in detail. The laws passed in accordance with the Constitution are declared to be the sole foundation for the exercising of the state power. At the same time, "the generally accepted precepts of international law are valid in Esthonia as an inseparable part of her juridical order." (Art. 4.) This provision is taken from the new German constitution, which, in its Article 4, states: "The universally recognized rules of international law are accepted as integral and obligatory parts of the law of the German Reich." Such provision, now in the German constitution, is quite new, and is explained by the influence of the Anglo-American law, according to which "international law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." (See James Brown Scott, *Cases on International Law*. St. Paul, 1922, page 12.)

Division II deals with the fundamental rights of Esthonian citizens, and especially fixes the rules for the protection of national minorities. All citizens are declared to be equal before the law, men and women alike. "There can be no public privileges or prejudices derived from birth, religion, sex, rank, or nationality. In Esthonia there are no legal class divisions or titles." (Art. 6.) It is interesting to note that despite this provision many laws exist which protect the women in industry, thereby discriminating favorably as against men. Every guarantee is given to personal freedom and inviolability. The right of private property is acknowledged as fundamental law. The principles of the habeas corpus act are incorporated in the Constitution.

According to the spirit of the times, special securities are given to the national rights of minorities, in order to make the situation of the racial minorities in Esthonia more happy and more secure than was the case with the Esthonian people themselves under the rule of the Russian Czar. Article 21 states: "The members of minority nationalities within the confines of Esthonia may form corresponding autonomous institutions for the promotion of the interests of their national culture and welfare, in so far as these do not run contrary to the interests of the state." The citizens of German, Russian, and Swedish nationalities have the right to address themselves to the State central institutions in the writing of their own language, although Esthonian is the state language. A special law on the



autonomy of nationalities is now under discussion in Parliament, and its passage will be effected in the very near future. Besides, the Estonian Government has given a pledge to the League of Nations to protect the national minorities. The situation of Estonian minorities, according to the constitutional law and international guarantees, is considered to be absolutely satisfactory, evoking no trouble.

The organization of economic life is discussed in the Constitution, and a rule similar to that in the Provisional Constitution of 1919, and which is a novelty in constitutions, is laid down that such organization "must correspond with the principles of justice, the object of which is the securing of conditions of living worthy of human beings." Especially strong is the wording in granting the rights of individual liberty, the rights of national minorities, and the rights of labor.

Division III has the heading "The People," and deals with the political rights of the citizens, in particular the rulings for a plebiscite. As the Estonian Constitution does not recognize the principle of the dissolution of Parliament by the executive power, a substitute has been found in the plebiscite. All laws, excepting those relating to foreign policy and taxation, are subject to plebiscite if during two months one-third of the legal number of members of the Parliament call for it. The same right to stop the promulgation is secured on demand of 25,000 enfranchised citizens. In such case the law must

be submitted to a plebiscite for acceptance or rejection as a whole. If the people reject a law passed by the Parliament, or accept a law rejected by them, new elections of the Parliament are proclaimed to take place not later than 75 days after the plebiscite.

There is already a case where such a plebiscite was actually applied. During the first Parliament, in 1922, 25,000 people demanded that the existing law regarding new religious elementary education be changed in such a way that the state would pay the expenses for religious instruction. Such law was rejected by the State assembly and a plebiscite taken. The majority of voters were in favor of the law in question and as a result the Parliament came to an end, and immediately new elections were proclaimed.

Division IV deals with Parliament, which is called "Riigikogu" or State assembly. Article 27 advises that: "The supreme executor of the state power in Estonia is the people itself, through the medium of the citizens having the right to vote." Accordingly the State assembly (Riigikogu) is considered to be only a representative of the people. The corresponding Article 35 states emphatically that "as the representative of the people the State assembly exercises the legislative power." Here is another difference from the Provisional Constitution of 1919, according to which the Constituent Assembly was a general governing body.

The State Assembly consists of 100 members, elected by universal, equal,



direct, and secret suffrage on the principle of proportional representation. Every citizen 20 years of age or over, woman or man, has the right to vote, excepting those who are insane or deprived of the vote by decision of the court. In elections, the Belgian system of party lines (D'Ont) is applied, and the whole country is divided into ten electoral districts. Members are elected for three years, dating from the declaration of the results of the elections. The members of the State Assembly are not bound by mandates, and they have no responsibility for their political declarations in the State Assembly or in its committees, except as foreseen in the standing orders. The members of the State Assembly are not immune. They can be brought up for trial, but they cannot be arrested without permission of the State Assembly, except in cases where they are detained *flagrante delicto*. The State Assembly has the right to postpone the imprisonment or other punishment of any of its members until vacation or new elections. If the State Assembly does not give such postponement, the member is left under arrest or in prison, and in such case they lose automatically their membership. The next candidate from the corresponding list will be called to take the seat in the State Assembly. The members of the State Assembly are paid in the amount of one-half the salary of the members of the Supreme Court. The amount of salary can be altered, but becomes effective only for subsequent Assemblies. The State Assembly passes

laws, fixes the budget, State revenue and expenditure, decides about loans and other matters, and ratifies all treaties.

Decision V deals with the executive branch, called briefly the Government. There is no individual chief executive elected for a fixed period. The Government consists of the Head of the State, called "Riigivanem," state head or president, and ministers, the number of whom is fixed by special law. The State Assembly forms the Government and accepts its resignation. It appoints each Minister separately and accepts each resignation separately. There is no cabinet responsibility provided for in the Constitution, but in practice a vote of confidence or non-confidence is expressed as to the whole Government. The Government as a collectivity conducts the executive duties. It prepares the estimates of the expenditures and revenues, appoints and dismisses military and civil officials (in so far as this duty is not confided by law to other institutions), concludes treaties with other powers subject to ratification by the State Assembly, declares war and concludes peace with the consent of the State Assembly, and decides petitions for mercy.

A particular situation is occupied by the Riigivanem. His duties are defined as follows: "The State Head represents the Estonian Republic, leads and unifies the activities of the republican Government, presides over the meetings of the Government, and is authorized to interpellate any particular minister." (Art. 61.) He



is subject to the general rule concerning the Government, and must have the confidence of the State Assembly, as every member of the Government. "The Republican Government must possess the confidence of the State Assembly. The Government or its members have to resign if the State Assembly expresses a direct declaration of absence of confidence in them." (Art. 64.) In reality the Riigivanem occupies the position of the president of the state, as is the case with other chief executives, with only one difference—his term of office is not limited to a certain number of years, but continues so long as he enjoys the confidence of the Parliament. The Riigivanem is at one and the same time president and prime minister, and in this respect approaches very much to the American type of government.

Although the Constitution intends that ministers shall be appointed by the State Assembly, in practice it has been done by the Riigivanem, who selects the members of his cabinet and presents them to the State Assembly for confirmation, as is the case with the members of the cabinet of the United States, who are appointed by the President with the advice and consent of the Senate.

The absence of a president for a fixed period is severely criticised by many in Esthonia, and during the elaboration of the Constitution this was the main point of controversy for a long time. The present provision was carried by a relatively small majority. Nevertheless four years' practice has shown that this disad-

vantage, although existing, is not so great, especially after the well-known deadlock in France, where President Millerand, having four years more to serve as President, was obliged to retire because no parliamentary government was possible except he resign. In France, it must be remembered, the executive has also no power of dissolving the parliament.

During the new Constitution there have been four Riigivanems. First, myself, until January, 1921; second, Mr. K. Paats, January, 1921, to November, 1922; Mr. J. Kukk, November, 1922, to August, 1923; Mr. K. Paats (again), August, 1923, to March, 1924; Dr. F. Akel, March, 1924, to the present time. It shows that the change of government is not so frequent as could be feared from a purely theoretical point of view.

In foreign affairs the power of the Riigivanem is more defined. He represents the state as the chief executives of other countries do. He accepts credentials and accredits foreign representatives according to the decisions of the Government as a whole. He signs the ratification of treaties and represents the state *omni modo*.

Division VI deals with the judicial power. The independence of the activities of the courts from the executive and legislative branch is a general rule. The supreme judicial power is exercised by the State Court of Justice, composed of the State judges, who are elected by the State Assembly. All other judges, who are not elected by the State Assembly or by self-governing bodies, are ap-



pointed by the State Court. Judges can be dismissed only by the Court and can be replaced against their will only in cases depending on the execution of the law. They should not hold any other paid occupation. The assize courts are provided for, but until the present are not in operation. In practice the State Court has proclaimed that it has the power to pass on the constitutionality of the laws, similar to the Supreme Court of this country, although there is no direct provision to this effect in the Constitution. The State Court bases its practice on Article 86 of the Constitution, which proclaims the Constitution to be the "unshaken rule of the action of the State Assembly."

Local government is exercised by self-governing bodies, by Division VII of the Constitution. It is provided that "the representative bodies of self-government units are elected by universal, equal, direct, and secret suffrage on the principle of proportional representation." (Art. 76.) All details regarding the organization of self-government are left open to special laws.

Division VIII deals with the defense of the state, and declares that all citizens are obliged to take part in the defense of the Republic, according to the laws passed by the State Assembly. A special provision in Article 80, considered by military authorities to be very wise, fixes that instead of a collective commander-in-chief (the Government) in case of war there must be an individual. It reads as follows: "On the order of mobilization, as also on the beginning

of war, the command of the defense forces of the Republic goes from the Republican Government to the special commander-in-chief, the limit of whose power is fixed in a special law." The Government has a certain legislative power in the matter relating to national defense, so that the major part of the military legislation is done not by the State Assembly, but by the Government.

Division IX lays down only general principles of taxation, that "no public tax or duty can be imposed on anybody unless on the basis of the law." (Article 83.) The budget system must be introduced.

The last Division, X, makes the rule for the alteration of the Constitution. As the Constitution is considered to be the "unshaken rule for the action of the State Assembly, courts, and the government institutions" (Article 86), the alteration of this Constitution is made very difficult, namely, it can be decided only by the people by way of plebiscite. A project for the alteration of the Constitution must be communicated to the people at least three months before the date of the plebiscite, or the projects for alteration can be elaborated by way of notification of the people or by the State Assembly in the ordinary way.

Such are the main provisions of the Constitution. As seen therefrom they are quite elaborate and considered to be fixed for a long period. The Constitution, as shown, is a very able piece of work. This is not surprising, as the Constituent Assembly spent over a year on this work, con-



sulting the best lawyers and statesmen in its elaboration. In the beginning it was feared by foreign writers that this Constitution would be too democratic, and that it would require extreme intelligence and political tact on the part of the people. It was very much doubted whether the Esthonian people (who until recent times had been under Russian rule) would be able to pass such a hard test; especially the wide use of the plebiscite in the Constitution gave much ground for dispute. (See R. T. Clark, "The Constitution of Esthonia." *Journal of Comparative Legislation and In-*

*ternational Law*, Vol. III, October, 1921.)

Four years' work of the Esthonian Constitution has shown that these fears have been groundless and that the Esthonian statesmen knew their people. Because the whole population is literate, taking a very active part in the national affairs, democratic institutions as established by the Constitution do work for the general welfare. There has been no change in the Constitution during those years. It is not foreseen that an amendment of the Constitution will be brought about through a plebiscite in a reasonable future time.

## **The Assault on the Constitution and the Courts**

*By David Jayne Hill*

Until the first decade of the present century, it was the universal belief of the American people that the adoption of the Constitution of the United States was the most important step in advance ever made in the history of human government. This opinion was widely shared throughout the world, and the American Constitution has served as a model for the realization of the aspirations of free peoples everywhere.

This judgment of the merits of our constitutional system remained unchanged and unchallenged until about the end of the first decade of the present century, when the growth of class interests created a demand for special class legislation. Equal laws, it was held, did not produce equal conditions of life. Legislation was

demanding in the name of social justice that would place the possession, use, and distribution of property under public control.

At first, complaint was not directed against the Constitution, but against the interpretation of it by the courts. Their authority to declare legislative acts unconstitutional—that is, acts either prohibited by the Constitution or exceeding the powers delegated by it—was questioned and finally denied by those who were dissatisfied with certain judicial decisions. A movement was set on foot for the recall of judges and the revision of judicial decisions by popular vote. The whole body of voters, or as many of them as were sufficiently interested to participate, uninstructed in the principles of jurisprudence, unaccustomed



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