CHAPTER I

The Origins of the German Works Councils Act of February 4, 1920

The German Works Councils Act of February 4, 1920, is the child of two parent ideas—the one constitutional, the other essentially revolutionary.

The influence of this dual parentage is very closely to be seen in the early struggles over the Council system, in the crystallisation of this system in the Constitution and the Works Councils Act, and in the subsequent history of the operation of this Act.

The first indications of the new problems which arose with the growth of the factory system in Germany are to be found in a resolution put forward by the Industrial Commission of the revolutionary National Assembly, which met in Frankfurt in 1848, calling for the compulsory issue of works rules (disciplinary regulations, etc.) by a “Factory Committee” consisting of the factory owner and elected representatives of the employees. The rules were to be approved by a district “Factory Council” elected by the Factory Committees in the district. The proposal was frustrated by the collapse of the Revolution, but remained one of the most keenly desired reforms in the programme of German labour. Finally in 1891, shortly after the fall of Bismarck, an amending Act was passed to the Industrial Code (Gewerbeordnung) which satisfied to a small extent the aspirations of labour. The issue of works rules (Arbeitsordnung) was made obligatory in all factories and businesses subject to the Industrial Code, employing more than 20 workers, and provision was made for the permissive constitution of workers’ committees. These committees, where they existed, were entitled to be consulted before the promulgation of works rules, though the employer was not required to give effect to any of the modifications put forward by the workers’ committee of his factory.

In 1905 the election of workers’ committees was made obligatory in Prussia in all mining undertakings employing 100 or
more workers, and in 1909 “safety men” elected by the workers were introduced in the mining industry and the functions of the workers’ committees were slightly extended. Apart from this single industry there was no further legal recognition of works representation of the employees between 1891 and 1914. The efforts of labour during this period were concentrated on the struggle for recognition of the Trade Unions and for the consolidation of their organisation. By 1914 there existed only a few thousand of the permissive workers’ committees constituted under the Act of 1891, and in any case their powers were so small that they possessed no practical importance. On the other hand, the system by which shop delegates were appointed by the Trade Unions to act as their local representatives in the individual factories was prevalent in the large-scale industries, though their activities were not recognised or approved by the employers, except in a few cases where they were constituted by Collective Agreement between Trade Unions and employers.

With the outbreak of the War the position of the Trade Unions underwent a vital change. Hitherto they had been struggling, often unsuccessfully, to defend the right of association against the opposition of practically the whole of the employers; now they found themselves courted by the Government and treated with deference by the employers. The shop delegates were recognised and used as a means of control over the enforcement of agreements between the Trade Unions and the employers. Far-reaching concessions were made in order to range the Trade Unions beside the Government and to maintain a united “home front”. Finally in 1916 the adoption of the Hindenburg munition programme necessitated the passing of the Auxiliary Service Act, which was designed to mobilise the whole of industry and of the male civilian population for the prosecution of the War. As was the case with the Munitions Acts in Great Britain, the sentiment of organised labour in Germany was very strongly opposed to many of the provisions of the Auxiliary Service Act. One of the chief concessions, with which the Government sought to placate the Trade Unions and to diminish their opposition to this measure, was the constitution of workers’ committees (composed both of wage-earning and
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salaried employees) in all undertakings coming within the scope of the Act, which employed more than 50 workers in all. The direct functions given to these committees were not large: they were to be the organ of the employees in the factory, and were to bring to the notice of the employer any complaints or wishes expressed by the employees in regard to the organisation of the factory or to wages or other labour conditions. Over and above this, special tribunals were set up to which the workers’ committees had an independent right of appeal in case of disputes with the management. The tribunals, which were called Schlichtungsausschüsse (Conciliation Boards), were composed of three representatives of the employers and three representatives of the employees with a Chairman appointed by the War Board.\(^1\)

The Conciliation Boards were empowered, if they could not bring about an amicable agreement, to make decisions which were binding on both parties. The legal powers of these workers’ committees set up under the Auxiliary Service Act were small, but their practical authority varied widely from one undertaking to another. In some cases, under the pressure of war production, the committees were able to extract very considerable rights and privileges from the employers, in much the same way as the Shop Stewards in Great Britain were able to take advantage of the strength of their bargaining position. In Germany, also, these workers’ committees were looked at somewhat askance by the leaders of the Trade Unions.

The end of the War in November 1918 was followed by two important measures—the one being a voluntary agreement between the employers and the Trade Unions, and the other an administrative Order of the new Government. On November 15, 1928, an agreement was concluded between the Trade Unions and the Employers’ Federation which provided for the setting up of Joint Industrial Alliances (Arbeitsgemeinschaften), consisting of representatives of employers and employees in equal numbers, to which was delegated the task of drawing up a programme for the period of economic demobilisation. A central Joint

\(^1\) The composition of these tribunals, which became later one of the corner stones on which the Works Councils Act of February 4, 1929, was founded, was modified by the Order of December 23, 1918, and again by the Order of October 30, 1923.
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Industrial Alliance was set up for the whole of Germany, and German industries were divided into 14 groups each of which had its own Joint Industrial Alliance. This organisation had a good deal in common with the Whitley Councils in England. In joining with the employers in these Joint Alliances the socialist Trade Unions sacrificed one of their dearest principles—that of the refusal to co-operate with the employers in securing the peaceful regulation of industrial conditions under the system of private enterprise. On the other hand, they gained the unconditional recognition of the method of Collective Agreements regulating wages and other labour conditions; it was agreed that disputes should be referred to joint arbitration boards, and the employers accepted the continuance of the workers’ committees set up by the Auxiliary Service Act of 1916. Soon after the conclusion of this agreement the Government issued their famous Order of December 23, 1918,¹ which Karl Legien, the most influential leader of the socialist Trade Unions, described as "The Great Charter of Labour".

This Order regulated in detail the operation of Collective Agreements; it reorganised the system of Conciliation Boards;² and, finally, it made provision for the constitution of workers’ committees, in all establishments employing 20 or more workers, which were to be responsible, in conjunction with the employer, for supervising the execution of Collective Agreements and for furthering peaceful industrial relations.

With the Order of December 23, 1918 was reached the apparent climax of the whole of the preceding evolutionary process, based as it was on the extension of the powers of the Trade Unions and on the legal and practical recognition of their right to bargain on equal terms with associations of employers. The outbreak of the German Revolution in November 1918, however, had introduced into the situation a new and very potent factor—the influence of Russian revolutionary ideas. Many of the most active leaders of the German Revolution drew their inspiration from the events which had led to the setting-up of the Russian Republic of the Soviets and were ardent partisans of the device of using Councils of Soldiers, Workers and Peasants

¹ See below, pp. 30–8. ² See below, pp. 22–4.
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as a method of transferring all power in the State into the hands of the proletariat.

The use of such Councils as revolutionary organs has an interesting history. As early as 1647–9 the Levellers’ Movement in England was associated with the formation of Soldiers’ Councils to which it was endeavoured to join Councils of Citizens. For a brief period the movement threatened to become dangerous, but the success of Cromwell and Fairfax in re-establishing discipline in the Army led to the collapse of the agitation.¹ During the period of the Commune in the French Revolution of 1789 Councils of Citizens were formed as political organs elected by and directly responsible to local groups. Similar Councils, but more distinctively representative of the workers as such, re-appeared in the short-lived Commune in Paris in 1871, and again in a much clearer and more definite form in the abortive Russian Revolution of 1905. In Russia the weakness of the Trade Union movement and the reactionary policy of the Government afforded a strong incentive to the spread of revolutionary ideas through agitators working in the factories, and the revolutionary leaders, taught by the failure of 1905, set themselves to organise revolt based on the factory as a nucleus or “cell”. The War of 1914 collected millions of men under arms and thus facilitated the work of propaganda. When the Czar’s Government collapsed in 1917 the more extreme elements in the factories formed themselves into Councils, which became grouped together in district organisations and finally, in cooperation with Councils of Soldiers and Peasants, constituted a national Congress of Councils. For a time the Congress existed side by side with the Duma and then, with the victory of the Communists, swept the Duma aside and took over political and economic control throughout the country.

Thus the success of the Russian Revolution of 1917 appeared to be based on and bound up with the Council system. This fact gave to Workers’ Councils an enormous prestige in all countries in which revolutionary socialism had taken a strong hold, for it appeared that at last the long-sought-for weapon had been forged

¹ Cf. Gooch, English Democratic Ideas in the Seventeenth Century, chs. iv and v; Firth, Cromwell’s Army, ch. xiv.
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which would enable the proletariat to attain to supreme power. Outside Russia, however, it was only realised by very few that, once the Revolution had been carried through, the whole of the political and executive power was assumed by a few men working through political Councils of Communists; while the factory Committees or Councils were relegated to the subordinate work of, at best, representing the immediate interests of the employees in each of the nationalised undertakings, the management of which was at least as autocratic as in the days of private enterprise. In most cases, moreover, the Russian factory Councils soon fell into the hands of the Communists and represented not so much the point of view of the workers, as the policy of the management.

In Germany the Revolution broke out in November 1918 with a suddenness and a completeness which surprised no one more than the Trade Union leaders who were the official heads of the German labour movement. In Germany, as in England, the war-time restrictions on the right to strike and the continual increases of wages due to the competition of the war industries to secure labour, had temporarily weakened the influence of the Trade Union leaders and diminished their control over their members. Officially, German labour had been throughout the War on the side of the Government and in favour of the prosecution of the War, and only a small minority had stood out and opposed it. This minority, belonging to the left wing of the labour movement, had gradually become convinced that the only way to bring the War to an end was to bring about a revolution, as in Russia. They therefore deliberately sowed the seeds of revolution wherever the ground seemed favourable, but above all in the large factories in the industrial districts. At the same time, the soldiers who had been fighting on the Eastern Front and who were transferred to the West after the collapse of Russia, brought with them the story of the Bolshevik success and of the means by which it had been achieved. It was in the Baltic ports, where the fleet had so long been cooped up, and in the industrial districts that the Revolution originated, and from thence it spread rapidly all over Germany. In most cases Soldiers’ Councils were first formed, but these were soon joined
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by Workers’ Councils. In Berlin an Executive Council was set up and six People’s Commissars were appointed—Ebert, Scheidemann and Landsberg as representatives of the Majority Socialists, and Dittmann, Haase and Emil Barth, representing the Independent Socialists.

It very soon became apparent that there was a fundamental cleavage of opinion between the different sections of German labour in regard to the future form of government. The greater number of the Independent Socialists, led by Däumig and Müller, were in favour of an out-and-out Soviet or Councils State. The catch-words, “All power to the Councils” and “The Dictatorship of the Proletariat”, which had already done duty in Russia, began to be heard throughout Germany. On the other side were the Majority Socialists of the Social Democratic Party. Their leaders, experienced Trade Unionists of the stamp of Ebert, Scheidemann and Noske, were men who put their faith and their hopes in democratic parliamentary institutions after the English pattern. For them the events in Russia since 1917 afforded a warning rather than an example to be followed, and they were determined if possible to avoid the fate of the Kerensky Government. The strength of the two sections was measured at the first general Congress of Councils held in Berlin, December 16–20, 1918. At this Congress the standpoint of the Majority Socialists carried the day and a decisive resolution in favour of parliamentary government and the election of a Constituent Assembly on January 19, 1919, was adopted. A Central Council was also elected to “safeguard the results of the Revolution” and to supervise the actions of the provisional Government. At the end of December the three Independent Socialist members of the Government resigned and went into active opposition. The elections to the National Assembly in January resulted in the formation of a Government based on a majority composed of Social Democrats, Democrats, and the Centre Party. The Independent Socialists and Communists found themselves in a small minority in the Assembly. In this election the political aims of the adherents of a Soviet State were definitely rejected by the great majority of the electorate. But the issue still hung for a time in the balance, for the Spartacists
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broke out in armed revolt, hoping to imitate the success of the Bolsheviks in the Russian Revolution. In the end the victory lay, though by a narrow margin, with the parliamentarians, backed up as they were by the powerful and disciplined Trade Union organisation.

The Central Council referred to above resigned its mandate and its legal powers on the convocation of the National Assembly. At the second Congress of Councils held from April 8 to 14, 1919, a second Central Council was elected, which was not recognised by the Government and which, moreover, ended by falling into the hands of the anti-Councils party.

With the disbandment of the Army the Soldiers’ Councils soon disappeared, but the political Workers’ Councils (those set up in connection with local government) survived for a longer period. They had, however, to contend with the opposition of the officials, who had all been reinstated in their former positions by the new Government, with financial difficulties, and with the absence of any effective central leadership. By degrees they lost all semblance of power and finally vanished without leaving any impress on local government.

It was otherwise with the revolutionary industrial Workers’ Councils, which were very strong in some parts of Germany, particularly in and around Berlin and the chief industrial districts, and which in some cases were well organised regionally. These Councils were not formed under the Order of December 28, 1918; they arose spontaneously out of the revolutionary enthusiasm of a section of German labour. The aim of these bodies was to supersede what they regarded as the bureaucratic and official-ridden organisation of the Trade Unions, by a new type of organisation based solely on the Councils system and imbued with the revolutionary spirit in contrast to the timid reformist socialism of which the Government and the Trade Union leaders

1 Some of the leaders of the left wing were in favour of an exclusively Soviet State—i.e. a Councils system without a parliament (Däumig, Müller), others of a Councils organisation working on an equal footing with a parliament (Haase, Kautsky), and others of Chambers of Labour (to include employers) exercising political functions alongside parliamentary government (Kaliaki, Cohen). The multitude of counsels confused the workers and weakened the force of the revolutionary movement.
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were adherents. The struggle which developed for the leadership of German labour is described in Chapter III. Here we are concerned with the effects of the Councils agitation in causing a new and vitally important Article to be added to the German Constitution by the Constituent Assembly at Weimar.

The draft of the Constitution presented by the Government contained no mention of the Councils. As late as February 25, 1919, Scheidemann, the head of the Government, declared officially: “No member of the Cabinet contemplates, or has ever contemplated, the incorporation of the Councils system in any form, whether in the Constitution or in the administrative machinery”. The immediate result of this declaration was to produce a very dangerous internal situation. The pronouncement was too reactionary for the majority of the workers. A general strike broke out among the metal workers in Berlin and those employed in many of the chief industries of Westphalia and Central Germany. The Cabinet realised that they had gone too far in their attitude of negation towards a movement which had in a large measure caught the imagination of the masses and, under the influence of Erzberger, they sought for a formula that would quiet the storm they had aroused. On March 5, 1919, Scheidemann gave a written undertaking that the Workers’ Councils should be “recognised in principle as a representation of the workers’ interests, and be anchored in the Constitution”. A month later the Government issued its proposals for organising and making use of the Councils in the form of an amendment to one of the draft Articles of the Constitution. This amendment, with slight modification, was adopted by the Assembly and included in the Constitution as Article 165, being placed in the group of Articles entitled “Fundamental Rights and Duties of Germans”.

Article 165, the precise wording of which is of great importance, runs as follows:

Wage-earning and salaried employees are called upon to co-operate, with equal rights in common with employers, in the regulation of wages and of working conditions as well as in the whole economic development of production. The organisations on both sides and the agreements entered into by them are recognised.

For the purpose of safeguarding their social and economic interests
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the wage-earning and salaried employees are entitled to be repre-

sented in Workers' Councils for each establishment, as well as in

Regional Workers' Councils organised for each industrial area, and in

a Federal Workers' Council.

The Regional Workers' Councils and the Federal Workers' Council
join with the representatives of the employers and of other interested
sections of the community to form Regional Economic Councils and
a Federal Economic Council for the accomplishment of all economic
tasks and for co-operation in the execution of the socialisation laws.
The Regional Economic Councils and the Federal Economic Council
shall be so constituted as to represent all important occupational
groups in accordance with their respective economic and social
importance.

Drafts of Bills of fundamental importance relating to social and
economic policy, before being introduced into the Reichstag, shall be
submitted by the Federal Government to the Federal Economic
Council for an expression of its views. The Federal Economic
Council has the right itself to initiate such Bills. Should the Federal
Government not approve of such Bills it is nevertheless bound to
introduce them into the Reichstag, together with a statement of its
own views. The Federal Economic Council may delegate one of its
own members to appear before the Reichstag in support of its Bill.

Supervisory and administrative functions in questions assigned to
them may be delegated to the Workers' Councils and to the Economic
Councils.

The Reich alone has power to determine the organisation and duties
of the Workers' and Economic Councils respectively, as well as their
relation to other self-governing bodies.

The very skilful wording of this Article for the time being
stilled the popular clamour, and the work of drafting the rest of
the Constitution was able to proceed.

A great deal turns on the precise interpretation of that co-
operation “with equal rights” (gleichberechtigt) accorded to
labour by the first paragraph of the Article. There can be no
doubt that the Government intended, and the whole course
of subsequent history has shown this to be the case, to maintain
the integral features of the industrial system (subject to any
measures of socialisation), and to recognise the existence of
divergent interests between employers and workers, while setting
up an additional representative machinery by which these
special interests of labour and the common interests of labour,
the employers and the community in the furtherance of pro-
duction could be facilitated. The attitude of the Government is