

## THE SYNDICAL SENATE:

### The Problem of Functional Representation

The Committee to Frame a World Constitution recommends in its Draft the setting up of a "syndical or functional senate" for the representation of occupational associations, and for the arbitration of non-justiciable issues among syndicates or unions or other corporate interests. The membership of this organ shall be determined by law, as shall be its powers, which in no case, however, shall be more than "para-legislative," i.e., subordinate to the primary legislative body or council.

The confusion around the concept of functional representation is boundless. Rightists brand it as Communist, leftists as Fascist. It may be helpful, therefore, to review briefly its history, merits, and demerits.

Associations of craftsmen and merchants are almost as ancient and universal as crafts and commerce themselves. Such titles as "the superintendent of the goldsmiths" or "the secretary of the masons," quoted frequently by the writers of the Pharaohs, betray the existence of professional organizations in early Egyptian times. Babylonian and Assyrian traders were organized in local associations which performed certain administrative functions. In Greece the Solonic law refers to organizations of traders (*emporoi*) along with religious and industrial organizations. By the end of the fifth century they were joined by corporations of ship-owners (*naucloroi*), until, during the Hellenistic period, we find all

artisans and craftsmen well-ordered in definite unions, more and more clearly differentiated according to professions.

Persia, India, China, and Japan evolved their own guild systems, and the role the guilds played in imperial Rome, Byzantium, and medieval Europe is well-known to all.

The initial association of members of the same profession into guilds induced two developments, starting from opposite poles, but coalescing eventually in the unity of governments and guilds.

In some cases, for example, the government commissioned a guild to provide for the transport of foodstuffs from the province to the capital. In exchange, certain honors or privileges were bestowed by the government on the guild. As the needs of the government increased, more guilds were drafted for the service. In order to obtain the maximum of service, enrollment in the guilds became obligatory; the statutes of the guilds were controlled by the government, and officials were appointed from the top. The whole of productive society was eventually engulfed into the guild system. This, roughly, was the development in imperial Rome and Byzantium. Analogous, in certain ways, was the development of the corporate state under fascism.

In other cases the guilds grew as autonomous organisms. Closed shop and monopoly were introduced as measures for economic self-defense. Political power accrued as a consequence of economic wealth; it increased in conflict with the state authority which it eventually engulfed. This, roughly, was the trend in medieval Europe.

The former alternative led to the ruin of crafts and commerce through governmental exploitation and overburdening of the guilds, which frequently were dissolved by the desertion of their members. The latter alternative was more successful for a number of centuries. But the rigidity of the organizations hampered expansion and material progress, while the conflicting economic interests which usurped polit-

ical power made for unstable government. Thus Hegel in *The Constitution of Germany* defines the corporate state of the Middle Ages as "the sum of the rights which the single parts have subtracted from the whole," and, he continues, "that justice which studiously watches that no power be left to the state, is the essence of its constitution." . . .

The guild order was superseded in its economic aspect by capitalism, and in its political aspect by parliamentarism, which were twin offshoots of that main stem of modern development: individualism. It is logical, hence, that parliamentarism and capitalism reached their crisis simultaneously, and that no solution of the one can be thought of without a solution of the other; thus the notion that true representation is always specific and functional, never general and inclusive; that what can be represented is not man as an individual, but only certain purposes common to groups of individuals; that the practice of representative government commonly found in legislative assemblies is false and destructive of personal rights and social well-being; that real democracy is to be found not in a single omnipotent representative assembly but in a system of coordinated functional representative bodies. Such a notion with its several implications ran parallel to the recognition that planless individualistic economy has led itself *ad absurdum*, and that co-ordination and planning at a level superior to the individual is one of the necessities of our age.

#### **The Sources of Modern Syndicalism**

The advocates of a return to functional organization and functional representation in modern times are manifold. While they meet on one point only—dissatisfaction with the present order—they set out from quite opposite starting points and move toward sharply contrasting goals.

The right wing of the movement consists of romantics and reactionaries, nostalgic for an idealized past. The poet

Novalis (1772-1801) can be considered as the father of this trend. His celebration of the Middle Ages, its "true Christianity" conducive to inner harmony not only among individuals but among nations; his conception of the "organic state," *makroanthropos*, whose moral faculty resides in the nobility, whose religious feeling expresses itself through the clergy, whose intellectual capacity rests with its teachers, whose memory is its archives, whose blood is gold and silver; his stress on the family as the original cell of the state, and on the guilds as the members and organs of *makroanthropos*; his attitude toward property, which he considers as functional and conditioned by its usefulness to the state; his denial of freedom from the state—all this anticipated the elaborations of Adam Müller (1779-1829), who had little to add to its essence. Adam Müller in turn generated Othmar Spann, who translated the former's romantic vagueness into contemporary and concrete terms.

According to Spann (*Der wahre Staat*, 1923), the just state has to be based on estates (*Stände*), and hierarchies of estates. Equality among unequals is injustice. The best must be the leader of the state, imparting his wisdom not blindly to "atomistically equalized" masses, unreceptive as they are to values, but to an estate of educated mediators who forward it to the lower ranks, until it reaches down the ladder of the hierarchy of estates to the lowliest workman. The order of his "estates" and guilds is entered with great detail on charts and columns. The guilds should have the power to levy taxes, and should absorb many functions of the state. They should, in fact, free the state from all its economic burden, thus enabling it to fulfill its real, spiritual function, "*die Staats-idee*." The new syndical order is to be founded on realities: on the basic reality of guild order, which has survived many a wave of individualistic rebellion, and which, in the form of cartels and unions, has survived also the present capitalistic individualistic flood.

The main spokesmen of this trend, all Catholics, were inspired by the medievalism of the Church, which, in turn, took the clue from their technical advice. *De Rerum Novarum* (1891) displays before the eyes of the workingmen "who have been surrendered, isolated and helpless, to the hard-heartedness of employers and the greed of unchecked competition" the medieval structure of workingmen's guilds, whose destruction marks the beginning of their trouble, since no other protective organization took their place. *Quadragesimo Anno* (1932) reiterates that the modern state colossus, overburdened with tasks, cannot possibly take care of the needs of the individual citizen; and that therefore intermediate, coordinated organs have to be created. "A first requisite for the common welfare is collaboration between the different professional groups, and to secure such harmony and cooperation is one of the State's first duties." There follows the description of the corporate state as the only solution. The corporate state overcomes the antinomy of labor and capital, of poor and rich; for it stands on the conviction that the interests of capital and labor are identical, and finds embodiment in the organization of all who work—in whatever capacity, in any particular trade—into a single professional corps. "Men would then be divided, not as employers and workmen, but according as they follow, in one capacity or another, this or that particular trade or profession."

The first to embody such nostalgias and desires in a modern constitution was the poet D'Annunzio, in the Constitution of the Carnaro, or the Statutes of Fiume (1919).

Any working citizen—and only he who works is a citizen—is enrolled in one of the ten Corporations. The ten Corporations are: 1) salaried workers, whether hired by industry or agriculture or commerce or transport; 2) technical and administrative employees in private enterprises, both industrial and agricultural, with the exception of shareholders; 3) commercial employees who are not manual laborers; 4) agri-

cultural, industrial, commercial, and transport employers; 5) state employees; 6) the "intellectual flower of the people" (teachers, university students, sculptors, painters, architects, and musicians); 7) such free professions as are not included in the previous categories; 8) consumers' cooperatives; 9) seafarers. The tenth Corporation has no name, like the tenth Muse. It directs the mysterious forces "inherent in a people in labor and ascendancy." . . .

*La Reggenza Italiana del Carnaro* resounded with appeals to the Muses, words of culture, humanism, and harmony. Yet, spelled out, it meant balcony speeches, castor oil, and tyranny.

There in Fiume, in 1919, the Fascist state was born.

The cold content of reactionary corporativism, intended to stabilize society by freezing the various professional groups, was poured by Mussolini into the hot form of French syndicalist revolutionism, as professed by Sorel. The steam that hissed from the contact was a number of Fascist constitutions....

It would lead too far to examine here all the recommendations for functional representation ranging, so to speak, from black through all the intermediate hues to red. Outstanding is Ruskin, inspired by aesthetic admiration for the perfection of medieval craftsmanship, with his descendants, the British Guild Socialists, most notably Stirling Taylor and Arthur Penty.... The British school finds its continuation in men like G. D. H. Cole, who advocated the division of political and economic power among a number of functional associations, independent of one another within their respective spheres, topped by a "joint council or congress of the supreme bodies representing each of the main functions in society," which would act as a "democratic supreme Court of Functional Equity" (*Social Theory*, 1920); and in the masterly re-evaluation of property as admissible and useful in so far as it is functional, and of an organization of society "on

the basis of function instead of on that of right" in Tawney's *Acquisitive Society* (1920). Also Laski in *The Development of the Representative System in Our Times* advocated the necessity of functional representation.

Among the French Syndicalists it may suffice to mention Charles Benoist (*La Crise de l'état moderne—de l'organisation du suffrage universel*, 1898), who proposed an interesting combination of functional with proportional representation; L. Jouhaux (*Le Syndicalisme et la C. G. T.*, 1920); and Léon Duguit (*Droit social et droit individuel*, 1912, *La Représentation syndicale au parlement*, 1911, and *Droit constitutionnel*, 1920). "I am of the opinion," Duguit stated in *Droit constitutionnel*, "that one misconceives social reality if one still talks of 'national sovereignty' in the traditional way, meaning the sovereignty of the numerical majority of individuals. Besides the power of numbers, there has arisen another social power, the power of the syndical groups." There will be no end of strikes and covert and overt class warfare "until those elements of social and economic force, which find their expression in the syndicates, receive an adequate political representation." He proposed a bicameral legislature, one chamber to be based on individual representation, the other on functional representation through the syndicates.

#### **The Soviets and the Germans**

While pre-fascism, fascism, and near-fascism corrupted the idea of functional representation by channeling it into their own stagnant waters, and while romantic syndicalists in England and France were imagining an ideal structure of society founded on the glorified guilds rather than recommending any precise system of functional representation, the beginnings of a progressive syndical chamber, in which the new collective forces should find their legal way of expres-

sion, assume their responsibilities, and be given the possibility of fruitful collaboration, are to be sought in the first Constitution of Soviet Russia (1918), unfinished, to be sure, and never enacted, and, more positively, in the *Rätesystem* of the young German Republic (1918)....

"In the Soviet state not a territorial district, but a productive unit (factory, mill) forms the electoral unit and the unit of the state. The state apparatus is thus brought nearer to the masses." With these words the revolutionary innovation was announced in the Program of the Communist Party of 1919 (Section 5).

The All Russian Congress—the highest legislative and executive organ of the Soviet state—was initially composed of delegates from the town soviets and of delegates from the Provincial Congress. The Provincial Congress consisted of another set of delegates from the town soviets and delegates from the rural soviets, who in this way were represented only indirectly at the All Russian Congress. Whereas the rural soviet was simply elected by village meetings, the composition of the town soviet is of great interest, since it points to the possibility of functional representation in a framework of freedom and democracy. The instructions for the election of the Moscow Town Soviet (1918), typical of the others, read as follows:

"The electors will be informed of the date of elections by notices posted in prominent places in all corridors of the factory not later than two days before the elections; in case of Trade Unions, the electors are informed by the usual method employed in calling meetings to elect officials. A meeting, at which not less than two-thirds of the electors are present, will be considered a quorum....

"Establishments employing 200-500 workers have one representative; those employing over 500 send one representative for every 500. Establishments employing less than 200 workers combine for the purpose of representation with

other small establishments. Ward Soviets send two deputies, elected at a plenary session. [Ward Soviets are elected by geographic electoral districts, representing the consumers.] Trade Unions with memberships not exceeding 2,000 send one deputy; not exceeding 5,000, two deputies; above 5,000, one for every 5,000 workers, but not over ten for any one Union. The Moscow Trades Council sends five deputies.

"Political parties send thirty deputies to the Soviet: the seats are allotted to the parties in proportion to their membership, providing that the parties include four representatives of industrial establishments and organized workers. Representatives of five non-Russian National Socialist parties (the Jewish 'Bund,' the Polish Socialist Party, Polish and Lithuanian S. D. P., Lettish S. D. P., Jewish S. D. P.) are also given one seat each." ("How a Soviet is Elected," People's Russian Information Bureau; extracts from *Pravda's Election News*; and Jerome Davis in *The Nation*, September 6, 1919, as quoted by Postgate, *Bolshevik Theory*.)

The total number of members of the Moscow Soviet was stated to be 803. It is well-known that representation, functional or other, remained a scheme. Reality belonged to the Bolshevik party.

While the Russians, at least theoretically, endeavored to enact democracy on the basis of a triple representation—of the individual (through the ward soviet), of the political party, and of the economic unit—the German approach to our conception of syndical representation was even closer. Article 165 of the Weimar Constitution [was] "an important landmark in modern constitutional development." It read:

"Workers and employees shall be called upon to cooperate in common with employers, and on an equal footing, in the regulation of salaries and working conditions, as well as in the entire field of the economic development of the forces of production. The organizations on both sides and their agreements shall be recognized."

"Workers and employees shall, for the purpose of looking after their economic and social interests, be given legal representation in Factory Workers Councils, as well as in District Workers Councils organized on the basis of economic areas and in a Workers Council of the Reich.

"District Workers Councils and the Workers Council of the Reich shall meet with the representatives of employers and other interested population groups as District Economic Councils and as an Economic Council of the Reich (*Reichswirtschaftsrat*) for the purpose of performing economic functions and for cooperation in the execution of the laws of socialization. District Economic Councils and the Economic Council of the Reich shall be constituted so that all important economic groups shall be represented therein proportionately to their economic and social importance.

"The National Ministry shall, before proposing drafts of politico-social and politico-economic bills of fundamental importance, submit them to the Economic Council of the Reich for consideration. The Economic Council of the Reich shall itself have the right to initiate drafts of such bills. If the National Ministry fails to assent, it shall nevertheless present the draft to the Reichstag accompanied by an expression of its views. The Economic Council of the Reich may designate one of its members to appear before the Reichstag in behalf of the proposal.

"Powers of control and administration may be conferred upon Workers and Economic Councils within the spheres assigned to them.

"The regulation of the development and functions of Workers and Economic Councils, as well as their relations with other administratively autonomous social bodies, shall be exclusively a matter for the Reich."

The "Factory Workers Councils," referred to in the second paragraph, were thus legalized and, as the saying went, "anchored in the Constitution." Their history before the

promulgation of the Weimar Constitution is well-known. With the advent of the revolution of 1918 they had sprung up spontaneously all over the Reich, had organized two Congresses in Berlin during 1918 and 1919, elected an "Executive Council," expelled the extremist elements favoring soviet as against parliamentary government, and supported finally the election of the Weimar Constitutional Assembly. Their composition within the frame of the Constitution was described in a by-law of February, 1920, consisting, in the most thorough German way, of 106 articles. These articles, however, provided for the most democratic manner of election and representation of the workmen, for promising possibilities of mediation between employers and employees, for fruitful participation of labor in the management of production, and were to have a highly educative effect on the German working class.

The rather vague description of the *Reichswirtschaftsrat* in the third paragraph, according to which all important economic groups should be represented therein proportionally to their economic and social importance, was taken care of by the establishment of a Provisional Economic Council, composed as follows: sixty-eight representatives of agriculture and forestry; sixty-eight of general industry; forty-four of commerce, banking, and insurance; thirty-six of small business and handicrafts; thirty-four of transport; six of market industries and fisheries; thirty of consumers; sixteen of civil servants and the professions; twenty-four representatives named by the government.

While the Provisional Economic Council fulfilled all the functions of the Permanent Economic Council, as described in paragraphs three, four, and five of the article quoted above (except initiating of laws), its first assignment was to draft the constitutions for the intermediate, still unborn organs, the District Economic Councils and Working Councils.

However, the Economic Council of the Weimar Constitu-

tion had neither veto nor law-enacting power. That it remained a merely advisory body contributed, according to such observers as Carl Schmitt (*Verfassungslehre*), to the frittering away of its activities in subcommittees, and to the waning of its influence and meaning until its death and transfiguration through National Socialism.

#### **Functional Representation in World Government**

After their first appearance, less or more actual, in Russia and Germany, economic councils, based on functional representation, sprang up under other democratic constitutions [—Yugoslavia and France among others].... [And as their] necessity, corresponding to the ever increasing importance of the economic factor in the life of the state, gained wide recognition between the two World Wars, it is not surprising that there is practically no constitution among those emerging from World War II that does not provide for functional representation alongside the traditional democratic forms of representation....

The inclusion in the World Constitution Draft of the paragraph quoted [in the first paragraph] of this article was preceded by long discussions. Two detailed proposals, indicating in what direction this paragraph might be implemented through bylaws, were offered in [earlier] Committee documents.... Both propose a separation of the socio-economic from the cultural or religious representation in distinct chambers whose activities, however, could be directed and coordinated by a Directorate composed of delegates from each chamber. The first list of organizations to be represented in the syndical chamber or Senate should be drawn up by a committee or board appointed by the executive and the legislative jointly, with the advice of local authorities; and the respective strength of the various organizations, chambers, and societies in the various states should be deter-

mined in accordance with the strength of their membership in numbers or their general importance.

Certain groups, such as churches, universities, organizations of scientists and artists, could be organized on a universal basis, since their social level is approximately even all over the world, while economic groups, such as labor, industrial management, commerce, and agriculture should be organized within the national boundaries, taking into account the enormous difference in the economic structure of the various countries.... On the other hand, certain groups of workers within a country, if their working conditions are similar, could be represented in one single organization.... The national groups could elect their representatives directly while the transnational groups should elect representatives indirectly through electors.

Taking a different point of view, one might argue that universal economic organizations, both of labor and of management, can contribute most efficiently to the leveling of those social and economic differences, counteracting at the same time national passions where such survive. Hence, to encourage their growth, the syndical chamber might even grant some privileges — such as over-representation — to international organizations or to local groups affiliated therewith.

The power of the syndical chamber or Senate, according to the proposals [in the Committee documents], should be "para-legislative," so that bills proposed by the Senate become laws unless they are vetoed by the primary legislative body or the President within thirty days.

In conclusion, three statements may be in order.

1. A study of constitutional history during the last thirty years demonstrates irrefutably what are the advantages deriving from functional representation in a syndical chamber. They are threefold. On the negative side, economic and social pressure groups and lobbies, with the disturbances emerging therefrom, are absorbed and neutralized. On the positive

side, the *expertise* and fervor intrinsic to professional groups are an asset in socio-economic planning that cannot be overrated. Last but not least, functional representation, implementing other forms of representation, enriches the meaning and enhances the working of democracy.

2. The apprehensions of those who, stressing the technical difficulties to be faced, oppose the establishment of a syndical chamber on the ground that it is less difficult to philosophize than to specify on the subject of functional representation should have been dispersed by the experience of our generation. It is true that the Soviet and Räte experiments, attempting to proceed upward from the base of the autonomous workshop, . . . failed, as it is true that the Fascist experiment, proceeding downward with top-heavy corporations clamped on the population, is against the spirit of the world state to come. But intermediate ways, leaning on democratic initiative while guided by a central authority, have been found on the national level. There is no reason for questioning their availability on the supranational level.

3. Full legislative power in the hands of a syndical chamber does not correspond to any real need. For government—as history-dominated by the economic factor is as invalid as government—or history—conceived without the economic factor. On the other hand, the merely advisory quality of more than one economic council has brought about its decadence and doom. Thus, the power of a syndical chamber has to be raised to the point where power engenders responsibility which guarantees vitality—not higher. The tentative proposal by the Committee, to grant the economic council “para-legislative” power such as a suspensory veto and the right to initiate bills which become law unless vetoed, seems to be a novel and promising solution.

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