CHAPTER XX

The National Constituent Assembly at Weimar (1919)

The national elections were held as scheduled on January 19, 1919, a few days after the crushing of the Spartacist revolt. They were different from any German elections up to that time. The voting age was lowered to include all Germans of twenty years, and for the first time women were given the right to vote, which had influential results. More than thirty million people voted. The seats in the assembly were allocated to the various parties according to a complicated method of proportional representation designed to equate as far as possible the division of seats with the desires of the electorate. While a strong case can be made for proportional representation as a democratic device, it had the bad effect in Germany of encouraging a large number of parties, since even a small party was almost sure of at least a few seats. As the years went on, small groups devoted to some particular ideology tended to proliferate. This trend was not noticeable in 1919; but in that election proportional representation, which was a favorite idea of the Social Democrats, prevented the Social Democratic party from capturing an absolute majority of the assembly. In fact, no party in the entire history of the republic ever received an absolute majority.

In general, the results showed that the German people were in agreement with the course that events had taken since November. The center of gravity was some distance left of center, but by no means at the extreme left. On the right the National People’s party came in fourth best, while on the left the Independents were a poor fifth. Ebert was vindicated, with the reservation that it was going to be necessary for him to co-operate with some of the more progressive bourgeois groups. The Social Democrats received the greatest number of votes (11.5 million, 163 seats). Next came the Center (almost 6 million votes, 92 seats),
the Democratic party (5.5 million, 75 seats), the Nationalists (almost 3 million, 42 seats), the Independents (2.3 million, 22 seats), and the People's party (1.6 million, 21 seats).

The vocational composition of the assembly sheds some light on its activities. This was not an inexperienced body. Of the 385 male members (who alone could have had legislative experience before 1918), 143 had previously been members of the Reichstag, while 244 had been members of either the Reichstag, a parliament in one of the federal states, or some municipal legislative body. The proportion of members with experience was highest on the left of the house, a fact which shows the extent to which the former ruling classes had been discredited or had voluntarily retired for the moment from the political scene. The largest single occupational group represented in the assembly was that of trade-union officials, who accounted for 77 out of a total of 421 delegates. Then followed editors and newspapermen, government officials, party secretaries, attorneys, farmers, authors, landed proprietors, and teachers.

Thus the assembly represented neither the old ruling groups nor big business. Its heavy emphasis was upon a class of middle officialdom, a fixed-income group. The bulk represented a general conservatism of opinion, conservative not in terms of the Prussian agriculturist but surely in terms of radical Marxist teaching. This judgment is particularly true for the Social Democratic party, for here the emphasis was on the trade-union group. The assembly was only technically revolutionary, not at all revolutionary in the ideological sense.

Friedrich Ebert opened the Constituent Assembly on February 6, 1919, in the lovely little city of Weimar in Thuringia. Weimar was chosen for two reasons. In the first place, the scars from the recent fighting in Berlin were too evident; there was still turbulence there and always the fear that the Berlin proletariat might seek to dominate the assembly. Secondly, the government wanted to assure the German people—and probably even more the Allies, who were already sitting in judgment on Germany at the Peace Conference in Paris—that the new Germany was going to revert to the Germany of poets and thinkers, of Goethe and Schiller, for whom the symbol was Weimar, rather than the Germany of Prussian militarism, of Frederick the Great and Bismarck, whose symbol was Berlin and Potsdam. Thus the constitution written at this assembly and the republic which it founded are known as the Weimar Constitution and the Weimar Republic. It is instructive to compare this action with that of Hitler, who in 1933 opened his first Reichstag in the Garrison Church in Potsdam above the bones of Frederick the Great.

Since no party had received an absolute majority, it was necessary to
form a coalition of some sort to run governmental affairs. Such bad blood still existed between the Social Democrats and the Independents that no co-operation between these two seemed possible, even aside from the fact that the two together did not constitute a majority. The Social Democrats and the Democrats could have formed a narrow majority, but it would have been an unstable situation as was shown when the Democrats retired from the government in June rather than take responsibility for signing the Treaty of Versailles. It seems to have been Erzberger who made it clear to the Social Democrats that they could not govern alone or allied with only the Democrats, and that further the Democrats would not enter into a coalition without the Center. Erzberger also persuaded his own party to enter a government composed of Social Democrats, Democrats, and Centrists. This grouping, generally known as the Weimar Coalition, guided the new republic during its early years, sometimes without the co-operation of the Democrats.

On February 11 the assembly elected Ebert first president of the German republic. He immediately chose as chancellor his right-hand man, Philipp Scheidemann. Scheidemann formed a ministry made up of the three parties of the coalition, plus, as foreign minister, Count Brockdorff-Rantzau, an aristocrat without party affiliation but an extraordinarily astute diplomat. Gustav Noske stayed on as minister of war. The leading Democrat was Dr. Hugo Preuss, minister of the interior and principal author of the constitution. The Center was represented by Erzberger, Dr. Johannes Bell as colonial minister, and Johann Giesberts in the post office. The new government received a vote of confidence, although speeches from both the far left and the far right indicated serious latent opposition.

The Weimar Assembly had two major tasks before it in addition to the day-to-day business of government. They were the writing of a constitution for the new republic and the establishment of peace with Germany's former enemies. There was not very much that could be done about the peace terms, for no German delegation was invited to the Peace Conference and the terms drawn up by the Allies were not presented to the Germans until May. The assembly addressed itself without delay to the new constitution. On February 24 Dr. Hugo Preuss laid before the assembly the draft constitution, which he and advisers from all over Germany had prepared during the preceding weeks. From February 24 to March 4 the assembly as a whole debated the draft and passed it at a first reading. On March 4 a constitutional committee was appointed to consider the draft point by point and to report back to the assembly. This committee met for three and a half months; the draft
which they delivered to the assembly was, except in detail, the Weimar Constitution as finally voted on July 31 and promulgated on August 11. The constitution, of course, reflected the attitudes of its authors. Dr. Preuss, the most influential of them, was a distinguished jurist with a considerable liberal reputation. In the United States he might have been called a Jeffersonian Democrat. His liberalism was the liberalism of 1848, unaffected by the broad stream of socialist thinking. The constitutional committee was about proportional in its membership to the strength of the various parties in the assembly. Most of its members were chosen by their parties as experts in legal and administrative matters. The result was a committee rather to the right of the general position of the assembly as a whole. It is therefore no surprise that the eventual constitution was redolent of bourgeois liberalism and one that Marxists found difficult to stomach.

A number of general problems had to be settled early in the discussions. One was the basic problem of centralism versus federalism. There were many, including Dr. Preuss, who wanted to break down the old, but frequently artificial, boundaries of the historic German states and create a centralized nation ruled democratically from Berlin. Convenience, efficiency, and uniformity were on the side of such a solution. However, it soon became clear that German particularism was by no means dead, that in fact it was perhaps stronger than in the past. Bavaria, for example, had no notion of surrendering her peculiar attitudes to a greater whole dominated by non-Bavarian ideas. Another plan would have been to preserve the federal character of the nation, but to separate Prussia into her provincial units to avoid the Prussian dominance of the Bismarck solution. This idea too was defeated, though it might have been received warmly abroad, particularly in France. In the end, Prussia was not shorn (except by the peace treaty), and although the central government had more authority than the empire, the old historical units retained their identity, wrote their own constitutions, possessed the residual powers of government, and maintained their complete apparatus of ministries and bureaucracies. There was one exception: several of the smallest states in central Germany merged into one new state called Thuringia. The old kingdoms, duchies, etc., were now called Länder (singular Land) and were required to have republican governments. The constitution provided that in certain contingencies the Reich government could send military force into the Länder to preserve order.

An even more difficult problem arose concerning the councils which had sprung up all over the country in November. Sentiment for the
councils was by no means dead, although their proponents did not realize that any effective implementation had been killed in the past weeks. Disturbances erupted in Berlin in March, and Scheidemann was forced to promise that the conciliar idea would be "anchored in the constitution," even though no mention of it was made in Preuss's original draft. The problem was to fit some obeisance to the conciliar idea into the bourgeois structure which the assembly was determined to erect.

The debates in the committee, and later on the floor of the assembly, betray a great confusion of ideas about the whole question of councils. Members of different parties talked of quite different things as soon as they uttered the word "council." To the Independents it meant simply the soviet system. To the members of the parties midway across the floor it represented a mixture of factory councils, participation of labor in management, and vocational representation in parliament, at least in the upper house. To the members of the Nationalist party it suggested something which resembled the old estates of the sixteenth and seventeenth centuries. In spite of all the theorizing and the immense amount of pamphlet literature which had appeared in the weeks after the revolution (or perhaps because of it), the idea remained a confused one, especially in the minds of the men on the committee, who were conservative and trained in older and more orthodox categories of politics and jurisprudence. Still another influence came from the Social Democrats. The most prominent men of that party were affiliated with the trade unions. Strong unionists were suspicious of the idea of councils because they feared that if economic government were entrusted to factory councils and councils for larger units elected by the factory councils, there would be no room left for the old, established unions.

Finally a weak compromise was effected and written into the constitution. In the first place, the legal existence and sanctity of the unions was guaranteed. Then provision was made for councils at three levels—factory, provincial, and national. It is hard to know exactly what their spheres of competence were to be. The National Economic Council (Reichswirtschaftsrat) was to have a voice in all legislation dealing with economic matters. It was to be chosen on a vocational rather than geographical basis. The factory councils were to deal directly with management and even to have access to the books and a voice in the general direction of policy within the factory, not limited solely to labor problems.

In actual practice during the following years not a great deal was done to implement these constitutional provisions. A number of factory councils were created; their activity varied from place to place according to the attitude of the employers and the aggressiveness of the employees.
A provisional Reichswirtschaftsrat was appointed to work out the details of a regular body, which never came into existence. Nothing at all was done about councils at the provincial level. Much the same can be said about the plans to socialize German industry. The assembly actually passed laws to socialize the coal and potash industries, but as a result of sabotage from the employers and weak enforcement by the authorities no important changes were made. Germany remained a capitalist nation. By the end of 1920 there was very little talk about the socialist program which had loomed so large in 1918.

The Weimar Constitution is a much lengthier and more detailed document than, for example, the Constitution of the United States. Not content with describing the skeleton of the future political organization, it goes into considerable detail on civil and political rights, and economic, social, cultural, and religious matters. The statement of rights betrays a warm, philosophic understanding of the ideals of 1848 and a comprehension of American, British, and other contributions to the history of freedom. All Germans are declared equal before the law; they have liberty of travel and emigration; in case of arrest, they must be informed of the circumstances within a day; communications and the home are sacred; freedom of speech is guaranteed and no censorship is to be established. In the economic realm, the right of private property is upheld as well as the right of free association (labor unions), and a system of social insurance is to be developed. The education of children, which is compulsory, is recognized as an obligation of the state. Germans were to enjoy full freedom of conscience and religious practice.

The legislative power was vested in a bicameral body, the Reichstag and the Reichsrat. Members of the Reichstag were to be elected for a maximum of four years by all Germans over the age of twenty and according to proportional representation. The electoral laws implementing this provision erected large constituencies, each electing a number of members selected from lists compiled by each party. Thus a voter really voted for a party rather than for an individual. The Reichstag had wide and full legislative powers: it could initiate and pass laws, subject to a suspensive veto, and the cabinet was completely responsible to it.

The Reichsrat represented the Länder. Each Land had to have at least one member; none could control more than two-fifths of the body. It was made up of members of the governments of the Länder. The Reichsrat could, with the cabinet, initiate legislation; if it disapproved of a bill passed by the Reichstag, it could return it to that body, which could override the veto by a two-thirds vote. In practice the Reichsrat never became a very powerful body.

Any German over thirty-five years of age could be a candidate for
the office of president of the Reich, whose term was set at seven years with the possibility of re-election. Later legislation provided that if no candidate received a majority of all votes cast, there would have to be a second election in which only a plurality was necessary. The president was to carry out the executive power, but all his orders and decrees had to be countersigned by the chancellor. He entered into the legislative framework to the extent that if he refused to promulgate a law within three months of its passage by the Reichstag, he could call for a referendum of the people on the matter. He could also dissolve the Reichstag and call for new elections. A peculiar power of the president, one which has been criticized more than any other provision of the constitution and which led legally to the fall of the republic, was Article 48. This article provided that if any Land did not live up to its constitutional obligations, the president could force it to do so by use of the armed forces. It further stated: "In the event that the public order and security are seriously disturbed or endangered, the president may take measures necessary for their restoration, intervening, if necessary, with the aid of the armed forces. For this purpose he may temporarily abrogate, wholly or in part, the fundamental principles laid down in [several articles of the statement of civil rights]." (Quoted in L. L. Snyder, ed., Documents of German History, New Brunswick, 1958, p. 338.) A safeguard was provided in that the president had the obligation to report any such action immediately to the Reichstag, which could rescind it.

Included in the constitution were all the modern democratic devices such as initiative, referendum, and recall, as well as the provisions for economic democracy discussed above. All in all this constitution reflected the most mature and advanced democratic political thought of its period. After its passage by the Weimar Assembly it was promulgated on August 11, 1919, by President Ebert and became the supreme law of Germany.

The Weimar Constitution was not received enthusiastically by any of the political parties. To the Social Democrats it was a defeat, for not even their minimum program was realized. To the Independents it was an even greater betrayal of principle. The Nationalists disliked it because it contained neither monarchy nor corporatism. The People’s party found it too progressive. For the Center it included dangerous latent secularism. Even the Democrats, though it approximated their position most closely, found too many elements of collectivism in it. Furthermore, the Democratic party began in 1920 a decline which continued as long as the republic. The Weimar Constitution was to such an extent a compromise document that it remained at best a solution based on the least
common denominator. Under such discouraging auspices the first German republic had its legal start.

Political scientists often point to the Weimar Constitution as a triumph of constructive democracy. Yet the regime established by it was within fourteen years to fall before one of the most ferociously antidemocratic reactions in all history. The answer to this paradox seems to be that a constitution is only as valuable as the energy expended by the men who implement it. The twenties later demonstrated that the number of Germans who were able and willing to expend themselves for the preservation of their democracy was tragically small and ineffectual.