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The New Irish Constitution

An Exposition and Some Arguments

Edited on Behalf of The Eighty Club by

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"For the later kindness done in season, though small in comparison, may cancel a greater previous wrong"—*Thucydides I.* 42.

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Introduction

A word of explanation seems necessary as to the origin of this work, its design, and the obligations under which it has laid the Editor. The Committee of the Eighty Club requested me some few months ago to undertake the preparation of a book dealing with the Irish question. They did me the honour of leaving entirely to my discretion both the design of the work and the choice of the contributors. Of books about Ireland, particularly of those which wear the livery of political parties, there are enough and to spare. Most of them are retrospective. I am not insensible to the value of a historical argument—as the design of the second part of this book sufficiently attests—but "few indeed," as Burke has remarked, "are the partisans of departed tyranny," and it seemed to me more profitable to pay some attention to the present and the future. The restoration to Ireland of her Parliament is an event which not only appeals to the imagination of the historian, but also stimulates the speculation of the jurist, and invites the assistance of the administrator. I have, therefore, attempted in the earlier part of this book to secure a sober and dispassionate study of the new order of government by writers who can speak with the authority of a life's vocation. Their names need no [ii] commendation from me.

The second part of the book may be regarded as supplementary to the first, in that it deals with constitutional history. When public men of such distinction as Mr. Balfour can speak of Irish patriotism, in so far as it used a Parliamentary vocabulary, as an exotic, and Irish nationality as a political afterthought, it seems not unimportant to show, as Mrs. J. R. Green and Professor Pollard have here shown, that the title-deeds of that nationality are not the forgeries of a political scriptorium, but are as authentic

as anything an Englishman can boast. No one who has served any apprenticeship to Irish history needs to be reminded of the indomitable charm with which Irishmen have always taken captivity captive, and naturalised the alien and the oppressor. No argument for Irish nationality is more potent than this. One may, if one is so perverse, think Bolton pedantic, Molyneux curious, Swift rhetorical, and Grattan forensic, but there is no denying that these Anglo-Irish champions of Irish nationality spoke with a truly native passion. Nor is it a little remarkable that at the eleventh hour history should have repeated itself, and that the heart of the ruling caste should have throbbed, as Lord Dunraven has shown in his remarkable chapter, with a new impulse toward self-government. Grattan's Parliament, as one may read in Mr. Gooch's essay, was composed of men of much the same antecedents and prestige as those who are associated with Lord Dunraven in that significant movement of Irish Unionism which has to-day met Nationalism half-way. That Parliament is about to be restored to Ireland under conditions, which, as Lord Fitzmaurice shows, are, allowing for the difference in time and in the categories of political thought, substantially those which the Rockingham Ministry would, had they been free agents, have [iii] imposed in 1782. Their imposition would have precluded the union, and we should have been saved that sorry story, to be read in Mr. Barry O'Brien's succinct pages, of concessions delayed until they had lost their grace, and promises redeemed when they had lost their virtue.

Much of these historical chapters is but melancholy reading. But it is for Englishmen to remember these things, as it will be, I hope and pray, for Irishmen to forget them.

The third part of the book comes nearer home. At a time when our fellow-subjects across the oceans are repudiating, as Irishmen have repudiated, the name of “colonists,” with all its suggestions of the dependent tenure of Roman law, and are claiming, as Irishmen long ago claimed, the status of a

"dominion," it does not lie with Englishmen, least of all of the Imperialist school, to challenge the claims of the Irishmen of to-day to nationality. Professor Hobhouse reminds us that where this stubborn non-conformity to the ruling order endures, it must be accepted as the touchstone of nationalism. But the Irish demands are reinforced by English exigencies, and, as three Liberal Members of Parliament remind us, the Imperial Legislature is already disintegrating domestically under the stress of its manifold burdens. Not for the first time is the path of justice thus discovered to be also the path of expediency.

In the later chapters of this book will be found a view of the present state of Ireland, from the pens of those best qualified to speak of it, the pens of men who have spent their lives in ministering to her people. I would commend to the attention of the reader those chapters, in which a great dignitary of the Roman Church, a distinguished scholar of the Church of Ireland,
[iv] and two members of Nonconformist bodies, who stand high in their respective communions, pray for the deliverance of the social life of their country from the obsession of a busy and alien fanaticism.

> Dea magna, dea Cybelle, dea domina Dindymi,
> Procul a mea tuus sit furor omnis, era, domo:
> Alios age incitatos, alios age rabidos.

It must be understood that the responsibility for each chapter is confined to the person who wrote it. We are all united in a common allegiance to the principles of Home Rule, but that allegiance is not incompatible with some diversity of view as to the form which it should take. It seems to me that the book gains, rather than loses, in value by this degree of latitude of opinion. It is, perhaps, hardly necessary to add that the order in which the chapters appear makes no pretence to anything so invidious as

an order of merit—otherwise the first chapter would have been the last; it is designed simply with a view to a logical sequence.

I wish to thank Lord Haldane and Mr. Birrell for the enjoyment of certain privileges in the preparation of the book, without the concession of which its appearance at this moment would have been impossible. I have also to thank Lord Haldane for reading the proofs of my own chapter on the Government of Ireland Bill, and giving me the benefit of that profound learning which is always so generously placed at the service of the student who seeks its guidance. To my friends, Lord Fitzmaurice, Mrs. J. R. Green, and Mr. J. A. Spender, I am indebted for many kind offices of a diplomatic character. Throughout the conduct of my editorial task I have had the wise counsel and unfailing support of Mr. Bourchier Hawksley, the Chairman of the Home Rule Committee of the Eighty Club, and to him I desire to express my grateful acknowledgments.

J. H. MORGAN.

The Temple.

May, 1912.

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Part I. The New Constitution

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I.—The Constitution: A Commentary. By Professor J. H. Morgan

"Home Rule is at bottom Federalism," we are told[1] by the most distinguished jurist among its opponents. It is urged against it that Federal Governments are almost invariably weak Governments, and that, in so far as they are strong, they are as "symmetrical" as the new constitution is unsymmetrical. Cornewall Lewis once thought it necessary to write a book on the Use and Abuse of Political Terms, and there is a great danger in the present controversy of our being enslaved by the poverty of our political vocabulary. The term "Federalism" is put to such new and alien uses as to darken counsel and confuse thought. That Federal Executives are usually weak, that in the dual allegiance of a Federal system men often prefer the State authority which is near to the Federal authority which is remote, that the respective limits of Federal and State legislation are defined with difficulty and observed with reluctance, that conflict of laws is more often the rule than the exception, that Federal constitutions are rigid [004] rather than flexible, and, in a word, that progress is sacrificed to stability: all these things are true, and all these things are irrelevant. The Government of Ireland Bill is not, and cannot be, the corner-stone of a Federal system for the United Kingdom, although its duplication in the case of Scotland and of England would not be impossible, should it appear desirable. We may, for want of a better term, call it the foundation of a system of Devolution, but we must not call it Federalism.

Putting on one side for the moment the question whether Home Rule is Federalism or not, I am inclined to enter a protest against all these attempts to fit the Bill into the categories of the jurist. It is very doubtful whether any two constitutions in the world,

[1] Professor Dicey in "A Leap in the Dark" (1911), p. 118. *Cf.* Mr. Balfour in *The Times*, May 3rd, 1912.

even federal constitutions, can be brought under one species. Two of the most successful "federal" constitutions present the gravest anomalies to the theorist. The Canadian Constitution, according to Professor Dicey, betrays a logical fallacy in the very words of its preamble;[2] and German jurists have wrangled no less inconclusively than incessantly about the legal character of the Empire and as to where its sovereignty resides;[3] yet in neither case has the practical operation of these constitutions been much the worse for the legal solecisms which they present. Indeed, it would not be too much to say with Aristotle that the "mixed"
[005] and not the "pure" type of government is the most successful, and that when Federalism is, as in the United States, at its purest, it is also at its weakest. The constitution of Imperial Germany ought, on this kind of reasoning, to be a flagrant perversion, and yet it has persisted in enduring for some forty-one years, and the prestige of its principal organ, the Bundesrath, although violating all Mr. Balfour's principles as to "equality" in its constitution, is, according to the doyen of the constitutional lawyers of Germany, increasing every day.[4] The argument that "Federalism" is incompatible with the preponderance of the "predominant partner," and that no "federal" union is possible in these islands owing to the superior position occupied by England, would, even if it were relevant, be easily refuted by the example presented by the hegemony of Prussia.

The same objection may be urged against the contention that the grant of self-government, whether to Ireland alone or to the rest of the United Kingdom, is both reactionary and

[2] "The Law of Constitution," Sixth Edition, p. 162, where Professor Dicey makes a rather unhappy attempt to force the Dominion Constitution into the category of Federalism.

[3] The opinion of Laband ("Staatsrecht," I., *passim*) as to its being found in the totality of allied Governments represented by the Bundesrath is probably nearest the truth.

[4] Laband, "Die Entwickelung des Bundesraths," Jahrbuch des oeffentlichen Rechts, 1907, Vol. I., p. 18.

unprecedented. The progress of all civilised communities, we are told, is towards political integration, not away from it. Devolution, it is said, is gratuitous in the case of a "United" Kingdom whose very union represents an ideal imperfectly achieved by the less fortunate countries which have had to be content with something less complete in the form of Federalism. Nations or Colonies mutually independent federate as a step towards union; it is "unprecedented" to reverse the process and qualify union by looser ties of cohesion. Now this attempt "to construct a normal programme for all portions of mankind"[5] cannot be sustained. If it could, it would avail as a conclusive [006] argument against the grant of self-government to our Colonies whose claims to legislative independence grow with their growth and strengthen with their strength.[6] But it is not even true of Federal Unions. Anyone who takes the trouble to study the history of judicial interpretation of the American Constitution will find that there is a constant ebb and flow in the current of "unionism." The intention of the framers of the 14th Amendment to create a United States citizenship has been largely neutralized by the decisions of the Supreme Court, which have inclined strongly in the direction of the legislative autonomy of the States.[7] Nor is this all. We are told that Federal Constitutions are "round and perfect and self-contained,"[8]—that they are characterized by "equality" of all the parts—and that, like the work of the divine law-giver of early communities, they are finished the moment they are begun.[9] But these confident inductions cannot

[5] Maitland, *Domesday Book and Beyond*, p. 345.

[6] It is difficult to understand what Professor Dicey means by saying "unity is increasing throughout the Empire." His argument seems like a play upon the words unity and union. In merchant shipping, copyright and other such matters, the whole tendency is towards differentiation.

[7] There are innumerable cases, *e.g. Cruikshank's case* and the *Slaughter House case*.

[8] *Cf.* Mr. Balfour, *The Times*, May 3rd.

[9] *Cf.* "Pacificus" in *The Times*, April 30th.

be sustained. The history of the constitution of the United States and of Imperial Germany tells another story—a story of ancillary communities and dependencies in various stages of political apprenticeship. If we look for the American Constitution where all such constitutions must really be sought, that is to say not in the original text, but in the commentary of the courts, we shall
[007] find a truly remarkable tendency of late years to emphasize this heterogeneity, inequality and incompleteness.[10]

The new Bill proposes a delegation of authority, both executive and legislative. Unlike a Federal constitution, it contemplates no distribution of sovereignty (begging a question which has often vexed the jurists as to the partibility of sovereignty). The new Government in Ireland will, indeed, be carried on in the name of the Crown, the writs of the Irish Court will run in the King's name, the statutes of the Irish Parliament will be enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and Commons. But the Imperial Government and the Imperial Parliament will remain supreme. The executive power in Ireland will continue vested in His Majesty, though some prerogatives may be delegated to the Lord-Lieutenant who, as respects them, will exist in a dual capacity—some of these he will exercise on the advice of the Imperial Government, others on the advice of the Irish Government. So far, however, as the law, as distinguished from convention, is concerned, he will be in no way bound to act on the advice of his Irish Ministers except in so far as his "instructions" require him to do so. The words of the Bill do, indeed, contemplate with more explicitness than is usual in our written constitutions, a transfer of executive as well as of legislative authority, but they are by no means exhaustive,

[10] I refer, of course, to the decisions of the Supreme Court—decisions almost revolutionary in their character—in connection with the annexation of Hawaii, the Philippines and Porto Rico. See in particular *Downes* v. *Bidwell*, 182 U.S., 244; also *Territory of Hawaii* v. *Makichi*, 23 S.C. Rep., 787, and *Dorr* v. *United States*, 195 U.S., 138.

and they still leave it to His Majesty to determine[11] what [008]
prerogatives shall be delegated after the Act has come into force. As regards the legislative power, it will remain with the Imperial Government to give it effect by granting or withholding the King's assent to Irish legislation,[12] and the Imperial Parliament may, at any time, exercise its supremacy to the prejudice of such legislation, even after it has found its way on to the Irish statute-book. As regards the judiciary, there will, of course, be no dual judiciary: Irish Courts will interpret and enforce Imperial as well as Irish statutes, but both in the one case and in the other their judgments will be subject to appeal to an Imperial Court—the Judicial Committee of the Privy Council. In other words, the Imperial power will be supreme in the executive, the legislative, and the judicial sphere.

Now in Federalism in the true sense—and I regard the constitution of the United States as the archetype—there is no such subordination. The authority of the constituent states and of the Federal nation are distinct and independent of one another. The Governor of the State is appointed not by the Federal authority, but by the State itself, whose servant he is. There is no "Crown" to serve as a common denominator of State [009]
and Federal Executives.[13] The one is not subordinate to the other,

[11] It cannot be contended with any show of reason that the grant of a constitution legally carries with it a grant of the Executive power such as to divest the Imperial Government of its authority. There is but a solitary opinion to the opposite effect—that of Higginbottom, C. J. of Victoria, in *Musgrove* v. *Toy* (Victorian Law Reports, XIV., 349).

[12] The veto of the central Government on the local legislature is the most decisive departure from the Federal principle. The Judicial Committee have always regarded it, in the case of the British North America Act, as a conclusive reason for rejecting the application of the Federal doctrines of the U.S. Courts to the interpretation of the Canadian Constitution. See *infra*, and *cf. Bank of Toronto* v. *Lambe*, 12 App. Cas., 575.

[13] Difficulties arise when, as in the case of the Australian Commonwealth, an attempt is made to reconcile the principles of the American Constitution with those of the English Constitution. The State Governments in Australia, equally

but is co-ordinate with it. The legislation of the State is subject to no external veto by the President. Nor is it subject to a legislative veto. In all matters not expressly conceded to the Federal Legislature, the State Legislatures remain as supreme after the enactment of the Federal Constitution as they were before it. In the legislative, as in the executive, sphere, the two authorities are co-ordinate. So with the judiciary. The decisions of the State Courts, in so far as they deal with State matters, and do not involve the interpretation of the Federal Constitution, are final and subject to no appeal to the Supreme Court at Washington. Conversely, Federal Circuit Courts exist independently of the State Courts to decide cases arising under Federal statutes or involving the interpretation of the Federal Constitution, and their judgments are enforced not by the State Executive but by the Federal Executive, which has its own marshals for the purpose. Nor can an act done by a Federal official, in obedience to a Federal statute, be punished by the State Court, even though it
[010] appear to involve a breach of a law of the State.[14]

It is this dual allegiance that constitutes the inherent weakness of all Federal systems. Arguments based upon it have been urged against the grant of self-government to Ireland. Even those who admit that Federal analogies have no application so far as the relations of the Imperial and Irish legislatures are concerned, and who concede that the Irish Parliament will be as subordinate as a State Parliament in a Federal system is co-ordinate—none the less insist that in the relation of the two executives there is a real and perilous dualism. Many opponents allege, and no doubt,

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with the Federal Government, are carried on in the name of the Crown; what, then, becomes of the prerogative doctrine that the Crown is not bound by a taxing statute, when the Federal Executive attempts to levy Customs duties under a Federal statute upon the property of a State Government? The High Court found itself compelled to distinguish between several capacities of the Crown in a Federal system. See *A-G. of New South Wales* v. *Collector of Customs*, 5 C.L.R., 818.

[14] *In re Neagle*, 135 U.S. Rep., p. 1.

believe, that, with an Irish Parliament sitting at Dublin, the King's Writ will not run, the decisions of the Judicial Committee will not be enforced. Imperial statutes will not be obeyed, and Imperial taxes will not be collected. If there were a real delimitation of Courts and Executives, Imperial and Irish, under the new system, such a danger, though remote, would be conceivable. But no such sharp distinction is to be found in the Bill. In political unions, the central Government may act upon its subjects in a particular state directly through its own agencies—its own Courts, its own Executive officers, and its own police—this is the true Federal type; or it may act indirectly through the agency of the State authorities. Conversely, the State Governments may act directly through their own agencies—this again is the Federal principle, or they may act indirectly through Imperial agencies. Now wherever this indirect action is employed in both its forms the distinction between the two authorities is confused, the Federal principle undergoes a qualification which, by depriving it of half its symmetry, deprives it of all its weakness. Just this reciprocal relationship is established between the Imperial Government and the Irish Government. [011]

Imperial officials will be at the service of the Irish Government, and Irish officials at the service of the Imperial Government. For example, in the collection of taxes imposed by the Irish Parliament, the Irish Government will depend upon Imperial revenue officers to assess and collect them. The Imperial Government, on the other hand, will depend upon Irish Courts and Irish sheriffs to enforce their collection. Irish sheriffs will, in turn, depend upon an Imperial constabulary to assist them in levying execution. I shall return to some of these points in greater detail when I come to deal with the relations between the Executive and the Judiciary, and the maintenance of law and order. It is sufficient for me to remark here that the Irish Nationalist who wishes to defy the Imperial Government, and the Irish Unionist who wishes to defy the Irish Government,

will each be hard put to define what he is pleased to regard as the limits of political obligation. He will find it difficult to distinguish where the authority of the Irish Government ends and that of the Imperial Government begins.

The Supremacy of the Imperial Parliament.

In the new Bill the supremacy of the Imperial Parliament is secured by express words. The words are not necessary. No Parliament can bind its successors, and what one Parliament has done another Parliament may undo. Even when one Parliament has been at pains, by declaring its legislation "perpetual" or "unalterable" to bind posterity—as in the case of certain clauses in the Irish and Scotch Acts of Union—its injunctions have been disregarded by its successors with no more formality than is necessary in the case of any other legislation. An Act setting up a new Constitution is no more irrevocable than an Act authorising
[012] the imposition of the income tax. If, therefore, the Imperial Parliament chooses to grant a Constitution to Ireland, there is nothing to prevent its revoking or amending that grant, even (we submit) though it should have been at pains to enact that the Constitution could only be surrendered or altered by the consent of the Legislature which that Constitution created. Some doubts did, indeed, arise as to this point in the case of the Home Rule Bill of 1886, which not only excluded the Irish members from Westminster, but made provision for the amendment of the new Constitution by stipulating that such amendment should be made, if at all, by the joint authority of the Irish and English Parliaments. Whether this would have had the effect of preventing the "Imperial" Parliament from amending such a Home Rule Act without calling in the assistance of the Irish Parliament was much discussed at the time.[15] Obviously, the question does not now

[15] *Cf.* Sir William Anson, in the *Law Quarterly Review*, 1886.

arise, as the Irish members are to continue to sit at Westminster.[16] [013]

It is therefore open to the Imperial Parliament at any time to repeal or amend the Government of Ireland Bill after it has become law. On the other hand, the Irish Parliament will have no power, except in so far as such power is conceded by the Act itself, to alter its provisions. This is stated in the Bill itself,[17] but the statement is superfluous. It follows from the doctrine of the supremacy of the Imperial Parliament that statutes of that Parliament can only be repealed by the Parliament itself. No constitution granted to a British Colony, however large the grant of self-government it contains, can be altered by that colony unless the power to alter it is expressly conceded. Such a power, when the Constitution itself does not prescribe some particular method of constitutional amendment, has indeed been granted in general terms by Section 5 of the Colonial Laws Validity Act,

[16] There is, however, a provision in Clause XXVI. of the Bill Providing that, in the event of a revision of the financial arrangements being recommended by the Joint Exchequer Board, with a view to securing an Imperial contribution from Irish revenues, and "extending the powers of the Irish Parliament and the Irish Government with respect to the imposition and collection of taxes," there shall be summoned to the Imperial Parliament such number of members of the *Irish* House of Commons as will raise the representation of Ireland in that Parliament from its reduced figure of forty-two to such a number (say seventy) as will represent Ireland's claim to representation on a population basis. That is to say, the Irish Parliament will send some twenty-eight of its members to reinforce the forty-two members who are directly elected to the Imperial Parliament by the constituencies. It is only proper that Ireland should not be required to contribute to Imperial purposes except with the consent of the full representation to which she is entitled. But the clause will require more careful definition: for example, the Irish Parliament ought to be required to choose these twenty-eight delegates in proportion to the representation of Irish parties in the Imperial Parliament, so as not to "pack" the delegation. It can hardly be denied that the provision makes a change in the constitution of the Imperial Parliament itself, and a somewhat anomalous one. It ought to be carefully considered in Committee. So, also, ought the powers of the Joint Exchequer Board, whose decisions are to be "final and conclusive."

[17] Clause XLI.

but this Act could not apply to Ireland, which is outside the legal definition of a colony contained in the Interpretation Act of 1889. The only powers of constitutional amendment which the Irish Legislature will possess are those expressly conceded in Clause 9, which enables it after three years from the passing of the Act to deal with the franchise and with re-distribution.

[014] The Irish Parliament will, of course, have power to repeal any existing Acts of the Imperial Parliament in so far as they relate to Ireland, and do not deal with matters exempted from its authority. It would be impossible for it to legislate for the peace, order, and good government of Ireland if it had not this power, and the power is implied in the general grant. But if the Imperial Parliament chooses to continue to legislate for Ireland, even in matters in regard to which the Irish Parliament has been empowered to legislate, such Imperial legislation will be of superior obligation. This is also a corollary of the doctrine of the supremacy of Parliament, and it was not necessary to state it in the Bill.[18] The grant of particular legislative powers to Ireland does not prevent the Imperial Parliament from subsequently legislating in derogation of those powers. The supremacy of the Imperial Parliament is as inexhaustible as the fountain of honour.

It is just here that the divergence from Federal principles is most marked. Under the British North America Act the legislative powers of the provinces are "exclusive" of Dominion legislation within their own sphere.[19] So, too, in the case of the Australian Constitution, under which the residuary legislative powers remain with the States, the Federal Parliament is excluded from legislating in any matters not expressly conceded to it. The

[18] Clause XLI. (2).

[19] The power of the Dominion Parliament to make laws for the peace, order, and good government of Canada has, however, been so interpreted as to permit of a large degree of concurrent legislation. See *Russell* v. *The Queen*, 7 App. Cas. 829. The Dominion Government can also exercise a veto on provincial legislation when it runs counter to the "settled policy" of the Dominion. But in these respects the Canadian Constitution diverges from the true Federal type.

result is seriously to limit the operations of such powers as it does possess. It has, for example, over Customs and Excise, but [015] there are other ways of giving a preference to a trade than by the imposition of duties: a low standard of factory legislation may operate in the same direction, as the Federal Parliament found to its cost when it attempted to pass an Excise Tariff Act, depriving manufacturers of the advantages of the new tariff in those States in which a certain industrial minimum was not observed. The Act was held invalid by the High Court[20] on the ground that it exceeded the powers conferred on the Federal Parliament by the Constitution, and encroached on the exclusive powers of industrial legislation which belonged to the States. No such situation would be possible under the Government of Ireland Act, because the powers of the Irish Legislature are not exclusive of the powers of the Imperial Parliament, but merely concurrent. And whenever an Irish and an Imperial statute conflict, the rule of construction will be in favour of the latter.

The Powers of the Irish Parliament

The Irish Parliament is given a general power to make laws for "the peace, order, and good government" of Ireland. The words are those usually employed in the grant of legislative power in colonial constitutions, and they have been interpreted as authorising "the utmost discretion of enactment for the attainment of the objects appointed to them."[21] No considerations of policy or equity or repugnancy to the common law would avail to challenge an Irish statute on the ground that it was *ultra vires*. Within the limits assigned to it the Irish Parliament will have authority as plenary and as ample as the Imperial Parliament [016] itself possesses or can bestow, and it may, if it so pleases,

[20] *The King* v. *Barger*, Commonwealth Law Reports, VI., p. 41.
[21] *Riel* v. *The Queen*, 10 App. Cas. 675.

delegate this authority.[22] The Irish legislature will, however, have no power to legislate extra-territorially.[23] It could not, for example, pass a law to punish the Irish subjects of the Crown for offences committed outside Ireland.

Now, these powers are undeniably large—larger, indeed, than is usually the case even in Federal systems where the unenumerated or "residuary" powers are left to the State. It is conceivable that they might be exercised to the prejudice of the Imperial Government and of the union of the two kingdoms, and there is nothing in these clauses of the Act to prevent them being so exercised. Treating it as a statute on the ordinary principles of the interpretation of statutes, the Judicial Committee would have no option but to regard as valid any legislation of the Irish Parliament that did not come within the exempted powers. With policy they are not and would not be concerned. But then it must be remembered that there is the possibility of the exercise of the veto of the Imperial Government in cases where legislation, though *intra vires*, is inequitable, inexpedient, or contrary to Imperial interests. This executive veto is really a juristic fact of great importance—it has always been present to their lordships'[24] mind as a reason for refusing to apply to the interpretation of the Federal constitutions of Canada and Australia the restrictive
[017] principles of the Supreme Court, as laid down in Marshall's famous doctrine of "implied restraints."[25] When no such veto is in the hands of the Central Government, it becomes necessary to restrict, either in the text of the constitution, or in judicial interpretation of it, with considerable precision, the powers of the local legislatures. This is why a true Federal system always

[22] Cf. *Reg.* v. *Burah*, 3 App. Cas. 889; *Hodge* v. *The Queen*, 9 App. Cas. 117; *Powell* v. *The Apollo Candle Company*, 10 App. Cas. 282.

[23] The Imperial Parliament can, of course, legislate for any part of the world (*Cf. Earl Russell's* Case, 1901, App. Cas. 446), but its power is limited in practice.

[24] *Cf. Bank of Toronto* v. *Lambe*, 12 App. Cas. 575.

[25] In *McCulloch* v. *Maryland*, 4 Wheaton 316.

involves a very large amount of litigation. But litigation is a thing to be avoided, if possible. It encourages political parties to carry test cases into the courts.

Constitutional Restrictions.[26]

The problem of protecting the rights and privileges of minorities in Ireland by constitutional restrictions is the most delicate that ever perplexed the mind of the jurist. It is one which puts the Irish problem in a category by itself. In no other Constitution in the Empire—with the exception of a single clause in the British North America Act—is any attempt made to fetter the discretion of Parliaments by the imposition of juristic limitations upon their legislative capacity. To say a Parliament shall not legislate except upon certain subjects is one thing, to attempt to define *how* it shall legislate upon those very subjects is quite another. The latter is as difficult as the former is simple. To adopt a pedestrian illustration, it is easy enough to forbid motorists to drive along certain roads, but to forbid them to drive "recklessly" along any road is another matter. "Recklessly" at once raises [018] questions of standards of negligence and actionable rights. How are we going to distinguish "just" from "unjust" legislation, taxes which discriminate from taxes which do not, "rights" of the subject which a Parliament may disregard from those which it must respect? There has never been any doubt that a colonial legislature may deal with the common law rights of the subject as it pleases, may abolish trial by jury, suspend the writ of *habeas corpus*, pass bills of attainder, enact *ex post facto* legislation, take private property without compensation, and indemnify the Executive against actions for breaches of the law—if any doubt

[26] I am concerned here only with the justification for the omission of constitutional restrictions. The Bill, as compared with its predecessors, is conspicuous in this respect. Such restrictions as it actually contains are dealt with by Sir John Macdonell in Chapter IV.

ever existed it was set at rest by the Colonial Laws Validity Act. But in the case of Ireland it was thought necessary—owing, doubtless, largely to the fears excited in the minds of Englishmen by the Protestant minority in Ulster and the commercial interests in both countries—to insert in the earlier Home Rule Bills an elaborate series of restrictions upon the exercise of even those legislative powers which the Irish Parliament might admittedly possess. For a parallel to these restrictions one would have to go back to the Constitution of the United States and the philosophy of "natural rights." A more difficult problem it is impossible to conceive, because a Constitution of this kind runs counter to the whole tradition of Parliamentary sovereignty in this country and the colonies. Anyone who takes the trouble to study the decisions of the Privy Council when colonial legislation has been impugned on the ground of its infringing the common law rights of the subject or "natural justice"[27] will discover that constitutional limitations of this kind upon the powers of colonial Legislatures
[019] are not recognised by our judges. In the absence of express words in the colonial Constitutions, such restraints do not exist. "The only thing," as Lord Halsbury grimly remarked on one occasion, for the subject whose actionable rights are taken away by a Colonial Act of Indemnity "to do is to submit."

The earlier Home Rule Bills were characterised by a most elaborate code of rights which the Irish Legislature might not infringe. Its main provisions might be classified as having three objects in view: (1) The protection of the subject in life, liberty, and property; (2) the prevention of legislation discriminating against any part of the United Kingdom, and (3) the preservation of the existing rights and privileges of the Protestant community in Ireland. In one form or another almost all these principles are to be found embodied in the Constitution of the United States, and in the case of the first of them a clause of the famous

[27] Let me cite in illustration *Tilonko* v. *The Attorney-General of Natal*, L.R. (1907), A.C. 93 and 461, and *Philips* v. *Eyre* (1869), Q.B.

14th Amendment was actually incorporated, with some slight alterations, in Sub-section 8 of Section 4 of the Bill of 1893, according to which the powers of the Irish Legislature should not extend to the making of any law

> "whereby any person may be deprived of life, liberty, or property without due process of law in accordance with settled principles and precedents or may be denied the equal protection of the laws or whereby private property may be taken without just compensation."

These impressive words bristled with legal controversy. Did they, for example, secure to the subject the preservation of the right to trial by jury? In the States of America it has been authoritatively laid down[28] that, in the absence of further defining words in the State constitutions, they do not. Such procedure is indeed safeguarded in the Federal Courts, but only in consequence of express words. In the case of the States, Cooley, [020] a great authority, says that "whatever the State establishes will be due process of law," and Story regarded the words by themselves as simply securing a judicial hearing—that is to say, as they stand they merely secure the separation of legislative and judicial functions and prevent the State Legislature from passing laws which are in effect judicial decrees.

What the words would really have secured to the subject in Ireland was very doubtful. The object of the draughtsman appears to have been to secure to the subject in Ireland all the protection of the law, including trial by jury, which he would have enjoyed at the date of the passing of the Bill, understanding by law both common law and statute law. If the Imperial Parliament had, subsequent to the date of the Act itself, passed legislation limiting trial by jury or other common law rights, this would, presumably, have provided the Irish Parliament with a new "settled principle

[28] *Walker* v. *Sauvinet,* 92 U.S. 90.

and precedent," enabling it to go further. In other words, the clause might have operated to secure a certain standardization of legislation as between the two countries.

The Argument Against Restrictions.

But it seems to me that such standardization is best secured by definitely reserving certain subjects of legislation to the Imperial Parliament rather than by imposing upon the exercise of such legislation by the Irish Parliament constitutional limitations which are certain to raise great doubts and provoke excessive litigation. It would be far better to reserve criminal law, as has been done in Canada, in the case of the provincial legislatures—though not without difficulty—than to lay down certain abstract principles. Moreover, is it desirable to maintain such uniformity of legislative principle? There is a great deal to be [021] said for reserving certain subjects of legislation to the Imperial Parliament, but to impose on the whole sphere of legislation entrusted to the Irish Parliament the same principles as those governing the English Statute-Book, or the common law, is to subject almost every conceivable Irish statute to the challenge of litigious politicians. This is what has happened in the United States. The clause, as it stood, might quite conceivably have prevented the Irish legislature from extending the procedure of the Summary Jurisdiction Acts to cases where it was not so extended in England—a most mischievous result, seeing that this procedure is the sanction by which nearly every new statute extending the scope of industrial or public health legislation or conferring powers on local authorities is enforced.

Uniformity of legislation between the two countries is not desirable in all directions nor has it hitherto been followed. In matters of expropriation, for example, the drastic procedure of the Housing and Town Planning Act has not been adopted in Ireland. Ireland has her own standard in these matters in the case

of the Irish Local Government Act, and the Land Purchase Acts, and I am not at all sure that the principles of the English Land Clauses Consolidation Act and Railway Clauses Consolidation Acts as to arbitration and compensation are by any means ideal. Still less has uniformity in the matter of criminal law been the rule hitherto between the two countries. It would be difficult to find a parallel in this country for the Crimes Act of 1887 (which is still on the Statute-Book although it is no longer put in force by proclamation) with its extensions of summary jurisdiction to cases of criminal conspiracy, intimidation, riot, and unlawful assembly, and its provisions for a change of venue.

It is perhaps more open to question whether the words of the [022]
1893 Bill designed to secure to the subject "the equal protection of the laws," and to prevent legislation discriminating against Englishmen and Scotsmen[29] under certain circumstances, ought not to have been repeated. The words "equal protection of the laws" have been interpreted in the United States in such a way as to secure that legislation, particularly in the exercise of the "police power," shall be impartial in its operation.[30] On this interpretation, they would for example, have prevented an Irish Legislature from exempting Catholic convents which are used as workshops from the operation of the Factory Acts. But that might be secured in another way, and the words might, if adopted, have operated to prevent much useful legislation. It seems likely enough that discriminating legislation, in so far as it tended to prevent a particular class of persons from residing in Ireland or penalised non-residents, would be held invalid in any case on the ground that it conflicted with the reservation to the Imperial Parliament of such subjects as "trade" and "naturalization."[31] And, as regards non-residents, it must

[29] *Cf.* Clause IV. (8) of the 1893 Bill.

[30] Such legislation must affect alike all persons similarly situated, *cf. Yick Wo* v. *Hopkins*, 118 U.S. 356.

[31] *Cf.* on this subject the decision of the Judicial Committee in *Union Colliery*

be remembered that the grant of legislative powers can only be exercised "in respect of matters exclusively relating to Ireland or some part thereof"—words which may be found to be of considerable importance.

The same may be said of the omission in the Bill, to provide, as its predecessor of 1893 provided, for the maintenance of securities for the liberty of the subject and the preservation of his common law rights. It is almost impossible to do this [023] without entering on an uncharted sea of litigation. Modern legislation, especially social and industrial legislation, infringes common law rights at every point. I have ventured elsewhere[32] to describe the modern tendency of industrial legislation as a tendency, inverting Maine's famous aphorism, to advance from contract to status, that is to say, to limit to an increasing extent the contractual freedom of the worker, and to confer on him a certain status by the protection of him against himself.[33] The greater part of our Irish land legislation impaired the obligation of contracts. Professor Dicey criticised the Bill of 1893 for not going further than it did in its incorporation of clauses taken from the Constitution of the United States with the intention of securing the common law rights of the subject. But it may be remarked that many of those clauses have proved an almost intolerable limitation upon the power of the legislatures to deal with the regulation of trade and industry, so intolerable that the Supreme Court has of late made a liberal use of the fiction of "the police power"[34] to enable the legislatures to pass legislation

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Co. of British Columbia v. *Bryden* (1899) A.C. 580.

[32] "Towards a Social Policy" (1905).

[33] For example, the statutory limitations of the doctrine of common employment which was based on the common law doctrine that the workman had freely contracted to undertake the risks of his employment.

[34] Mr. Justice O. W. Holmes, of the Supreme Court of the United States, writes to me on the subject of constitutional restrictions as follows: "The police power is a 'conciliatory phrase' to cover the fact that if the infringement is not very big it will be sustained. The police power would warrant a State law

which otherwise might have seemed to "abridge the privileges" of citizens of the United States or deprive them of "liberty or property without due process of law."[35] [024]

At the same time it must be remembered that, although the Irish Parliament is not debarred from statutory interference with common law rights, its legislation will be subject to rules of interpretation, at the hands of the Judicial Committee, by which statutes are always construed in favour of the subject. It is a well-accepted rule of construction in English courts that common law rights cannot be taken away except by express words.[36] It is something to secure that the interpretation of the new Constitution and of Irish statutes shall, in the last resort, be wholly in the hands of an Imperial Court. The chartered protection of the rights of the individual by a fundamental Act is always difficult and often impossible. In the last resort it depends very much on the interpretation which the judges choose to place upon such an Act.[37]

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limiting the height of buildings in a certain region to, say, 70 feet; but if you limited them to 5 feet you would have to fall back on Eminent Domain and pay for it—so that the beginning of constitutional rights may be measured in feet. In other words, constitutional restrictions cannot be carried to extremes, but end in a penumbra."

[35] The best example of this liberalising interpretation of the police power is the famous *Slaughter House Case* (16 Wall. 36). *Cf.* as to regulation of the liquor trade *Barbemeyer* v. *Iowa* (18 Wall. 129), and *Mayler* v. *Kansas* (123 U.S. 623). For a general review of cases bearing on the restrictive words of the Fourteenth Amendment and their qualification by the necessity of allowing State Legislatures the benefit of the police power, see the case of the Utah Miners Act, 18 Supreme Court Reporter 383.

[36] *Cf.* the leading case of *Metropolitan Asylums Board* v. *Hill* and *cf. Partington* v. *The Attorney-General*, L.R. 4 H.L. 122.

[37] The decisions of the Supreme Court at Washington in the annexation cases are a remarkable example of this. Their decision in the case of *Dorr* v. *United States* that trial by jury did not extend to the Philippines, on the ground that it was not a right fundamental in its nature, set up a distinction which is not to be found in the Constitution itself, and therefore left it to the court to decide principles of constitutional law which are unwritten. *Cf. Harvard Law Review*

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The Executive Veto.

It is obvious, therefore, that the principal and indeed almost the only safeguard provided in the Bill against inequitable or discriminating legislation[38] is the veto of the Lord-Lieutenant acting on the instructions of the Imperial Government. A political check is preferred to a juristic check. The apostolic maxim "all things are lawful but all things are not expedient," appears to have been the motto of the draughtsman. Not law but policy will decide what Irish Acts are to be placed on the Statute-Book. It must be admitted that this is the principle most in harmony with precedent if the constitutions granted to the colonies are to be regarded as precedents. No colony would have tolerated for a moment the elaborate network of restrictions in Clause 4 of the Bill of 1893, through the finely-woven meshes of which it would have been hard for any Irish legislation of an original or experimental character to pass. If we are really in earnest about setting up a Parliament on College Green, we cannot do otherwise. The executive veto must be the real check, and in the presence of such a check, English judges would always be very loath[39] to declare the Acts of a legislature *ultra vires* merely because they infringed common law rights.

Now this check may be exercised on one of two grounds. The Imperial Government may "instruct" the Lord-Lieutenant to refuse his assent either on the ground that the bill in question is politically objectionable, or on the ground that it is, in
[026] their opinion, in excess of the powers conferred on the Irish

XIX. 547.

[38] As to the safeguard against legislation affecting the rights of religious minorities and to laws of marriage, see Sir John Macdonell's remarks in Chapter IV. *infra*.

[39] *Cf. Philips v. Eyre supra*.

Legislature. It is desirable in every way that the two should be distinguished in order that the Imperial Parliament may be able to hold the Cabinet of the day responsible when its action is purely a question of policy. On the other hand, it is no less desirable that the Cabinet should, in the interests of the public in Ireland, be in a position to test the validity of an Irish Bill which, though unobjectionable on the ground of policy, may be questionable on the ground of law. It is a common error that in all written constitutions the courts, particularly those of the United States, have *proprio motu* the power of declaring *ultra vires* any legislative act which infringes the principles of the Constitution. Laboulaye fell into this error in his study of the American Constitution. But the American Courts have no such power. Until a case arises in the ordinary course of litigation, under the statute in question, there is no means of annulling it, and there have been many Acts[40] on the Federal Statute Book which are quite conceivably "unconstitutional" in the letter as well as in the spirit, but have never been declared *ultra vires* for the simple reason that no one has found his private rights affected. This holds particulars of questions of the distribution of power. It might for example, occur in the case of an Irish Bill which proposed to deal with one of the reserved services. To meet this difficulty and to avoid the trouble which might arise from an Act being placed in the Irish Statute Book[41] and observed in Ireland only to be subsequently declared *ultra vires* in the course of litigation, it is provided in the Government of Ireland [027] Bill[42] (Clause 29) that if it appears to the Lord-Lieutenant or a

[40] This would apply to the Tenure of Office Act.

[41] The mere fact that the Crown had given its consent to an Irish Act would not make that Act *intra vires* if it exceeded the powers of the Irish Legislature. It might subsequently be declared *ultra vires* by a Court at any time.

[42] I am not at all sure that this provision was necessary. The Crown already has the power under 3 & 4 Will. IV. cap 41, sec. 4 to refer to the Judicial Committee any such matters whatsoever as it may think fit. The Canadian Government has a similar power conferred on it by the Supreme Court Act,

Secretary of State expedient in the public interest that the validity of an Irish Act should be tested he may represent the same to His Majesty in Council and the question may then be heard and determined by the Judicial Committee in the same manner as an appeal from a Court in Ireland. It is not necessary to suppose that the executive veto will be a dead letter, and to argue from its disuse in the case of the self-governing colonies is to argue from the like to the unlike. In the case of the provincial legislatures of Canada it has been exercised by the Dominion Government where provincial legislation is inequitable, or contrary to "the settled policy" of the Dominion.

Exempted Powers.

The enumeration of matters in respect of which the Irish Parliament shall have no power to make laws is a little deceptive, inasmuch as many of the matters so enumerated would have been outside its power in any case. Ireland is not, so long as the Act of Union remains on the Statute Book, a sovereign state, and "the
[028] making of peace or war" and the negotiation of treaties would, as a matter of international law, have been impossible in her case, even if they had not been expressly prohibited. "Merchant shipping" and "the return of fugitive offenders" would also have been excluded from her authority by the rule of law[43] which precludes a subordinate legislature from extra-territorial legislation. The same may be said of Copyright. The colonies

1875, extended by 54 & 55 Vict., enabling the Governor-General in Council to refer to the Supreme Court certain specified matters, particularly questions touching the validity of provincial or Dominion legislation. The decision of the court operates as a declaratory judgment, on which an appeal may be taken to the Judicial Committee. For example of its exercise *cf.* the Manitoba Schools Case. See Sir Frederick Pollock's remarks in Chapter III.

[43] The English judges, even when favourable to the claims of the early Irish Parliament, insisted on this limitation. *Cf.* the Case of the Merchants of Waterford; Year Book, Ric. III., fol. 12.

have only been enabled to deal with these matters in virtue of clauses in Acts of the Imperial Parliament.[44] But it would not be true to say that the position of the Irish Parliament is assimilated to that of the legislature of a self-governing colony. The exclusion of subjects relating to allegiance, such as naturalization[45] and treason,[46] and of legislation as to aliens is exceptional. All the self-governing colonies have power to deal with these matters, as also with the subject of naval and military forces. Perhaps the most important exemption in the case of Ireland is that of trade, trade-marks, designs, merchandise marks and patent rights. I cannot help regretting that, inasmuch as the principle has been adopted of giving Ireland general and unenumerated powers, the number of specific exemptions has not been enlarged. It is highly desirable to avoid conflict of laws in the United Kingdom as far as possible. It must be remembered that the Statute Book has, quite apart from the Act of Union, bound [029] Ireland to England by many legislative ties; there is a uniform system of industrial, commercial, and, to some extent, criminal law for the whole of these Islands—Factory Acts, Companies Acts, the law of negotiable instruments, criminal procedure, old-age pensions, and insurance legislation; in all these there is legislative standardization, and the tendency of all modern political unions, notably those of the Australian Commonwealth and the German Empire, is in this direction. Confusion, injustice, and economic inequalities constantly occur in a modern State whose inhabitants are living under a "conflict of laws." Fiscal considerations point the same way. It may be safely assumed that English opinion will not tolerate any considerable divergence

[44] *Cf.* Section 264 of the Merchant Shipping Act of 1894; also the Fugitive Offenders Act of 1881 (44 & 45 Vict., cap. 69).

[45] *Cf.* the Naturalization Act of 1870.

[46] The law as to treason is not necessarily the same in the Colonies. *Cf. Riel* v. *The Queen*, 10 App. Cas. 675, and also *R.* v. *Marais*, L.T. Rep. LXXXV., p. 363.

between the fiscal systems of England and Ireland. Moreover, financial considerations apart, the regulation of "trade" is, as in every political union, reserved for the central legislature. But to distinguish between "trade" on the one hand and "industry" on the other is not an easy problem, and Ireland may discriminate against England only less effectively by lowering the standard of the Factory Acts than by a tariff.

The "subject matter" of the Old Age Pensions Acts, National Insurance Acts, and Labour Exchanges Acts has, it is true, been excluded. It seems regrettable that the category is not enlarged to include the Companies Acts, the Sale of Goods Act, the Bills of Exchange Act, and the Factory Acts. It would be highly undesirable to have the "industrial minimum" for the United Kingdom, so laboriously attained by our factory legislation, lowered in the interests of particular interests in Ireland. The advantages of securing uniformity by the inclusion of the three great statutes relating to commercial law is also very obvious.
[030] Two of them, indeed, represent a great step in that codification of English law which is the dream of English jurists, they have been adopted as a model in some of our colonies, and it would seem highly desirable that the standard thus attained should remain fixed. In urging this, I do not forget what I have already said, in connection with the subject of constitutional limitations, as to the undesirability of exacting too rigid a degree of uniformity in English and Irish legislation, but constitutional limitations are one thing and exceptions quite another. It is very difficult to subject the whole field of Irish legislation to juristic principles, but it is comparatively easy to exempt from that field the subject matter of particular Acts. The whole question resolves itself into a consideration of the point at which uniformity should be determined. The Bill seems to fix the point much too low.

Of course, one way of dealing with the question would have been to grant Ireland only particular and enumerated powers of legislation, as has been done in the case of the provincial

legislatures of Canada. There is much to be said for this. It seems the line of least resistance; it is always easier to add to powers which appear deficient than to withdraw powers which have proved excessive. But it undoubtedly invites litigation and it is very difficult, if not impossible, to define what are exclusively Irish matters without in the last resort using some such general term (as is used in the British North America Act) as "generally all matters of a merely local nature."

The great economy shown by the draughtsman in the number of the exceptions from the powers of the Irish legislature, as well as in the number of the restrictions upon the exercise of those powers, means, as we have already indicated, that the whole weight of control over the Irish legislature is thrown upon the [031] executive and legislative veto of the Imperial Government. Is it sufficient to rely upon the paramount power of the Imperial Parliament to override by statute Irish legislation which may be inequitable or inexpedient, and upon the exercise of the veto of the Imperial Government? These checks are the exercise of a *force majeure*, which is often invidious and always difficult. Above all they are political. The exercise of them depends on the party in power in Great Britain, and as such it may excite resentment among the Irish people as an invasion of the autonomy granted to them. On the other hand, exceptions and restrictions are a legal, not a political, check—they operate through the agency of the courts of law without the intervention of political considerations. Moreover—and this perhaps is the most important consideration—they rest upon the consent of the Irish people expressed in the terms of the Home Rule Act to which their representatives are a party. For an Irish Parliament to defy them would be to defy the very Act which was the charter of its existence. But they invite litigation. It all resolves itself into a question of hitting the mean between the dangers of litigation on the one hand and of political pressure on the other. Probably, however, the occasions of conflict will be few and

unimportant, and the temper of the Irish Parliament may be much more conservative than its critics imagine.

The Executive

The new Bill is remarkable for the explicitness with which it invests Ireland with control over the Executive. For the first time in the written constitutions of the Empire we have a statutory
[032] Executive, and not only is it a statutory Executive, but it is to be a Parliamentary Executive defined by statute. In the earlier Bills nothing was more remarkable than the brevity and allusiveness with which this question of the Government of Ireland was treated. "The Executive power in Ireland shall continue vested in Her Majesty the Queen" was the language employed in the Bill of 1893. Under that Bill the Government of Ireland would have continued, even after its passage into law, to be in the hands of the English Cabinet and it would have rested with that Cabinet to determine how large or how small a part of the prerogatives of the Crown should be delegated to the Lord-Lieutenant. Paradoxical as it may seem, it would have been quite possible for a Unionist Government, coming into power immediately after the Home Rule Bill had passed into law and an Irish Parliament had met at Dublin, to retain in their own hands the Executive authority in Ireland without any breach of statutory obligations. The Bills of 1886 and 1893 left it in the discretion of the Crown to decide what the powers of the Lord-Lieutenant should be. Following Colonial precedents, the Constitution would have had to be supplemented[47] by prerogative legislation in the shape of Letters Patent defining those powers. Moreover, these powers were to have been vested not in the Lord-Lieutenant in Council,

[47] There can, I think, be no doubt as to the necessity. I know but one opinion, and not a very authoritative one, to the contrary, namely that of a Chief Justice of the Colony of Victoria. See *Musgrove* v. *Toy* V.L. Rep. XIV. 349, and *supra*.

but in the Lord-Lieutenant alone. Something was indeed, said about an "Executive Committee" of the Irish Privy Council to aid and advise in the Government of Ireland—this was the only hint of responsible Government that the Bill contained—but nothing was said of the powers or constitution of the Committee nor of [033] the extent to which the Lord-Lieutenant was bound to act on its advice. Its constitution was left to the discretion of Her Majesty. Its powers would, of course, as in the case of the Colonies, have been decided by the tacit adoption of the unwritten conventions of the English Constitution that the advisers of the Governor must command the confidence of the Legislature which votes supplies.

Very different is our new Bill. The Executive power does indeed continue "vested in His Majesty the King," and nothing is to affect its exercise—in other words, it is to continue in the hands of the Imperial Government—*except* "as respects Irish services as defined for the purpose of this Act." The exception is a new departure and the general effect of the whole clause (Clause IV.) is expressly to hand over in statutory terms "all public services in connection with the administration of the Government of Ireland" except the reserved services and such services as those in regard to which the Irish Parliament have no power to make laws. The effect of this is to hand over an executive authority co-extensive with the legislative authority.[48] Moreover, in regard to Irish services, the Executive power is to be exercised by the Lord-Lieutenant *through* Irish Departments, and the heads of these Departments are given the Parliamentary title of "Ministers" and, what is more remarkable, it is expressly

[48] Even, however, if there had not been such an express grant of the executive power in the Act, the Irish Parliament might, I think, have assumed it by legislation. A colonial Legislature can, subject, of course, to the veto of the Crown, confer on the Colonial Government the prerogatives in so far as they are necessary to the domestic government of the colony. *Cf.* Lefroy, "Legislative Power in Canada," p. 180.

[034] provided (a provision to be found in only one or two, and those the latest, of our Colonial Constitutions) that:

> "No such person shall hold office as an Irish Minister for a longer period than six months, unless he is or becomes a member of one of the Houses of the Irish Parliament."

Never in any constitution that emanated from the practised hand of the Parliamentary draughtsman has there been such a complete transfer in express statutory terms of the executive power. Taken together with the comparatively unrestricted grant of legislative power, it constitutes a grant of a larger measure of self-government than is to be found in any of the earlier Bills.

At the same time there is here no cause for alarm. It must be remembered that the Lord-Lieutenant will exist in a dual capacity—like a constitutional king he will be bound in Irish matters to act on the advice of his Irish Ministers but, like a Colonial governor, he will also in all Imperial matters be bound to obey the instructions of the Imperial Government. In regard to legislation the position here is quite clear: he may veto measures which his own Ministers have promoted if the Imperial Government think it advisable so to instruct him. In regard to the executive, he will, of course, enjoy less latitude; it is quite clear that the Imperial Government will, under this clause, find it practically impossible to interfere in purely Irish administration. The Irish Government will, of course, be carried on in the name of the Crown, and it will enjoy the same prerogatives at common law as the Imperial Government in such matters as the use of the prerogative writs *mandamus* and *certiorari*, and the immunity from actions in tort. Ireland has its own Petitions of Right Act.

At the same time a distinction must be drawn between the
[035] prerogatives relating to the exercise of Irish services and prerogatives which cannot be so defined. Some of the latter may be delegated to the Lord-Lieutenant by his patent, and these he will exercise not on the advice of the Irish, but of the Imperial,

Government. Moreover, there are certain powers conferred by statute on the Lord-Lieutenant, or the Lord-Lieutenant in Council, such as the power of proclaiming disaffected districts under the Crimes Act, of suspending the operation of the Irish Habeas Corpus Act, and of controlling the constabulary, not all[49] of which will be exercisable on the advice of Irish Ministers. Prerogatives not so exercisable will no doubt be exercised on the advice of the Secretary of State for Home Affairs who is even now the medium of formal communications between the Lord-Lieutenant and the Crown. The Chief Secretary[50] will, of course, disappear altogether; he will be replaced by the Executive Committee. The Lord-Lieutenant will, of course, cease to be a member of the English Ministry; his position will be assimilated to that of a Colonial Governor, and his tenure fixed for a term of years so as to make his tenure of office independent, as it must be in the exercise of his new constitutional duties, of the fortunes of English Parties.

The Irish Legislature

The constitution of the legislature itself calls for little comment. It follows with some fidelity the features of Mr. Gladstone's [036] Bills, but the substitution of a nominated Senate for the "Council" or "Order" elected on a property franchise is a new departure. Nomination of late has fallen into some discredit both in theory and in practice.[51] Colonial experience is not encouraging.

[49] No doubt the statutory powers exercisable under the first two Acts would come within the control of the Irish Government.

[50] His office is not the creation of statute except in so far as it was necessary to place his salary on the Estimates. His office has, however, frequently received statutory recognition in connection with the creation of new Departments. *Cf.* the Irish Local Government Board Act (1872), Section 3.

[51] I have examined with some care the theory of Second Chambers in my articles in *The Nineteenth Century*, for November, 1910, and June, 1911. I may

Nomination by the Crown means in practice nomination by the Governor, on the advice of the Cabinet of the day, and Ministries in Canada and New South Wales have put this prerogative to such partizan uses as to reduce the Upper House to a very servile condition. When nomination is for life and not for a fixed term of years the evils of this system may be mitigated, but they are not removed. The one thing that can be said about the proposed Senate is that its powers in legislation are of such a limited character that an Irish Executive would be under little temptation to "pack" it. A Senate of only forty members compelled to meet in joint session a House of Commons of 164 members every second time that it rejects or objectionably amends a bill is not likely to prove a very formidable obstacle to legislation. But the nomination by the Executive is in any case somewhat objectionable, and it would seem better to provide that at the end of the first term of eight years the Senators should be appointed by some system of election, whether on a basis of proportional
[037] representation or otherwise.[52] But to their nomination for the first term by the Imperial Government I see no very cogent objection. Indeed, the expedient has much to be said for it, for the discretion, if wisely exercised, will enable the Imperial Government not only to secure to Irish minorities a degree of representation which no conceivable system of election could secure, but also to appoint men of moderate opinions—one immediately thinks of Sir Horace Plunkett—who, in the strife

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also refer the reader to my book on "The House of Lords and the Constitution," and particularly to the Lord Chancellor's preface to the same. Foreign examples are dealt with in the reprint of the author's lectures on "The Place of a Second Chamber in the Constitution" (1911).

[52] There is this much to be said for nomination, that it does fulfil the condition laid down by Alexander Hamilton and by Story as the first canon of the bi-cameral theory—namely, that the basis of the two chambers should be radically different. See Story's Commentaries (ed. Bigelow) Vol. I., Section 690. This is not so easy to secure by election in modern times when there is suspicion of any other than a democratic franchise.

of extremists, might have no chance of election by either party. It has been argued in some quarters that a Second Chamber is wholly unnecessary, and the example of the single-chamber legislatures in some of the Canadian provinces has been cited. The argument, however, overlooks one really important function of the Senate, namely its duty to provide for the security of tenure of the Irish judges. Clause XXVII. provides that judges appointed after the passing of the Act shall only be removable on an Address of both Houses of the Irish Parliament, and, should the Senate refuse to concur in a demand by the lower House for the removal of a judge, there is no such means of overcoming its resistance in a joint session as is the case with legislation. This is well.

There is one provision in the Bill[53] which will serve to strengthen the position of the Senate as an advisory body and may operate to give it an initiative in the introduction of Government legislation—the provision which enables an Irish Minister who is a member of either House to sit and to speak in both Houses. This is a practice common on the Continent, and not wholly unknown in the case of some of our Colonial Constitutions, [038] and it has much to commend it. The Senate is placed under the same disabilities as to money bills as are imposed on the House of Lords by the Parliament Act. Thereby it is placed in an inferior position to that of most of the Second Chambers in the Colonies, all of which can reject, and some of which may also amend, money bills. The disability is the less surprising having regard to its character as a nominee body—it is when the Second Chambers of the Colonies are elective, that their powers in regard to money bills are considerable.[54]

The privileges of the Imperial Parliament are conferred by the Government of Ireland Bill upon the Irish Parliament. In

[53] Clause XII. (4).

[54] For a survey of the Second Chambers in the Colonies I may refer the reader to my article on the subject in *The Contemporary Review* for May, 1910.

the absence of such grant the Irish Parliament would not have had such privileges—although it might have adopted them by legislation—for the *lex et consuetudo Parliamenti* are not implied in the grant of a constitution.[55] It is not uncommon to prescribe in Colonial Constitutions that the legislature shall have such privileges as are enjoyed by the House of Commons at the time of grant. In the present case, the Irish Parliament may define its privileges, if it thinks fit, by legislation, though it is difficult to imagine any occasion for its doing so. The really important thing is that it cannot enlarge those privileges beyond the scope of the privileges of the Imperial Parliament. This is the one constitutional limitation in the Bill—apart from the "safeguards" as to legislation in regard to religion and marriage contained in Clause III.—and it is by no means unimportant. The powers
[039] of the Imperial Parliament—particularly as to the right of the two Houses to commit for contempt without cause shewn—are a sufficiently high standard.

Irish Representation in the House of Commons[56]

Irish representation at Westminster has always been the riddle of the Home Rule problem. I have no space to examine here in detail the alternative solutions which were put forward in the earlier Home Rule Bills. But there is one general consideration which must always be borne in mind in the theoretical discussion of any solution. It is the very simple consideration that representation is what mathematicians would call a "function" of legislative power—the one is dependent upon the other. If the legislative

[55] *Kielley* v. *Carson*, 4 Moore P.C. 63.

[56] I refer the reader for detailed treatment of the subjects of Irish Appeals, Constitutional Limitations, and Police and Judiciary, to the chapters by Sir Frederick Pollock, Sir John Macdonell and Serjeant Molony. I have not thought it necessary to touch on the financial provisions of the Bill, as they are exhaustively treated by Lord Welby in Chapter V.

powers over Ireland reserved to the Imperial Parliament are large, the representation of Ireland in that Parliament must not be small. It is at this point that Mr. Gladstone's original proposal for total exclusion broke down. He reserved to the Imperial Parliament considerable powers of legislation in regard to Ireland and yet proposed to exercise those powers in the absence of Irish representatives.

It was no answer to cite colonial analogies. The Irish problem is not, as I have pointed out elsewhere, a colonial problem. No one at present proposes to give Ireland complete fiscal autonomy, for example. Nor is it strictly apposite to say that the Imperial Parliament legislates for the Colonies in the absence of colonial representatives. Such legislation is now almost exclusively [040] confined to what I may call enabling legislation in matters in which the Colonies, owing to their status as Dependencies, are unable to legislate. In such matters as copyright, merchant shipping, marriage, extradition, the Imperial Parliament legislates for the Colonies largely because colonial laws cannot operate ex-territorially, and such Imperial legislation is usually effected by means of application clauses which enable the Colonies to adopt it or not as they please. But rarely if ever does the Imperial Parliament legislate for a self-governing colony as it has done and will continue to do in the case of such domestic Irish affairs as old-age pensions, land purchase, Customs and Excise, defence, naturalisation, to say nothing perhaps of industrial and commercial law. I have already indicated my opinion in favour of confining these subjects to the Imperial Parliament, but even were the opposite course taken there would still remain the fiscal question. We cannot continue to tax Ireland unless the Irish representatives are to remain at Westminster.

The presence of the Irish members at Westminster is imperative if the supremacy of the Imperial Parliament is not to

be illusory. Mr. Balfour[57] contends that it will be as illusory as it has been in the case of the Colonies. But the Colonies are not represented in the Imperial Parliament, and to differentiate Ireland in this respect is to make all the difference between a legal formula and a political fact.

There remains the question of inclusion. No one would question the propriety of reducing Irish representation to its true proportions on a population basis—in other words, from its present figure of 103 to one of 70. The real difficulty arises when
[041] we consider whether those members, whatever their numbers, are to attend at Westminster in the same capacity as the British members. We are to-day confronted by the same problem as that which vexed the Parliament of 1893: are Irish members to vote upon all occasions or only upon those occasions when exclusively Irish and exclusively Imperial affairs are under discussion? The original text of the 1893 Bill adopted the latter solution. At first it has much to commend it, for it avoids—or attempts to avoid—the anomaly of refusing self-government to Great Britain while granting it to Ireland: if Irish members are to govern themselves at Dublin without the interference of Englishmen, why, it has been pertinently asked, should not the converse hold good at Westminster? But two very grave difficulties stand in the way; one is the difficulty of distinguishing between Irish and non-Irish business at Westminster; the other is the difficulty, even when such distinction is made, of maintaining a single majority under such circumstances. Withdraw the Irish members on certain occasions and you might convert a Liberal majority at Westminster on certain days into a Unionist majority on other days. A Liberal Government might have responsibility without power in British matters and a Unionist Opposition power without responsibility. One Executive could not co-exist with two majorities. Such a state of affairs might have been

[57] *The Times*, April 16th.

conceivable some seventy or eighty years ago, when Ministries were not regarded as responsible for the passage of legislation into law. It would be conceivable in France, where Ministries come and go and the Deputies remain. But it would be fatal to the Cabinet system as we know it.

Another objection to the "in-and-out" plan is the extreme difficulty of classifying the business of the House of Commons [042] in such a way as to distinguish between what is "Irish" and what is not. If that business were purely legislative the difficulty would not be so great, but the House controls administration as well as legislation. Any question involving a vote of confidence in the Cabinet might legitimately be regarded as a matter in which the Irish members had a right to have a voice. The motion for the adjournment of the House, following on an unsatisfactory answer by a Minister, might be regarded as such. Who would decide these things? The Bill of 1893 provided for their determination by the House. In that event the Irish members would presumably have had a voice in determining on what subjects they should or should not vote, and they would have been masters of the situation under all circumstances. By their power to determine the fate of Imperial Ministries they might have determined the exercise of the Imperial veto on Irish legislation and reduced it to a nullity. It may, indeed, be urged that the Irish vote often dominates the situation at Westminster even under present circumstances, but it must be remembered that it is now exercised in the consistent support of the same administration, whereas under an "in-and-out" system its action might be capricious and apt to be determined solely by Irish exigencies of the moment.

There remains the plan of the inclusion of Irish members for all purposes. This at least has the advantage of simplicity. If Irishmen constantly attended at Westminster without distinction of voting capacity they would be less likely to regard their presence there as an instrument for reducing to impotence

the exercise of the Imperial veto upon Irish legislation. It is quite conceivable, indeed, that once Home Rule is granted
[043] Irishmen will be Imperialists at Westminster without becoming Nationalists at Dublin—the natural conservatism of the Irish character may reassert itself. Close observers of Irish thought are inclined to believe that the grant of Home Rule will act as a great solvent in Irish political life, and that with the iron discipline of Nationalism relaxed, and its cherished object attained, lines of cleavage, social, economic, and industrial, will appear in Ireland and vastly change the distribution of Irish parties both at Dublin and at Westminster. Ulster "Unionists" may be found voting with a Liberal Government on education questions and Irish "Nationalists" against it. Irish representatives at Westminster may become more, rather than less, closely identified with British interests. And it should be remembered that it would be no new thing for members from one part of the United Kingdom to be voting on measures which solely concerned another part of the Kingdom. This is happening every day. As Mr. Walker points out elsewhere, a process of legislative disintegration has been going on within the walls of the Imperial Parliament itself, which is already being forced to legislate separately for the three separate parts of the United Kingdom. He estimates that during the last twenty years no less than 49.7 per cent. of the public general Acts have applied only to some one part of the United Kingdom instead of to the whole.

The Government of Ireland Bill adopts the principle of total inclusion, but qualifies the anomaly which is involved in the presence of Irish members voting on non-Irish questions by reducing the representation of Ireland to the number of forty-two, and thus to a figure far below that to which Ireland is entitled on the basis of population. At the same time it must be admitted that the anomaly is not thereby removed. The position of Irish
[044] members voting on purely English legislation after the grant of Home Rule will indeed—numbers apart—be more anomalous

than it was before it. An anomaly can be tolerated so long as it is universal in its operation, and Scotch and English members can at present view with equanimity the spectacle of Irish members voting in their own affairs so long as they themselves exercise the same privilege in those of their neighbours. Reciprocity of this kind produces a certain unity of thought in a deliberative assembly. But the anomaly at once becomes invidious if Irishmen are placed in a privileged position. It is perhaps more theoretical than real, as the actual weight that could be thrown into the scale of the division lobby by a Nationalist majority (taking the present balance of parties in Ireland) of about twenty-six cannot be considerable, even if, as is very doubtful, it were consistently exercised.

Still the anomaly remains. Is it possible to meet it by some extension of Home Rule to the legislative affairs of England and Scotland?

The Further Extension of Home Rule

The anomaly, however, remains. How is it to be met? Obviously it is but a temporary difficulty if, as the Prime Minister has suggested in his speech on the first reading, the Bill is to be regarded as but the first step in a general devolution of the legislative powers of the Imperial Parliament. But everything depends on how far that devolution is to be carried. The Prime Minister's reference to a change in the Standing Orders suggests a further development of the Committee system already in operation in the case of the Scottish Standing Committee by which the House has delegated a certain degree of provincial autonomy to a group of members. It would be possible to extend this to the creation of a Standing Committee for England and [045] Wales. Under such a system Irish Members would be excluded from the Committee stages of legislation which was neither Irish nor Imperial. But there remains the Report stage, which is always

apt to resolve itself into a Second Committee stage[58] in which the whole House participates. Moreover, an impassable limit is set to this process of domestic devolution by the necessity that the Government of to-day should command a majority in each of these Committees. A Liberal Ministry would probably find itself in a minority in an English Standing Committee, and a Unionist Ministry would, with equal probability, find itself in a minority in a Scottish Committee. Committees have become not so much a sphere for the legislative initiative of the private member as a new outlet for Government business. Contentious bills introduced or adopted by the Government are referred to them, and the moment this is the case the Minister in charge who is confronted in Committee with amendments which he does not care to accept may invite the whole House on the Report stage of the Bill to disallow them. The House itself, jealous of any surrender of its prerogatives, is only too apt to turn the Report stage into a second Committee stage. The responsibility of a Government department for the preparation and execution of legislation is to-day so indispensable that effective legislative devolution is almost impossible without devolution of the executive also. A Committee to which the Minister in charge of the Bill is not responsible is not in a position to exercise effectual control over legislation. Indeed it seems impossible to contemplate
[046] a devolution of legislative power without a corresponding devolution of executive power. So long as we have but one Executive in the House of Commons it is impossible to have two or three legislatures within the walls of that House. Moreover, it is just as imperative to restore the diminishing control of members of Parliament over administration as it is to re-establish their authority in legislation. There is a growing and regrettable tendency to confer upon Government departments both legislative and judicial powers—powers to make statutory

[58] See Mr. Cecil Harmsworth's essay on the "State of Public Business," Chap. XV. of this work.

orders and to interpret them, which is depriving our constitution of what has hitherto been regarded by foreign students as one of its most distinctive features—the subordination of the executive to the legislature and to the courts. The distinction between Gesetz und Verordnung,[59] between statute and order, is fast disappearing in the enormous volume of statutory orders. Powers to make rules under particular statutes are entrusted to Scotch, Irish, and English Departments which have the effect of diminishing the control of the House of Commons without transferring it to any representative substitute. The great increase of grants-in-aid for administrative purposes has also given the departments a power of indirect legislation by the latitude they enjoy in the distribution of them such as is further calculated to diminish the control of the House of Commons over questions of Irish and Scotch policy. Rarely do any marked departures by the departments come under the review of the House of Commons; the claims of the Government over the time-table of the House, fortified by certain rulings of the Speaker,[60] may and frequently do preclude any [047] examination of them. In the words of a famous resolution, one may say "the power of the Executive has increased, is increasing, and ought to be diminished."

But it is no remedy for this state of things to provide for administrative devolution alone. To devolve the authority which a great Department of State, such as the Board of Agriculture, exercises over the whole of Great Britain by the simple process of assigning its Scotch business to the Secretary for Scotland, does not increase the control of Scottish members over the executive. This process of administrative devolution, which is always going on, is not accompanied by any measure of legislative devolution; the Secretary for Scotland is not thereby brought under the control

[59] *Cf.* for example, Jellinek's "Gesetz und Verordnung" (Freiburg, 1887), pp. 20-35.

[60] I may here refer to an article of mine in the *Nineteenth Century* for April of last year.

of the Scotch Standing Committee.

To create a new Scottish or Irish Department does not increase Parliamentary control over Scottish or Irish administration; rather it diminishes it. The heads of a Scottish Education Office, Local Government Board, and Department of Agriculture have been made responsible not to the House of Commons but to the Secretary for Scotland. Like the Chief Secretary for Ireland, he is a Prime Minister without a Cabinet and without a Legislature, and his policy is determined primarily not by Scottish or Irish opinion, but by the alien issues of imperial politics. Obviously there will never be any remedy for these anomalies until we have a Legislature with an executive responsible to it.

Scottish Home Rule

At the present moment we have in the case of Scotland devolution in a state of arrested development. This process of disintegration is reflected in separate Estimates in finance and in distinct draftsmanship in legislation. In legislation, indeed, marked changes have also taken place under cover of alterations in the Standing Orders of the House of Commons. An itinerant delegation of Scotch members has been set up to deal with private bill procedure in Scotland, and domestic devolution within the walls of the House of Commons has taken the shape of a Scotch Grand Committee. Few or none of these changes have any preconceived relation with the others; they represent experiments framed to meet the exigencies of the moment, but they all bear eloquent witness to a fact which has changed the whole aspect of the Home Rule problem and made that aspect at once more practical and less intimidating—the fact that the House of Commons has found itself increasingly incompetent to do its work. The fact is disguised by a multitude of expedients, all of them, however, amounting to a renunciation of legislative authority. These changes represent the *disjecta membra* of

[048]

Scottish Home Rule—they have no coherence, they point not so much to a solution of the problem as to its recognition.

None the less, I think the Irish Government Bill does provide us with a prototype. There is nothing in it, with the exception of the financial clauses, which forbids its adoption in the case of Scotland and of England. But I think, as I have already indicated in another connection, that the category of reserved subjects ought to be considerably enlarged so as to secure the maintenance of the existing uniformity of legislation in commercial and industrial matters. There are, however, undeniable difficulties in the way of an identity of local constitutions. Legislation in regard to land is exempted from the control of the Irish Legislature to an extent which Scotland would hardly be prepared to accept. Control over legislation relating to marriage is retained in the case of Ireland; [049] I doubt if it would be tolerated in Scotland, whose marriage law differs[61] from that of England to a far greater extent than is the case with the marriage law of Ireland. In common law England and Ireland have the same rules;[62] it is only in statute law that they differ. In Scotland the common law is radically different. There will, therefore, be some difficulty in finding a common denominator for the Imperial Parliament—and in avoiding, even under "Home Rule All Round" a certain divergence in the legislative capacities of the members from Scotland and Ireland, with the attendant risk of an "in-and-out" procedure.

[61] Statutory changes in the common law (it would be more correct to call it "the civil law") of Scotland are rarely made by Parliament except on the initiative, or with the consent, of Scottish members. There is a remarkable clause in the Act of Union between England and Scotland (6 Anne, Cap II., Art. xviii.) providing that "no alteration may be made in the (Scotch) laws which concern private right except for evident utility of the subjects within Scotland."

[62] The law relating to matrimonial causes in Ireland is governed by the Matrimonial Causes and Marriage Law (Ireland) Amendment Act of 1870, and is practically the same as the English Law before the Matrimonial Causes Act of 1857.

[050]

II.—Irish Administration Under Home Rule. By Lord MacDonnell of Swinford

> [The following article was, at my request, written by Lord MacDonnell before he became acquainted with the provisions of the Home Rule Bill. We agree in thinking it desirable that the article should appear without alteration as an expression of the views which Lord MacDonnell had formed on the subject.—The Editor.]

I am asked to state my opinion as to the changes of Administrative Direction and Control which should be introduced into the system of Irish Government in the event of a Home Rule Bill becoming law.

As I write (in March) I am not acquainted with the provisions of the promised Bill and my conjectures in regard to them may, in some respects at all events, fall wide of the mark. But there are cardinal principles which, presumably, must govern the Bill, and lend to conjecture some approximate degree of accuracy. Among such principles are the establishment of a representative assembly (Mr. Birrell has told us there will be two Houses), with powers of legislation and of control over the finances allocated to Ireland; the maintenance of the supremacy of the Imperial Parliament; and the preservation of the executive authority of the King in Ireland.

Assuming then that the Bill will, in essence, be a measure of [051] devolution under which the supremacy of the Imperial Parliament will be preserved, the Executive Power in Ireland will continue vested in the King (as under the Bills of 1886 and 1893) and a representative body controlling the Finances (and consequently the Executive) will be established, an intelligent anticipation may be made of the organic changes in the existing system of

Irish Government which are likely to be required when the Bill becomes law.

I do not propose to push this anticipation into regions beyond those of constitutional or organic change. It may happen that re-arrangements of the Civil Service in Ireland, Inter-Departmental Transfers of the Executive Staffs, and reductions of redundant establishments, may ensue on the creation of the Irish Legislature.[63] But these changes, if they take place, will not be organic or constitutional changes; nor could anticipations in respect of them be now worked out with due regard to vested rights or economical administration. If not so worked out, such anticipations would be either valueless or harmful.

I shall therefore not attempt on this occasion to allocate establishments, or to suggest scales of pay, for the departments of the future Irish Government which I shall suggest in the following paragraphs. But I shall, as opportunity offers, point to such retrenchments of higher administrative posts as appear to follow from the organic changes I shall indicate as necessary.

[052] The dominating constitutional change will, of course, be the establishment of a Parliament which, operating through a Ministry responsible to it, will control and direct the various departments engaged in the transaction of public business. It is unnecessary to consider here how that Parliament will be recruited, though I may express my conviction that justice to minorities, the mitigation of political mistrust, and the promotion of efficiency in the Public Services, urgently require the recruitment to be on the system of proportional representation. But I assume that when recruited, the Parliament's general procedure will be fashioned on the model of the Imperial Parliament at Westminster. To that end the first thing the new Parliament will have to do is to create its own establishment

[63] Power to make such re-arrangements or transfers by Order in Council is given by Sections XL. and XLIV. of the Government of Ireland Bill.—EDITORIAL NOTE.{FNS

of officers and clerks, to frame its Standing Orders relating to the conduct of public business, and to settle any subsidiary rules that the Westminster precedents may suggest.

Having thus provided itself with the requisite machinery for the exercise of its powers, the Irish Parliament would naturally next proceed to bring under its supervision the various existing agencies for the direction and control of the public business of the country.

At present the business of Civil Government in Ireland is carried on through the following forty-seven Departments, Boards, and Offices, which I group with reference to the degree of control exercised over them by the Irish Government at the present time.

DEPARTMENTS, ETC., UNDER THE CONTROL OF THE IRISH GOVERNMENT.

(1) Royal Irish Constabulary.
(2) Dublin Metropolitan Police.
(3) Prisons Board.
(4) Reformatory and Industrial School Office. [053]
(5) Inspectors of Lunatics.
(6) General Registry of Vital Statistics.
(7) Registry of Petty Sessions Clerks.
(8) Resident Magistrates.[64]
(9) Crown Solicitors.
(10) Clerks of Crown and Peace.
(11) Office of Arms (Ulster King of Arms).

DEPARTMENTS, ETC., UNDER THE PARTIAL CONTROL OF THE IRISH GOVERNMENT.

(1) Land Commission.
(2) Commissioners of charitable donations and bequests.

[64] The control by Government, of course, does not extend to the magistrates' judicial functions.

(3) Public Record Office.

DEPARTMENTS, ETC., NOT UNDER CONTROL OF THE IRISH GOVERNMENT, BUT HAVING THE CHIEF SECRETARY AS EX OFFICIO PRESIDENT.

(1) Local Government Board.
(2) Department of Agriculture and Technical Instruction.

DEPARTMENTS, ETC., NOT UNDER THE CONTROL OF THE IRISH GOVERNMENT EXCEPT AS REGARDS APPOINTMENTS AND, IN SOME INSTANCES, THE FRAMING OF RULES OF BUSINESS.

(1) Board of National Education.
(2) Board of Intermediate Education.
(3) Commissioners of Education. (Endowed Schools).
(4) National Gallery.
(5) Royal Hibernian Academy.
(6) Congested Districts Board.

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BOARDS EXERCISING STATUTORY POWERS IN IRELAND BUT NOT UNDER CONTROL OF THE IRISH GOVERNMENT.

(1) Public Loan Fund.
(2) Commissioners of Irish Lights.
(3) Queen's University, Belfast.
(4) National University.

DEPARTMENTS, ETC., NOT CONTROLLED BY THE IRISH GOVERNMENT.

(1) The Judiciary.
(*a*) The Supreme Court of Judicature and its officers.
(*b*) Recorders.[65]
(*c*) County Court Judges.
(2) Registry of Deeds.
(3) Local Registration of Titles.

[65] Recorders and County Court Judges are appointed by the Irish Government.

(4) Railway and Canal Commission.
(5) Commissioners of Public Works.
(6) General Valuation and Boundary Survey of Ireland.
(7) Treasury Remembrancer's Office.
(8) National School Teachers' Superannuation Office.

ENGLISH CIVIL DEPARTMENTS WORKING IN IRELAND AND NOT UNDER THE CONTROL OF THE IRISH GOVERNMENT.

(1) Customs.
(2) Inland Revenue.
(3) General Post Office.
(4) Board of Trade (Dublin and other Ports). [055]
(5) Quit Rent Office (Woods and Forests).
(6) His Majesty's Stationery Office.
(7) Civil Service Commissioners.
(8) Inspector of Mines.
(9) Inspector of Factories.
(10) Registrar of Friendly Societies and Trades Unions, Building and Co-operative Societies.
(11) Ordnance Survey of Ireland.
(12) Public Works Loan Commissioners.
(13) Exchequer and Audit Department.

It is thus apparent that at present the Irish Government exercises control over only a small portion of the official agencies working in the country. Many of these agencies—some of first-class importance and dealing with strictly Irish business—are uncontrolled by the Irish Government, while the supervision exercised over them by the Imperial Parliament is of the most shadowy character. The congestion of public business in Westminster effectually prevents attention being paid to any Irish business—at least to any Irish business out of which party capital cannot be made.

In these circumstances, the first duty of the new Parliament will be to co-ordinate, and establish its control over, the

dísjecta membra of Irish Government. To that end it will, presumably, group into classes or departments the various "Boards," "Offices," and other official agencies enumerated above on the principle of common or cognate functions. Such a classification is an essential preliminary to the establishment of effectual Parliamentary control over the transaction of public business. I proceed to suggest such a scheme of classification, but a preliminary word is necessary.

[056] Some controversy has taken place as to what is, and what is not, business of a "purely Irish nature," with which alone, the Irish Government is to be concerned under the promised Bill. In my opinion, the following Departments, out of those enumerated above, namely:

(1) Customs,
(2) Excise,
(3) Post Office, Telegraphs, etc.,
(4) Treasury Remembrancer's Office,
(5) Civil Service Commissioners,
(6) Exchequer and Audit Office, and
(7) Public Works Loan Commissioners,

can not be so classed, for the following reasons.

The control of the levy of Customs and Excise Revenue by the Irish Legislature, would imperil the fiscal solidarity of the United Kingdom, and be destructive of the further extension of Home Rule on federal lines. The Imperial Parliament should continue to control these all-important Departments, but power may be usefully reserved to the Irish Legislature to vary, under certain defined conditions, the duties on particular articles or commodities, without, however, any reservation of power to vary the articles themselves. For such a reservation, there is a precedent in the Isle of Man (Customs) Act of 1887, as I explained in an address delivered before the Irish Bankers' Institute last November. The suggestion was further developed in an Article

on Irish Finance, which I contributed to the *Nineteenth Century and After* for January, 1912. In this connexion, it should be remembered that Mr. Gladstone's Bills of 1866 and 1893, excluded the Customs and Excise Revenue from Irish Control: and that the present Leader of the Irish Parliamentary Party, following, in this respect, Mr. Parnell's example, has recognized the propriety of the exclusion.

The suggestion I make preserves the principle, thus confirmed [057] by high authority, while it allows to Ireland, working in concert with Great Britain, the opportunity of adjusting her taxation to her own special necessities.

The Administration of Posts and Telegraphs in Ireland is intimately associated with the Department's Administration in Great Britain; and though Ireland has an indefeasible claim, which can be readily conceded, to the great bulk of the patronage within her shores, (patronage mostly of a petty and purely local character) I fail to see in that claim sufficient justification for localizing the Irish part of the business and thereby incurring the risk of dislocating the working of a great Imperial Department. And my objection to transferring the Postal Department to the new Government is emphasised by the fact that in Ireland this Department is worked at a loss of about a quarter of a million sterling annually. There would, therefore, be a tendency on the part of the new Irish Government to curtail expenditure on the Post Office, to the detriment of the public convenience of the United Kingdom, in order that the expenditure on the Department should balance the income.

The Treasury Remembrancer's Office will probably disappear with the system of which it is the symbol: but the Civil Service Commission calls for further consideration. As I am, at present, Chairman of the Royal Commission on the Civil Service, I feel myself precluded from writing on this important matter with complete freedom; but this much I may say—in recruiting her Civil Service Ireland will be well advised to follow the same

general system of appointment, promotion, and conditions of service as prevail in Great Britain, (though this uniformity need not be taken to apply to scales of emolument). The enforcement
[058] of this principle will not militate against the establishment by the Irish Parliament, if so advised, of an Irish Civil Service as distinguished from the service which now exists for the United Kingdom as a whole. But I earnestly trust that if a separate Irish Civil Service be established there will be no limitation of candidature to Irish-born subjects of the Crown. Ireland would, in my opinion, commit a fatal mistake—fatal in more ways than one—if she imposed any impediment to the free competition by British-born subjects for appointments in the Irish Service, should one be created. She will gain far more than she will lose from reciprocity in this connection.

Assuming for the purpose in hand that the present general policy of recruitment for the Civil Service will continue, the question arises whether there should be an independent Civil Service Commission established in Dublin: or whether the Irish Government should ask the Burlington Gardens Commission to hold examinations in Ireland for the Irish service, associating with themselves some distinguished Irish educationalists. Personally I am strongly in favour of the latter alternative, on the ground of economy; and because of the advantage of using experienced British agencies for common purposes. Good feeling and mutual understanding will be thereby promoted.

Turning to the remaining Imperial Departments, I think the Exchequer and Audit Office should relinquish its Irish functions to a similar office restricted in its operations to Irish finances only[66]; while the Public Works Loans Commissioners would probably cease to do business in Ireland.[67] Loans to municipal-

[66] Clause XXI. of the Bill provides for this.—EDITORIAL NOTE.{FNS

[67] "Money for loans in Ireland shall cease to be advanced either by the Public Works Loans Commissioners or out of the Local Loans Fund" (Clause XIV. (3)).—EDITORIAL NOTE.{FNS

ities and other public bodies in Ireland would, under the new [059]
dispensation, be probably made by the Irish Treasury acting on the advice of the Irish Board of Works.

I had, at first, thought of adding the Department of "Woods and Forests" (Quit Rents) to the list of excluded Departments, but I trust that, following the treatment proposed in Clause 24 of the Bill of 1893, this source of income may be made over to the Irish Parliament. If not, the Department should swell the list of exclusions. In the same way I had at first intended including the Land Commission in the excluded list, because of the imperative necessity which exists of retaining the Finance and Administration of Land Purchase under the control of the Imperial Treasury. I need not labour this point; all intelligent persons are agreed that the use of British Credit is essential to the furtherance of Irish Land Purchase, that Ireland, of herself, could not finance her great Land Purchase undertaking, because the cost would be prohibitive and would bring to an end that great scheme on whose successful accomplishment the peace and prosperity of Ireland so greatly depend. If the Government decides to exclude the Land Commission permanently from the control of the Irish Legislature no Irishman need object; but, for reasons to be stated in the sequel, I am disposed to think that the Land Commission might be better placed in a temporarily reserved, than in a permanently excluded, list.

With these exceptions I think that all the other public Departments and Offices enumerated may be regarded as dealing with business of a purely Irish character, the administration of which may be localized to Ireland. All of them, with the important addition of "Finance" and of certain other minor subjects which [060]
are known officially as "Votes," I would group into Departments of Government in the following way, premising that I do not pretend to give an exhaustive list of "sub-heads," which, indeed, must vary with changing circumstances and the growth of work. As I have said, the object of this grouping or classification is

to facilitate the introduction of parliamentary control over every branch or kind of public business in Ireland.

SUGGESTED SCHEME OF ADMINISTRATIVE DEPARTMENTS OF THE REFORMED IRISH GOVERNMENT.

Group I.—The Treasury.

(1) General Finance.
- (*a*) Taxation, Bills before the Legislature.
- (*b*) Budgets, Recoverable Loans, Local Taxation Account.
- (*c*) Courts of Law, Legal Establishments, Legal Business.
- (*d*) Other Civil Departments, Pensions, Valuation and Boundary Surveys.
- (*e*) Trade and Commerce.
- (*f*) Exchequer and Audit.

(2) Local Finance.
- (*a*) Municipalities, Urban Councils.
- (*b*) County and Rural Councils.

(3) Registry, Receipt and Issue of Letters.

Group II.—Law and Justice.

(1) Supreme Court of Justice and its Officers.
(2) Recorders.
(3) County Court Judges.
(4) Resident Magistrates.
(5) Crown Business.
- (*a*) General.
- [061] (*b*) Law Officers.
- (*c*) Crown Prosecutors, Crown Solicitors.
- (*d*) Petty Sessions Clerks.

(6) Police.
- (*a*) Royal Irish Constabulary.
- (*b*) Dublin Metropolitan Police.

(7) Prisons, Reformatories, Criminal Lunatics.
(8) Miscellaneous.

(9) Registry, Receipt and Issue of Letters.

Group III.—Education, Science and Art.

(1) Primary.
(2) Secondary.
(3) University.
(4) Technical.
(5) College of Science.
(6) National Gallery, Public Libraries, Museums.
(7) Registry, etc., of Letters.

Group IV.—Local Government.

(1) Rural.
(2) Urban.
(3) Sanitation.
(4) Medical Relief, Hospitals.
(5) Poor Law Relief, Orphanages and Asylums.
(6) Crop Failure, Famine Relief.
(7) Labour questions, Housing of the working-classes.
(8) Audit of Local Accounts.
(9) Registry, etc., of Letters.

Group V.—Public Works.

(1) Roads and Buildings.
(2) Railways and Canals.
(3) Marine Works.
(4) Drainage, Irrigation and Reclamation.
(5) Mines and Minerals.
(6) Registry of Letters. [062]

Group VI.—Agriculture.

(1) General.
(2) Relief of Agricultural Congestion. (Congested Districts Board).
(3) Land Improvement, Seeds, Manures, Agricultural Implements, etc.
(4) Improvement in the breed of Horses, Cattle, etc.
(5) Diseases of Animals and Plants.

(6) Agricultural Schools, Experimental and Demonstration Farms, etc.
(7) Arboriculture, Afforestation.
(8) Registry of Letters.

Group VII.—The Land Commission.

(1) Land Purchase.
(2) Relief of Congestion.
(3) Recovery of Annuities and Sinking Fund.
(4) Fixation of Judicial Rents.
(5) Registry, etc., of Letters.

Group VIII.—Registration.

(1) General and Vital Statistics.
(2) Deeds.
(3) Titles.
(4) General Records.
(5) Friendly Societies.
(6) Registry of Receipts and Issue of Letters.

Group IX.—General Purposes.

(1) Sea and Inland Fisheries.
(2) Labour Questions, other than Housing.
(3) Scientific Investigations.
(4) Thrift and Credit Societies; Agricultural Banks.
[063] (5) Quit Rents.[68] (Woods and Forests).
(6) Temporary Commissions of Enquiry.
(7) Stationery.
(8) Office of Arms.[69]

Before proceeding to discuss the method by which the control of the Legislature may be most easily and effectively established over these various departments, I wish to consider whether any of them should be *temporarily* reserved from that control. There is

[68] If transferred to the Irish Government.

[69] The Office of Arms is now directly controlled by the Lord-Lieutenant, and it is a question whether it should not remain so.

undoubtedly, a strong feeling among Irish Unionists, and among many moderate Nationalists, that, if Home Rule does come, Judicial Patronage, and the control over the Police, should be in the beginning reserved or excepted from the general transfer of control to the new Government which would take place when the Bill becomes law. On the other hand, the Nationalist Party are, I understand, anxious that there should be no delay in transferring the judicial patronage. They have been dissatisfied with the exercise of judicial patronage in the past: and they wish for a distribution more to their liking in the immediate future.

I have myself no fear that judicial patronage will be misused to the detriment of any party by the Irish Government of the future; but Irish Unionists are apprehensive on the point; and in my opinion something should be done to allay their fears. If the Bill should contain provisions similar to Clause 19 of the Bill of 1893, which maintained in the Irish Supreme Court two judges with salaries charged on the Consolidated Fund of the United Kingdom, appointed by the King in Council, and removable only by his Order, the Unionist apprehensions might be, to some extent at all events, removed. But as the Financial Provisions of the coming Bill will probably be different from those of the [064] Bill of 1893, a clause like Clause 19 of that Bill may not be inserted.[70]

In that case, I think it would tend to the establishment of general confidence if the patronage in connexion with judicial appointments were, during the transition period, reserved and administered, as at present, by the Lord-Lieutenant. I think it would be good policy to abstain from every transfer of authority from the Lord-Lieutenant to which the Irish minority may at the outset reasonably object. There must be a period of transition—be it seven years or ten years or even longer—during

[70] The clause in question which set up a Court to be known as the Exchequer Division with a quasi-federal jurisdiction has not been repeated. *See* Chapter I. of this work.—EDITORIAL NOTE.{FNS

which the minority will be suspicious of such change as I am now concerned with. I would let these suspicions wear themselves out, as in time they are sure to do with the growth of further knowledge and of that saner outlook on Imperial and Irish affairs, which collaboration towards common objects brings with it. It seems to me that in the reassurance of opponents and hesitating well-wishers, and even in the immunity, for a time, from the pressure and annoyances of this class of patronage, the new Irish Government may well find, in its infancy, satisfaction for the temporary withholding of a part of its prerogatives. It might be an instruction to the Lord-Lieutenant, that, during the transition period, (which need not be long) the wishes of the Irish ministry, in regard to appointments to judicial vacancies, should be ascertained and fully considered before the vacancies are filled.

But if this view cannot prevail then I suggest that during the transition period the patronage in connexion with the Supreme
[065] Court should, at all events, be reserved. It is highly desirable that the apprehensions of the Irish Unionists should be allayed in every practicable way.

Advantage should, I think, be taken of this opportunity to remove the Irish Chancellorship from the list of political appointments. Whatever strong reasons or justification may exist in England for the Lord Chancellor changing with the Government, there should be none that I can discover in the Ireland of the future, unless it be in connection with the appointment of Justices of the Peace. But fairness in distributing that sort of patronage can surely be secured by other means than a frequently recurring and unnatural change of Chancellors, whereby the Pension List is heavily and unnecessarily burdened.

In connexion with the Royal Irish Constabulary, I am clear that the control should rest, as now, with the Lord-Lieutenant (that is, with the Imperial Government) until Land Purchase has made further progress, and the new Government has gained

experience of administration; but it is only fair that during this period of reservation the Imperial Government should allow Ireland a drawback on the cost of the police force, the present strength of which is excessive if judged from the Irish point of view.

The situation will, of course, be anomalous inasmuch as there will be an Executive Government responsible to the Irish Parliament yet relieved of the prime responsibility resting on all Governments—the maintenance of law and order. This anomaly cannot be avoided: it inevitably arises from the political conditions of the case. The best way of dealing with the situation will be to maintain existing arrangements which are directed by the Under-Secretary and to preserve the subordination of the Law Officers to the Lord-Lieutenant in all matters relating [066] to the maintenance of order. But while the Minister for Law and Justice should have no control over the police during this transition period, his wishes in regard to any matter will, of course, be carefully considered; his request for the performance by the police of all duties not of a purely police character which they now customarily discharge, will be complied with, and his proposals to reduce the strength of the force, and thereby effect saving in the public expenditure, will no doubt be favourably considered by the Lord-Lieutenant if the state of the country permits.

I presume the Bill will indicate the kind of police force which in time will take the place of the existing force. I confess I am not prepossessed in favour of the plan embodied in this connexion in the Bill of 1886 or 1893. I think the best plan will be to retain the organization of the Royal Irish Constabulary, and to reduce the present force by short recruitment when the Imperial Government think that can be safely done. I deprecate the creation of a local force under the control of the local authorities.[71]

[71] Clauses II. and V. provide for the reservation of the Constabulary for a period of six years from the appointed day, at the end of which the force is

Finally, the question whether the force to be locally employed should be armed, or not armed (as the Bill of 1893 proposed), may be left to be decided at the time by the Imperial Government: but, in any case, it will, I think, be necessary for the Irish Government to maintain a sufficiently strong armed body of police in Dublin
[067] and other suitable centres to deal with emergencies.

The control over the staff of Resident Magistrates is so intimately bound up with the existing system of police administration that one cannot be safely separated from the other, and this section of Law and Justice should, in my opinion, also be reserved during the transition period. At the same time I think the services of the Resident Magistrates can be more fully utilized in the business of general administration than they are at present.

There is less reason for retaining the Dublin Metropolitan Police under the Lord-Lieutenant's direct control during the transition period than for retaining the Royal Irish Constabulary; and if the national feeling would be gratified by giving to the Irish Parliament, at once, the control of the Dublin police, I would defer to that feeling. But my personal opinion is that the Irish Parliament in its earliest days would be wise to concentrate upon self-organization, the establishment of control over the departmental system, and the taking stock of the condition of the country in all the various aspects of national life. It will then with greater assurance of success take over from the Imperial Government the responsibility for the maintenance of order.

I have already referred to the Land Commission. There is a general agreement that the department of land purchase, which depends essentially upon the use of British credit, should remain with the Imperial Government. The only question is: should this department be permanently excluded from Irish control, or only temporarily excluded, the period of exclusion being

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to be transferred to the Irish Government. The Dublin Metropolitan Police is transferable at once.—EDITORIAL NOTE.{FNS

in the discretion of the Imperial Government? In view of the temporary character of the Land Commission, the possibility that Legislation affecting land may be necessary before the Annuities generally cease, and the certainty that when they do cease, [068] either generally or in any particular area, it will be desirable to remove all limitations on the functions of the Irish Legislature in reference to land, I am disposed to think it, on the whole, better to treat the Land Commission as a "reserved" instead of an "excluded" subject, and thereby make its ultimate transfer to Irish control a matter of executive action on the part of the Imperial Government. But I admit the existence of strong reasons for total exclusion, and I should not question a decision in favour of the latter course.[72] Should it be excluded, I would suggest that it shall be open for the Irish Government to bring to the notice of the Lord-Lieutenant any matters in which the administration of the Land Commission seems to be defective.

In this connexion I desire to call attention to the Congested Districts Board and the power which it at present exercises of purchasing land under the Land Purchase Acts. It is imperatively necessary, if this Board is to be retained in its existing or in any modified shape, that its work of relieving congestion and improving the condition of the peasantry of the West should be brought under the supervision and control of the Irish Legislature. But if the land purchase operations of the Land Commission are to be excluded or reserved from control by the Irish Legislature, it is very difficult to defend the subjection to such control of the land purchase functions of the Congested Districts Board. How can the British Treasury be reasonably asked to become responsible for prices fixed by an Irish body over which it will have no control whatever? Such a situation would be utterly anomalous. [069]

The anomaly can be avoided (as suggested in my Minute

[72] Under the Bill it is permanently reserved, *i.e.*, "excluded."—*Ibid.*

appended to the Report of the Royal Commission on Congestion, 1908) by relieving the Congested Districts Board of its functions as a purchasing authority and having purchases of land made for it, on its requisition, by the Land Commission.

Having thus indicated my opinion as to the departments or sections of departments to be temporarily reserved from the control of the Irish Parliament, I come to the question of how that control should be exercised over the departments remaining on the list. In this connexion I invite reference to Clauses 20-22 of the Irish Council Bill. That Bill (Clause 19) contemplated the appointment of committees of council, with paid chairmen, to administer the departments into which public business was to be distributed under the Bill. It was my own expectation, had the Council Bill become law, that the chairmen of these Committees of Council would in course of time have become ministers for the departments concerned; but, in the beginning and until experience had been gained, it seemed desirable to give the embryonic ministers the help, and to impose on them the restraint, of colleagues. Whether the future Irish Legislature will see prudence or wisdom in this course, one can only conjecture; but one may trust that it may. In the following observations, however, and without meaning to imply any preference for "Ministers" over "Chairmen of Committees," I shall employ the word "Minister."[73]

The first Department on my list is the Treasury. Here the new Irish Administration must break entirely fresh ground and build
[070] from the foundation. An Irish Exchequer must be created, a system of Treasury Regulations and accounts must be evolved; an Irish Consolidated Fund must be established; and a Bank must be selected with which the Irish Government will bank. (Much pressure will, I anticipate, be brought to bear on the

[73] Provision is made by Clause IV. of the Bill for the appointment of heads of Departments who shall be known as "Ministers." *See* Chapter I. of this work.—EDITORIAL NOTE.{FNS

Irish Ministry to distribute its favours in this connexion; but, it would, I submit, be highly inconvenient to keep accounts with separate banks). At present the Chief Secretary's office in Dublin Castle has a financial section, but the new Government will derive no inspiration from its procedure. It will be better to look for precedents in Whitehall. They will show a Treasury Board composed of members of the Government but with the responsibility resting on one called the Chancellor of the Exchequer who is answerable to Parliament for the country's finances and, subject to the decision of the Cabinet, possesses complete control over them (excepting the Army and Navy Estimates). It will, I suggest, be wise for the Irish Legislature to follow this precedent, and place the Irish Treasury in charge of a Body of Commissioners (being Members of the Parliament) with a Treasurer or Chancellor of the Exchequer, specially responsible to it.

The governing principle, from the parliamentary point of view, of our financial system, is that no expenditure can be proposed to Parliament except by a Minister of the Crown.[74] I trust that the principle will be reproduced in the Irish Parliament, and rigidly enforced. In no other way can an adequate safeguard be provided against irresponsible and hasty proposals for spending public money.

The Imperial Treasury at present, exercises financial control [071] over every department and branch of the public service (over the Army and Navy estimates I believe the control is less effective than in other directions). This is a wholesome practice, and it should be copied by the Irish Legislature with one qualification. At present, the financial control of the Treasury is occasionally accompanied by a degree of administrative interference which I venture to think is sometimes injurious to the public interests. The Treasury is deficient in administrative knowledge; and for this

[74] This convention of the English Constitution, which rests on a Standing Order of the House of Commons, is embodied in the Bill (Clause X. (2)).—*Ibid.*

reason its interference has not infrequently led to inefficiency. Some administrative restraint is, of course, inseparable from financial control; but when money is sanctioned for a particular purpose, the administrative officers on the spot can regulate detailed expenditure better than gentlemen at a distance.

The new Parliament should certainly provide a Public Accounts' Committee; and a Comptroller and Auditor-General, as under the Exchequer and Audit Act of 1866; and I suggest for consideration, that the Departments should be competent to challenge, before the Public Accounts' Committee, any over-interference on the part of the Treasury in administrative details. While I should be glad to see in Ireland the most effective check upon wasteful expenditure, I deprecate the exercise of a meticulous interference in administrative details.

The secretariat arrangements to be made in connection with the Department of Law and Justice, will depend on the extent of "temporary reservation" to be effected. If there is to be the larger reservation, during the transition period which I have suggested above, nothing need now be done. Matters will continue, during that period, on their present footing. If there is to be only partial
[072] reservation, the portion of the existing office staff in Dublin Castle which deals with the unreserved sections can be detached for employment under the Minister, who in this case would doubtless also hold another portfolio. When the Department is brought fully under Irish control, there will be found in Dublin Castle gentlemen specially competent to give effect to the policy of the Legislature in this Department of Irish Government.

But, whether the Judicial Department is brought sooner or later under Irish control, an early opportunity should be taken of reviewing the entire judicial organization with the view of pruning away redundancies and placing it on a more economical basis. Few will be found to deny that the existing staff of County Court Judges and legal officials of various grades is excessive; and no one, with knowledge, will maintain that a Supreme Court

of 14 Judges, costing with their subordinate officers £181,209 a year, is not too costly for a country with a population of 4-¼ millions. In the House of Commons Return (Cd. 210 of July, 1911), the number of civil servants of all grades in the Supreme and Appellate Courts of England (with their 39 judges) is shown as 461, while in the Supreme and Appellate Courts of Ireland (with their 14 judges) it is shown as 257!

The administration of Education is at present distributed between three Boards and the Irish Government and the circumstances call for drastic reorganization. The Boards of National and Intermediate Education should be abolished, and a Department of Education created under the control of a Minister responsible to the Irish Legislature. Such a Minister would find ready to his hand an official staff (working under the direction of a very competent "Commissioner of Education") which will not at the outset require any large increase. [073]

In the Irish Council Bill a Committee of Council for Education was proposed, which provided for the admission of gentlemen not being members of the Irish Council; the object being to conciliate public feeling which is notoriously sensitive upon this matter, and to secure special opportunities for representatives of the various religious creeds of making their views felt. I believe that the liberality of that provision was very inadequately understood in 1907; but in the altered conditions of the present time, I do not repeat the proposal. The Irish Parliament, under the coming Bill, will be a stronger representation of the popular will than the Irish Council would have been, at all events, at the outset.

This change of administrative control, direction, and responsibility in respect of Education will, I trust, have a powerful effect in improving secular instruction, which is at present notoriously inefficient; but it need not (apart from any declaration of policy by the Irish Legislature), involve any change in the religious aspect of the teaching. Teaching in Irish primary

schools of all creeds is in practice denominational (though not so in theory). My hope is that it will remain so. What the change will involve is the control of the Department over the appointment, the promotion, the removal, the qualifications, and the conditions of service of every person employed in Irish schools. That is as it should be.

The "Endowed Schools" are conducted under schemes which have, I believe, been settled by the Judicial Tribunals, and I do not suggest any interference with such schemes, but the efficiency of the secular teaching in those schools should be subject to the supervision of the Department of Education.

[074] I come next to the Local Government Board, which consists at present of an *ex-officio* President (the Chief Secretary) and three members, one of the three being Vice-President and the real head of the Board. The appointment of a Minister, being a member of the Irish Legislature, in place of the *ex-officio* President who never sits on the Board, will convert this Board into a Department with a responsible Minister in charge. One member of the Board (not the medical member) may be dispensed with, and the Executive Establishment calls for revision. This Board comes into contact with the people in many intimate relations of their lives and on its successful administration will largely depend the popularity of the new Administration.

The next Department is the Board of Public Works and Buildings, which at present is a Treasury Department independent of Irish control. For the "Chairman" should be substituted a Minister responsible to the Legislative Assembly. At present there are three members, but one of these may, I think, be dispensed with at once. I look to this Department to confer benefits, long delayed, on the country; I would, especially, instance, drainage. Ireland stands in need of nothing more than a system of arterial drainage carried out on a large scale.

At present the Commissioners of Public Works in Ireland make recoverable loans on behalf of the Treasury for land

improvement and such like purposes. In the scheme indicated above, the making of these loans would come within the functions of the Finance Department. But the Department of Works would naturally be the Treasury's Agents advising on the necessity for such loans and supervising the expenditure of them, when borrowed for large betterment undertakings.

The next Department is the Department of Agriculture and Technical Instruction. In the scheme outlined above Technical [075] Instruction has been brought under the Education Department, while the Congested Districts Board has been brought under the supervision of the Department of Agriculture. The Act under which the Department of Agriculture at present works provides for two Bodies, to assist and advise the Vice-President, (who, as in the case of the Local Government Board, is the working head of the department)—a Board having a veto on expenditure, and a Council which gives general advice on policy. Both the Board and the Council were devised to supply that popular element in which the system of Irish Government is at present lacking. Under the new dispensation this popular element will be amply supplied. Both Bodies will therefore be unnecessary; their continuance would conduce to embarrassment and friction with the all-controlling Legislature. Both the Council and the Board should be abolished. The President and Vice-President should also disappear, and in their place should emerge a responsible Minister in charge of the Department. This Department seems to be, after the Judicial Department, the most expensively organised in Ireland. It is true that it comprises some branches which have elsewhere an independent *status*: but notwithstanding this, I am convinced that a revision of its numerous and costly establishments is needed in the interests of economy and efficiency.

I have already suggested that the Congested Districts Board should be relieved of the duty of purchasing land, the Land Commission being required to make these purchases on

requisition from the Congested Districts Board. I would add (in accordance with the principle suggested by paragraph 100 of the Report of the Royal Commission on Congestion in Ireland,
[076] (1908)) that the creation of an Irish Legislature destroys the justification for this Board. The work can be better done by an Executive Agency working under the control of a Committee of Parliament. But if a Board is retained it should not be the large Board we have now. A small Board of five will be more conducive to efficiency and far more amenable to the control of the Legislature. That control I venture to add will be most beneficially exercised in bringing about the abandonment of the Congested District Board's present policy of spoon-feeding the congested villages of the West; and of dealing with them not, to any extent, on eleemosynary principles, but exclusively on those of self-help. The Board's methods of relieving congestion should be assimilated to the practice of the Land Commission on dealing with congested areas, if men now living are to see the end of the Board's activities.

In connexion with Registration, I think it is desirable to bring all kinds of registration under the control of one Minister, but the work is mostly of a routine character and a single Minister will doubtless find himself able to direct this and also the last Department remaining on my list.

This Department—for General Purposes—brings together the remaining Boards and Offices dealing with official work in Ireland; and under it may in future be brought any official business of a temporary character, not of sufficient importance to be dealt with by a separate Office, but yet of such importance that a vote is taken for it in Committee of Supply.

I have placed “Fisheries” in this Department because that important industry requires more attention than it has hitherto received, or than it can receive from the Department of Agriculture. It will also be observed that I have placed in
[077] this Department the subject of Thrift and Credit Societies and

Co-operative Banks: thus dissociating them from the Department of Agriculture, which deals with them at present but with which they have no necessary connexion. They have been made far too much the battle-ground of contending parties. Some supervision by the Government over these co-operative agencies may perhaps be necessary, but they will flourish most when interference by the Government is least felt.

It remains to refer to the position and functions of the Lord-Lieutenant under the new dispensation (it is, of course, to be presumed that no religious disqualification will any longer attach to the office). On the assumption that the Executive power will continue vested in the King, all executive acts of the Irish Government must issue by authority of the Lord-Lieutenant through whom will also be communicated the assent to, or the withholding of assent from, Acts of the Irish Legislature. The Bill of 1893 (Clause 5 (2)) provided for:

"An Executive Committee of the Privy Council in Ireland to aid and advise in the government of Ireland being of such members and comprising persons holding such offices under the Crown as His Majesty, or if so authorised, the Lord-Lieutenant, may think fit, save as may be otherwise directed by Irish Act."[75]

It will be desirable that such a Committee of the Irish Privy Council should be created to assist the Lord-Lieutenant. But while the majority of the Committee should always be composed of Ministers, it would, I think, conciliate the minority, and otherwise make for efficiency, if some members on the Privy Council Committee, were taken from outside the Government. [078] If the Committee were composed of ten members, seven might be Ministers, and three members might be taken from outside

[75] A similar provision appears in the new Bill, but the character of the Executive Committee is much more explicitly defined. *See* Clause IV.; *also* Chapter I. of this work.—EDITORIAL NOTE.{FNS

the Government: the decision of the Council would be that of the majority.

Of course, I am conscious of the fact, that this arrangement may be objected to on the ground that it would expose the plans of the Government, in particular cases, to gentlemen who might not be of the Party in Office. But Privy Councillors are bound by oath to secrecy; and I think the danger of a dishonourable betrayal of trust is incommensurate with the advantages which this representation of outside feeling on the Committee, would bring. Moreover, the Lord-Lieutenant would be free not to summon any particular Privy Councillor to a session of the Committee, if the Prime Minister objected to his presence. The proceedings of the Privy Council would be secret, and no Minutes of dissent would be recorded.

I take it that under the coming Bill, the Lord-Lieutenant will have no power to initiate action otherwise than by suggestion to the Ministers concerned, who, may, or may not, act on the suggestion. Ordinarily, the Lord-Lieutenant in Council will accept the Minister's advice: but when he differs, and persists in differing, he would be bound in the last resort to refer the matter to the British Cabinet. *Ex-concessis*, all proceedings of the Irish Legislature or Government will be subject to the ultimate control of the Imperial Parliament.

It will be necessary to provide for the representation of the Irish Government in the Imperial Parliament (a different thing from the representation of Ireland, which, if the solidarity of the United Kingdom is to be preserved, must be maintained, though, as I [079] have already said, in a proportion "which should be sensibly less than the proportion existing between British Members and their electorates"). Some Member of the Imperial Parliament must answer for that Government; and the question arises whether the Member should be an Irish Member, designated by the Irish Government, as its representative, or a British Minister. In view of the fact that the Acts of the Irish Government will be subject

to the control of the Imperial Parliament, and must, therefore, come regularly under the cognizance of the British Ministry, I suggest that the duty should be discharged by the British Home Secretary, pending the time when the establishment of the Federal System (Home Rule all round) will call for a more far-reaching Parliamentary adjustment.

If the Land Commission (Group VII.) be excluded from Irish control, the number of Ministers in charge of departments would be seven, reducible to six by giving the portfolios of Groups VIII. and IX. to the same Minister, and to five if a separate Minister for Law and Justice be not at once appointed. With the Prime Minister, who might have charge of a department, or, as in Canada, might be President of the Privy Council, a Cabinet of seven or six as a minimum number would be composed; and this would seem to be an adequate number, at all events to begin with.

The general result of the preceding suggestions should be that responsibility for every agency engaged in the administration of public business in Ireland will attach to a particular Minister, responsible to the Irish Parliament; that interest in Irish public business will be enormously stimulated in Ireland, and that a salutary public control will be effectively exercised. In particular, it may be expected that public money will be husbanded, and when expended, will be spent to the best advantage. [080]

It is not possible within the limits of a paper like this, to enumerate the provisions of law, peculiar to Ireland which the organic changes indicated in the preceding paragraphs may necessitate. An enquiry into that matter (as into the redundancy of Judicial, Executive and Secretariat establishments) will no doubt be undertaken by the Irish Government on a suitable opportunity. But it is probably correct to say that changes of substantive law will not be so much required as changes of practice, whereby the administration of the law may be brought more into harmony, than it is at present, with popular sentiment.

It is always to be remembered that the scheme of Home Rule or Devolution which is advocated in this paper, does not contemplate the creation of a body of law for Ireland, different from that prevailing in Great Britain. In all matters of *status*, property and personal rights, the laws of the two countries will, I presume, remain identical; and no legislation of a restrictive, sectional, or sectarian character will be permissible in the one country, which is not permitted in the other. It is also to be presumed that the decrees of English Courts will be as enforceable by Irish Courts and Authorities as they are now, and *vice versa*; and that, in fact, the Judicial and Executive Organisations will be as available, under the new order of things, for carrying on His Majesty's Government in both countries, as they are now.

If this be understood, most of the doubts and fears, and forebodings of evil to come from this extension of Irish Local Government, will, I predict, be soon dissipated.

[081]

III.—The Judicial Committee And The Interpretation Of The New Constitution. By Sir Frederick Pollock

"In this [the United States] and all other countries where there is a written constitution designating the powers and duties of the legislative, as well as of the other departments of the government, an act of the legislature may be void as being against the constitution." So James Kent wrote in his Commentaries when the foundation of American independence was still within living memory, and an observer in search of constitutional autonomy under the British flag beyond the British Islands would have been driven to find his best example in Barbados. Kent continues: "The judicial department is the proper power in the government to determine whether a statute be or be not constitutional"; for the interpretation of the constitution which is the supreme law of the land is as much a judicial act as the interpretation of an ordinary written law. This is the view most natural to minds trained in English legal and political tradition. It was established in the United States by a decision of the Supreme Court at Washington early in the nineteenth century, and, though not previously free from controversy, has been received ever since; and it has been [082] accepted by British publicists and lawyers as applicable to the decision of causes involving constitutional questions throughout the British Empire. As Chief Justice Marshall said:

> "If two laws conflict with each other, the courts must decide on the operation of each. If the courts are to regard the constitution, and the constitution is superior to any ordinary act of the Legislature, the constitution, and not such ordinary act, must govern the case to which they both apply."[76]

[76] *Marbury* v. *Madison*, 1 Cranch, at pp. 177-8.

The principle, so far as I know, has never been disputed by any English authority, but occasions for its application did not often arise before our own time. In strictness of law the King in Parliament has supreme legislative power, as with or without Parliament he has supreme executive power, in every part of his dominions. But in fact very large powers of government have been granted in various ways and at various times, and in the cases which now concern us are coupled with an effectual understanding, though of a political rather than legal nature, that they shall not be recalled. It may be observed that a grant of this kind is quite possible without representative institutions. Extensive powers of government and jurisdiction, including the highest "regalities" which could be granted to a subject, were conferred on individuals by several of the early colonial charters. William Penn's charter is perhaps the best known of these, and is a striking example. This, however, is remote from the present purpose, as is the still wider subject of the political and semi-political authorities granted by charter to the East India Company and other trading companies. We have now to attend only to the creation of autonomous powers by statutes of the Imperial Parliament.

[083] The accustomed form in such creations is to confer in express words power to make laws for the peace, order (sometimes "welfare"), and good government of the territory in question. Within the limits prescribed in its constitution, legislative power so created is full and perfect. The Judicial Committee of the Privy Council has repeatedly laid down—not for one Dominion only, but alike for British India, Ontario and New South Wales—that it must not be likened to the merely vicarious authority of a delegate or agent, and is not to be restrained by the rules applicable to agency. So far as it extends, it is a plenary power analogous to that of the Imperial Parliament itself and not to a ministerial authority which cannot be delegated; and this applies to the federated units in a federal system no less than to central or

unitary legislature.[77] It is, therefore, not quite accurate, though useful in the first introduction of novices to the subject, to liken the enactments of any such local legislature to the by-laws made under statutory authority by a railway company or a town council. Such bodies can make the regulations they are empowered to make, but cannot delegate the framing of any regulation, or the decision of questions arising under it, to the traffic manager or the town clerk. But a local legislature, within the limits of subject-matter originally fixed, can do all that its creator the Parliament of the United Kingdom could have done. The working safeguard against legislation which, by improvidence or oversight, would conflict with Imperial requirements, is the refusal of royal assent by the local Governor on the advice of his Ministers, or, in the last resort, by the Home Government. Some of the earlier Acts establishing self-government, following the common form of [084] the old colonial charter, provided that local legislation should not be repugnant to the laws of England. This might have been held to forbid such revolutionary changes as abolishing the publicity of Courts of Justice or depriving prisoners of the right to trial by jury. In our own time the question has been raised whether the sacred number of twelve jurymen could be reduced by Order in Council in a criminal court established under the Foreign Jurisdiction Acts in an Asiatic country.[78] But in 1865 it was expressly declared by the Colonial Laws Validity Act that the enactments of colonial legislatures should not be called in question for repugnancy to the law of England in any other sense than repugnancy to some Act of the Imperial Parliament or an order made under its authority.

These matters are only preliminary to the questions that arise under federal constitutions, but they are necessary to be

[77] The principal authority is *Hodge* v. *Reg.* (1883) 9 App. Ca. 117, 132. See also the *Maritime Bank of Canada's* case (1892) A.C. 437, 442.

[78] *Ex parte Carew* (1897) A.C. 719. It is not clear that the judgment was adequately considered.

understood if we are to avoid confusion. In the case of a federated Dominion within the British Empire the federal constitution is itself an Act of the Imperial Parliament, and therefore all exercise of legislative power in the Dominion, whether by the central legislature or by that of any constituent State or Province, must be consistent with its provisions, or otherwise it will clearly be invalid to the extent of the repugnancy or excess. Every such constitution has to assign the bounds of central and local legislation; in the case of Canada, for example, the field of action open to the Dominion Parliament at Ottawa and the legislatures of the several Provinces. In strict legal theory the Confederation Act of Canada or the Commonwealth Act
[085] of Australia can be amended at Westminster like any other Act of Parliament; but, as in fact these constituent Acts were framed by Canadian and Australian statesmen, so it is well understood that the Home Parliament will not touch them except at the request of Canada or Australia. With such request, there have been amendments and legislative interpretations of the Canadian Constitution. If any Act of Parliament might be called unconstitutional, uninvited intermeddling with the constitution of a self-governing colony would be so. We may pause here to draw one immediate consequence. Whenever Home Rule is enacted and established for Ireland, Parliament must harden its heart against all endeavours, from whatever quarter they may proceed, to obtain any alteration in the scheme save as it may be required by the regularly expressed will of Ireland as a whole. This should be an understanding outside and above all party divisions, British or Irish; and it is equally necessary whether or not a certain number of Irish members continue to sit at Westminster.

We now turn to the possible conflicts of legislation under a federal constitution. It will be convenient to use the more expressive and generally understood word “State” for the autonomous components of the federation. The Canadian

term “Province” is prior in time within the Empire; but it might be misleading to readers unacquainted with Canadian affairs, as tending to suggest merely administrative functions like those of a County Council: a body which has many important duties and some delegated legislative authority, but cannot reasonably be called autonomous. A federal constitution must assign some legislative powers exclusively to the federal legislature, and it may reserve or assign others exclusively to the State legislatures. It may also leave a region in which the States have power to [086] legislate, but subject to a concurrent and superior power in the federal authority. This is actually the case in Canada. Hence questions may arise of a more complicated kind than those which are open under unitary Home Rule; they may nevertheless be instructive in simpler cases. The Judicial Committee has deliberately abstained from laying down any general system of interpretation or any presumption in favour of extending or limiting the powers of either Federal or State legislation. It is prepared to take some pains to reconcile apparently conflicting enactments, but beyond that no precise method can be formulated. The Court must deal with the problem of each case on its own merits. “The true nature and character of the legislation in the particular instance under discussion must always be determined in order to ascertain the class of subject to which it really belongs.”[79] Again: “In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand.”[80] It would seem obvious without argument that the courts of Canada, Australia, or in the future, Ireland, cannot be bound in any case to give effect to two conflicting enactments of the local and the central legislative

[79] See *Russell* v. *Reg.* (1882) 7 App. Ca., 829, 839.

[80] *Citizens' Insurance Company of Canada* v. *Parsons* (1881) 7 App. Ca. 96, 109.

bodies at once, notwithstanding that some of the language used by the Judicial Committee a few years ago, on an appeal from the Supreme Court of Victoria, suggests that there is no authority
[087] anywhere, short of an Act of the Imperial Parliament, capable of resolving such a contradiction.[81]

The question remains what should be the ultimate court of appeal for questions of this kind arising under an Irish Home Rule Act. According to our general forensic habit and tradition, it would be the court to which appeals are taken in the ordinary course from the Court of Appeal in Ireland, namely the House of Lords. It appears however to have been decided that this duty will be more appropriate to the Judicial Committee of the Privy Council. Now it is high time, for quite independent reasons, that these two courts of last resort, which are composed in practice of the same, or very nearly the same members, should be merged in a single tribunal of final appeal for the whole of the British Empire. In the meanwhile the only material difference is that when noble and learned persons are sitting as the House of Lords they can and do express their individual opinions in the form of speeches addressed to the House itself, and when they sit as "their Lordships" of the Privy Council, or "this Board," only one opinion is given as the Judicial Committee's advice to His Majesty. For my part I rather think that the suppression of dissenting opinions does not work well in cases of constitutional interpretation. Some decisions of the Judicial Committee within pretty recent memory have been hardly intelligible; one is tempted to conjecture that not all of the reasons for them commanded unanimous assent, and the reasons to which the whole or the greater part of their Lordships could
[088] agree were not the best that any of them could have given. Separate and dissenting opinions are freely given in the Supreme

[81] *Webb* v. *Outrim* (1907) A.C. 81. The appeal which before the Constitution Act of 1900 lay direct to the Crown in Council from the Supreme Courts of the several Australian Colonies is not abolished.

Court of the United States, which has dealt with the most delicate constitutional questions ever since its work began. If I were an Irishman I think I should prefer the House of Lords to the Judicial Committee. But, as above said, it is hoped that before very long they will cease to be distinct tribunals. Moreover there is a practical reason, which shall now be mentioned, for making the Judicial Committee the final Court of Appeal in this behalf.

It appears from the published text of the Bill [cl. 29, sub.-cl. 1] that the Lord-Lieutenant or a Secretary of State—in ordinary political language either the Irish Government or the Home Government—may refer a question whether any provision of an Irish Act or Bill is constitutional to be heard and determined by the Judicial Committee of the Privy Council. That Committee is to decide who are the proper parties to argue the case. There does not seem to be any reason to apprehend that the parties interested would make difficulties on the score of expense; they would be either public authorities or representative associations. This provision is really not a novelty but a special declaration, and perhaps an enlargement, of the very wide power given by the Act which established the Judicial Committee in 1833,[82] and empowered the King "to refer to the said Judicial Committee for hearing or consideration any such other matters whatsoever as [089] His Majesty shall think fit": a power more than once exercised in our own time.[83] It is quite easy, however, for even learned persons who are not familiar with the practice of the Privy Council to overlook the existence of this enactment, and therefore the insertion of an express clause in the Home Rule Bill is judicious. Probably no one will seriously propose to deprive the Crown,

[82] 3 and 4 Will. IV. c. 41, s. 4. Under this section the question whether the Royal assent should be given to a Bill of the Irish Parliament could certainly be referred to the Judicial Committee, but it seems doubtful whether an Act already passed could be so dealt with, as the matter would then be beyond the competence of an Order in Council.

[83] See Prof. Harrison Moore in *Law Quart. Rev.*, xx. 236.

as regards Ireland, of a power which it already has throughout the British Empire. But it is a matter from which party politics ought to be rigorously excluded. It should be understood that the power will not be exercised without a considered opinion of the law officers, in Ireland or here, that there is a substantial and arguable question.

[090]

IV.—Constitutional Limitations Upon The Powers Of The Irish Legislation. By Sir John Macdonell, C.B., LL.D.

Securities For Religious Freedom

It may be of interest before dealing with the safeguards for religious liberty in Ireland to describe those adopted in other countries. This survey, made in no controversial spirit, may help to give a proper sense of perspective and proportion. A brief comparative study of the legal safeguards for religious liberty may not perhaps help much to inspire the spirit of charity and toleration, which are its best supports. But we know our own position better when we know that of others. It is some gain also to find that others have had the same problems as ours, and have solved them with more or less success. Certain fears are much abated when it is recognised that it is proposed to make in Ireland an experiment of a kind which has been satisfactorily carried out elsewhere. Political justice has been found, in the countries to which I refer, compatible with religious freedom. Why not in Ireland? [091]

Constitutional Limitations

I. Progress of Religious Liberty

In most States to-day religious liberty exists with some qualifications—it is one of the most characteristic features of modern legislation. All religious denominations are tolerated; some may be favoured; all are free so long as they do not come into conflict with generally accepted principles of morality. In most States there is a further advance; we find a tendency, more and more accentuated, towards religious equality; more and more is it the policy of States to place all religious denominations upon the same footing. This principle is not carried out completely in all or indeed in most States. Certain churches are in a special sense State Churches. In some countries, the churches of large

parts of the population are treated as "recognised churches," to their advantage and to the exclusion, it may be, of others. In Austria, for example, there are six recognised churches and religious societies; and a similar system exists in Hungary.

I do not attempt to analyse the many causes of these movements. The fact at all events is that, whether as the result of the attrition, everywhere going on, of dogmatic creeds, or of the growth of the spirit of tolerance, or of indifference, or the rediscovery of charity as a fundamental principle of Christianity, or because toleration is the line of least resistance, or because it best accords with democracy, almost everywhere in modern times in Europe and America religious equality seems to be the condition towards which States are moving. It is worthy of notice that complete freedom is demanded by many sincere adherents
[092] of churches who are impatient of State control, and who believe that spiritual life thrives best in an atmosphere of freedom. It is the creed, I am inclined to think, of an ever increasing number that the existence of a free Church in a free State is to the welfare of both.

Even where the principle is questioned, practice tends to conform thereto. Reluctantly and grudgingly conceded as a favour, religious toleration becomes part of the habitual attitude of mind at first of the more enlightened and then of ordinary men. The principle of religious liberty or equality is still disputed by the Church of Rome.[84] The doctrines of Gregory VII. and Innocent III. are still asserted as of old. The syllabus of Pius IX. condemns the principle of equality as enshrining an error not less pernicious because common; it is the vain attempt to equalise creeds incomparable with each other and radically different; such liberty is no better than liberty to err. That is the position taken up in the Papal Syllabus. But in modern times all churches, the

[84] The Syllabus of March 8th, 1861 (Proposition 57) condemned the proposition that "any other religion than the Roman Catholic may be established by the State."

Roman Catholic not excepted, have yielded, often insensibly and reluctantly, to the pressure of facts. The ideal condition may be domination of the church; the practical problem in adverse circumstances is how to make the best compromise. Vatican decrees notwithstanding, the powers which issue them cannot, and do not, press their claims as they once did. Immutable in doctrine, they are found to be adaptive in practice. Churches which retract nothing alter their practice; they do not escape the influence of the age and the country, Ireland not excepted, in which they work. Everywhere the tendency is towards religious equality; I find abundant evidence of it even in the policy of [093] the Church of Rome. Many books have been written describing the recent increase of the pretensions of Papal absolutism. There exists, so far as I am aware, no complete history of the policy pursued by the Church of Rome in countries in which it cannot give full effect to its doctrines respecting the true connection between Church and State. Such a history would reveal the existence and exercise of a singularly adaptive power; the growth of a policy suitable for and acceptable in non-Catholic countries and under democratic rule. In the wonderfully rich system of the Canon law are devices suitable for all circumstances. The Church may promulgate a decree in one country and not in another; the Tridentine decrees at the close of some four centuries are not yet made universally obligatory. It may for centuries leave it uncertain whether a bull specially assertive of the power of the Church, is in force in a particular country. The doctrine of the Canon law as to the efficacy of customs, and particularly local customs, permits of variations in accordance with the necessities of time and place. *Semper eadem*, but elastic and always opportunist—such is the character of the actual policy of the Church;[85] and there is no reason to think that it will be otherwise

[85] To illustrate this, I quote first from a Roman Catholic writer of distinction: "Religious liberty may be introduced when it is required for the common good, to prevent greater evils, or when it has been a necessity" (Hergenröther, Vol.

in Ireland under popular government.

[094] The Roman Catholic Church has lately shown itself accommodating in Germany in regard to the marriage law. When Dr. Hogan of Maynooth College writes of "the peaceful character and disposition of the church and her reluctance to cause any disturbance of the social affairs of States or communities, even where the vast majority of the people are hostile to her religious claims"; when he adds "if it can be shown that a new law (the *Ne temere* decree) inflicts any serious grievance on Protestants in this country, we are satisfied that due consideration will be given to any representations which may be made in this matter," he is borne out by the recent policy of his Church, even if one cannot admit the accuracy of his further statement: "Such has always been the policy and practice of the Church in this matter."—(*See Irish Ecclesiastical Record*, February, 1911). The system never breaks, but it bends—bends to the exigencies of new situations, and particularly of democratic institutions, such as will exist in Ireland under Home Rule.

II. Securities for Religious Liberty

[095] How to obtain and still more how to secure such liberty or equality is a problem in every modern State. The actual solutions, though many, fall into a few groups[86]; I enumerate the chief.

II., p. 364). "Where modern States exist with freedom of conscience and several religious denominations with equal rights, it is impossible further to carry out the principles of the Church. In these days the Church is confined to the purely ecclesiastical domain, and her whole endeavours must be directed to preserve her necessary freedom, or if she does not possess it, to win it back" (Hergenröther, Vol. I., p. 65). The next quotation is from a modern Protestant historian "The Pope would like to have freedom of conscience in Sweden and Russia; but he does not wish for it on principle, but only as a means which may be used by Providence to propagate the truth in those countries. Pius IX. and Mgr. Pie were agreed that only in countries where the Catholics are in a minority might religious freedom be wished for by Catholics" (Nielsen "History of the Papacy in the Nineteenth Century," Vol. II., p. 263). See also *Ueber die Entwickelung des Katolischen Kirchenrechts im 19. Jahrhundert*, Von Dr. Fritz Fleiner.

There are countries with State Churches in which have gradually been made concessions to other denominations. England is the typical example. Religious equality (so far as it exists) is the result of a long series of measures; the successive removal of disabilities of Dissenters and Roman Catholics; of measures relating to the tenure of public offices, and as to marriage, or oaths. No one Act states any governing principle. After the fashion of English legislation there has been movement from point to point, though, on the whole, always, or with few relapses, in modern times, in one direction. The securities for equality are found in a long series of individual statutes. Such, also, may be said to have been the history of religious equality in Hungary; as in so many countries there has been a gradual abandonment of the old maxim *cujus regio, ejus religio.*

I am concerned with the safeguards for equality within a State, and so I need say little or nothing of the Gallican system, which was intended to secure liberty against foreign intrusion. It was the liberty claimed by a church, which refused toleration to other denominations; the protests of a national Church part of Catholicism against the intrusion of the Papacy; it was [096] the assertion of claims, which, to quote Saint Simon, "*blessent douloureusement la Cour de Rome*"; assertions of the doctrine that the French kings were in secular matters independent of the Pope, and that the Pope's spiritual authority was limited by the

[86] Mr. Gladstone ("Church and State," p. 185) enumerates eight principles adopted by modern Governments with regard to the support of religion and the treatment of its varieties. He subsequently reduces them to four; the first in which heresy and schism were visited with civil penalty *pro salute animæ* for the cure of the individual. The second in which they were similarly visited, but chiefly in the view of preventing the infection of society within which limits they had appeared. The third in which disqualifications of a civil kind are imposed instead of penalties. The fourth is that in which all forms of religion claim from Government a precisely equal regard, as respects either civil privileges or positive assistance (pp. 187, 188). Zeller ("Staat und Kirche," p. 6) reduces the principles to three; substantial identity of Church and State; complete separation; partial separation and identity.

laws of the church. In some countries, churches have secured a large measure of religious liberty or autonomy by means of Concordats with the civil Power. The typical case is that of the Catholic Church in France, where such a system may be said to have existed from the Concordat of Bologna, concluded between Francis I. and Leo X. in 1516, until recent times, with the exception of a short break at the Revolution; they may be said to have established an offensive and defensive alliance between Church and State.

I come to systems and devices chiefly used in modern times to secure religious liberty or equality. They are to be found in particular in countries possessing written constitutions. Either they lay down with more or less clearness principles of religious equality, or, dealing specifically with some pressing danger or difficulty, they provide a safeguard as to it. The first striking example of this kind of restriction is to be found in America. Dread of the existence of an established Church and of its ultimate effects upon republican institutions was shared by the framers of the United States Constitution and most of the framers of the States Constitutions. The provision which Jefferson caused to be inserted in the Virginia Bill of Rights and the article in the Massachusetts Declaration of Rights have been copied with variations by the States. Speaking generally, they provide for equality of treatment of religious denominations (Stimson, "Federal and State Constitutions," p. 137). In the
[097] Constitution of the United States there is only one Article on the subject (Amendment, Article 1). "Congress shall make no law respecting the establishment[87] of religion or prohibiting the free exercise thereof." In the United States true equality exists; all denominations are treated alike; the modern tendency towards equality has triumphed as the result partly of national habits and partly of constitutional restrictions.

[87] As to meaning of "establishment," see *Bradfield* v. *Roberts* (1899), 175 U.S. 291.

I may here cite one or two examples of modern Constitutions which have laid down principles designed to secure religious equality.[88] Naturally Switzerland, with its population nearly equally divided into Catholics and Protestants, has been obliged to deal with this question, and so far as I am aware, it has done so with success. The principles of religious equality are embodied in the amended Constitution of 1874. I quote the chief provisions, because they are on the whole the most complete set of existing safeguards which I have found.

> "*Article* 49.—La liberté de conscience et de croyance est inviolable. Nul ne peut être constraint de faire partie d'une association religieuse, de suivre un enseignement religieux, d'accomplir un acte religieux, ni encourir des peines, de quelque nature quelles soient, pour cause d'opinion religieuse.
>
> "L'exercice des droits civils ou politiques ne peut être restreint par des prescriptions ou des conditions de nature ecclésiastique ou religieuse, quelles qu'elles soient.
>
> "Nul ne peut, pour cause d'opinion religieuse, s'affranchir de l'accomplissement d'un devoir civique.
>
> "Nul n'est tenu de payer des impôts dont le produit est spécialement affecté aux frais proprement dits du culte d'un communauté religieuse à laquelle il n'appartient pas. L'exécution ultérieure de ce principe reste réservée à la legislation fédérale. [098]
>
> "*Article* 50.—Le libre exercice des cultes est garanti dans les limites compatibles avec l'ordre public et les bonnes mœurs.
>
> "*Article* 54.—Le droit de mariage est placé sous la protection de la conféderation.
>
> "Aucun empêchement au mariage ne peut être fondé sur des motifs confessionels."

[88] The German *Reichsgesetz* of July 3rd, 1869, expressly repeals all civic disqualifications based upon religion (Laband, Vol. I., p. 148).

While declaring the principle of liberty of conscience, the Swiss Federal Constitution permits the cantons to give a privileged position to certain religious denominations; they may give them subsidies; they may invest them with certain prerogatives denied to other bodies less favoured. For example, in Fribourg, the Catholic and the Protestants are put on a footing of equality. Owing to the powers possessed by the separate cantons religious equality is not so complete as at first sight might seem. No serious difficulty appears to have been experienced in giving effect to the above provisions[89] which are not so complete as those found in the Home Rule Bill.

III. Safeguards in Colonies

I come to legislation which may seem of a kind more helpful and instructive than that of Continental countries. In the British Colonies there is no connection between the State and Church. The sole important exception is in Canada, where "the church can compel by law the payment of dues by Roman Catholics, and thus obtains great privilege from, while independent of, the [099] State."[90]

In framing the Constitution for the Canadian Dominions the religious question chiefly considered related to education; it was deemed necessary to guard against legislation which might impair existing rights. It was with an eye to the possibility of injustice being done to the denominational schools that special provisions were inserted in the North American Act accordingly (30 & 31 Vic., c. 3, 1867, Section 93):

> "In and for each province the Legislative may exclusively make laws in relation to education, subject and according to

[89] See as to cases which have come before the Swiss Courts (Buckhardt, p. 484).

[90] Keith: "Responsible Government in the Dominions," Vol. III., 1423n. In Gignac's "Compendium Juris Canonici ad Usum Cleri Canadensis" (1901) is a statement of the large rights which the Catholic Church has acquired in Canada in virtue of treaties.

the following provisions:

"(1) Nothing in any such Act shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union;

"(2) All the powers, privileges and duties at the union law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec;

"(3) Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the Legislature of the province, an appeal shall lie to the Governor-General in Council from any Act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education;

"(4) In case any such provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of this section is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General in Council under this section."[91] [100]

Lately there have arisen religious difficulties to which this section has no application. By the Confederation Act (Section 91) the Dominion Parliament has exclusive jurisdiction as to marriage and divorce; jurisdiction which would appear to relate

[91] See, as to the effect of this section, *Barrett* v. *City of Winnipeg* (1892) A.C. 445; also *Brophy* v. *Attorney-General of Manitoba* (1895) A.C. 202.

to capacity as to marriage. By Section 92 in each province the legislature may exclusively make laws as to "the solemnisation of marriage in the province," which would appear to extend to all matters affecting the form and ceremony; a division of powers certain to produce sooner or later conflicts. Recently the *Ne temere* decree was promulgated in Canada. The effect upon Roman Catholics has been considered in what is known as the Hebert case, the chief facts of which were these: Eugene Hebert and Emma Clouatre, both Roman Catholics, were married by a Protestant clergyman. The marriage was declared null and void by Archbishop Bruchesi. His decision was confirmed by Judge Laurendeau. But on appeal it was reversed by Judge Charbonneau, who held that any officer qualified by the State to marry persons could marry persons of any religious faith; that the *Ne temere* decree had no legal validity and was binding only upon the consciences of Roman Catholics.

To quote a report of Judge Charbonneau's judgment:

> "I do not think that the Roman congregation ever intended the *Ne temere* Decree to have a civil effect. It applies to Roman Catholics only. As for the Archbishop's nullification, it has the same legal effect, but not more than the decree upon
> [101] which it is based. It simply declares that no Catholic marriage ceremony was performed."—(*Globe*, Toronto, February 23rd, 1912.)

So far as I know, there has been no appeal to the Judicial Committee, and I take it that Judge Charbonneau's decision is binding in Canada.[92]

[92] "There is at present no general marriage law for the Dominion, and it is disputed whether the Dominion Parliament has power to pass such an Act. Each province has legislated with respect to this subject. The Government of the Dominion have just referred to the Supreme Court (March 11th) a stated case regarding the respective jurisdictions of the Dominion and provinces in regard to a marriage law. The Quebec provinces argued that there is no power

In the Constitution of the Australian Dominion is a provision similar to that quoted above from the Constitution of the United States. (Section 116):

> "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the constitution."

This enactment, so far as I am aware, has not been the subject of interpretation. Religious equality in Australia has virtually no history.

IV. SAFEGUARDS FOR IRELAND

I come to the position of things in Ireland. It may be well at the outset to make clear two points. The first is the present legal status of the Roman Catholic Church in that country. It is the same as that of any other voluntary association; its position theoretically no better and no worse. It possesses autonomy; it [102]
enjoys freedom as to doctrine and worship; its constitution is not interfered with; it regulates clerical education; it nominates its bishops; it administers its property in its own way.

It may thus enjoy immense power, especially if there be no true national system of primary education; it may well be doubted whether it possesses as much power in any other country as in Ireland. But like other voluntary religious associations the Catholic Church is not wholly withdrawn from the supervision and control of the Law Courts. A series of decisions of our highest courts with reference to Churches in Ireland and Scotland, and the colonies, have laid down certain principles equally applicable to the Roman Catholic Church and to all other religious bodies; in particular, these principles: that the State can exercise control

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on the part of the Dominion Parliament to submit such a case to the Supreme Court. The point stands over until May 7th." (*The Globe*, Toronto, March 12th.)

over all religious bodies possessing property when it is proved to be contravening its rules to the injury of members. In the case of societies resting upon a consensual basis, Courts of Justice are bound when due complaint is made that a member of the society has been injured as to his rights in any matter of a mixed spiritual and temporal character, to inquire into the laws or rules of the Society.[93] Further the authority of a Church cannot be legally used for purposes inimical to the State or contrary to any statute. It may make rules for its own members; it cannot enforce them against others; they are invalid against them if contrary to the terms of any statute. It may, for example, declare that it will not regard a marriage with a deceased wife's sister as valid; it may refuse to recognise as members those who so marry. But
[103] such rules will not legally invalidate a union which a statute has legalised. Probably this has not always been fully borne in mind by those who have denounced the promulgation of the decree *Ne temere* in Ireland. Resolutions have been passed against it here and in Ireland. Many Nonconformist bodies have protested against the promulgation of the decree in British Dominions. The decree is, I think, objectionable for several reasons, and not least because it discourages mixed marriages, an effect which seems to me deplorable, for nothing is better calculated to put an end to uncharitableness and hatred than the frequency of such unions. But while such a decree may do harm, it will have no direct effect except as between the members of the Catholic Church *in foro conscientiæ*. The Irish marriage law, which with a few exceptions is the same as the English, is binding on all Catholics and Protestants. Lord Llandaff who speaks at once as a lawyer and as a Catholic, puts this point clearly:

> "The invalidity was that of the sacramental and not of the legal marriage, and what the Church said to one of her subjects in

[93] *Brown* v. *Curé de Montreal*, L.R. 6, P.C. 157. See *O'Keefe* v. *Cullen*, Report by Fitzpatrick; also 7 Irish Reports, 319.

> such circumstances was: 'You are married; you are a husband; but you may not receive the sacrament, and therefore you are in a state of sin, and in that sense your marriage in void, according to your conscience, though not according to the law.' "[94]

A movement of retrogression the promulgation of the decree may have been; but every religious body must be free to lay down rules as to its membership. To quote the letter of the Archbishop of Canterbury of November 8th, 1911, on this subject: "Any branch of the Church of Christ must clearly have the power [104] of defining the conditions of membership."[95] It is but fair to remember that the decree *Ne temere* is part of a settled policy. The Church of Rome has often shown its disapproval of mixed marriages which Benedict XIV. declared "abominable."[96] It is but fair also to take note of the plea that this decree is the latest attempt to secure uniformity in regard to marriage law; attempts which have been pursued since the *Tametsi* decrees of the Council of Trent. Before the reform in the marriage law then effected there was much confusion and looseness. All that was required for a valid marriage was that the contracting parties should express to each other their mutual consent by words *de præsenti*; a state of things which favoured fraud and led to uncertainty. The Tridentine change must appear to most lawyers to have been a great reform; marriage was to be solemnised in the presence of the parish priest of one of the parties and of two witnesses. But this

[94] *The Times*, March 1st, 1911.

[95] It is only right that the rest of the letter should be quoted: "But it is, in my opinion, much to be regretted that by the promulgation of the decree, and even more by the language which appears to be sometimes used to secure obedience to it, the Roman Catholic Church should introduce confusion into domestic life and give rise to unnecessary and disquieting doubts as to the legal validity of marriages already contracted, or as to the lawful status of persons who may hereafter marry."

[96] "Ecclesia haec matrimonia mixta communiter improbavit atque detestata," Lehmkuhl Theologia Moralis, Vol. II., p. 511.

ecclesiastical law is not even now in force in several countries. It was promulgated in most Catholic countries; it was never promulgated in purely Protestant countries, or in all countries with a mixed population. It applied to marriages between two Catholics but not necessarily to mixed or to Protestant marriages. It might be in force in one part of a country and not in another.
[105] Thus the *Tametsi* decree was in force in the greater part of the province of Armagh since the time of Elizabeth. Not until 1827 was it promulgated in the province of Dublin. Now we are told that it was to secure still further uniformity that the decree *Ne temere* was published. It requires all persons baptized in the Catholic Church, and those who have been converted to it from heresy or schism, to marry in the presence of the parish priest or ordinary of the place in which the marriage is to be celebrated, otherwise the Church will regard it as null. If neither of the contracting parties is a Catholic the Church recognises the marriage as valid wherever it is celebrated.[97] How far other motives may have operated I cannot say; it is only fair to bear in mind that the decree is defended as a fresh effort to introduce certainty and definiteness as to a fundamental institution.

I may here refer to the fears expressed as to the effects of the decree, *Motu Proprio, Quantavis Diligentia* of October 9th, 1911; a decree which, it is said, might conceivably place every sincere Roman Catholic in antagonism with his duties to the State. The principle of that decree seems to me highly objectionable; it is an impossible attempt to revive the past; a form of the greatest of all heresies, disbelief in spiritual forces unsupported by privilege. But here, too, it is well to understand the case made by defenders of that decree, and before deploring its effects in Ireland to be certain that, in the view of the Catholic Church, it is in force there. When the Church was all powerful, there existed a *privilegium fori* according to which no layman could

[97] See Statement by Monsignor Bidwell in *Dublin Review*, 148, p. 327; also article "*Apostolicæ Sedis*." Vacant, *Dictionnaire Théologie Catholique*.

bring a cleric before a lay tribunal; a privilege based upon the words of St. Paul to the Corinthians who resorted to the Pagan [106] Courts. By various Concordats the Papacy had agreed to abrogate this right wholly or partly. In some countries the privilege had become extinct. In October 1869, was issued the bull of Pius IX., *Apostolicæ Sedis Moderationi convenit* which appeared to revive the *privilegium fori*. This, however, is denied by Roman Catholic theologians; according to them where no such Concordat exists, a custom has grown up that breaches of ecclesiastical immunity are to be overlooked; in any case it operates only as to canonical offences.[98] Whether that interpretation is correct or not, I need not enquire. But obviously such a rule has no legal efficacy; and it would be a strong measure to deny the Church the right to give to its adherents such monitions—for its commands are no more—as it thinks fit.

V. FUTURE SAFEGUARDS

In the Home Rule Bills of 1886 and 1893 were elaborate provisions designed to secure equality of treatment. Thus the Irish Legislature was prohibited from making any law.

> Respecting the establishment or endowment of religion, or prohibiting the free exercise thereof; imposing any disability or conferring any privilege on account of religious belief; abrogating or derogating from the right to establish any place of denominational education or any denominational institution or charity; prejudicially affecting the right of any child to attend a school receiving public money without attending the religious instruction at that school; or impairing without either the leave of Her Majesty in Council first obtained on an address presented by the legislative body of Ireland, or the [107] consent of the Corporation interested, the rights, property or privileges of any existing corporation, incorporated by Royal Charter or local or general Act of Parliament.

[98] Reiffensteuel, Vol. II., p. 245, asserts that the privilege is not lost by immemorial custom, even as to civil matters.

(Summary of Clause 4 in Bills of 1886 and 1893.)

Two comments may be made upon these provisions. They were so minute as to be at once a source of frequent irritation and certain to give rise to frequent conflicts with the Irish Legislature and as to be calculated to encourage litigation. Further, they did not specifically deal with the subject of marriage, an omission which, in view of the decree *Ne temere*, seems objectionable. They are replaced by a general clause to the following effect:

> "In the exercise of their power to make laws under this Act the Irish Parliament shall not make a law so as either directly or indirectly to establish or endow any religion, or prohibit the free exercise thereof, or give a preference, privilege or advantage, or impose any disability or disadvantage, on account of religious belief or religious or ecclesiastical status, or make any religious belief or religious ceremony a condition of the validity of any marriage."

How far these provisions will be eluded probably no one can say with certainty. It is difficult enough to ascertain the present situation in Ireland without attempting to predict with confidence the future. Statements diametrically opposite are vouched for by persons of equal experience and opportunity of knowledge. "Facts" in that country are so elusive. What is true in the south is fiction in the north, and *vice versa*. It may be admitted that machinery designed to protect minorities counts for less than the spirit actuating those who work it. The greatest security no doubt for religious liberty would be the presence of a general spirit of mutual forbearance; militant bigotry could not permanently exist
[108] alongside the prevalence of the spirit of charity; and Ulster, as well as other parts of Ireland, might make its contribution thereto. Some new forces there are working for toleration, I believe that they are increasing. Among them are these: the action of democratic institutions in which persons of all creeds take part;

the prosperity of the country bringing in its train to all parts of the country new ideas and hopes and interests; the performance by Catholics and Protestants of common civic duties; the constant stream, strongly charged with secular elements, flowing between Ireland and the United States; the silent influence of literature and newspapers permeated by a spirit which no priesthood can exorcise; the frequency of mixed marriages as proved by the action of the Catholic Church against them; the existence of urgent political and social questions as to which men are not divided according to their religious beliefs. These are so many manifestations of the modern spirit, from the operation of which Ireland no more than any other part of the western world can escape. They may prove stronger than legal safeguards.

I shall not attempt to measure the relative strength of these influences, but I should be inclined to rate highest the ultimate effect of democracy, and of a Parliament in which must be a Protestant minority powerful by their talents, their wealth and their energy. Democracy has everywhere its own problems, as engrossing for it as any in which the Church is interested. It will solve them in its own way, which may not be always the Church's. "Nothing," says Mr. Bryce with reference to America, "excites more general disapproval than any attempt by an ecclesiastical organisation to interfere in politics." Under democratic institutions there may be the same results in Ireland. [109] The remodelling of primary education will probably be one of the first struggles in which an Irish Parliament will be engaged. The fight will be in the open, which is a clear gain. The Church may for a time succeed in retaining its present hold over the schools. It is quite as likely that it will lose ground, and that the first Irish Minister of Education will be the first to incur ecclesiastical censure. There is much evidence of the growth of a widespread toleration extending it may be hoped, to the northeast corner of Ulster:

> "Since the Local Government Act of 1898," writes Mr. Annan Bryce, "it has not been found that the priest interferes unless in the rare cases where there is a question of personal morality, and then not always with success."

The opinions of three Lord-Lieutenants upon this point cannot be ignored.

Lord Aberdeen:

> "After years of continuous residence in Ireland, watching affairs and meeting people of every class and creed, I am profoundly impressed with the baselessness of alarm about the consequences of Home Rule.
>
> "On Home Rule for Ireland, I repeat and emphasise the opinion of my former telegrams, especially regarding apprehension of religious intolerance."

The late Lord Spencer:

> "I have had some experience of Ireland, and yet I do not know any specific instance where there has been the exercise of religious intolerance on the part of the Roman Catholics against their Protestant countrymen."

The Marquis of Crewe:

> "In 1886 and 1893 the animosity between classes, largely agrarian in its origin, was far stronger than at present, and the
> [110] line of cleavage roughly followed that of religious difference. But even in those days, as I well remember, it was evident that the possibilities of intolerance in a self-governed Ireland were deliberately and grossly exaggerated, with a party motive. Now, when the various classes know each other better, and there is less occasion for friction, the attempt to excite religious discord will utterly fail, as I firmly believe."

The safeguards provided by the measure deal specifically with the subjects as to which fears of religious inequality

exist: establishment and endowment, education and marriage; as compared with them, the provisions in the Canadian and Australian Acts are very imperfect. They guard, in explicit terms, against the dangers to religious liberty and equality in a way in which probably no other Constitution does.

A necessary supplement to any Legislature with limited jurisdiction is a Court of Appeal. Under the proposed constitution, the Irish Courts will be free to determine the constitutional character of any measures passed by the Irish Parliament; and from their decisions an appeal will lie to the Judicial Committee of the Privy Council, which will decide questions similar to those determined by it with reference to the Canadian and Australian constitutions, and by the Supreme Court of the United States reviewing the constitutional character of State legislation. It may be surmised that the Court will be faithful to the principles which it has laid down in dealing with the powers of the Parliaments of the Dominions. It has not hesitated to interfere in Canada with ecclesiastical sentences or censure which it believed invalid (see *e.g.*, *Brown* v. *Curé de Montreal*). It will, we may assume, do likewise in Ireland.

To conclude: He who believes in political freedom will believe also that religious oppression cannot long co-exist with it. Never, [111]
so far as I know, has ecclesiastical tyranny been enduring under democratic institutions; and I see no reason why the result should be different in the new Ireland which the Land Acts and the Local Government Act have created. Full and free political life is the best, perhaps the only, solvent of intolerance.

[112]

V.—Financial Relations[99] By Lord Welby

> "The Channel forbids Union, the Ocean forbids separation. I demand the continued severance of the Parliament with a view to the continued everlasting unity of the Empire."

Terse words in which a great statesman summed up the relation of Ireland to England. The Home Rule Bill will give the sanction of law to Grattan's aphorism. It bids Ireland manage her own affairs, freeing her in her own house from official bondage to an unsympathetic consort. If the Act of Enfranchisement is drawn in a trustful and large spirit, it will, we may feel assured, end the feud of centuries, and create unity where the Act of Union has created enmity.

The policy of Home Rule is wise in itself, and worthy the statesmanship of a nation always bold in the hour of need, and, as experience of its working is gained, it will commend itself more and more to the commonsense of a practical people, but the immediate success of the first Home Rule Act will depend greatly on the skill and wisdom with which the details of a complicated
[113] measure are devised, facing fairly the financial evils consequent on Tory obstinacy, and avoiding, in reasonable degree, offence to popular prejudice and existing interests.

The provisions which will adjust the financial relations between the two nations are not among the least difficult of those details, and Parliament must solve the puzzling problem without delay. It must begin by temporarily giving local government in Ireland a fair start at the cost of the British tax-payer.

Let us, in the first place, clear the ground from some doubtful arguments which, used as premises, will probably lead the

[99] It is perhaps hardly necessary to remind the reader that Lord Welby was a member of the Royal Commission on the Financial Relations between England and Ireland which reported in 1896.—*Editorial Note.*

unwary to false conclusions. A plea is often put forward that England is a rich country and Ireland a poor country, and it is argued that identical taxation therefore wrongs Ireland. But England is not a rich country, in the broad sense. It is a country in which there is vast accumulation of wealth, but in which, also, there is a great mass of poverty—poverty probably exceeding the poverty of Ireland, and, therefore, identical taxation if it wrongs the poor of Ireland, wrongs still more the poor of England. Critics arguing from this false premise contend that the extension of the Income-tax to Ireland was a wrong, that is to say, the wealthy man living in Ireland, where living is relatively cheap, ought not to contribute to the national expenditure on the same principle as the wealthy man living in England, where living is relatively dear; or, to put the argument in another form, it is sound finance to take Income-tax from a man in England, struggling on a few hundreds a year. It is unsound finance to take Income-tax from, say, the profits earned in Ireland by the Guinness firm. Nationalists, misled by the plea of Ireland's poverty, have relied on this argument, and Conservatives also have used it chiefly to discredit Mr. Gladstone, who extended the Income-tax to [114] Ireland; but the argument is false in itself, and cannot be made the basis of sound financial legislation. As a matter of fact, taxes on articles of general consumption, on the necessaries of life, fall heavily on the poor, and the argument of over-taxation applies in great degree to the poor in the great towns of England, and to the poor in Ireland. If, then, the poor of Ireland are to be relieved, the poor of England must be relieved also, and identical taxation would still be the result. The statesman must find a truer gauge by which to measure the relative capacity of the two countries to bear taxation.

Again, during the long discussion on financial relations, much time has been wasted in criticising that provision of the Act of Union, which fixed the respective contributions of Great Britain and Ireland to the common purposes of the Empire at the

proportion of fifteen and two. That proportion, in fact, was not exacted, and it may be put aside as theoretical.

A summary of recent financial history in Ireland will enable the reader to understand the circumstances in which Parliament takes up the problem of Home Rule. Towards the close of the eighteenth century the condition of Ireland was bad. England, selfish to the last degree in her commercial policy, treated Ireland as little better than a conquered country, and ruined her commercially and industrially by restrictions on her trade. Protestants and Catholics joined in patriotic resistance, and wrung at last freedom of trade in 1779, and an independent Parliament in 1782. Thenceforward for a time the financial administration of Ireland was regulated in accord with Irish interest. The country prospered financially under the new order. Large sums were spent in promoting agriculture and manufactures, and in grants
[115] for public works, and the country's finance was restored to order. During the years of peace, 1782 to 1793, Ireland contributed on the average £584,000 to military—that is to the common expenses of the Empire. The military expenditure of Great Britain in the peace years, 1786 to 1792, averaged £5,142,000. Ireland was then a most important factor in the State, for the population was to that of England in the proportion of nearly one to two.

Pitt desired to establish reciprocity between the two countries and at the same time to obtain from Ireland a contribution on a fixed principle for the Navy, wise proposals worthy of the Minister; but the two Parliaments could not agree. That of England bowed to the pernicious claims of ascendancy and to the supposed interests of the commercial classes. Pitt was defeated. The French Revolution and a war lasting nearly twenty-two years followed, and in the midst of the war broke out the Rebellion of 1798. If the charge of the Irish debt at the outbreak of the war and the average civil expenditure of Ireland between 1793 and the Union is deducted from the average income of Ireland,

the surplus constituted Ireland's real contribution to the common expenditure and it averaged about £900,000 a year. The year 1800 marks a great change of policy. Pitt put an end to the independent Parliament of Ireland and passed the Act of Union, bad in itself, and worse by the means which made it law. It sought to make the two countries one for all purposes of revenue, and that object was kept steadily in view.

From 1800 to 1817 the United Parliament imposed taxes on both England and Ireland, but the Irish Treasury collected the Irish Revenue, defrayed the local expenditure of Ireland as sanctioned by the United Parliament and remitted the surplus in aid of the war expenditure. The greater part of the burthen fell upon [116] Great Britain, but Ireland's share drained greatly her resources. Her revenue which had produced £1,837,000 in 1793, reached £7,305,000 in 1817, an increase of 300 per cent., while her contributions during the years of war to the common expenditure calculated on the principle adopted in the preceding paragraph amounted to about £3,000,000. During the same period Great Britain contributed to the war out of revenue about £43,000,000 on the annual average.

In 1817 the Irish Treasury was abolished, the exchequers of the two countries were united, the British and Irish Revenues were paid alike into the one exchequer. The Irish local expenditure was defrayed from that exchequer under the check of the English Treasury, and the United Parliament imposed and repealed Irish taxes. From 1817 for many years Ireland fared badly. Her representatives in Parliament served her ill. Tories, Whigs, and independent members failed alike in making England understand Irish needs, and the British Parliament neglected Irish interests. The years between 1817 and 1842 mark the first period of Irish financial history dating from the war. It was a period of stagnation. Both countries required time to recover from the calamity incident to war; but the recovery would have been more rapid, even under heavy taxation, had not progress been

retarded by the unwise legislation of protection, which fettered enterprise and restricted commerce. This evil, however, injured Great Britain more than Ireland. In 1824 the separate Customs Departments of the two countries were abolished. The trade between Great Britain and Ireland was treated as coasting, and from that time no official record has been kept of goods exported from and imported into both countries.

[117] In 1817 the taxes levied in England were similar to, but not identical with, those levied in Great Britain. Ireland was exempt from many taxes levied here, and in some cases, such as spirits, she paid a lower rate of duty. A period of profound peace enabled the government to remit taxation; but those remissions were chiefly made in deference to British interests, and in making them Irish interests were little considered. The truth of this statement is illustrated by the Revenue Returns. The estimated "*true*"[100] Revenue of Great Britain fell from £51,500,000 in 1820 to £46,250,000 in 1840, although population, and with it consumption, had increased. The "*true*" Revenue of Ireland in the same period rose from £5,250,000 to £5,500,000. But it must be added that many of the taxes remitted were taxes *not levied in Ireland*. In respect to them Great Britain had to a certain extent a claim to prior consideration.

The second period of financial history extended from 1842 to 1869, a period of rapid recovery and of great prosperity in Great Britain, but not so in Ireland. Famine fell upon her in 1846, and thinned her population, followed by emigration, which showed how poverty pressed upon the poor, while the Fenian movement of 1866 showed how widespread was the spirit of unrest. A highly cultivated Liberal statesman was Lord-Lieutenant during several years of the period. An interesting diary which he kept leaves the impression that the leading statesmen of the day were not reading the signs of the times, or gauging the gravity of

[100] The "*true*" revenue differs from the *collected* revenue, by making allowance for duties paid in the one country on articles consumed in the other.

a growing movement. This was hardly the period to choose for increasing the taxation of Ireland, nevertheless in 1853 Mr. Gladstone extended the Income-tax to Ireland, counterbalancing [118] it in part by the remission of loans granted to Ireland during the famine—a very insufficient compensation. But the Income-tax did not touch the poor, and as I have pointed out there was no reason why the wealthy and comparatively well-to-do classes in Ireland should not contribute to the public expenditure like their brethren in Great Britain. This plea, however, does not extend to the spirit duties which during 1853 Mr. Gladstone and Mr. Disraeli raised to the level of the spirit duties in Great Britain. That tax undoubtedly was paid in great measure by the poorer classes.

In one direction there was improvement. In 1842 Sir Robert Peel acceded to power, and inaugurated at once the policy of liberating trade which has conferred such benefits on Great Britain, and in a minor degree on Ireland. The era of prosperity which followed the adoption of the Free Trade policy increased greatly the consuming power of the people, and enabled Mr. Gladstone to largely reduce duties on the principal articles of food consumed by the poorer classes. For example, he and his successors reduced the tea duties from 2s. 2d. to 6d. and abolished the sugar duties. This was undoubtedly the true method of remedying the evil which underlies the plea that identical taxation wronged Ireland. I have shown that that evil was caused not by identical taxation, but by heavy taxes on food, which oppressed alike the poor of Ireland, and the more numerous poor of Great Britain. The policy adopted met the local grievance, by modifying if not removing the general grievance, and this remedy of the general grievance was only rendered possible by the growing prosperity of Great Britain. The poor of Ireland had therefore their full share of the benefit caused by the prosperity of Great Britain. The historian must give full weight [119] to this consideration when he criticises the increase of the Irish

spirit duty. There can be little doubt as to the verdict of history, if the choice lies between cheap whisky and dear food on the one side, and cheap food and dear whisky on the other. Between 1860 and 1900 the Customs and Excise duties which were reduced exceeded the like duties increased by some £22,000,000 a year, and Ireland had her share in the reduction.

In 1864 a Committee of the House of Commons inquired into the taxation of Ireland, but it led to no useful result. In other directions the monotony of neglect continued. The Government and Parliament paid little or no attention to Irish needs. Ireland was the Cinderella of the three kingdoms, and fared accordingly.

The third period ranged from 1869 to 1896. It might be termed the Home Rule period, for it includes the two Home Rule Bills of Mr. Gladstone, but it includes also other great measures relating to Ireland. Indeed, during the whole period of seventeen years Ireland engrossed, to a great degree, the attention of Parliament. The change was very remarkable. Up to 1869 England was indifferent to, or bored by, Ireland. She was stupid. She did not trouble herself to learn Irish wants, and she could not understand the spirit of Irish nationality. The Devon Commission, a Conservative Commission, appointed by a Conservative Minister, Sir Robert Peel, reported that 2,500,000 people in Ireland were on the verge of starvation, and gave warning of the evils, the perils, inherent in the Irish land system. England took no notice of either warning. The famine answered the first in cruel fashion. The second was pigeon-holed. Wise in
[120] her own Home administration, wise of late years in her Colonial administration, she knew no remedy for Ireland but force, and force is no remedy. She accepted, almost as matters of ordinary administration, Coercion Acts which marked with a black stigma most years of the century, unable to see that that fact alone was a disgrace to her statesmen, her Parliament, and her people.

Early in the Home Rule days I heard a great English statesman say: “The first duty of a Government is to bring the people into

agreement with the law; till it does that it fails in its first duty, and England has hitherto failed to bring Ireland into agreement with the law"—a truth well and forcibly expressed.

In 1869 a man of great power and eloquence, wide views, and firm resolve became Prime Minister. He realised the habitual injustice of England to Ireland, and he saw the perils impending. By his strength of will he forced an unwilling country and an indifferent Parliament to devote its serious attention to Irish questions. He disestablished the Church. He was defeated on Irish education, but he laid the foundation of a land settlement by conferring on the tenants, in spite of strenuous opposition from the Tories, the rights of fair rents, fixity of tenure, and free sale, and his measures were marked by an earnest desire to deal liberally with Ireland to the utmost extent consistent with equity to the British tax-payer. Finally, when Ireland sent to Westminster more than four-fifths of her representatives pledged to Home Rule, he accepted this expression of the national will, and became a convert to the principle of Home Rule. I deal later in detail with his two Home Rule Bills of 1886 and 1893, which were defeated, and I need only here deal with finance of the third period, apart from the provision of the Home Rule Bills. [121]

Before Mr. Gladstone was converted to Home Rule, Home Rule finance attracted little attention. That eminent statistician, Sir Robert Giffen, made, indeed, in 1885, a singular suggestion to the *Statist* newspaper, viz., that the Irish landlords should be bought out at the cost of the Imperial Exchequer, and that the rent charge, which would then be payable by the purchasing tenant, should be given to an Irish authority, in lieu of payments from the Exchequer, for the internal administration of Ireland.

Again, Sir Robert wrote an article in the *Nineteenth Century Review*, March, 1886, a few weeks before the introduction of the first Home Rule Bill, to show how unimportant, from a financial point of view, Ireland had become to us, and to suggest the expediency of devising some form of Government under

which the special needs and circumstances of that country would receive more and better attention than they did under the existing arrangements. His figures might be, in some instances, doubtful, perhaps even incorrect, but it can hardly be denied that he made good his point. Sir Robert was, we see, greatly in advance, not only of the ordinary Briton, but of financial experts generally, both as regards the land question and also that of the Government of Ireland.

Perhaps the most able thinker and writer on economic questions in the second half of the nineteenth century was the late Mr. Bagehot, and, in proof of the general indifference to Irish questions in England, it is notable that his collected works, ranging over a wide field in politics and literature, contain no paper on the government or condition of Ireland. Yet he had witnessed O'Connell, the famine, the depopulation of Ireland, the
[122] Committee on Irish Taxation, and the Fenian outbreak in 1866.

In 1890 Mr. Goschen, as Chancellor of the Exchequer, in the Conservative Government, moved for a Committee of the House of Commons to consider the financial relations of England, Scotland, and Ireland. The Committee was instructed to inquire into the equity of their financial relations in regard to the resources and population of the three kingdoms. It had hitherto been much discussed whether Ireland could be regarded as a separate financial entity from the rest of the kingdom. The Irish Taxation Committee of 1864, of which Sir Stafford Northcote and Mr. Lowe were prominent members, had refused to admit the principle of such separate entity, and that had been generally the Conservative contention. But, in the reference to the Committee of 1890, the Conservative Government accepted the principle. The Home Rule Bills of 1886 and 1893 were, of course, based upon it. Thus, 1890 marks an important advance in the discussion, and thenceforward, by consent of both parties, the separate “entity” was established.

After the rejection of the second Home Rule Bill the Liberal

Government appointed a Royal Commission to inquire into the financial relations of the two countries and their relative taxable capacity. The Report of this Commission deserves attention, because it was exhaustive in its inquiries, because the information it laid before the public has since that time been generally used in discussion, and because many of the recommendations made were far-reaching and suggestive. There was, as might be expected, great difference of opinion. The Conservative members and the Nationalist members made their several Reports. Attention, however, may be directed to one of the Reports, because it received the concurrence of the Nationalist members and of three English members—one of whom was a very high, if not the highest, financial authority in the City of [123] London, the two others retired Civil Servants who had been at the head of two great Departments of the State. Their conclusions were as follows:

> "(1) That Great Britain and Ireland must, for the purpose of this inquiry, be considered as separate entities.
>
> "(2) That the Act of Union imposed upon Ireland a burthen which, as events showed, she was unable to bear.
>
> "(3) That the increase of taxation laid upon Ireland between 1853 and 1860 was not justified by the then existing circumstances.
>
> "(4) That identity of rates of taxation does not necessarily involve equality of burthen.
>
> "(5) That whilst the actual tax revenue of Ireland is about one-eleventh of that of Great Britain, the relative taxable capacity of Ireland is very much smaller, and is not estimated by any of us as exceeding one-twentieth."

The three English members above mentioned presented a separate Report, recording at length their views on the questions referred to the Commission. I call attention to it, because reference is frequently made to it in the Report of Sir

Henry Primrose's Committee, recently appointed to advise the Government upon the new Home Rule Bill.

They pointed out that the whole taxation of Ireland increased from £2,900,000 in 1820, to over £6,600,000 in 1893, and that by far the larger part of this increase was derived from taxes on articles of consumption which fell most heavily on the poor; that the increase resulted only temporarily in an increase in the contribution to common expenditure which rose from £3,691,000 in 1820 to £5,396,000 in 1860, to fall to £1,966,000 in 1893, for the greater part of the increase had been absorbed in increase of Irish civil expenditure. This local expenditure amounted in Ireland to 19s. 7d. per head, while in Great Britain it only amounted to 11s. 9d. If the cost of administering Ireland had [124] been reduced to the like cost in Great Britain, a saving of nearly £2,000,000 would have been realised.

They thought that the expenditure in Ireland was conducted on a scale totally unsuitable to that country, that the industrial taxation, borne in Ireland mainly by the consumers of dutiable articles, was heavier than the masses of the Irish people ought to bear, that Irish taxation ought not to exceed one twentieth part of taxation of the United Kingdom, but they doubted whether Great Britain would consent to alter her whole system of taxation to meet the evil to Ireland. They objected totally to seeking a remedy in increased grants and doles, and they suggested that Ireland should levy her own taxes and provide for her own expenditure.

Lastly, in answer to the objection that Ireland might impose new Customs duties, they held that to be unlikely, since Ireland rather than Great Britain would suffer by such a policy, because the market of Great Britain is of greater importance to Ireland than that of Ireland to Great Britain.

The Royal Commission reported in 1896. The question of the financial relations remained then in practical abeyance till 1907. In that year the Government of Sir H. Campbell-

Bannerman proposed to establish an Irish Council under the Lord-Lieutenant entrusted with the control and direction of certain administrative Departments. A sum was to be charged on the Consolidated Fund to enable the Council to meet the expenditure of the transferred Departments. This sum was fixed for the first five years at £4,164,000. This was simply a measure to decentralise administration, and to admit Irishmen to a share in Irish administration. It did not, however, obtain support in Ireland, and in consequence it was not pressed.

We come now to the last stages in the story of Irish finance. [125] The Government of Mr. Asquith decided to introduce the Third Home Rule Bill in the session of 1912, and in 1911 they appointed a Departmental Committee under Sir Henry Primrose to advise them. The able report of that Committee has been laid before Parliament, and it brings our information on the financial relations up to the latest date:

They state the "true" Irish Revenue in 1895-6 to have been £8,034,000.

They estimate "true" Revenue 1910-11 at 10,300,000.

Increase £2,266,000.

The "true" local expenditure in Ireland, 1895-6, £5,938,000.

The "true" local expenditure 1910-11, 11,344,000.

£5,406,000.

Thus whereas Ireland in 1895-6 made a contribution of £2,066,000 to Imperial Expenditure, in 1910-11, not only did she make no contribution to Imperial Expenditure, but the British taxpayer was called on to contribute more than £1,000,000 towards Irish local expenditure. But Irish local expenditure is increasing under the heads of old-age pensions, land purchase, and expenses of the Government which will be established in Ireland under Home Rule. The Committee in consequence estimate:

The Irish local expenditure in 1913-14 at £12,400,000.

The Irish Revenue at 10,350,000.

[126] Deficit £2,050,000.

for which provision must be made in the forthcoming measure.

In order to meet the existing deficit, the Committee suggest that the British Exchequer should take over liability for all old-age pensions which had been actually granted at the date when the Home Rule Bill comes into operation. They estimate that liability at £3,000,000 a year, gradually, of course, diminishing. If necessary, the liability in whole or part of the Irish Constabulary Pensions (£400,000) might also be transferred to the British Exchequer. They advise that the obligation of Ireland to contribute to the Imperial expenditure should be affirmed, but that a settlement of the amount of the contribution should remain in abeyance; and lastly, that the guarantee of the Imperial Exchequer in respect of the Land Stock should remain, but that means should be taken to secure regular payment of the sum due from Ireland to the National Debt Commissioners.

I shall contrast later the recommendations of the Committee with the actual provisions of the Home Rule Bill.

I will now compare the finance of the three Home Rule Bills which have been submitted to Parliament, those of 1886, 1893 and 1912.

THE BILL OF 1886

Mr. Gladstone made it an essential condition of his plan that there should be an equitable distribution of Imperial charges and that Ireland should pay her fair proportion to the common expenses of the Empire. In 1885 that contribution was represented by the surplus of Irish Revenue remaining after deduction of the expenditure in Ireland on Irish services. He calculated in 1886
[127] that the surplus above described provided a contribution by Ireland to Imperial expenditure equivalent to £2 where Great Britain contributed £23. This proportion contrasts with Mr. Pitt's arrangement in 1800 that Ireland should pay £2 where Great Britain paid £15. Mr. Gladstone proposed in future that where Great Britain paid £28, Ireland should pay £2, a concession of

moment to Ireland, and he supported it on the following ground: he measured the taxable capacity of the two countries by (1) the Income-tax returns (2) the death duty returns, and (3) the valuation of property. Income-tax gave a proportion of £38 to £2, but he held Income-tax an imperfect test, because it was paid in Ireland on a lower valuation than in Great Britain and because many Irishmen receive dividends on securities which pay Income-tax in England. He thought that £34 to £2 would be nearer the true proportion. He held the death duties to be a better test and they showed a proportion of £26 to £2, while the valuation, lower in Ireland than in Great Britain, gave a proportion of £24 to £2. Arguing from these premises, he held that his proposed contribution of £2 to £28 was an equitable and even a generous arrangement, justified by the necessity of starting the Irish Legislative body with a balance to its credit.

A table is given showing how the contribution was appropriated.

The amount to be contributed by Ireland to Imperial expenditure being thus ascertained, the more difficult part of the problem remained, viz., how to provide the fund out of which the contribution would be payable and how to secure its payment. The plan which commended itself to him as insuring the fiscal unity of the three kingdoms, and giving absolute security to the British Exchequer, left the imposition and collection of Customs [128] and Excise duties with the Imperial Government, and under Imperial control. This plan was to be carried into effect in the following manner. The Customs and Excise were to be levied under Acts of the Imperial Parliament, and were not to be subject to the control of the Irish Legislature. The Irish Legislature with that exception could impose taxes on Ireland. Under the Land Purchase Bill, which was to be introduced concurrently with the Home Rule Bill, a Receiver-General was to be appointed, into whose hands the Customs and Excise Duties and other taxes were to be paid, including taxes imposed by the Irish Parliament. The

Imperial Receiver-General, having thus in hand all Imperial and local taxes levied in Ireland, would in the first instance pay out of them the Imperial charges. Apart from the Imperial charges there were other charges, strictly Irish, such as Judges' salaries, pensions, the salaries of existing civil servants, for the security of which the Bill provided. The Bill bound the Irish Parliament to impose taxes sufficient to meet such charges, and ordered them to be paid by the Receiver-General. The Receiver-General was to keep an Imperial and an Irish account. The Irish charges would of course be paid from the latter account. He was to carry the Customs and Excise Duties in the first instance to the Imperial account, and the local taxes to the Irish account, transferring to the Irish account the surplus of Custom and Excise, after payment of the Imperial contribution. He was subsequently to pay the balance remaining on the Irish account to the Irish Exchequer.

An Imperial Court of Exchequer was established in Ireland to watch over the observance of the Act, and all Revenue acts were to be tried and defaults punished in that Court. The Bill further
[129] enabled the Irish Parliament to take over the Irish Post Office, if it should so desire, though it was Mr. Gladstone's opinion that it would be for the convenience of both countries if the Post Office were to remain under the control of the Postmaster-General.

The Imperial contribution payable by Ireland was not to be increased for thirty years, though it might be reduced if the Imperial charge for Army, Navy and Imperial Civil expenditure for any year should be less than fifteen times the contribution paid by Ireland. In that case one-fifteenth of the diminution could be deducted from the Imperial contribution.

Existing Civil Servants were retained in their offices at existing salaries. If the Irish Government were to desire their retirement, they would be retired on pensions. On the other hand, if at the end of two years the officers themselves desired to retire, they could do so, receiving pensions on the usual abolition of office scale.

Supposing the Home Rule Bill to have become law the account of Irish finance would have stood thus:

Receipts.

Imperial taxes:
Customs £1,880,000
Excise £4,300,000
Total £6,180,000

Local taxes:
Stamps £600,000
Income-tax 6d. £550,000
Total £1,150,000

Non-tax revenue:
Post Office £1,020,000

Total: £8,350,000

Expenditure.

Contributions to Imperial expenditure on basis of one-fifteenth of Imperial expenditure:
Debt charges £1,466,000
Army and Navy £1,666,000
Civil charges £110,000
Total £3,242,000

Sinking Fund on one-fifteenth of capital of debt £360,000
Constabulary[101] £1,000,000
Local Irish Civil charges £2,510,000
Collection of revenue:
Imperial taxes £170,000
Local taxes £60,000
Non-tax revenue £604,000

[101] Any charge in excess of £1,000,000 on the Constabulary was to be borne by the Imperial Exchequer.

Total £834,000
Surplus £404,000
Total £8,350,000

[130]

When it is said that in 1885-1886 Ireland was paying to Imperial expenditure in the proportion of £2 to £23, that proportion was calculated on the whole gross Imperial expenditure, whereas Mr. Gladstone calculated the proportion of £2 to £28 on a military expenditure materially cut down, for he excluded from it charges which ought strictly to be called war charges, a modification very favourable to Ireland and reducing considerably her true contribution.

He made another concession of great importance. He proposed to credit Ireland with the entire receipts levied in Ireland, but that was not a true test of the amount of taxation paid by Ireland. There are goods which pay duty in Great Britain, but which are consumed in Ireland, so conversely there are goods which pay duty in Ireland but are consumed in Great Britain. For instance, spirits, porter, and tobacco are largely exported duty paid from Ireland and are consumed in Great Britain, and Mr. Gladstone calculated that the excess of duties so paid in Ireland on goods consumed in Great Britain amounted to no less a sum than, £1,400,000 a year. That is of course British Revenue, and in striking a true account between the two countries it should be credited to Great Britain, not to Ireland. The Home Rule Bill, however, gave it to Ireland, a direct grant of £1,400,000[102] from Great Britain to Ireland, and if that amount be subtracted from the contribution of £2 to £28, it leaves the proportion £2 to £52 instead of £2 to £23.

If we strike a balance between the contributions to be paid by Ireland to Great Britain under the Home Rule Bill, and the grants
[131] to be paid to Ireland, we shall arrive at the following result:

[102] Probably over-estimated.

Contribution from Ireland to Great Britain £3,602,000
Grants from Great Britain to Ireland:
Duties paid in Ireland on goods consumed in Great Britain £1,400,000
Grant toward the Constabulary £500,000
Total: £1,900,000

Net contribution from Ireland to Imperial purposes (or nearly in the proportion of 2 to 60) £1,702,000

If the Imperial contribution *actually* paid by Ireland in 1885 be equated on like principle, the proportion stated above at 2 to 23 will be similarly reduced.

The Bill was defeated in the House of Commons, and therefore its provisions did not undergo the test of scrutiny in Committee.

The provisions of this Bill illustrate the difficulties which attend the financial severance of the Irish from the British Government. High authorities thought at the time that Mr. Gladstone, in 1886, should have proceeded in the first instance by way of Resolutions establishing the principles upon which the Bill would be subsequently founded, and there is much to be said for that view. The main principles of the measure would have been established in the first instance after free and full discussion, and the details would have been adapted later to the principles then laid down. Mr. Gladstone himself, in his reply upon the Second Reading (June 7th, 1886,) indicated a course somewhat similar in its result. He said:

> "If an interval is granted us, and the circumstances of the present session require the withdrawal of the Bill, and it is to be re-introduced with amendment at an early date [132] in the autumn, it is our duty to amend the Bill with every real amendment and improvement, and with whatever is calculated to make it more effective and more acceptable for the attainment of its end."

It must be remembered that there had been no sufficient time for the collection of the data on which an effective measure could be founded, and the collection of those data was a task of great difficulty, for the Departments did not possess them. The Government came into power in February, and the Bill was introduced on April 6th; thus there was no real opportunity for testing the value of the data collected in that short interval, or for gauging beforehand objections both to the principles and details of the scheme adopted, and experience proved that some of the objections were valid, though probably not insurmountable.

The scheme was based on two principles which would be especially liable to criticism:

(1) For thirty years Ireland was to contribute to Imperial charges as they then existed a fixed annual sum.

(2) The Customs and Excise duties as *collected* in Ireland (*i.e.*, not the "true" revenue) were to be credited to the Irish Government.

The first of these principles would have been closely scrutinised in Committee, but probably in the main it could have held its ground. In the first place, it reduced considerably the Imperial contribution, consisting hitherto of the balance of revenue after payment of Irish charges. As Mr. Gladstone pointed out, the amount of military expenditure, on which the proportion of 2 to 28 was calculated, was considerably reduced, and Great Britain had to pay the difference, and so far the change
[133] was favourable to Ireland. In the second place, Irish expenditure was increasing, and under the existing system the balance of Irish revenue, constituting the Irish Imperial contribution, was, as the sequel lamentably proved, diminishing, and, a result not foreseen at the time, the wasteful and unsound finance which financial partnership entailed upon Ireland ere long extinguished it. The grant of autonomy was an effective check on this continued waste, otherwise the contribution of a fixed quota would soon have reduced the Irish Government to insolvency.

The grant to Ireland of the *collected* not the *true* duties of Customs and Excise was open to grave objection. It presented her with the duties levied in Ireland on articles consumed in Great Britain, but if at any time the habits of the people, such as decrease in drinking, reduced this practical gift—estimated at £1,400,000, or if changes in law or practice transferred the payment of these duties from Ireland to Great Britain, the financial equilibrium of the scheme would be destroyed. This was a real danger as under the bonding system the British trader could, if he pleased, pay these duties in Great Britain.

The decision that Ireland was not to be represented at Westminster led to a clumsy device for giving Ireland a voice in the Imperial Parliament when Irish interests were involved. This would be the resource if a war contribution had to be obtained.

The scheme of 1886 can only, therefore, be regarded as a draft to be tested and modified in discussion and to form the basis of a revised and amended scheme.

The Bill of 1893

Mr. Gladstone introduced the second Home Rule Bill in February, 1893. In the discussion he pointed out how incredibly [134] wasteful the method of governing Ireland was; the Irish Civil Government grants, which had averaged from 1833 to 1837 £762,000, had risen between 1888 and 1892 to £4,042,000, and the cost of local government in Ireland was twice as much per head as the like cost in England.

Under the scheme of 1886 Irish representatives were not to sit in the Imperial Parliament, but the Government found that under existing financial arrangements there must be financial connection, unless Parliament was prepared to face a different system of trade laws between the two countries, and provision must be made for that connection. Mr. Gladstone, therefore, reversed the decision of the Government in 1886. He proposed to retain Irish representatives at Westminster, reduced in number to 80. They were not to vote on purely British questions, but in

his opinion it would be difficult to make that distinction as far as the mass of business was concerned. The Irish representatives would not vote on any tax which was not to be levied in Ireland or on any grant of money for other than Imperial purposes as scheduled in the Bill. By this means Ireland would have a voice, if emergency, such as war, rendered fresh taxation necessary.

In the interval between 1886 and 1893 knowledge had been gained to some extent as to what constituted the "true" revenue of Ireland, and the Inland Revenue thought it possible to levy in Great Britain the Excise duties collected in Ireland on articles consumed in Great Britain and *vice versa*. These Excise duties represented the greater part of the sum of £1,400,000, previously described as the difference between duties, so to speak, belonging to Ireland and duties collected in Ireland, a difference estimated in 1893 at £1,800,000. If Ireland retained that difference, as
[135] contemplated by the scheme of 1886, it was equivalent to a grant from Great Britain to Ireland. On the other hand the Customs were not able to make the separation thought possible by the Excise.

With these facts before him Mr. Gladstone made an entire change in the financial scheme. As in 1886, he held that Ireland must make a proper contribution to Imperial expenditure, but he abandoned the principle, adopted in 1886, of obtaining that contribution by a quota of one-fifteenth of Imperial expenditure, that is a contribution of £2 by Ireland to £28 by Great Britain. He retained instead the whole of the Customs revenue collected in Ireland as the Irish contribution. He proposed that Great Britain should pay any excess of the charge of constabulary over £1,000,000, out of the contribution, the balance representing Ireland's share of Imperial expenditure. He justified the change on the ground that as the management of trade was reserved to the Imperial Government, the management of the Customs so closely connected with trade should be Imperial also. The Customs were expected to produce a net revenue of £2,370,000.

He estimated it as equivalent to about 4 per cent. of Imperial expenditure whereas the actual contribution was about 12 per cent. The contribution would, of course, vary as the net Customs revenue rose or fell. On the other hand the Irish Government were to take all the rest of the "true" revenue of Ireland and to defray out of it all local Irish expenditure, including a fixed sum of £1,000,000 towards the cost of the constabulary and Dublin police, which were temporarily to remain Imperial services. Customs and Excise duties were to be regulated and collected by the Imperial authority which was also to fix postal rates; but all other taxes were to be imposed by the Irish Legislature. [136]

The interests of existing judges, and existing civil servants, and of her constabulary, which remained under the control of the Viceroy, were secured. The constabulary would be gradually replaced by a force under the control of the Irish authority. Two Exchequer Judges would be appointed to guard observance of the Act, and appeals lay to the Privy Council which would try on the motion of the Viceroy, or of the Secretary of State, any question as to invalidity of an Irish Act. These arrangements might after fifteen years be subject to revision in pursuance of an address to Her Majesty from the House of Commons or the Irish Legislative Assembly.

The receipts and expenditure of the Irish Government under this scheme would have stood as follows:

Receipts.

(1) Excise true revenue exclusive of licences £3,220,000
(2) Local taxes:
Stamps, Income-tax, Excise licenses £1,495,000
(3) Postal revenue £740,000
(4) Other non-tax revenue £205,000
Total £5,660,000

EXPENDITURE.
(1) Civil Government charges, except Constabulary £3,210,000
(2) Collection of Inland revenue £160,000
(3) Postal service £790,000
(4) Contribution to Irish Constabulary £1,000,000
Total £5,160,000
Surplus £500,000

The Bill passed the House of Commons, but the financial clauses were greatly recast in Committee. The changes originated in the fact that the Inland revenue had overestimated the "true" revenue of Excise by a very considerable sum, and the error would have reduced to an insignificant sum the free starting balance for the Irish Government provided in the original scheme. Mr. Gladstone decided in consequence not to keep the Customs revenue as Ireland's contribution to Imperial expenditure, but to let that revenue fall into the common stock of Irish revenue
[137] and to take out of that common stock one third of the "true" Irish revenue. This third was to cover Ireland's contribution to Imperial expenditure together with one third of the cost of the Irish constabulary and Dublin police. Ireland was to meet all her local charges out of the remaining Irish revenue. The Imperial Government was to retain for six years the imposition and collection of all taxes; the Irish Government having only supplementary powers of taxation. At the end of six years the Irish contribution was to be revised, and Ireland would be empowered to impose taxes other than Customs and Excise, and she would collect taxes, the Customs alone being retained by the Imperial authorities. The "true" revenue derived from the Customs and Excise was to be ascertained by a Joint Committee of the Treasury and the Irish Government. The financial result of
[138] these changes is shown in the following figures:

(1) Customs:
Revenue collected in Ireland £2,136,000

Add estimated allowance for duties paid in Great Britain on articles consumed in Ireland £266,000
Total estimated Irish revenue £2,402,000; Amount Payable to Irish Exchequer Two-Thirds £1,601,000

(2) Excise:
(*a*) Spirits. Revenue collected in Ireland £4,112,000
Deduct duties ascertained to be paid in Ireland on spirits consumed in Great Britain £1,872,000
Total £2,240,000
(*b*) Beer. Revenue collected in Ireland £811,000
Deduct estimated allowance for duties paid in Ireland on beer consumed in Great Britain £187,000
Total £624,000
(*c*) Licence duties collected in Ireland £194,000
Total estimated £3,058,000; payable to Exchequer £2,039,000
(3) Stamp duties collected in Ireland £707,000 estimated, £471,000 payable
(4) Income-tax collected in Ireland £552,000 estimated, £368,000 payable
(5) Crown Lands amount estimated to be due to £65,000 estimated, £43,000 payable
Total £6,784,000 estimated, £4,522,000 payable
(6) Miscellaneous Irish Revenue £138,000 estimated, £138,000 payable
Totals £6,922,000 estimated, £4,660,000 payable

Irish Expenditure, 1892-3.
(1) Civil Government charges (exclusive of Constabulary and salary of Lord-Lieutenant, but inclusive of local charges met out of local taxation account) £3,123,000
(2) Constabulary charges (£1,459,000) two-thirds of £973,000
(3) Estimated deficit on postal account £52,000
Total £4,148,000

Surplus £512,000
Total £4,660,000

[139]

The schemes of 1893 again illustrate the difficulties inherent in a severance of the two Exchequers. The revise left more points open for difference between the two Governments, and it had the serious defect of revision after the short interval of six years.

The original scheme was far preferable. The retention of the Customs as the Imperial contribution reduced opportunity for conflicts of opinion to a minimum, and the interval of fifteen years before revision left ample time for the new Irish Government to put its house in order. I venture to think it would have been wise to make good the error in estimating the "true" revenue of Ireland (which invalidated the scheme) by an Imperial Grant, at all events for a time. Under the scheme the Imperial Government provided £500,000 for the constabulary. If it had granted £300,000 or £400,000 more, the net Imperial contribution derived from the Customs would have been reduced to say £1,400,000, not a large sacrifice for the end in view—reconciliation with Ireland.

The Bill as amended passed the House of Commons but was thrown out in the Lords. This Parliament refused to accept Mr. Gladstone's proposals to give Ireland Home Rule, and nineteen years elapsed before a third Home Rule Bill was submitted to Parliament.

In the three schemes of 1886 and 1893 the Imperial contribution was very similar, perhaps somewhat larger in 1893. In all three schemes, also, the net gain to the British Exchequer was reduced by the grant from that Exchequer of £500,000 to the cost of the Irish Constabulary.

The difficulty of devising a financial scheme fairly simple and workable, which was experienced in 1886 and 1893, has been disappointing, but not discouraging. It was inevitable but it can be surmounted.

[140]

THE BILL OF 1912

In 1911, Mr. Asquith pledged the Government to take up again in the ensuing session the question of Home Rule. In 1910 the Conservative Party, at least a considerable part of it, in presence of a probable dissolution on the Parliament Bill, showed, as in 1885, a disposition to coquette with Home Rule, but the movement came to nothing, and the Party settled into determined opposition to the Home Rule policy, submitting themselves to the lead of the Ulster extremists, who preached sedition in no measured terms. In other respects, the prospects of Home Rule are fairly favourable. England, apart from Scotland, Wales, and Ireland, still returns a majority opposed to Home Rule, but public opinion does not show any signs of vigorous or violent opposition as in 1886. The Liberals, the Irish, and the Labour Party are united in its favour. The passing of the Land Acts is rapidly removing the agrarian evil, and the landlords have not the same cause for anxiety as formerly. The grant of Local Government is working well, and in spite of much poverty the condition of the people is improving. Lastly, the passing of the Parliament Act has made it possible, in spite of opposition in the Lords, to pass a Home Rule Act within the limits of the present Parliament.

On April 11th, the Prime Minister introduced the Government Bill. He regarded it as the first step in a comprehensive policy of devolution. It retains permanently at Westminster 42 Irish Members, so that Ireland will have a voice, not only on questions in the Imperial Parliament which concern Ireland, but on questions of Imperial interest, such as war and peace. The Bill of 1886 reserved to the Imperial Parliament certain [141] questions. The Bill of 1893 also made necessary reservations, though its tendency was towards more complete autonomy; but in the interval between 1893 and 1912 great changes have taken place, and the Imperial Government finds itself hampered by new liabilities. The Old-Age Pension Act, the Land Purchase Act of 1903, the National Insurance Act, and Labour Exchanges have added very greatly to Irish expenditure. On the other hand,

the contribution to Imperial expenditure, unluckily for the British taxpayer, has disappeared. The problem is, therefore, a new one, and the Government solves it, at all events for the present, by keeping in its own hands a large number of Services, as will be seen hereafter.

In 1885-6 Ireland contributed a surplus of considerably more than £2,000,000 to Imperial expenditure; in 1895-6, £2,000,000.[103] The Government estimates the true revenue of Ireland in 1912-13 at £10,839,000; and the expenditure on Irish services at £12,354,000. Therefore the new Irish Government will start with a deficit of £1,515,000. That deficit is now charged on the British taxpayer. It results from British management of Irish finance, for, on the one hand, Irish revenue is limited by the relatively limited means of Irish taxpayers; on the other hand, England has regulated Irish expenditure on the lavish scale of her own expenditure.

The Government lays down certain principles on which Home Rule finance will be based:

[142]

(1) Ireland must manage her own finance and must have powers of taxation consistent with leaving to the Imperial Government a field of taxation sufficiently wide for Imperial needs.

(2) The Budgets of the two countries must not hamper each other.

(3) Ireland must bear the cost of any increase arising hereafter on Irish services, but she must benefit by economies in those services.

(4) She must have power to reduce taxation if her economies permit it.

The scheme which will give effect to these principles may be described as follows.

[103] True Revenue £8,000,000, Irish Expenditure £6,000,000, Contribution £2,000,000.

In the first place the Imperial Government retains in its own hands the imposition and collection of all Irish taxes, the Post Office duties alone excepted, which will be transferred to the Irish Government. *Normal* increase in Irish Revenue will not be applied to Irish services. It will reduce the deficit. The Irish Government, however, will have supplementary powers of taxation.

An Irish Exchequer and an Irish Consolidated Fund will be created, and an Irish Auditor-General appointed. Further, a joint Exchequer Board, consisting of Treasury and Irish officers, will adjust the accounts between the two Exchequers, based upon what it declares to be the actual cost of Irish services when the Act comes into operation. If the Irish Government, using its supplementary powers of taxation, increases or reduces taxes, the Exchequer Board will vary accordingly the sum to be paid by the British to the Irish Exchequer on account of Irish expenditure, and it will determine the effect of any other changes taking place in the relations between the two Exchequers. Lastly, if and when normal increase of Irish revenue puts an end, during a period of three years, to the existing deficit, the Exchequer Board [143] will make a report to that effect, and the financial arrangement between the two countries will then be reconsidered in order to secure a fair contribution from Ireland to Imperial expenditure.

The Government, as I have stated, estimates the revenue of 1912-13 at £10,839,000. That sum represents the whole "true" revenue of Ireland, viz., taxes and miscellaneous, £9,485,000; Post Office Revenue, £1,354,000. The Imperial Government adds to this revenue of £10,839,000 a free gift of £500,000 at the cost of the British taxpayer, in order to give the Irish Government a fair start. The total Irish income in the year 1912-13 will therefore be £11,339,000.

On the other side of the account, the Imperial Government retains in its own hand various Irish Services, termed in the Bill "*Reserved Services*," described later. It transfers from

the British to the Irish Exchequer the sum allotted to Irish Expenditure (outside the Reserved Services), estimated in 1912-13 at £5,462,000, the cost of the Postal Service £1,600,000,[104] and £500,000, the free gift mentioned above, making a total transfer of £7,562,000.

If in the future the sum of £5,462,000 allotted to Irish Expenditure and the free gift of £500,000 are exceeded, the Irish Legislature must provide the necessary ways and means.

The transfer of £7,562,000 from the British to the Irish Exchequer leaves a balance on the British Exchequer on the
[144] Irish Account of £3,777,000[105] free to that extent to meet the charge of the Reserved Services.

These Reserved Services are:

(1) Old-age Pensions £2,664,000
(2) National Insurance Labour Exchange £191,500
(3) Land Purchase £761,000
(4) Constabulary £1,377,500
(5) Collection of Revenue £298,000
Total £5,292,000

Therefore the excess of Irish Expenditure in 1912-13 over Irish Revenue as provided results in a deficit of £1,515,000 payable by the British taxpayer, and if the free gift of £500,000 by the British taxpayer included in the provided revenue be added, the total charge on the British taxpayer in 1912-13 on account of Irish Expenditure is £2,015,000.

This annual gift of £500,000 is after three years to diminish yearly by £50,000, until a minimum of £200,000 is reached, which will eventually represent the gift of Great Britain to Ireland, until prosperity or good management enables Ireland

[104] It is not clear from the Bill or the explanatory paper, whether the Irish Postal Revenue will be paid into the British Exchequer in the first instance, or retained in the Irish Exchequer. I presume the former.
[105] £11,339,000 minus £7,562,000 = £3,777,000.

to pay her own way, and at the last to make a contribution to Imperial Expenditure.

The Government estimates a normal growth in Irish Revenue of £200,000 a year, which, to the extent it is realised, will reduce the deficit payable by the British taxpayer.

The Imperial guarantee on Irish Land Stock is to continue in full force.

Effect of Future Modification

If the Imperial Parliament increases or reduces taxation, the change will not affect the Irish Budget, for the transferred sum will remain unaltered. [145]

The Irish Parliament will have power to reduce taxes levied in Ireland. It will also have power to impose taxes. It may add at will to Excise duties, and if so the Customs duties on beer or spirits must vary with the Excise duties. It may levy new duties which do not interfere with the Imperial system of taxation—for instance, a house duty, or establishment licences. It may add to Income-tax or death duties, and also to Customs duties (other than beer and spirits) provided that the addition does not exceed 10 per cent. of their yield. This 10 per cent. resembles the "centimes additionels" which are levied in foreign countries on direct taxes, and are applicable there to local expenditure. But the Irish Parliament must not trench on Imperial taxes. This increase or reduction of Irish duties will not affect the British Exchequer, but it will increase or diminish the "sum transferred" to the Irish Exchequer.

The Irish Parliament will not have power to tax articles not subject to Imperial taxes for the time being. If in the exercise of its power it differentiates Customs or Excise duties in the two countries, there will be a differential duty on such goods passing from one to the other.

Public Works Loans granted before the passing of the Home Rule Act will remain under the management of the Imperial

Government. Future loans will be managed by the Irish Government.

The Irish Parliament will have power to raise loans on the security of the "transferred" revenue, sufficient provision being made for interest and sinking fund. If the Irish Government desires it, the Exchequer Board above-mentioned, may issue an Irish Loan, deducting the charge from the sum "transferred" to Ireland.

[146] Such are the provisions of the Bill. It cannot be denied that they appear complicated, but they will be found less so in practice. The machinery of financial administration in a great State is necessarily complicated, and a radical change in that machinery involves a multitude of changes in detail for which the reforming Act must provide. Root and branch opponents of Home Rule naturally criticise those provisions, and exaggerate with *Ulster* vehemence the administrative difficulties which attend radical change, but the advocates of great measures, while recognising difficulties can take juster views of their extent, and they know that they can be surmounted.

In the first place an expert body (the Exchequer Board) will interpret the financial provisions of the Act. It will consist of two members appointed by the Treasury and two by the Irish Government, and a chairman appointed by the Crown. Their decision is to be final. On these questions there is therefore no power reserved to the Imperial Government, which might cause friction. The Chairman should probably be a man of judicial rank. Possibly a case might arise in which a revision of the Board's decision would be needed. So far this important section of the machinery is not complicated. In the next place the Imperial Government remains responsible and liable for all the "reserved" services. Here again there is no complication. *Thirdly*, the Customs and Excise Clauses appear complicated, but they are for the most part machinery clauses, common to Revenue Acts. *Fourthly*, the Free Trade Clause offends of course the Unionist-

Protectionist party, but its merits need not be discussed here. I venture to doubt where Ireland is likely to set up a Protectionist policy against Great Britain. Our market is too important to her. If such a policy were established, history tells us that British Protectionists will not consult Irish interests. Lastly a certain, [147] but not a great, inconvenience will attend the taking of an official record of goods passing between the two countries essential to determining the true revenue of Ireland.

Thus the apparent complications of the Bill dwindle greatly on examination. The Bill of 1912 is no doubt much less simple than that of 1893 as introduced by Mr. Gladstone, but that Bill was not, however, so simple as it appeared. It was based on the principle of autonomy, but it retained great powers in Imperial hands. In fact it gave autonomy as far as autonomy was practicable. Circumstances have changed much since 1893, and the problem is now in some respects easier. The pivot and crux of Mr. Gladstone's scheme, the Imperial contribution, has, for the time, disappeared.

Sir Henry Primrose's Committee adopted unanimously and unhesitatingly the principle of simplicity. They recommend that the power of imposing and levying all taxation in Ireland, subject to reservations on questions of trade and of foreign relations should rest with the Irish Government. They urge that that policy accords with the general policy of Home Rule, as removing causes of friction, as avoiding need for revision of the arrangement (excepting a future question as to an Imperial contribution), it terminates the extravagance inherent in the partnership, and makes the responsibility of the Irish Government for Irish administration complete.

The Committee examine the objections to the grant of complete power of taxation, viz., that (1) it would break up the fixed unity of the realm; (2) that it would impair facilities of trade between the two countries; (3) and that it is at variance with the principle of a Customs Union, said to be a feature common to federations. [148]

On the first point the Committee reply:

> (1) That in their view the Irish Government should have power to impose Customs duties only for the purpose of raising revenue, and that the Imperial Government should reserve questions of tariff, and foreign relations. Thus fiscal unity on important points would be maintained. For sixty years from the Union separate machinery existed for the collection of different rates of duty in the two countries. If Union could dispense with fiscal unity, *a fortíorí* can any less close form of association do so.
>
> (2) The Committee do not attach importance to the second objection. The Custom House does not seriously trammel the convenience of traders between this country and the Continent, and it was found endurable when the variance between England and Ireland was more formidable than now.
>
> (3) On the third objection the Committee argue that a Customs Union is indispensable, when the boundaries of federated states form a ring fence. It is not indispensable when, in a case like that of England and Ireland, the two countries are separated by sea.

These reserves diminish, of course, the severe simplicity of the scheme, and the Committee's answers to objections admit some inconvenience to trade, but a great change like that of Home Rule must have some drawbacks, and in the opinion of Home Rulers, the end to be gained far more than compensates for slight inconveniences which attend its execution. It is certain, moreover, that, whatever may be the measure adopted, it will be [149] necessary to take means for ascertaining the “true” Revenue of Ireland, and to that extent there must be some slight interference with trade.

I agree with the Committee in their preference for the simplicity of complete autonomy.

Sir Henry Primrose and his colleagues agree to a great extent with a Minority Report of the Financial Relations Committee

(1896), signed by Lord Farrer, Mr. Bertram Currie and myself. The advantages of complete autonomy are obvious, and I cannot avoid a regret that it has not been possible to adopt it. I note, however, that the greatest Irish authority on Irish Government, Lord Macdonnell, though in favour of Home Rule, is entirely opposed to the grant of fixed autonomy to Ireland.

We must not misunderstand the relations of the Committee to the Government. They were not appointed to draw a Home Rule Bill. They were to ascertain and consider the fiscal relations between Ireland and other parts of the United Kingdom as they exist to-day, paying special regard to the changes which have taken place in revenue and expenditure since 1896, the date of the Report of the Royal Commission; to distinguish between Irish Local Expenditure and Imperial Expenditure in Ireland; and to consider, in the event of Home Rule being established, how the revenue required to meet the necessary expenditure should be provided. The function of the Committee was, therefore, purely financial. They had to collect financial information, a necessary preliminary to a consideration of the Bill, and to advise as to the method of providing the revenue required. They had no mission to examine the political conditions which must be satisfied by a Bill designed to effect a Constitutional Revolution. That [150] was the function of the Cabinet. The Committee, limiting itself to its instructions, recommended the method of raising revenue which they thought wisest, independently of any but financial considerations. The Government consider the question from a wider point of view. Their measure must be founded on policy as well as finance. They do not adopt the Committee's recommendations. They decide to retain for a time, more or less indefinite, a closer relation between the two financial systems. Much as I should like greater simplicity, a study of their measure leads me to the conclusion that its provisions are, in the main, wise. Let us then consider how far the provisions of the actual Bill satisfy the conditions needed to insure the success of Home

Rule.

In the first instance, and for an uncertain number of years, the Imperial Government keeps a tight hand upon the Irish Government. It reserves large powers enabling it to reject, postpone, or test the validity of Irish Bills. It regulates and levies all taxes, and fixes postal rates. It secures the interests of various classes of public servants, and retains temporarily the police under its own control. It fixes Irish Local Expenditure at a certain sum, and it issues that sum yearly to the Irish Government together with a free gift of £500,000 a year for three years, falling gradually to a permanent gift of £200,000. *Normal* increase of Irish Revenue is appropriated to reduce the deficit to be borne by the British Exchequer. If, therefore, the Irish Government increases its own expenditure beyond the fixed sum allotted to it, it must find the revenue required, and for that purpose powers of taxation are given to it.

The nursing hand of the mother is, in fact, present at every
[151] point of the Bill, but it must be remembered that a hostile step-mother may, at any time, replace the kindly mother.

There is no escape from the conclusion that these reservations restrict the autonomous power of the Irish Government. On the other hand, the whole spirit of the Bill marks the greater part of them as temporary. The Bill, in fact, confers autonomy by gradual steps, and holds out prospects that eventually the relations between the two countries will be simple and workable. At the outset, and for some time onward, the Irish Government, freed from liability for the costly "reserved" services which the "partnership" has bestowed or inflicted on Ireland, will occupy itself with the organisation of its own home administration. It starts with no previous experience of administration, and it is clearly desirable that it should proceed by steps, gathering experience as it goes. Its field of work at first should not be too wide, and six years is not too long a period for it to reform and reconstitute its administrative organisation. This is its first duty,

and it undertakes it under favourable conditions.

In six years the constabulary will be transferred automatically from the charge of the Imperial Government to that of the Irish Government with the sum allotted to its support.[106] That sum will be increased by any saving which accrues to the British Exchequer from the transfer, and in determining that sum regard is to be had to the *prospect* of any increase or decrease in the cost [152] of the service, expected to arise from causes not being matters of administration.

In the next place, the Irish Parliament may, at any time, on twelve months' notice assume the legislative and executive control of three reserved services, viz., Old-age Pensions, National Insurance, and Labour Exchanges. If they are taken over, the sum transferred with them will be determined on the same principle as in the case of the constabulary. Autonomy, therefore, in regard to these services is granted to the Irish Government, and they will only be retained under the control of the Imperial Government, if, and so long as the Irish Government desires it.

The Postmaster-General said in his speech on the introduction of the Bill that the old-age pension charge is now practically at its maximum, gradually diminishing, and the Primrose Committee (paragraph 54), estimate the charge at the time when the Bill becomes law at £3,000,000. The question then arises what will be the amount transferred, if the Irish Government, seeing its way to more economical administration, were to give at once the twelve months' notice and take over the service at the end of a year. It would not, I presume, be £2,664,000 the charge at which

[106] The Constabulary charge is fixed at first at £1,337,000. If in the six years of Imperial control the cost rises to (say) £1,500,000-£1,500,000 will be the sum transferred; but the Bill does not say what is to happen if the cost were to fall to (say) £1,300,000. Explanation is needed as to the effect of the proviso that regard is to be had to the prospect of any increase or decrease expected to arise from causes not being matters of administration.

the Treasury in its "outline of financial provision" (paper 6154), estimated it in 1912-13, but £3,000,000, modified to some extent by the prospect of reduction.

The cost of National Insurance and Labour Exchanges is estimated by the Treasury in 1912-13 at £191,500, increasing by £300,000 in ten or fifteen years. If the Irish Government were in like manner to take them over, the amount transferred would, I presume, be £190,000 with a sum added representing the prospect of increase.

[153] In the event then of those services being taken over by the Irish Government, they would considerably exceed their charges as estimated by the Treasury for 1912-13, and the excess would entail a corresponding increase of charge on the British taxpayer, to be counterbalanced gradually by the normal increase of Irish revenue, which the Postmaster-General estimates, with due reserve, at £200,000 a year, and by the gradual reduction (£50,000 a year) of the free gift of the British taxpayer from £500,000 to £200,000.

It must be remembered that these increased charges on the British taxpayer are not the result of Home Rule, they are an inheritance from the "partnership."

When these services are transferred from the Imperial to the Irish Government, the Imperial Government will only retain control over the land purchase charges and the regulation and collection of taxes. The former will apparently remain permanently with the Imperial Government, involving an estimated increase of charge on the British taxpayers of £450,000 a year (Treasury Paper 6154). With regard to the latter, it is clearly desirable that at the outset the Imperial Government should be responsible for levying and collecting taxes. If difficulties on that subject should arise in parts of Ireland, the Imperial Government will settle them with an authority which the new Irish Government cannot possess. Clause 26, however, holds out a possibility hereafter of extended autonomy to Ireland. If for

three years the revenue of Ireland exceeds the expenditure on Irish services by the Imperial and Irish Governments, the Parliament of the United Kingdom will revise the financial provisions of the Home Rule Act, with a view to securing a proper contribution from Irish revenues to Imperial expenditure, and extending the powers of the Irish Government *with respect to the imposition* [154] *and collection of taxes*, and if extension were then granted in a liberal spirit, there would be little left to desire.

Conclusion

I have thus traced the gradual progress towards autonomy contemplated by the Act. It justifies the conclusion that the Government favours autonomy, but seeks to achieve that end gradually and tentatively. With the path thus marked out, it lies with the nation to pursue steadily and resolvedly the great end of reconciliation with Ireland.

It is impossible to consider Home Rule in its financial aspect, without casting a look backward and comparing the result which would have followed the grant of Home Rule in 1886 with the result which has followed its refusal. In the former case Ireland would have been reconciled long ago. She would have been mistress in her own house, and it would have been her interest as well as her policy so to conduct her administration as to insure the success of her autonomy. She would have had full opportunity for reorganising her establishments on a reasonable scale, substituting for an expensive military police an ordinary police, with a saving, as Mr. Gladstone once pointed out, of £900,000 a year. She would have been able to maintain the reasonable contribution to Imperial expenditure which it is her duty as an integral part of the United Kingdom to provide. It would have been worth the while of Great Britain to make a great sacrifice at the outset to attain this solution of the Irish problem, and long before now the solution would have been complete.

The Conservative Party refused Home Rule. They have held power during sixteen out of the twenty-five years elapsed in [155]

the interval, and they have had full opportunity to try their alternative policy. That policy has not indeed been the twenty years of "resolute Government," a euphemism for coercion, advocated by Lord Salisbury. They have tried a policy of bribes and doles, with the result that the Imperial contribution of over £2,000,000 made in 1885 has been dissipated, and that Irish local expenditure alone shows now a deficit of £1,500,000 and a steadily increasing deficit. In short, a total burthen of between £3,500,000 and £4,000,000 has been inflicted on the British taxpayer. The Leader of the Conservatives has now announced with splendid audacity that if the "partnership" continues, if the Conservatives are allowed still to mis-rule Ireland, and to maintain the baleful spirit of ascendancy, they will endeavour to develop in every possible way the resources of Ireland. That is to say, the policy of bribes and doles is to continue at the expense of the British taxpayer. Let the British taxpayer note that, and let him note also that the Conservative Party will find the ways and means for these bribes and doles not by taxes on the wealthy, but by taxes on the food of the people. Ireland will accept the doles; but she will not be satisfied. She will still clamour at our gates for Home Rule, as she has clamoured since 1886, and she will get Home Rule, but the burthen on the British taxpayer will be
[156] then how much greater than now?

Appendix

This Report of the Primrose Committee, the Treasury outline of financial provisions, and the speech of the Postmaster-General on the introduction of the Bill offer some vague estimates, perhaps more properly guesses, of Irish finance, one of which, Old-age Pensions, extends to twenty years. It may be interesting to throw these figures together, not (God forbid) as an estimate, but as illustrating opinion prevalent among the experts engaged in the preparation of the Bill.

Income:

Estimate for the year 1912-1913 10,839,000

Add free gift of £500,000 to be reduced in nine years to 200,000

The Postmaster-General's Estimate of £200,000 normal yearly increase of revenue in twenty years 4,000,000

Income in twenty years (round figures) 15,000,000

Expenditure:

Sum transferred to Ireland 1912-1913 5,462,000

Post Office, 1912-1913 1,600,000

Old-age pensions (Treasury Paper) 2,800,000

Land purchase (£761,000 in 1912-1913 increased by £450,000) 1,211,000

Insurance £191,500 in 1912-1913 increased by £300,000 491,500

(Say) 11,564,500-11,600,000

Balance available for Constabulary, collection of Revenue, Imperial contribution and Irish services.

It must be recollected that the Irish Government has to provide for increase of Irish services beyond £5,462,000 by taxation.

VI.—The Judiciary, The Police, And The Maintenance Of Law And Order. By Thomas F. Molony, K.C., His Majesty's Second Serjeant-at-Law, Crown Counsel for Dublin.

(1) *The Judiciary*

The Supreme Court of Judicature in Ireland is at present constituted as follows: The Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Baron of the Exchequer, two Lords Justices of Appeal, two Judges of the Chancery Division and six Puisne Judges of the King's Bench Division. On the occurrence of the next vacancy in the office of Lord Chief Baron the office is to be abolished and a Puisne Judge appointed instead. Since the year 1897, six judgeships have been abolished in Ireland, and a large saving thereby effected. The duties formerly discharged by the Probate and Matrimonial Judge, the Admiralty Judge and the two Bankruptcy Judges have been transferred to the King's Bench Division and the number of the Puisne Judges of the King's Bench Division has been reduced by two.[107] With every desire for economy it is believed that the Supreme Court Bench cannot be further reduced without interfering with the efficiency of the public service. The Lord [158] Chancellor of Ireland is appointed by having the Great Seal delivered to him by the Crown, and all the other Judges are appointed by His Majesty by Letters Patent. There are also in Ireland five Recorders and sixteen County Court Judges, who are appointed by the Lord-Lieutenant. The County Court Judges in Ireland are also Chairmen of the Quarter Sessions of their

[107] 60 and 61 Vic. c. 66, 7 Edward VII. c. 44.

respective counties. No Judge of the Supreme Court or of the County Court can be removed from his office except upon the address of both Houses of Parliament. Under the Home Rule Bill the position of existing judges is to remain unchanged, and future judges are to be appointed by the Irish Executive, and can only be removed by a joint address of both Houses of the Irish Parliament which gives them the same independence that the existing Judges now enjoy. Under the Bill of 1893, the Imperial Executive was to have the appointment of Judges for six years after the passing of the Act, but there seems to be no justification for the suspensory period and it has been wisely dropped from the present measure. The Irish Executive will not be "irresponsible and inexperienced" as Mr. J. H. Campbell says in "Against Home Rule—The Case for the Union" (page 54), but will be composed of men who for many years have served in the Imperial Parliament, and are well qualified from their ability and experience to at once take up the reins of Government.

(2) *The Police*

There are two distinct police forces in Ireland. The Dublin Metropolitan force[108] has jurisdiction over the Dublin Metropolitan District, which includes the whole of the City of Dublin and portion of the County. It consists of 2 Commissioners, [159]
7 Superintendents, 25 Inspectors, 187 Sergeants and 1,060 Constables, and costs £154,181 per annum.[109] Portion of the cost is met by a police tax of 8d. in the £ on the rateable value of the district, but a substantial balance—in the present year amounting to £96,466—is borne by the Treasury. The Royal Irish Constabulary[110] has jurisdiction over the rest of Ireland,

[108] 6 & 7 Will. IV., c. 29; 7 Will. IV., and 1 Vict., c. 25; 5 & 6 Vict., c. 24.
[109] Civil Service Estimates, 1912-1913, Class III., p. III.
[110] 6 & 7 Will. IV., c. 13; 2 & 3 Vict., c. 75; 22 & 23 Vict., c. 22.

including Belfast. It consists of 1 Inspector-General, 1 Deputy Inspector-General, 3 Assistant Inspectors-General, 37 County Inspectors, 195 District Inspectors, 235 Head Constables, 2,068 Sergeants and 8,182 Constables. It costs £1,413,069 per annum, the whole of which is borne by the Treasury.[111] There is a fundamental difference between the two forces. The Dublin force has been founded on the model of the London Metropolitan Police, and is essentially a civilian force. It is admirably trained in police duties, and has always discharged its duty to the satisfaction of the citizens. The Royal Irish Constabulary is drilled and trained in the use of the revolver, rifle, and sword in the same manner as are the armed forces of the Crown, and is in every essential a military organization. There is a reserve force always kept at the Depôt in the Phœnix Park which at a moment's notice is available for service in any part of Ireland. The Bill proposes that the control of the Dublin Metropolitan Police be transferred immediately to the Irish Executive, but that the Royal Irish Constabulary shall remain under Imperial control for six years. An Irish Executive which could not control the police force of its own metropolis would be in a ridiculous position, and no believer in self-government can object to the immediate
[160] transfer of the Dublin force to the Irish Executive, and indeed, many think that the same course ought to be adopted with regard to the Royal Irish Constabulary. It has for a long period, been a constant source of complaint that the numbers of the Royal Irish Constabulary, and its consequent cost, are entirely out of proportion to the wants of the country. It was created in a time of agrarian disturbance which has long since passed away, and now that Ireland has been for many years far more free from serious crime than either England or Scotland, it is absurd that in Ireland it should cost 6s. 8d. per head of the population for police, while an equally efficient force can be provided, in England for 3s. 4d.

[111] Civil Service Estimates, 1912-1913, Class III., p. 119.

per head, and in Scotland for 2s. 5d. per head. In Ireland there is one policeman for every 365 inhabitants, while in England and Wales there is only one for every 727 inhabitants.[112]

(3) *Law and Order*

The maintenance of law and order is the first duty of a Government, and if it could be proved that the proposed measure of Home Rule for Ireland would lead to crime and disorder, the cause would lose many of its more prominent adherents. To those, however, who are interested in the administration of the law—and particularly the criminal law—it is obvious that Home Rule will have the effect of still further diminishing crime, and will also enable considerable saving to be effected in the sums now spent on law charges and criminal prosecutions. At the present time, and indeed for many years past, Ireland has been practically crimeless. The Judges at the Spring Assizes, 1912, were unanimous in describing all the counties in Ireland, except two, as peaceable and orderly, and free from serious crime. [161] In two counties—Fermanagh and Carlow—there were no cases whatever for trial, and it was only in Galway and Clare that dissatisfaction was expressed with the present state of affairs, and even in those counties the affected districts comprised a very limited area. The following table taken from the report of the General Prisons Board for Ireland for 1910, shows how the Government have been able to close prisons in consequence of the diminution of crime and reduction in the number of prisoners:

> "The number of prisons and bridewells," says the report, "under the control of the General Prisons Board on the 1st

[112] Taking Census of 1911 as a basis, see Civil Service Estimates 1912-1913, Class III. pp. 111 and 119, Reports of H.M. Inspectors of Constabulary for England and Wales, 1910, p. 135.

April, 1878—the date when the local prisons and bridewells were transferred to the Board—and now is as follows:—

1878.	1910.
4 Convict Prisons.	1 Convict Prison.
38 Local Prisons.	1 Joint Convict and Local Prison.
95 Bridewells.	15 Local Prisons.
	6 Bridewells."

The Unionist Associations of Ireland have recently published a handbook called "The Home Rule 'Nutshell' Examined by an Irish Unionist" in which it is stated (p. 69) "The only crime that is complained of in Ireland is the organized crime due to the inspired agitation of the United Irish League. Without that Ireland would be *comparatively crimeless*." No proof has ever been given that the United Irish League has taken any part in the organization of crime, and beyond all doubt in many instances it has been instrumental in preventing it. It cannot, of course, be denied that in certain parts of the country instances of boycotting and cattle driving occur, but such occurrences will certainly not increase, and are more likely to cease altogether when Ireland is governed by an Irish Executive chosen by the people, and [162] responsible to the people for the good government of the country. The Unionist complaint is, not so much that an Irish Executive will not be able to enforce the law, but that it will be unwilling to do so in certain cases, and will exercise a dispensing power as to whether the decrees of the Courts shall or shall not, in particular cases, be enforced.[113] If it were within the power of the Executive to prevent the police or military from being called upon to protect the civil officers of the law in the discharge of their duties, it would, no doubt, be possible to paralyze the administration of justice, but it is well settled that a sheriff, or anybody charged with the execution of a writ of a competent Court, has the right to require the assistance of constables, and

[113] "Against Home Rule," p. 155.

indeed of any of the liege subjects of the Crown, and that the Executive has no power to prevent such assistance being given. This was laid down by the Common Law Judges in England in the well-known case of "*Miller* v. *Knox*"[114] and still more emphatically by the Lord Chief Baron (Palles) of the Exchequer in Ireland in the case of the Woodford prisoners at the Connaught Winter Assizes of 1886.[115] The Lord Chief Baron said:

> "I desire it to be thoroughly understood that the execution of the decrees of the judiciary in this country does not depend—as it does not, I believe, in any civilised country—upon the will of the Executive who, for the moment, may happen to be in office. Into the execution of our writ we cannot allow any question of party politics to enter. If the law be wrong, let the law be altered by the Legislature, and the judges will, at the moment, carry out the law as altered. They cannot look
> [163] beyond the law. They cannot, in the administration of that law, contemplate alterations at a future time. Their sworn duty is to give to him who asks it that which he is entitled to by law. It is not competent to them, or to any other person, to go behind the law and to ask whether, in his own opinion, or in the opinion of others, the law is just or unjust. With them the only consideration must be that is the law. They are bound to pronounce the law. From that pronouncement there is an appeal to the highest court in the realm. But when judgment is once given—the judgment of a court of law, acting within the scope of its jurisdiction—it is not competent to anyone in this kingdom, I care not how high he may be, to say that a writ regularly issued on foot of that judgment shall not be executed, or to prevent those who by law are bound to aid in its execution from giving that aid and assistance which the Constitution requires."

[114] 4 Bingham, "New Cases," p. 574.

[115] Judgments of the Superior Courts in Ireland published under the direction of the Attorney-General for the information of magistrates (1889), p. 23.

In 1893 the County Inspector of the Royal Irish Constabulary in County Kerry, by the direction of the Executive, refused the assistance of the Constabulary to the Sheriff of the County, when he desired to execute certain writs of the superior Courts in the night time. The Sheriff thereupon applied to the Queen's Bench Division for an attachment against the County Inspector, and the Court unanimously made the order.[116] The Lord Chief Justice (Lord O'Brien) in giving judgment said (p. 238):

> "I wish to point out that, according to the opinion of all the judges who were called in to advise the House of Lords in the case of *Miller* v. *Knox*,[117] refusal, unjustified by the occasion, as, in my opinion, the refusal in the present case was, to protect the sheriff in the execution of his duty, when protection is sought by him, in the honest exercise of his discretion, to enable him to discharge his duty in the execution of civil process, is punishable, by indictment, by criminal information, and, as was established in *Miller* v. *Knox* by the summary process of this court. The official, be he Under Secretary or Chief Secretary (I do not, of course, refer to his Excellency the Lord-Lieutenant), who directed Mr. Waters not to comply with the sheriff's demand for protection, has rendered himself amenable to the criminal law, is liable [164] to be tried by indictment, to have a criminal information exhibited in this court against him, or to be attached by the summary process of this court."

There can be no doubt, therefore, that the Irish Executive will be bound to give assistance and protection to sheriffs or other lawful officers executing any legal process of a competent Court, and if such assistance is not given the Courts will be able to assert their supremacy in the various ways pointed out by the Lord Chief Justice.

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[116] *Attorney-General* v. *Kissane*, 32 Law Reports, Ireland, p. 220.

[117] 4 Bingham, "New Cases", p. 574 *supra*.

A great deal of capital has recently been made in the Unionist Press on account of the promulgation of the *Motu Proprio* "*Quantavis Diligentia*." It has been asserted that this decree applies to Ireland and will necessarily embarrass catholic officials in the discharge of their public duty. The Roman Catholic Archbishop of Dublin has, however, fully explained the meaning of the decree, and has shown that it does not apply to any country where there has prevailed against it, as there has long prevailed against it in Ireland, a custom invested with the conditions required by the Canon Law.[118] He further says (p. 36):

> "The excommunication of the clause *Cogentes*, is not decreed against all who oblige lay judges to compel the attendance of ecclesiastics in their courts. It is decreed against those who do this in violation of the Canon Law. There must first, then, be a canonical offence. It is to that offence that the clause *Cogentes* attaches the penalty of excommunication. But, there being no canonical offence in the discharge of their duty by our Catholic Judges, and Catholic Law Officers of the Crown, our Catholic Police Magistrates and Catholic Policemen, and our laity in general—who were so ludicrously paraded before the public a few weeks ago as the unhappy victims of the *Motu Proprio*—there is in their case no offence to which an ecclesiastical penalty can be attached, and so, no ecclesiastical penalty is incurred."

[165]

Nothing is to be feared in Ireland from the *Motu Proprio* "*Quantavis Diligentia*," and there is really no necessity for the restrictions contained in Section 3 of the Bill, although no person will object to their insertion as a matter of precaution. The Unionists profess to be alarmed at the prospects of Ireland under Home Rule; but when their fears are analyzed they are seen to be illusory, and when their arguments are considered they are found

[118] "The Motu Proprio 'Quantavis Diligentia' and its Critics," by the Archbishop of Dublin, p. 10.

to amount to a single assertion that a great measure of reform is not to be passed, and the will of the people is not to prevail, because a small minority is irrevocably opposed to any measure which will give to the Irish people power to manage their own affairs.

When Unionists complain of an occasional case of boycotting or cattle-driving—and it is almost all they have to complain of now—they should read Lord Durham's report on Canada in 1838, and they will see how favourably Ireland, even in its darkest hour, contrasts with the Canada of that day. Lord Durham adopted the courageous policy of trusting the people, and his policy brought peace, prosperity and contentment to that country. Mr. Asquith's great measure is an embodiment of the same policy, and will be attended with the same results, and indeed the situation could not be better summed up than it was by Mr. John Redmond in the House of Commons three years ago.[119]

> "As it happened in Canada, so it will happen in Ireland—when you throw responsibility on the shoulders of the people, and not till then. Then respect for law will arise in Ireland; then confidence in the administration of justice will arise; and when that day comes, I am perfectly convinced that Ireland will become the most peaceable and most law-abiding, as she is to-day the most crimeless, part of your Empire."

[166]

[119] Speech upon the Address, February, 1909.

VII.—The Present Position Of The Irish Land Question. By Jonathan Pim, K.C.

Introductory

The following chapter contains an account of the change which has been wrought by legislation in the position of the Irish tenant farmer and labourer during the last forty years. The change is large—the benefit and improvement equally great. The task is, however, not much more than half completed. The holdings purchased, or agreed to be purchased, by tenants under the Purchase Acts amount to about 378,000. There remain to be purchased about 227,000. The Congested Districts Board have done good work in the congested districts, but what has been done has hardly gone beyond the experimental stage. The experiments have, to a large extent, succeeded, but their very success enlarges the vista of work to be done in the future. The work of the District Councils in providing better dwellings for agricultural labourers is perhaps more nearly completed. Nevertheless, much still remains to be done.

Under the second section of the proposed Bill "to amend the provision for the Government of Ireland," the "general subject
[167] matter of the Acts relating to Land Purchase in Ireland" is reserved. This would seem to include the Land Purchase work of the Congested Districts Board, but it is doubtful if it would include any part of the Labourers' Acts. Taken in conjunction with the whole scheme of the Bill, and especially with its financial provisions, the wisdom of this reservation is evident. That work which has gone so far and has been so beneficial in its operation should be stopped, or even hampered, in its development, would be an injury which, even the undoubted benefits a Home Government will bring with it would scarcely out-weigh. No doubt Ireland, if thrown altogether on her own resources, could, after a few years' time, continue the work of land

purchase and could finally complete it, but the interregnum would be most mischievous. All those who had not purchased would be dissatisfied, and the Irish Government would be subjected to a pressure which they would find it hard to resist. The danger would be two-fold. On the one hand the Government might attempt to raise money at an excessive rate of interest and would thereby embarrass themselves financially; on the other hand an attempt might be made to force the Government to pass a "Compulsory Purchase Act" and to fix the price of purchase at a much lower figure than could be obtained under a system of free agreement. The Imperial Government itself runs no risk in reserving Land Purchase; on the contrary, it will run less risk under Home Rule than it does now. At the present moment, there is due to the Treasury a sum of about £71,000,000, money advanced for the purchase of land. The amount of the annual instalments payable on this sum is about £2,226,785, and on the 31st of March, 1912, there was due for arrears the sum of £44,156.[120] The purchase annuitants have up to the present discharged their obligations [168] in a most faithful and honest manner. There is not the slightest reason to think that they will act differently in the future, but if, as some political prophets seem to consider possible, they do, in the future, strike against the payment of the instalments they themselves will be the principal sufferers, for under the proposed Bill the Treasury may, out of the sum to be transferred to the Irish Government, before making the transfer, deduct each year the amount then due on account of purchase annuities. This, if it happened to any large extent, would render fresh taxation necessary—a contingency which would certainly not be desired by the Irish Government. The proposed Bill does not contain any specific provision giving power to the Irish administration, in the case of local repudiation, to make the counties in which repudiation had taken place repay to the Irish Treasury such

[120] This sum has, since the 31st of March, been considerably reduced.

sums as they had been forced to pay to the Imperial Treasury. If such a provision were inserted, it would make the position of the Treasury extremely secure.

When Mr. Gladstone introduced his first Home Rule Bill in 1886, the land war was at its height. The country was, on the one hand, full of intense and unreasoning bitterness and resentment, and, on the other hand, of unreasoning terror of the consequences of the change of administration. There are many persons, to-day convinced believers in the policy of Home Rule, who do not regret that the Bill of 1886 failed to pass. Things were not very much better in 1893, although, owing to the Land Act of 1881, the land war was slowly losing its fierceness. Since then a slow, but no less deep and far-reaching, change has passed over the tenant farmers of Ireland. The bitterness and discontent which
[169] rightly possessed them during the whole of the last century have at last given way to more kindly and contented feelings. This is due in a great measure to the large remedial measures passed first by Mr. Gladstone's Government of 1880 to 1895, and afterwards by the Conservative Administration between 1896 and 1905; but it is perhaps even more due to the feeling which has slowly grown up among the agricultural population that, at last, they are being listened to, and that their wants are being attended to, imperfectly, no doubt, but still with sympathy and with a desire to do what can be done to meet them. Whatever dangers may attend the granting of Home Rule now, they will not be the dangers which terrified and controlled public opinion in 1886 and 1893. Almost all the confusion, trouble, and crime of last century was due to the vicious absurdity of the Irish land code and to the miserable condition of the Irish tenant farmers produced thereby. That is now changed and Ireland has become a quiet and comparatively crimeless country. The danger which many foresee under a Home Government is of a different kind. It is rather that the overwhelming peasant vote may render the administration unduly parsimonious and so unwilling to place

any additional burden on the owners of land that a kind of political stagnation may arise therefrom. Ireland cannot, of course, be kept permanently out of the great movements of European thought, but, for the moment, it may be safely alleged that in no part of Europe is property safer. [170]

Part I. The Fair Rent Acts and the Land Purchase Acts.[121]

Two Classes of Occupiers of Land in Ireland—Economic and Uneconomic.

The occupiers of Irish agricultural holdings are of two classes—those whose farms are economic, and those whose farms are uneconomic. By an economic holding is meant one of sufficient productive capacity to support a family at a reasonable standard of comfort without help from outside sources. One class holds land of a fertility, quantity, and situation that enables the occupier to live at a reasonable standard of comfort out of the produce, and pay a rent. The other class also lives on and partly out of land, but land of a character, quantity, or situation that will not support a family at a proper standard of living without extraneous help. In the case of the first class, the fairness of the rent is the most important consideration; in the case of the second, the land and rent are often minor elements in the struggle for existence. The land is either so limited in amount or of so unproductive a character that, without outside help such as the wages of labour, or help from friends and relations, the income of this class would sink below the line necessary for subsistence, and actual starvation would ensue. It has often been pointed out that agricultural rent is in many cases paid in Ireland for farms out
[171] of which no true economic rent is earned. This means, as every economist knows, that, were the ordinary and necessary cost of production, including the remuneration of labour, deducted from

[121] Part I. of this Chapter incorporates the statement on the Land Question prepared by the Right Hon. W. F. Bailey, Estates Commissioner for the Commission on Congestion in Ireland, presided over by the Earl of Dudley. It has been brought up-to-date, but otherwise it is almost word for word as the learned Commissioner wrote it.

the returns from the cultivation of land, no surplus would remain for the payment of rent. Consequently, the rent paid for such land is not true agricultural rent. It is more of the nature of house-rent paid by working men in towns, who, out of the wages that they earn in their various employments, spend certain portions in food, clothing, and shelter. But the Irish peasant, who tries to support his family on an insufficient farm, has not the advantage of having a demand for his labour at hand. He has either to emigrate, to migrate, or to live below the proper standard of decency and comfort. Consequently, he is neither in the position of the farmer nor of the labourer. He is the occupier of a piece of land on which he builds his cabin, and pays a rent which is supposed to be agricultural, but which is really not earned out of the land, but is paid out of whatever other supplementary income he is able to obtain by working for wages in other countries; or by contributions from outside sources. The Irish Fair Rent Acts are supposed to deal only with agricultural holdings. The rents fixed under them are intended to be agricultural and economic rents. It is evident to anyone who has examined the circumstances of the small holdings of the West of Ireland, that the rents assessed on them under the Land Acts in many cases are not agricultural rents, but are payments more of the nature of site rents, or the rents of non-agricultural holdings, which were not supposed to be subject to the provisions of the Irish Fair Rent Acts at all. Were the Land Acts strictly administered, unquestionably the greater portion of the small holdings on the western seaboard and other parts of Ireland would have been excluded, and applications to [172] fix agricultural rents on them would have been dismissed.

Confusion of Treatment of Occupiers of Economic and Uneconomic Holdings.

The importance of the view here put forward lies mainly in the fact that until the passing of the Act of 1891, under which the

Congested Districts Board was created, no attempt was made to distinguish between the two classes of occupiers of Irish land. The occupiers of economic and uneconomic farms were subject to the same laws, and were treated in the same manner. No attempt was ever made to distinguish between the man who could make his rent out of his land and the man who could not. Both were included in the Fair Rent provisions of the Act of 1881, as it was administered, and a rent was assessed on what was practically the site for a cabin as if it were a farm. This confusion of treatment of two different problems renders it necessary to trace the evolution of the Irish Land Acts if we are to understand intelligently the problem that presents itself in dealing with congestion in Ireland, and it is accordingly proposed to sketch shortly the steps by which Irish land legislation has advanced, and how it at present deals with the various classes of holdings that have to be taken into consideration.

Special treatment for the congested districts was not thought of in the earlier remedial Land Acts. The Act of 1881, if strictly administered, as we have seen, would have excluded most of the holdings in such districts. After twenty years' experience of this Act it was found that its provisions, even
[173] though amended repeatedly, did not meet the special difficulties. The Congested Districts were not withdrawn from the operations of the various Land Acts—merely additional powers were given for ameliorating the condition of the people in the defined localities.

The Land Act of 1881 is naturally regarded in Ireland as the sheet-anchor of the peasant—as the Magna Charta of his rights. On the other hand, it has been looked on by many land-owners as an unjustifiable invasion of their rights, and it has often been blamed for results which it recorded rather than caused. To justify that Act of 1881, we must understand the preceding conditions that governed the tenure of land in Ireland.

Complaints against Irish rents are not confined to recent years

or to the last century. A continuous stream of emigration of Protestant dissenters from Ulster went on during the early part of the eighteenth century, and the Irish Government of the day was much concerned at losing so many of their most loyal citizens. In 1729 the Lord-Lieutenant forwarded a report on the subject to the King, which states:

> "One great reason given by the people themselves for leaving the Kingdom is the poverty to which that part of the country is reduced, occasioned in a great measure, they say, by raising of rents in many places above the real value of land, or what can be paid out of the produce of them, if any tolerable subsistence be allowed to the farmers using their utmost industry."

Complaint was also made of the uncertain tenures, the short leases, and "the usual method of late when lands are out of lease," which was "to invite and encourage all persons to make proposals and set them to the highest bidder without regard to the tenants in possession."

[174]

Relation of Landlord and Tenant in Ireland prior to 1860.

The relation of landlord and tenant in Ireland was, down to the year 1860, based on tenure, not on contract. The old feudal tenures imported from England were, during the last two or three centuries, modified and altered by the existing Irish customs. The result was that a period of much doubt and confusion arose, and an extraordinary collection of Acts dealing with land was placed on the Irish Statute Book. In the reign of George III. upwards of sixty of these Acts were passed for Ireland, while six sufficed for England. The following reigns were equally productive in agrarian legislation, and the condition of the occupiers became more and more unsettled and unsatisfactory, and "wild doctrines," to quote the words of the eminent authors of a standard work on Irish Land Tenure, published in 1851, were

agitated, including “extravagant demands for fixity of tenure and compulsory valuation of rents.”

The relation of landlord and tenant, based on tenure that prevailed down to the year 1860, gave no security of occupation to the tenant, and did not protect his improvements, but the cost of ejectment and the legal difficulties of proof that accompanied it exercised a powerful restraining influence in preventing capricious eviction.

Position of Tenants under the Common Law as regards Eviction—in the case of Leaseholds.

During the eighteenth and early part of the nineteenth centuries, while many Irish tenants held under leases or written contracts the great majority were tenants from year to year. Under the Common Law both in England and Ireland, the right of the landlord to recover possession of the land in the case of a lease
[175] or written contract depended on the covenants and conditions in the contract, and no ejectment could take place unless for “a condition broken.”

In the Case of Yearly Tenancies.

In the case of tenancies not created by writing—tenancies from year to year—there was no power of eviction for non-payment of rent under the Common Law. The tenant of such a tenancy could only be ejected by a notice to quit, which notice must expire with the termination of the year of his tenancy. This system caused much difficulty to the landlord, as the onus lay on him of proving the commencement of the tenancy, and, frequently, even where the tenant had failed to pay the rent, eighteen months passed before possession could be obtained.

The Common Law of England and the tribunals that administered it discouraged the forfeiture of tenants' interests,

and the landlord was held strictly to the technical proofs required by law.

The Irish Ejectment Code—how it Pressed against the Tenant.

In Ireland a different course was followed. The Irish "Ejectment Code," which originated in the reign of Queen Anne, had for its object, to quote an eminent Irish lawyer, the expediting and facilitating the eviction of the tenant. It got rid of every formality by which the old Common Law delayed and obstructed the forfeiture of the tenant's estate. Statute after Statute was passed for this purpose. The whole principle of the Common Law was reversed. Chief Justice Pennefather judicially declared that it was a code of law made solely for the benefit of the landlord, and against the interest of the tenant, and that it was upon this principle that judges must administer and interpret it.

[176]

Facilities given for Evicting Leaseholders.

The landlord who sought to evict a tenant holding under lease was, down to the year 1816, obliged to proceed in one of the Superior Courts of law, a practice which caused much expense and delay. When the European peace came in 1815, after the Battle of Waterloo, the fall in agricultural prices rendered it difficult, if not impossible, for tenants to pay the high rents which had been fixed while war prices ruled. An Act was immediately passed (56 George III., c. 88) which enabled an ejectment to be obtained in the County Courts at a small cost, and without delay. In this respect Ireland was forty years ahead of England, as a similar jurisdiction was not given to the English County Courts until 1856.

Facilities given for Evicting Yearly Tenants.

The Irish Ejectment Code applied only to tenants holding under leases or written contracts. As the country advanced, landlords gradually ceased to give leases, and the great majority of small tenants held from year to year. To meet this state of things the Civil Bill Court Act of 1851 extended the ejectment for non-payment of rent to tenancies from year to year. Under the English statutes no similar power was given, and the English landlord was obliged in the case of non-payment of rent to first serve the tenant with a Notice to Quit, and then proceed to evict him by the slow and costly process of an action in the Superior Courts.

The Land Act of 1860 (Deasy's Act).

From this sketch it will be seen that the law governing the relations of landlord and tenant in Ireland became more and
[177] more favourable to the owner. This tendency culminated in 1860, when, by "Deasy's Act" (23 & 24 Vic., c. 154)—which was passed through Parliament without amendment—the relation between landlord and tenant was defined as founded on contract and not upon tenure. The Act proceeded on the assumption that the land is the exclusive property of the landlord, and that the tenant's interest is nothing more than that of a person who has agreed to pay a certain remuneration for the use of the soil for a limited period. It simplified and increased the remedies of the landlord for recovering possession of the land, and rendered efficient the law of ejectment for non-payment of rent and on notice to quit. Thus a default in payment of one year's rent entitled a landlord to evict the tenant and get possession of the land, with all improvements on it, even where such improvements many times exceeded in value the amount due. So also, by serving a Notice to Quit, the landlord could similarly get rid of the tenant without cause, and take possession of the holding and all its improvements, no matter how valuable these might be,

and without having to pay any compensation. The governing principle of the Act was that whatever attached to the freehold became part of the freehold.

Position of the Irish Tenant from 1860-1870.—The Devon Commission reported (1844) that farm Improvements are made by the Tenants.

During the ten years after the passing of "Deasy's Act" the position of the Irish tenant reached its nadir. He had no right of any kind, except such as the contract under which he held gave him. Almost all the improvements which rendered the land capable of being worked were made by him. He had built the houses, erected the fences, made the roads, drained and manured the land, reclaimed it from bog or mountain—generally at a cost [178] out of all proportion to the return—and yet he could be turned out without compensation at the will of the owner, either by the service of a Notice to Quit or by ejectment for non-payment of one year's rent. That the tenants in Ireland made the improvements was universally admitted. The Devon Commission (presided over by a leading Irish landlord) in the year 1844, reported:

> "It is well known that in England and Scotland before a landlord offers a farm for letting, he finds it necessary to provide a suitable farm-house, with necessary farm buildings for the proper management of the farm. He puts the gates and fences in good order, and he also takes upon himself a great part of the burden of keeping the buildings in repair during the term; and the rent is fixed with reference to this state of things. In Ireland the case is wholly different. It is admitted on all hands, that according to the general practice in Ireland, the landlord builds neither dwelling house nor farm offices, nor puts fences, gates, &c., into good order, before he lets his land to the tenant. The cases in which the landlord does any of these things are the exception. In most cases whatever is done

> in the way of building or fencing is done by the tenant, and in the ordinary language of the country—dwelling houses, farm buildings, and even the making of fences, are described by the general word *improvements*, which is thus employed to denote the general adjuncts to a farm, without which, in England or Scotland, no tenant would be found to rent it."

Effects of Political and Economic Changes on the Relations between Landlord and Tenant during the Nineteenth Century.

In the early part of the last century the landlords, for political as well as commercial reasons, encouraged the increase of the tenantry. The political system that prevailed gave the landlord who had a large number of tenants considerable power. The economic conditions of the time made small tillage farming
[179] productive, and the demand caused by an ever-growing agricultural population increased the competition for land, and enabled the rents to be raised. About the middle of the century all these conditions altered. The combined influence of the Famine and of the introduction of Free Trade made it the interest of most landlords to get rid of their small tenants as expeditiously and as completely as possible. Now came the era of pasture and larger farms. Although the population rapidly decreased, the consolidation of farms kept up the competition for land, and rents rose rapidly. The clearances so common from the Famine to 1870 were made in many cases quite irrespective of the non-payment of rent.

Attempts at Reform.—Land Act of 1870.

This state of things led to outrage and constant agrarian disturbance. Various suggestions for reform of the Land Laws were made, but such proposals were usually denounced as confiscatory. Mr. Butt's proposal in 1866 that sixty-three years' leases, with power to the landlord of varying the rent, when

any accidental circumstances increased the value of the land, should be given by every landlord to his tenants, was described by Lord Dufferin as "communistic" and "as subversive of the rights of property." Mr. John Stuart Mill, speaking on a Land Bill introduced by Mr. Chichester Fortescue (May 17th, 1865), denounced the policy of clearing away the small tenants to make room for capitalist farmers. "You cannot," he said, "evict a whole nation." Various attempts to alter the law were defeated, until at length, in 1870, Mr. Gladstone took the matter in hand, and passed his Landlord and Tenant Act—the beginning of a new Land Code.

The justification for the Act of 1870 was the same as for the [180] Act of 1881, which followed it. The tenant had made all the improvements on the land, and yet had no legal property in them. He was liable to capricious eviction from a holding, the value of which was often mainly due to his labour, and he was subject to arbitrary increases of rent.

The Act of 1870 did three things: (1) It gave compensation for disturbance; (2) it gave compensation for improvements; and (3) it legalised the Ulster Tenant Right Custom.

Compensation for Disturbance.

I.—Compensation for disturbance was strictly limited to such loss as "*the Court shall find*" to have been sustained by the tenant. The loss was often held to be the less the higher the rent. The amount of compensation could in no case exceed £250, and was limited to tenancies created after the passing of the Act. No compensation was to be given to tenants who had sublet or subdivided their holdings without the consent in writing of the landlord, or to any tenant under a lease for thirty-one years or upwards, and the landlord had a right of deduction from the amount awarded, for deterioration, &c.

Compensation for Improvements.

II.—The right to compensation for his improvements to be awarded to a tenant when quitting his holding was subject to

so large a variety of exceptions as to greatly limit the number of tenants able to take advantage of the provision.

Even when compensation was awarded, the landlord could deduct from the amount any arrears due for rates and taxes and for the loss due to the non-observance of express or
[181] implied covenants or agreements, and the Court in awarding compensation was required in reduction of the claim of the tenant to take into consideration the time during which the tenant had enjoyed the advantages of such improvements, and also any other benefits he had had.

Ulster Custom.

III.—The legalization of the Ulster Custom did not prevent the landlord from increasing the rent from time to time so as almost to destroy the tenant's interest. The Act did not define the custom, and the onus lay on the tenant of establishing that the particular usage under which he held was within it.

The three great reforms introduced by the Act of 1870, namely: (1) The right to compensation for disturbance; (2) to compensation for improvements; and (3) the legalization of the Ulster Custom—could only be brought into operation by proceedings before the County Court Judges, who were thus entrusted with the administration of the Act.

Failure of the Act of 1870, Causes of.

The Act of 1870 failed in its object mainly for three reasons:

(1) The great variety and complexity of the exceptions from the benefits of the Act.

(2) The principle of administration which, as a rule, tended to reduce the compensation to as low a figure as possible.

(3) The insecurity of tenure of the tenant, and the right the landlord still had of raising the rent at his pleasure. Thus the legalization of the Ulster Custom was of little use, as the landlord could practically destroy all the tenant's interest

> under it by raising the rent. The only remedy was to surrender the holding and go before the County Court Judge for compensation, which was usually much less than the tenant-right would fetch if sold in the open market.

To protect the interest and property of the tenant in his holding and in his improvements, both of which had now legal recognition—it was necessary to give him: (1) Security of tenure at a fair rent; and (2) a special and expert tribunal to decide on the amount of the rent at which he was to hold.

The Land Act of 1881.

The Act of 1881 effected these reforms. It gave the tenant the right to sell his interest in his holding—subject to the landlord's right of pre-emption—it gave fixity of tenure at a fair rent—subject to a fifteen years' re-valuation—and it established a special tribunal to fix the rents.

The principles of the present Irish Land Code—which comprises a large number of statutes—are contained in the Acts of 1870 and 1881. The Act of 1870 recognised for the first time that the Irish tenant had a right of occupation and a property in his improvements. But the Act failed because it recognised these rights grudgingly, and left untouched the power of the landlord to fix what rent he pleased. The Land Act of 1881 for the first time safeguarded the property of the tenant, and reversed the policy of the Act of 1860 (Deasy's Act) by removing the Irish Land system from the domain of contract, and, in a manner, bringing it back to tenure.

Differences between the English and the Irish Land Systems.

To understand the agrarian situation in Ireland it is necessary to keep in mind the fundamental difference between the English [183] and the Irish systems, which was pointed out in the Report

of the Devon Commission. In England, speaking generally, agricultural farms are let by the owners fully equipped with buildings, fences, farm roads, and other improvements necessary for the proper working of the holding. The tenant contracts to pay a rent for the farm so equipped, and, if he finds that the particular holding does not suit him, he gives it up at the end of his contract term, and goes elsewhere. Under this system, what Adam Smith termed "the higgling of the market!" is the easiest test of land value, as it is of all other commodities with regard to which competition is free. In Ireland, on the other hand, the landlord, speaking generally, owns only the soil. The equipment of each farm is the property of or has been effected by the tenant, who is practically a hereditary occupier. The houses, fences, drainage, reclamation, farm roads, and other such necessary improvements have been made by the tenant or his predecessors in title. The landlord owns the soil, and the tenant the necessary agricultural equipment. Consequently, the tenant is not free. He cannot walk out at the end of his term and leave behind him his houses, roads, fences, and drains. Besides, if he goes out, he has nowhere else to settle.

The pressure of competition is so great—as is natural in a country in the greater part of which there is no other employment or industry than that of agriculture—that, very large sums, often far in excess of the value of the land, measured by any standard of productive capacity are paid for the mere right to occupy. Again, the nature of the land, in large parts of Ireland, is such as to prevent owners from working it on the English system of equipped farms. In the poorer parts of the country the land can
[184] only be made to yield a profit to the owner by being worked by small occupying tenants, who, without any economic return, are willing to expend their labour and that of their families. Were such land to be handed back to the owners to be worked by them without the intervention of tenants no profit could be obtained, and the land would go out of cultivation, being below the margin

of economic profit.

Here we have the explanation and the justification of the series of Land Acts from 1870 to 1896. They were an attempt to adjust the law of landlord and tenant to the facts of the case. Before 1870 the law regarded the landlord as the sole owner of the farm, while, in fact, the tenant was the co-owner. The Act of 1870 recognised, to a limited extent, the co-ownership, but gave insufficient relief. The Act of 1881 gave a more complete recognition and relief, and various amendments and extensions were introduced by subsequent Statutes.

Irish Land Purchase and the extent to which it has been carried on by State aid.

Side by side with the legal recognition of dual ownership in Ireland there proceeded a system for the creation of a peasant proprietary by the aid of State loans, when both parties were agreed. The principal Acts under which advances of public money to enable tenants to become proprietors of their holdings were made are:

The Irish Church Act, 1869.
The Landlord and Tenant (Ireland) Act, 1870.
The Land Law (Ireland) Act, 1881.
The Purchase of Land (Ireland) Act, 1885.
The Purchase of Land (Ireland) Act, 1891 and 1896. [185]
The Irish Land Act, 1903 and 1907.
The Evicted Tenant Act, 1907.
The Irish Land Act, 1909.

Irish Church Act, 1869.

Under this Act the Church Temporalities Commissioners were empowered to sell to tenants of Church Lands their holdings at prices to be fixed by the Commissioners themselves. If the tenants refused to buy on the terms offered to them, the Commissioners could sell to the public. The Church Temporalities Commissioners were empowered, if they thought well, to take payment, as to one-fourth only, in cash and to leave the other three-fourths outstanding as a legal charge on the holding, to be paid off in thirty-two years by sixty-four half-yearly instalments.

The Commissioners sold in all to 6,057 tenants at an average price of twenty-two and two-thirds years' purchase of the rents, and the total amount of the money advanced on loan was £1,674,841, which was issued by the Commissioners of Public Works.

The terms of repayment and the rate of interest charged on loans were afterwards altered and reduced under the Purchase of Land Act of 1885, Section 23.

Landlord and Tenant (Ireland) Act, 1870.

Under what are known as the "Bright Clauses" of this Act, the landlords and tenants of agricultural or pastoral holdings could arrange for a sale of their holdings with State aid to be carried out in the Landed Estates Court. Upwards of two-thirds of the price agreed upon could be advanced by the Board of Works, to be repaid in thirty-five years by an annuity, at the rate of five per cent. on the loan. Under this Act 877 tenants purchased
[186] their holdings, and the amount of loans issued was £514,536. The total purchase money paid by the tenant purchasers for their holdings was £859,000, being at the rate of twenty-three and one-third years' purchase of the rents.

The Act of 1881 (the "Gladstone Act").

Under this Act the Land Commission thereby established was empowered to make advances to tenants for the purchase of their holdings, and was enabled to purchase estates for re-sale to the tenants. The limit of advance was extended from two-thirds of the purchase-money (as in the Act of 1870) to three-quarters. The terms of repayment were the same—an annuity of five per cent. for thirty-five years.

Upwards of 731 tenants purchased under this Act, and the advances made amounted to £240,801. These included advances to 405 tenants on seven estates bought under the Act (Section 26) by the Land Commission in the Landed Estates Court.

The Purchase of Land (Ireland) Act, 1885 (the "Ashbourne Act").

Under this Act—commonly known as the "Ashbourne Act"—a sum of £5,000,000 was authorised to be advanced to the Land Commission to enable sales to be carried out between landlords and tenants by agreement, and to enable the Land Commission to purchase estates in the Landed Estates Court for the purpose of re-selling them to the tenants. The Land Commission was empowered to advance the entire of the purchase-money subject to the retention of one-fifth by way of guarantee deposit for a period of about seventeen and a half years, by which time an equivalent amount of the capital advanced had been repaid by means of the sinking fund. This deposit could be utilised if [187] the tenant purchaser made default in his repayment, and if the amount in default could not otherwise be recovered. Thus the landlord vendor was made a guarantor for the repayment of the annuity by the tenant purchaser. (Section 3.)

The advances made under this Act were to be repaid by annual instalments (which included interest and sinking fund), extending over a period of forty-nine years.

In 1888, the £5,000,000 given under the Act of 1883 being practically exhausted, an additional sum of £5,000,000 was advanced to the Land Commission for the purposes of land purchase (51 and 52 Vic., c. 49). Under the "Ashbourne" Acts 25,367 tenants (on 1,355 estates) became purchasers of their holdings, and the loans made amounted to £9,992,536. The rate of sale was seventeen years' purchase of the rents. (Report of the Irish Land Commission, 1902, p. 89.) Under these Acts 101 estates were purchased in the Landed Estates Court for re-sale to tenants, and loans were issued to 2,029 tenants, amounting to £531,277.

Purchase of Land Acts, 1891 and 1896 (the "Balfour Acts").

The funds advanced to the Irish Land Commission for the purposes of land purchase having again become exhausted, Mr. Balfour, in 1891, introduced a new system under which the landlord or vendor was paid in a specially created guaranteed Land Stock (exchangeable for Consols at the option of the vendor), equal in nominal amount to the purchase money. This stock bears interest at the rate of 2-¾ per cent. per annum, and cannot be redeemed until the expiration of thirty years from the date of the passing of the Act of 1891. The dividends and
[188] sinking fund payments required for this stock are paid out of a "Land Purchase Account," established by the Land Commission (Section 4), to which all moneys received on account of any purchase annuity for the discharge of an advance are paid. If this Land Purchase Account is at any time insufficient to meet the dividends and sinking fund payments (owing, for instance, to default in the repayment of instalments), the deficiency is to be a charge on a "Guarantee Fund," established for the purposes of the Act (Section 5). This fund consists of a cash portion and a contingent portion. The cash portion is mainly made up of the Irish Probate Duty (now Estate Duty) grant, and an Exchequer

contribution, and the contingent portion consists of the Irish share of the local taxation (Customs and Excise) duties and certain local grants (Section 5). Any deficiency in the Land Purchase account is to be paid out of this Guarantee Fund. This financial expedient, of course, throws the securing of the repayment of the advances for land purchase on the ratepayers of the county, as any default will be recouped by deductions from the various payments and contributions in aid of rates that make up the Guarantee Fund. The amount of stock that could be issued for each county for purposes of Land Purchase was limited to twenty-five times the share of the county in the guarantee fund by the Act of 1891 (Section 9). This limit, having been reached in the case of Co. Wexford, by Mr. Wyndham's Purchase of Land (Ireland) Act, 1901 (1 Edw. VII., c. 3) the limit was extended to fifty times the share of that county in the guarantee fund. By the Act of 1903 (Section 46) the limit for each county was raised to thirty times its share in the guarantee fund, which limit might be further raised to sixty times where the Treasury, on the certificate of the Lord-Lieutenant, were of opinion that such increase in advances [189] could be made without any risk of loss to the Exchequer.

Taken on the basis of the financial year 1909-10 the Guarantee Fund for all counties of Ireland amounted to £2,797,126. On the above figures the capitalized value of the Guarantee Fund on the thirty times basis is at present £83,913,780, but owing to increases beyond this thirty times limit which have been sanctioned by the Treasury, in certain counties the present capitalized value of the fund stands at £89,323,685.

The total charge on the fund up to March 31st, 1910, was about 48-¾ million pounds in respect of advances made on the security of the fund, and, taking pending applications for advances into account, the approximate charges amounted at that date to about 105 millions.

The Act of 1891 was amended in various respects by Mr. Gerald Balfour's Act of 1896, which introduced, among other

changes, a method of reducing every decade (up to thirty years after the advance was made), the annuity to be paid by the tenant purchaser. As under the "Ashbourne Act" of 1885, this annuity was calculated at £4 per cent. on the purchase money, 2-¾ per cent. being for interest, and 1-¼ per cent. being for sinking fund. Under Mr. Gerald Balfour's system, during the first decade after the purchase the annuity is calculated on the original advance, and during the second and third decades on the portion of the advance which is ascertained to be unpaid at the end of the previous decade. At the end of the third decade the annuity is calculated on the amount of the advance then outstanding and runs until the entire debt is paid off. The Act of 1896 also permitted the Land Commission to dispense with the whole or any part of the guarantee deposit required under the Act of 1885
[190] if the security for the repayment of the advance was considered to be sufficient without it (Section 29).

The number of loans issued under these Acts of 1891 and 1896 to tenant purchasers up to March 31st, 1910, was 46,828, amounting in all to £13,145,762, and being at the rate of 17.7 years' purchase of the rents (Land Commission Report, 1910, p. 110).

Irish Land Act, 1903 (the "Wyndham Act").

I have traced the history of the Irish Land Acts down to 1896. Some short Acts were added to the code during the following years to clear away certain difficulties, and in 1903 Mr. Wyndham brought in and passed his Irish Land Act, which may be said to have opened a new era in Irish agrarian legislation. Under it a new body known as Estates Commissioners was formed, and included in the Land Commission to administer land purchase in Ireland.

Sales under previous Purchase Acts were carried out by holdings. A landlord could agree with one or more of his tenants

to sell them their farms, and if the Land Commission, after examination, found that the particular holding was security for the advance asked for by the tenant, such advance was made irrespective of any other sales on the estate. The Act of 1903 introduced the system of sales by "Estates." A landlord, to obtain the benefit of the Act, is obliged to sell his entire estate, or such portion of it as the Land Commission considers fit to be regarded as a separate estate for the purposes of the Act. The Commissioners, before defining any lands to be an estate, have to consider all the circumstances of the district and of the property. Once the estate is "declared," the holdings comprised in it are dealt with in accordance with the provisions of the Act. Those of them that are subject to judicial rents and are within certain [191] "zones" laid down in the Act are freed from the liability to inspection as to security or equity of price. The Act presumes that a holding subject to a judicial rent which is sold at a price the annuity on which is from 10 to 30 per cent. less than the judicial rent, where that rent was fixed since the passing of the Act of 1896, or from 20 to 40 per cent. less where the rent was fixed before that date, is good security for the payment of the annuity, and that the agreed price is equitable. Holdings not subject to the "zone" provisions are liable in inspection as to security and as to equity of price.

The Act also introduced the system of sales of estates to the Commissioners under Section 6 (the direct sales to tenants by landlords being under Section 1). When a landlord is willing to sell in this manner, the Commissioners, after due enquiry as to the price that should be paid by each tenant for his holding, may offer to purchase the estate for the purpose of re-selling to the occupiers, provided that at least three-fourths of the tenants agree to purchase their holdings from the Commissioners at the estimated price.

To encourage sales of estates, and to enable owners to get such a sum as would give them their net income out of the purchase

money, when reinvested in suitable securities, the Act provided that a bonus of 12 per cent. on the purchase money should be paid to the owner on the completion of the sale. At the same time the tenant was enabled to borrow the purchase money of his holding on easier terms. As we have seen, under the former Purchase Acts, the annuity rate was fixed at 4 per cent., of which 2-¾ per cent. was for interest and 1-¼ per cent. for a sinking fund, the accumulation of which, with compound interest, would repay the sum advanced in about forty-three years. Under the Act of 1903 [192] the annuity rate which the tenant had to repay was reduced to 3-¼ per cent., of which 2-¾ per cent. is for interest and a ½ per cent. for sinking fund. This reduction in the sinking fund lengthens the period over which the repayment will extend to sixty-eight and a half years, and, of course, renders it practically impossible to continue the system of giving decadal reductions in the annuities. The decadal reductions, which were abolished by the Act of 1903, worked out at about 15 per cent. reduction in the annuity every ten years.

The Act of 1903 also enabled owners to sell their demesnes and untenanted lands to the Commissioners, and to repurchase them, or so much of them as the Commissioners approved, with the aid of advances made to them in the same manner and under the same conditions as to tenant purchasers.

The Act also gave considerable powers to the Commissioners of dealing with poor and uneconomic holdings. It enabled (Section 2) parcels of untenanted lands on the sale of an estate to be sold to the following persons:

> (*a*) A person being the tenant of a holding on the estate;
>
> (*b*) A person being the son of a tenant of a holding on the estate;
>
> (*c*) A person being the tenant or proprietor of a holding not exceeding five pounds in rateable value, situate in the neighbourhood of the estate; and,

> (*d*) A person who within twenty-five years before the passing of this Act was the tenant of a holding to which the Land Law Acts apply, and who is not at the date of the purchase the tenant or proprietor of that holding: Provided that in the case of the death of a person to whom an advance [193] under this paragraph might otherwise have been made, the advance may be made to a person nominated by the Land Commission as the personal representative of the deceased person.

This last class (*d*) was intended to provide for the reinstatement of tenants evicted from their holdings within the prescribed time.

It also gives power to the Commissioners to purchase untenanted lands for the purpose of enlarging holdings and of creating new holdings, and to enable this work to be carried out satisfactorily, the Land Commission is given all the powers conferred on the Congested Districts Board by their Act of 1901 for facilitating re-sales of land.

The Evicted Tenants Act, 1907.

A large number of evicted tenants had been reinstated in their holdings under the Act of 1903 or had been provided with new holdings where their former holdings were not available. Large sums of money (drawn from the Reserve Fund established under the Act of 1891, which was made available by Section 43 of the Act of 1903) were expended in equipping these holdings and in financing reinstated tenants where in the opinion of the Estates Commissioners this was necessary. The provisions of the Act of 1903 were, however, found to be insufficient to carry out the intentions of the legislature, and in 1907 Mr. Birrell passed an Evicted Tenants Act which enabled the Estates Commissioners to acquire untenanted land compulsorily for the purpose of providing holdings for tenants who, or whose predecessors, had been evicted from their holdings since the year 1878, and who

had applied to the Commissioners before May 1st, 1907. Up to March 31st, 1911, as many as 12,398 persons had applied for
[194] holdings as Evicted Tenants. Of these 6,276 were rejected by the Commissioners after enquiry; 2,631 did not apply within the prescribed time; 2,830 were actually reinstated in holdings; and 661 were still under consideration by the Commissioners.

Irish Land Act, 1909 (Mr. Birrell's Act).

After six years' experience of the Act of 1903 it became evident that further legislation was required if Land Purchase was to go on. In two important matters Mr. Wyndham's Act needed amendment. Under the financial provisions of the Act the money required for advances to enable tenants to purchase their holdings was provided by the issue of a Stock bearing interest at 2-¾ per cent. But it turned out that at no time after the passing of the Act could the money be raised on these terms, except at a large discount averaging over 12 per cent. The Act provided that a fund known as the Irish Development Grant should bear any loss due to the issue of Stock at a discount. This Fund made available a sum of £160,000 a year. The first issue of Stock under the Wyndham Act was made at 87, or a discount of 13 per cent. Thus, to provide £100 in cash over £113 of Stock had to be issued. The interest on this "excess Stock" was not paid by the tenant purchasers, and was to be provided for out of the Development Grant so long as that Fund was available, and afterwards would fall on the Guarantee Fund, which meant the Irish Ratepayers. In the year 1909 it, however, appeared that the charge for "excess Stock" necessitated by the continual flotation of Stock at a large discount had so eaten into the Development Grant that that Fund had become exhausted, and consequently all subsequent issues of
[195] Stock for Land Purchase purposes would have to be made at the expense of the Ratepayer. Agreements amounting to 56 millions of Purchase Money were pending. To finance these Agreements

a sum of about £250,000 a year for the period of sixty-eight and a half years would have to be provided by Irish Ratepayers, and were all the agricultural land in Ireland to be sold the charge on the ratepayers would amount to an annual sum of £877,000.

It became evident that the Irish Ratepayers would not tolerate Land Purchase on these terms. Mr. Birrell, accordingly, by his Land Act passed in December, 1909, provided that the charge for excess Stock to finance all pending Purchase Agreements should be provided by the Treasury instead of the Ratepayers, thus relieving the latter of a capital sum that might exceed over £7,000,000. As regarded future Purchase Agreements, the Act provided that the Vendors should be paid in 3 per cent. Stock, and that Purchasers should pay an Annuity of 3-½ per cent. instead of 3-¼ per cent.

The other matter in which the Act of 1903 required amendment was as regards the provision of the Bonus. A sum of 12 millions was provided by Mr. Wyndham for the purpose of encouraging landlords to sell. On the assumption that £100,000,000 would be sufficient to complete Land Purchase, this Bonus Fund was distributed at the rate of 12 per cent. on the Purchase Money advanced. This rate was to be continued for a period of five years. On the expiration of that period (November 1st, 1908) it was found that proceedings for sale of Estates had been instituted to an amount of between 70 and 80 millions, and that the amount remaining to be sold would probably approximate to another 80 millions. The Treasury accordingly, in accordance with powers given them in the 1903 Act, reduced the percentage from 12 to [196] 3 per cent. at which rate it would remain for at least five years were a new Act not passed. Mr. Birrell's Act, however, removed the 12 million limit, and provided for the payment of a graduated Bonus at rates ranging from 3 to 18 per cent., according to the number of years' purchase of the rent at which the landlords sell. The old rate of Bonus tempted landlords to stand out for a high price: the new graduated rate offers an inducement to them to sell

at a low price. It was calculated that under the new provisions the capital sum for Bonus would amount to at least 15 millions, which is likely to cost over 17 millions, owing to the necessity for excess Stock.

As before stated, Agreements representing 56 millions of purchase money were awaiting completion through the Land Commission in 1909. In 1903 it had been calculated that the annual output of the Land Commission would be five millions, and at that rate it would take more than eleven years to complete these agreements. The block was due partly to the difficulty of raising more than a limited amount of money in each year; partly to the impossibility of any department dealing with more than a limited number of sales in a year; and partly to the great rush of applications in 1908 when the bonus revision was impending. The Act of 1909, in order to relieve the block, gave Vendors under pending agreements an option to take 2-¾ per cent. Stock at 92 (3 per cent. investment) in whole or part liquidation of their Purchase Money. By virtue of certain statutory regulations, all Vendors who exercise this option will be paid in a special priority sometimes years sooner than if they elected to be paid entirely in Cash. Cash Sales, Stock Sales, and Future Agreements are dealt
[197] with *pari passu*, each class claiming on a separate fund.

Land Purchase under the voluntary system operated least of all in places where its operation would have been most beneficial, and the congested districts derived comparatively little benefit from the Act of 1903.

Table of Number of Purchasers and Amount of Advances under the various Land Purchase Acts

The following table gives a summary of the number of tenant purchasers and the amount of advances issued under the various Acts from 1869 to March 31st, 1912:

TABLE I

Act.	No. of Purchasers.	Amount of Advances.
I—Irish Church Act, 1869	6,057	1,674,841
II—Landlord and Tenant Act, 1870	877	514,536
III—Land Law (Ireland) Act, 1881	731	240,801
IV—Land Purchase Acts, 1885, 1887, 1888, and 1889	25,367	9,992,536
V—Land Purchase Acts, 1891, 1896	46,810	13,633,665
VI—Irish Land Act, 1903	144,630	48,824,884
VII—Evicted Tenants Act, 1907	641	356,487
VIII—Irish Land Act, 1909	5,062	1,435,175
Total	230,175	76,672,925

The following represent the Number of Purchasers and Advances—comprised in cases at present pending under the 1903 and 1909 Acts, (*i.e.*, on March 31st, 1912).

TABLE II

	Purchasers.	Advances applied for.
Act of 1903	118,360	35,794,157
Act of 1909	40,733	7,094,725

(Includes lands of an estimated value of £4-½ millions for the purchase of which the Congested Districts Board are in

[198] negotiation.)

TABLE III

Table giving (1) the Number of Holdings; (2) Area; (3) Poor Law Valuation; and (4) the Purchase Money of (*a*) Lands Sold and Vested; (*b*) agreed to be Sold but not yet Vested; and (*c*) in respect of which proceedings for sale had not been instituted up to March 2nd, 1912:

	(*a*) Lands *sold* and *vested* in purchasing tenants, or in the Estates Commissioners or Congested Districts Board, for resale to Tenants.	(*b*) Lands *agreed to be sold* but *not yet vested* in purchasing tenants (including lands comprised in Estates for the sale of which to the Estates Commissioners and Congested Districts Board proceedings have been instituted.	(*c*) Lands in respect of which *proceedings for sale have not been instituted* under the Land Purchase Acts (the estimated Purchase Money of same being calculated on basis of Purchase-Price of Poor Law Valuation of lands sold to March 31st, 1910, under the Act of 1903).
Acts 1870-1896.			

Number of Holdings	73,812		
73,812			
Area	2,508,938		
2,508,938			
Poor Law Valuation	£1,399,188		
£1,399,188			
Purchase Money	£24,779,176		
£24,779,176			
Acts 1903-1909.			
Number of Holdings	143,618	167,319	
Area	4,637,183	4,291,725	7,301,798
16,230,706			
Poor Law Valuation	£2,418,136	£2,250,372	£3,993,971
£8,662,479			
Purchase Money	£49,202,298	£45,536,851	£82,263,747
£177,002,896			
Gross Totals.			
Number of Holdings	217,430	167,319	
Area	7,146,121	4,291,725	7,301,798
18,739,644			
Poor Law Valuation	£3,817,324	£2,250,372	£3,993,971

£10,061,667			
Purchase Money £201,782,072	£73,981,474	£45,536,851	£82,263,747

NOTE.—This Table is based on the assumption that all the land in Ireland valued as agricultural land will come under the operations of the Land Purchase Acts. [199]

TABLE IV

Table giving Rates of Annuity (distinguishing amounts for Interest and Sinking Fund) and number of years payable under the various Land Purchase Acts:

Purchase Act.	Rate of Annuity.	Rate of Interest comprised in Annuity.	Rate of Sinking Fund comprised in Annuity.	Number of years payable.
1881	5	3-½	1-½	35
1885	4	3-1/8	7/8	49
1891	4	2-¾	1-¼	49
1896	As in Act of 1891, subject to decadal reduction.			73
1903	3-¼	2-¾	½	68-½
1909	3-½	3	½	65-½

Part II. The Statutes Relating to the Relief of Congestion in Ireland.

Two Classes of Occupiers in Ireland—Establishment of the Congested Districts Board

Most of the earlier Statutes which have been summarised in the first part of this chapter deal with the rights and obligations of Irish Tenants without any attempt at Economic discrimination. No distinction was drawn between the occupiers of uneconomic holdings and those who were able to make a living and pay a rent out of their farms. Some slight recognition of the fact that the smaller tenants had a special claim to protection was shown by the Compensation for Disturbance Clause (Section 3) of the Act of 1870, which enacted that a tenant of a holding valued at £10 or under might be awarded a sum not exceeding seven years' rent, while a tenant above £100 Valuation could
[200] not in any case receive more than one year's rent. Beyond that, however, nothing was done. It took many years to get the Irish Administration to understand that something more than "Fixity of Tenure" was necessary if the periodical famines and endemic misery of the poorer occupiers of the West and South of Ireland were to be fought successfully. It was, however, finally recognised that, in many parts of the country, the average character of the holdings was below the level which is necessary in order to make a reasonable standard of living possible, and it was then resolved to adopt special means to meet the evil. The establishment of the Congested Districts Board in 1891 was the outcome of this resolve. It was the first attempt made to discriminate by legislation between the two great classes of Irish occupiers, namely, those whose holdings were capable of affording a means of livelihood and of paying a rent; and those

who were so impoverished as to be incapable of supporting themselves without assistance from outside.

The word "Congestion," as applied to land, has acquired a special and peculiar meaning in Ireland. It has become a term of art, and, like many another word of the kind, has travelled far from its original meaning. It does not mean, as might be supposed, "pressure of population." The definition of a "Congested District" given in the Act of 1891, is a district in which more than 20 per cent. of the population live in electoral divisions of which the total rateable value, when divided by the number of the population, gives a sum of less than 30s. for each person. This definition is, of course, arbitrary, and in fact includes many districts through which a man might drive for miles without seeing a human habitation, and excludes districts in which the population is in truth "Congested." [201]

The word connotes not the over-population of particular localities, but rather the condition of the people in those localities. Owing to various reasons, mainly historical, a population which, having regard to the means of subsistence, may be called excessive, is to be found on the large area of poor land that extends along the western seaboard of Ireland from Donegal to Cork. In some regions it is really "congested" and, as in such places the poverty of the people is most pronounced and obtrusive, the problem was supposed to be one of "congestion," and so the word came to be used. The true area of congestion is, of course, the western part of the Island, but it must not be supposed that the same problem does not arise in other parts of Ireland—(even in the province of Leinster)—in an acute form. This was recognised by the framers of the Land Act of 1909, and now the Estates Commissioners are empowered to purchase compulsorily, not only any congested estate, but also, in the case of any estate which does not as a whole come within the definition of a "Congested Estate," any townlands forming part of the Estate which are themselves "Congested." The definition

of a "Congested Estate" is "an Estate not less than half the area of which consists of holdings not exceeding seven pounds in rateable value or of mountain or bog land or not less than a quarter of the area of which is held in rundale or intermixed plots." There is a further power given to the Commissioners to acquire compulsorily untenanted lands. Under these powers the Estates Commissioners will be able to do for the rest of Ireland what the Board is doing for the Congested Districts, namely: to turn the present uneconomic holdings into economic ones by the addition thereto of other lands; and further, by the consolidation
[202] of holdings held in rundale or in intermixed plots, to put an end to the waste of effort inherent in such a system.

Statutes Dealing with Congestion

(Act of 1891—Act of 1893—Act of 1894—Act of 1896—Act of 1899—Act of 1901—Act of 1903—Act of 1909)

The Congested Districts Board was founded under the authority of Section 34 of the Purchase of Land (Ireland) Act, 1891, to continue for twenty years, "and thereafter until Parliament shall otherwise determine." It was given power (Section 39) to aid migration and emigration within a congested districts county, to sell suitable seed potatoes and seed oats to occupiers, to aid and develop agriculture, forestry, the breeding of live stock and poultry, weaving, spinning, fishing (including the construction of piers and harbours, the supply of fishing boats and gear, and industries connected with fishing), and any other suitable industries. Powers were also given for the enlargement of holdings whether subject to purchase annuities, or to rents to private owners, but these powers were so circumscribed and guarded, as to be unworkable. The Board was granted an income to commence with of £41,250 a year. In 1893 an Act was passed (56 & 57 Vic., c. 35) which gave the Board power to

acquire land and to hold it as landlords for the enlargement of holdings and for the purpose of the Land Purchase Acts. In 1894 another Act was passed which enabled the Board to give to the Land Commission, on selling to a tenant purchaser, a guarantee for the repayment of the annuity. Such guarantee enabled the Land Commission to dispense with their retention of any sum out of the purchase money as a guarantee deposit, a practice which, if followed, would have seriously crippled the operations of the Board. The Land Law Act of 1896 gave power to the Board to obtain an advance from the Land Commission for the [203] purchase of estates "in like manner as if the Board were a tenant purchasing his holding." This Act contained some provisions that greatly hampered the Board. Thus an advance could not be obtained by a tenant valued at under £10 for the repurchase of his holding from the Board. Also Section 40 (2) enabled Court tenants and temporary tenants to obtain advances under the Purchase Acts in the case of sales of estates under the section in the Land Judges' Court. This meant that the lands that were most required by the Board for the Relief of Congestion were commonly disposed of to graziers and others. The Congested Districts Act of 1899 cleared away these two obstacles to the work of the Board, and also enabled the Land Commission to make advances for the redemption of head rents and other "superior interests," and increased the Parliamentary Grant from £6,500 to £25,000. The Congested Districts Board Act of 1901 gave a limited power of dealing with obstructive tenants in the rearrangement of the estates purchased. It also gave the Board all the powers of entry on a holding subject to a statutory tenancy for the purposes of mining, quarrying, cutting timber or turf, opening or making roads, fences, drains, and water-courses, hunting, fishing, shooting, etc., given to the landlord by Section 5 (subsection 5) of the Act of 1881, and further extended these powers to holdings not subject to statutory tenancies. The Act also enabled the Board to purchase land outside a congested

districts county with the approval of the Lord-Lieutenant. The Land Act of 1903 gave facilities to the Board for the purchase of estates, similar to those given to the Estates Commissioners under the Act. It also gave the Board the discretionary power of
[204] deciding whether an advance should be made to a purchaser; of what amount the advance should be; and how far the security was sufficient. The collection of the purchase annuities so made, was, however, still left to the Land Commission. The Act added £20,000 to the annual income of the Board, to be drawn from the Irish Development Grant (Section 38).

Under Mr. Birrell's Act of 1909 the constitution, powers, duties and income of the Board were reconstituted and enlarged. The new Board consists of fourteen members, three of whom are *ex-officio*, namely, the Chief Secretary, the Under-Secretary to the Lord-Lieutenant and the Vice-President of the Department of Agriculture; nine are appointed by the Crown; and two are paid permanent members. The annual income of the Board was raised from £86,250 to £250,000, and its operations were extended so as to comprise the counties of Donegal, Sligo, Leitrim, Roscommon, Mayo, Galway, Kerry, and parts of the counties of Clare and Cork. It was enacted that thenceforward no Congested Estate could be sold under the Land Purchase Acts in a congested districts county to persons other than the Congested Districts Board without the consent of that Board; that the Land Commission before entering into an agreement for the purchase of any land in a congested districts county, should obtain the consent of the Board; and the power of purchasing estates and land compulsorily through the Estates Commissioners was given to the Board within all congested districts.

Up to February 1st, 1911, the Congested Districts Board had purchased estates of the value of £1,813,568, and of this, lands of the value of £1,710,304 then remained unsold. The remainder, so far as they were “tenanted lands,” had been sold to the tenants,
[205] and, so far as they were “untenanted lands,” had been used in

enlarging the neighbouring holdings or in the creation of new holdings. In the latter cases, the new farms were fenced and drained and houses built thereon. On some estates where the tenants held in rundale or had joint rights of grazing over parts of the land, the Board "striped" the whole estate, giving to each tenant an enlarged and compact holding, properly drained and fenced. An example of the excellent work done on such an estate can be seen by anyone who will pay a visit to Clare Island at the mouth of Clew Bay in the County of Mayo. An example of the work done in creating new holdings can perhaps best be seen on the Dillon Estate in the County of Roscommon.

Since the passing of the Act of 1909 the most extravagant ideas as to the powers of the Board have got abroad among the people of the congested areas, and applications are being made to them from every estate—almost from every parish—to purchase and divide up particular lands. The area of the congested counties under their control amounts to 7,658,114 acres, or about one-third of the whole of Ireland. Even assuming that a large number of these applications should not be granted, there still remains a residue of work to be done which would tax the capacity of a Board many times stronger both in resources and staff than the Congested Districts Board.

At the present time the Board is possessed of large tracts of land which they annually let on grazing contracts or which they stock themselves. This is not as it should be, for, when the people see lands taken by the Board used year after year as pasture, they begin to lose faith in the capacity and usefulness of the institution.

It is not the fault of the Board. It would take a much bigger income than they possess and a much bigger staff than they [206] command, to cope with the work which they have to do and which ought to be done.

Parliament has now given them enormous and compulsory powers. Immense pressure will be put on them to exercise these

powers, and in many cases if the powers were exercised it would be for the lasting benefit of the country. If the Board are to carry out fully the work which they have been created to do, the Government must in the near future again come to their assistance. With their present resources, their task is well-nigh impossible.

Part III. Statutes Relating to the Provision of Allotments of Land and Dwellings for Agricultural Labourers in Ireland.

(Act of 1883—Act of 1885—Act of 1886—Act of 1891—Act of 1892—Act of 1896—Act of 1903—Part IV. of the Irish Land Act, 1903—Act of 1906)

Previous to the Act of 1883 little or nothing had been done to meet the want of better housing for the agricultural labourers in Ireland. Their condition was deplorable. The houses in which they lived were almost everywhere throughout the country of the worst description. In fact, they were little better than hovels.

By the Acts of 1883 to 1906, the Rural District Councils of Ireland were empowered to obtain loans to provide suitable dwellings and allotments of land for agricultural labourers. The loans might be applied, subject to the approval of the Local Government Board, for any of the following purposes: the acquisition of land either for new cottages and allotments or for additional allotments; the acquisition of existing houses; the [207] erection of new houses; the legal, engineering and incidental expenses in connection with these purposes. The amount of land which might be allotted to any one labourer was not to exceed one statute acre.

The expression "agricultural labourer" is defined by Section 4 of the Act of 1886 as "a man or woman who does agricultural work for hire at any season of the year on the land of some other person or persons, and shall include handloom weavers and fishermen doing agricultural work as aforesaid and shall also include herdsmen." By Section 93 of the Land Act of 1903 (Part IV. of which is construed as one of the Labourers Acts) the earlier definition is enlarged so as to include "any person (other than a domestic or menial servant) working for hire in a rural district whose average wages in the year preceding the lodgment of any representation under the Labourers Acts affecting him do not exceed two shillings and sixpence a day, and who is not in occupation of land exceeding one quarter of an acre." These definitions are very wide and, practically speaking, enable the Sanitary Authority to provide cottages and allotments for all labourers in rural districts, who are thus placed on somewhat the same footing as artisans in urban districts are placed under the Housing of the Working Classes Act. The Rural District Councils are given power to acquire, compulsorily or by agreement, the necessary lands from the owner either by purchase of the fee simple or on a lease for a term not exceeding ninety-nine years. If the lands are acquired compulsorily in fee, the amounts to be paid to the owners and occupiers are fixed by an arbitrator appointed by the Local Government Board; if the lands are acquired compulsorily for a term of years, the rents to be paid are fixed by the Land Commission. [208]

If the Council cannot agree with the owner as to the price to be paid, they must prepare a scheme showing the lands it is purposed to take, and the scheme must be confirmed by an Inspector of the Irish Local Government Board. Any person interested can appeal, at their option, either to the County Court Judge or to the Local Government Board. In either case the decision is final. There is no appeal against the price fixed by the arbitrator unless the amount awarded exceeds one thousand pounds.

Prior to the passing of the Act of 1906, the loans for the purposes of the Labourers Acts were advanced by the Commissioners of Public Works and were repayable by annuities which included principal and interest. The rates of interest varied according to the number of years during which the annuities were payable, and at the passing of the Act of 1906 were as follows:

Period.	Rate of Interest.	Annuity covering Principal and Interest.
20 years	3-½ per cent.	£7 0s. 9d.
30 years	3-¾	£5 12s. 2d.
40 years	4	£5 1s. 1d.
50 years	4-¼	£4 17s. 2d.

The Act of 1906 enabled the Rural District Councils to obtain advances for the purposes of the Labourers Acts up to 4-¼ millions from the Land Commission out of the Irish Land Purchase Fund, and provided that such advances were to be repayable in like manner as the advances under the Irish Land Act of 1903, that is to say, by annuities at 3-¼ per cent. (covering both principal and interest) and payable for 68-½ years. This
[209] annuity rate has been continued in the case of advances for the purposes of the Labourers Acts by the Irish Land Act, 1909, which Act increased the annuity rate to 3-½ per cent. in respect of all advances for lands purchased under the Land Purchase Acts since September 15th, 1909.

It will thus be seen that the terms of repayment for loans under the Labourers Acts were made much easier by the Act of 1906 than they were under the previous Labourers Acts. That Act further provided that only 64 per cent. of the charge was to be borne by the local rates; the remaining 36 per cent. being defrayed, as to 16 per cent. out of the Labourers' Cottages Fund

established by the Act, and as to 20 per cent. out of the Irish Development Grant. There was placed at the disposal of the Local Government Board the following sums for the purposes of the Labourers' Cottages Fund: A capital sum of £150,000 taken from the Petty Sessions Clerks' Fund; a principal sum of £7,000 taken from the Ireland Development Grant, an annual sum of £6,000 to be deducted from the Exchequer Contribution mentioned in Section 5 of the Land Purchase Act of 1891, and an annual sum of £9,000, equivalent to the savings to be effected by the abolition of two Irish Judgeships and a reduction in the salary of the Lord Chancellor of Ireland.

By an amending Act passed in 1911 a further sum of £36,000 cash, and 2-½ per cent. Consolidated Stock to the nominal value of £30,000, both taken out of the Fund of Suitors in the Supreme Court, were added to the Labourers' Cottages Fund.

The effect of the change made by the Act of 1906 has been to reduce the charge per £100 on the rates from £4 17s. 2d. (the lowest amount payable before that Act) to £2 1s. 7d. the amount payable now—a reduction of almost 57 per cent. [210]

Under the Acts of 1883 to 1896, 22,588 cottages were built, and the loans sanctioned amounted to £3,600,000. Under the Act of 1906, 12,821 additional cottages have been built, 5,057 are in course of erection, and others have been sanctioned or are awaiting sanction. The loans sanctioned under the Act amount to close on 4-¼ millions. This is the amount provided for by the Act of 1906. Another million on the same terms as the 4-¼ millions was provided by the amending Act of last year.

The average cost of each cottage built has been £175, and the average rent paid for a cottage with half an acre of land is 10d. per week, and for a cottage with an acre of land about 1s. per week.

The Labourers Act of 1906 included agricultural labourers in the class of persons to whom a parcel of untenanted land might be allotted by the Estates Commissioners, where the agricultural

labourer had for a period, not less than five years immediately preceding, been resident on the estate or in the immediate neighbourhood thereof, but it provided that in no case should any advance be made to a labourer to purchase a parcel of land so long as he was in occupation of a tenancy under the Acts. The Act also empowered the Estates Commissioners to make advances to Rural District Councils, as trustees under Section 4 of the Irish Land Act, 1903, to purchase parcels of untenanted land for the purposes of the Labourers Acts.

The Labourers Acts and their administration have been, on the whole, extremely successful. No legislation passed during the last thirty years was more entirely needed, and none has been more beneficial to the country. The benefit is one which no one who travelled through Ireland thirty years ago, and who travels
[212] through it again to-day can fail to remark.

Where dilapidated hovels stood formerly, decent cottages stand to-day. A great deal still remains to be done, but what has been done has been, on the whole, well done. Up to the present there has been no inquiry ever asked for into the working of the Acts. That fact in itself shows that no serious dissatisfaction has been felt with their administration. However, from time to time complaints are heard which should be attended to; complaints as to the unsuitability of the people for whom cottages have been built; as to the size or workmanship of the cottages; as to a number of the cottages, remaining untenanted; and more often as to jobbery in respect of the sites chosen. Considering the amount of work done, it is surprising that the complaints have been so few. Nevertheless, it would be well that an inquiry should be held. It would tend to prevent any existing abuses from increasing.

Part IV. Compulsory Registration of Land in Ireland.

In the year 1865 a Record of Title Act was passed for Ireland. Its operation was confined to lands sold through the Landed Estates Court. About 680 titles were recorded under it. It failed, largely because it was not compulsory.

In the year 1891 the Local Registration of Title (Ireland) Act was passed. All lands sold under the Land Purchase Acts and vested in purchasing tenants subject to land purchase annuities, are thereby required to be registered in the central or local offices of the Land Registry. There is a local office in each county in [213] Ireland and a central office in the City of Dublin, which is also the local office as regards lands in the county of Dublin. When the holdings are vested in the purchasing tenants by the Land Commission that department furnishes to the Land Registry the necessary particulars for the registration of the lands. These particulars are entered on the registers and the boundaries of the holdings are delineated on the registry maps. A certificate, which is a copy of the folio of the register, is then issued to the purchaser.

All subsequent dealings with the land must be registered, and no estate is acquired by the transferee of registered land until his name is put on the register as owner of the lands transferred (Section 25).

All registered land is divisible on the death of the registered holder intestate "*as if it were personal estate*" (Section 85).

Lands acquired by Rural District Councils under the Labourers Acts are also compulsorily registered in the Land Register.

The title of each purchasing tenant is registered on the application of the Land Commission and without any application by him. As no investigation of any of these titles is possible, each holding is registered "subject to equities," that is, subject to any rights of third persons interested in the land. Before a transfer of the holding is executed these equities are, as a rule, discharged.

When the work of the Land Purchase Acts has been completed, practically the whole land of Ireland will be registered. The

principal effect of such registration will be to facilitate the sale of land by reducing the cost and simplifying the process of transfer.

[214] Registration of title exists wherever a peasant proprietary has been established. It is almost a necessary concomitant of such ownership.

The Irish Act has been conceived on right lines, but it will in the near future need much amendment.

It needs simplification. The process of registration is too complicated and too slow; there are too many burdens on the lands which do not require registration, and in consequence, there are too many matters which, on a sale, must be inquired into and so add to the price of transfer. Above all, registered land should be declared to be personal property and should not merely be made to descend "*as if it were personal estate*." These words have already on numerous occasions occupied the attention of the judges, and their full meaning has not yet been made clear. The effect of the various decisions is that, while registered land descends on a death intestate to the next of kin as if it were personal estate, for every other purpose it is to be regarded as "real estate." To a lawyer the position is full of interest; to the ordinary layman it is absurd; for the community it is most mischievous.

[215]

Part II. A Historical Argument

VIII.—Irish Nationality. By Mrs. J. R. Green

> "Justice requires power, intelligence, and will."—(*Leonardo da Vinci*.)

"Sinister information," reported a Governor of Ireland under Henry VIII., "hath been of more hindrance to the reformation of Ireland than all the rebels and Irishry within the realm." The complaint is as true to-day as it was nearly four hundred years ago, for false tongues still gain power through ignorance. Irish history has the misfortune of being at the same time trite and unknown. Men hear with the old acquiescence the old formulæ, and the well-known words carry to them the solace of the ancient prejudices.

There is indeed in these latter days a change of accusation. In former times Irishmen were marked off as an inferior people, but within the last few years the attack is altered; and it is now the fashion to assume that the Irish fail, not as individuals, but only in their corporate capacity. To Irishmen is still denied "the delight of admiration and the duty of reverence." Holding in their hearts the image of a nation, they are warned not to ask whether it was a nation of any value, whether there has been any conspicuous merit which justifies the devotion that the Irish people feel to their race, and which may claim the regard of [218] others. For it is not enough to have the mere instinct of passion

for our country, unless our heart and reason are convinced that we give our allegiance to a people that, in spite of human errors, has been of noble habit and distinguished spirit.

The policy of "Unionist" leaders is to meet the Irish desire for an uplifting pride in the life of the Irish commonwealth by a flat denial. Ireland, we are told, is not, nor ever has been, nor ever can be, a nation. A disorganized and contentious people, incapable of rightly using any polity Irish or English, we have not, it is said, even the materials of a nation. We are only "material," to use an old Irish expression, for an Empire. The island in fact was never a kingdom till England gave it a king worthy the name; so how could it be a nation? To the gift of a king England added her invention of a Parliament, but the failure of Parliament in Ireland was open and flagrant; how then talk about a nation?

> "There are Englishmen and Scotchmen," says Mr. Balfour, "who really suppose that England has deprived Ireland of its own national institutions, has absorbed Ireland, which had a polity and a civilization of its own—has absorbed it in the wider sphere of British politics; and who think that a great wrong has thereby been done to a separate nationality.... It is a profound illusion. It has no basis in historical fact at all."

He gives a history of his own.

> "Those whom the Nationalists choose more particularly and especially to call Irishmen, namely, the original inhabitants of Ireland—those who were there before the Celt and before the Saxon and before the Norman—never had the chance of developing, they never could have developed, a polity of their own, any more than the Highlanders. That does not mean that they are in any sense inferior, but it does mean that all this talk of restoring to Ireland Irish institutions, and of governing Ireland according to Irish ideas, has no historic basis whatever."

[219]

It is for such wayward imaginings that the historic claim of Ireland is denied. What meaning shall we give to this new dogma of the partiality of Nationalists for some pre-Celtic race—whether Iberian, or whether (as some explain the phrase) Finn MacCumhaill and his followers, ingeniously regarded by Mr. Balfour as having adorned Ireland before the Celtic age? Where was the "Saxon" settlement in Ireland between the Celts and the Normans? What is the comparison of the Highlanders with the original inhabitants of Ireland? Why should Mr. Balfour's doubts of a pre-Celtic polity put an end to all talk of Irish institutions and Irish ideas?

To come to somewhat later times, under the clan system, says Mr. Balfour, it was impossible to rise to civilization. "And when England dealt with Ireland, Ireland was completely under the tribal system" (a theory false to history). The superior English polity in due time, however, spread its hand over Iberian chaos. "An Irish Parliament is a British invention"—the word, with Mr. Balfour's easy adjustment of history to politics, is probably chosen to give the Scotch a gratuitous share in the credit, with a compliment to their spirit; for, as he says, "my Lowland ancestors in Scotland had precisely the same contempt for my Highland fellow-countrymen as the English had for the Irish in Ireland"—(the word Lowland being here misused in a non-historic sense). "Every political idea in Ireland is of English growth—the Irish dependent Parliament, the Irish independent Parliament—it is all of British extraction." Mr. Balfour seems to imagine in his indifferent way that the "dependent form" was the first; he seems to guess that it was a single form, "*the* dependent Parliament"; and he calls his "independent Parliament" "a [220] practically sovereign legislature." It would be hard to gather more fundamental errors into one sentence. At any rate in his simplified scheme both forms of "the British invention" failed in Ireland. But in the success of the Union and the assembly at Westminster, England has established successfully what Mr.

Balfour calls “the unity which we have inherited from our forefathers.”

Such are the “General Principles” which Mr. Balfour—speaking with all the authority of an “Unionist” statesman, head of a great English party, leader for a generation of those who refuse to Ireland any claim to national memory or national hope, absolute ruler for four years of that island—has issued in his book “Aspects of Home Rule” to rally his followers. This confusion of fictions, in all their brave untruth, furnishes the historic background and justification of the Unionist creed. We might not easily expect an “Imperial” leader so far to forego respect for himself or for his public.

There is an Old Irish proverb: “Three candles that illumine every darkness: truth, nature, knowledge.” But Mr. Balfour is as a man for his pleasure wandering in the dark among the tombs of vain things. And from places of death comes as of old “sinister information” to minister to ignorance and prejudice, and to be still the hindrance to the reformation of Ireland.

These comprehensive charges cover the two strongly-contrasted periods of Irish history—the period of Gaelic civilization, and that of Norman, or later of English settlement. All races are alike condemned. The one people had no institutions. The other misused what were given to it. In either case the fault is said to be “Irish”—the general word of contempt. Confounded together by Mr. Balfour for his own
[221] purposes, the two accusations have nothing in common, and must be separately considered if we wish to think justly.

We may, however, observe that to both races is denied the praise of a “nation” or “nationality.”

The definition of a “nation” may be varied: every man has his opinion, for, as the old Irish saying went, “'tis his own head he has on him.” But in the matter nature and history cannot be wholly set aside, and we may attach some importance to the unity of a country, the persistence of its race, and the

continuity of its life. If we consider outward form, who ever thinks of the map of Great Britain as a whole? The form that is in men's minds is of two configurations, one of England and one of Scotland, two countries mapped out on separate sheets. The names of the countries have changed, Alban and Scotland; Britain and England; and the title of the whole is a somewhat awkward evasion or compromise. Ireland on the other hand has its unchangeable boundaries fixed by the Ocean, its provinces from immemorial times subordinate territories of the undivided country. Its successive peoples, perhaps for some four thousand years, have never known it but by one name, Erin; or by the variations of that name as it passed into other speech, Iberia, Hibernia, Ire-land. The Old Irish knew it some fourteen hundred years ago as their "Fatherland." As far back as we can go the unity of the country as a whole is prominent in their thought; as, for example, in an ancient poem on the passing of the pagan world and the triumph of Christianity:

> "God's counsel at every time concerning virgin Erin is greater than can be told; though glittering Liffey is thine to-day, it has been the land of others in their turn."

In the Middle Irish period a legend of the coming to Tara of [222] the most ancient of all the sages carried to the people the same rapt love of Ireland. When all the assembly rose up before him:

> "There is no need to make rejoicing for me, for I am sure of your welcome as every son is sure of his foster-mother, and this, then, is my foster-mother," said Fintan, "the island in which ye are, even Erin, and the familiar knee of this island in which ye are, namely, Tara. Moreover it is the mast and the produce, the flowers and the food of this island that have sustained me from the deluge until this day. And I am skilled in its feasts and its cattle-spoils, its destructions and its courtships, in all that have taken place from the deluge until now."

Every race in turn that entered Ireland drank in the spirit of the soil: all became citizens of the one land. Even that gift of "English invention" and "British extraction," the Pale Parliament, was by mere human nature and necessity stirred to loyalty for "the land of Ireland." "More conveniently," so they urged in a statute of 1460, "a proper coin distinct from the coin of the realm of England was to be had therein." And the Anglo-Norman colonists decreed that of the coins they ordered one should be called an "*Irelands*," with that name engraven on it, and the other a "*Patrick*," with the name and cross of the national Irish saint.

This persistence of the name of Ireland with its national pride, and its perpetual recalling of a distinct people, was displeasing to Englishmen in the height of their "godly conquest." If the name was extinguished the fact might be more easily denied. They pleaded, as we learn in the Carew Papers (I. 251-2), for its disappearance, in the true spirit of modern Unionism. When Paul IV. gave to Philip and Mary the title of King and Queen of Ireland:

> "Men of judgment, ... thought it a vanity, not seeing what profit, either of authority or honour, it might bring to a King to have many titles in the country which he possesseth,
> [223] considering that the Most Christian King is more honoured by the only title of King of France, than if his state were divided into as many kingly titles as he hath provinces.... But it seemed hard to induce England to quit that which two kings had used, and the Queen, not thinking much of it, had continued."

There was indeed a power in nature far older than the habit of two English kings; and in spite of the Unionist grumblings the ancient name survived, and the ancient fact. Cardinal Pole was appointed legate to "the realms of England and Ireland." Our ambassadors and consuls still carry with them abroad the significant title "of Great Britain and Ireland"; and we may read

in a Russian newspaper concerned with the East, of the "policy of Great Britain and Ireland in Afghanistan."

The persistence of race in Ireland was no less remarkable than the triumph of its name. There are some who profess to distinguish the Iberians. We know that successive streams of immigrants, Danes, Normans, English, French, have been merged in the commonwealth. But the Registrar-General gives, in spite of outgoings of the Celtic and incomings of Teutonic peoples, an overwhelming majority of men of Celtic blood and name—a majority which is in fact less than the truth, owing to the continual change during centuries of Celtic into English surnames. But it is not on purity of race that Ireland, any more than other countries, would rely. Difference in blood was recognised, but it was not held a bar to patriotism. Ireland was the common country to which all races who entered it were bound by every human interest. It had a unity of its own, which as "the Pale" shrank and the sense of country deepened, laid hold on the minds of the later as of the earlier inhabitants. Belfast Orangemen indeed, as "the loyalists of Ireland," accepted the [224] doctrine in 1886 that a Parliament in Dublin chosen by the whole Irish people "must be to them a *foreign* and *alien* assembly." It was the echo of an old fiction. We know that the ascendency of a constantly recruited English group, above all of safe men born in England and consequently held worthy of trust there, was for seven centuries the favourite dream of English politicians; and that it invariably failed before the broader and humaner influences that move communities of men dwelling side by side under the equal heavens. Faithful citizens of Norman or English stock did brave service for their country: "Ireland-men" they called themselves, or "commonwealth men," or "good 'country men' as they would be gloriously termed." What name indeed is there for men of Ireland to take unless they frankly own their country? The term chosen for them by *The Times*: "The British Colony on the other side of St. George's Channel" will scarcely

endure.

Mr. Balfour is probably the last statesman to press a claim to ascendency in the partial favour of Great Britain for a selected group, "who, of all others in the United Kingdom, surely deserve the protection of England and Scotland." It is a curious return in these days of equal citizenship to the tyrannical distinctions of the middle ages—"wild Irish our enemies, Irish rebels, and obedient English," who had varying claims on the dominating race according to their deserts.

To return, however, to the special charges urged against Gaelic life in Ireland. The island may be the same, and the race of ancient date, and with no less than their ancient pride; but what of that, if the people could not have, nor ever did have, a polity of their own, nor any Irish institutions nor an Irish idea of government?

[225] "The fiction has been assiduously propagated," says a Unionist writer in the *Morning Post*, "by the Irish extreme section ... that the nationhood of Ireland is a thing which once had an actual objective existence.... But such teaching, however romantically attractive, is simply incompatible with the plain facts of history. Ireland as a political entity dates from the period of the conquest by England, when for the first time the princes and chieftains with their followers were fused into something like national unity." So Macedon might have boasted that for the first time it had put some order into Greece, given it a political entity, and brought it into line with modern Imperial civilization.

Is this unhistoric statement all the Unionists have in the end got to give us of the Irish story? Is there nothing behind it—no trace of any soul of the people in Ireland? How then was it that with so incomplete a military or political organization, they could defy for centuries the whole power of England? Ireland in fact drew her strength from a remarkable State system of her own. In the Gaelic form of civilization the national sentiment did not gather round a military king, as in the Teutonic states, but round a common learning, literature, and tradition; and this

exalted belief in the spiritual existence of a nation, though it is not the English idea of a kingdom, may belong nevertheless to a high order of human aspiration. It produced in Ireland a literature which has not been surpassed among any people for its profound and ardent sense of nationality.

The union of the Irish people lay in the absolute community of learning, institutions, and law. Irish law was one of the most striking products of Irish genius. If we know nothing of its beginnings, we see it as a body of custom that spread over the entire country, varying not at all from province to province. [226] Highly finished, highly technical, worked on for hundreds of years by successive commentators, it still remained the law of the people, and claimed their allegiance—an allegiance could only have been possible to a law founded on reason and justice, and expedient and efficient in practice. If we take that which in an agricultural country comes home to every peasant—the land system—the native law in Ireland was equal, enduring, and respected. The farmer was assured a fair rent and compensation for improvements. No chief in Ireland could molest the people in their ancient privilege; he could neither evict them, nor take their grazing-lands, nor make a forest waste and impose a forest law for his hunting. Five hundred years after the Norman invasion Irish farmers holding under the old Irish law were still paying the same rent that their forefathers had paid centuries before. It is certain that no system can wholly prevent misfortune, injustice, or usurpation; but there seems to have been among the people a social content far beyond that in mediæval England, a long security of farmers, a passionate belief in their land system, an extraordinary tenacity in its defence against any other, and as far as we can see no bitterness of classes. A satirist might mock at the depth of the chief's pocket, as deep as the pocket of the Church or of the poet; but the Irish no more wanted to get rid of the chief than of the poet or the priest. In Tudor times the only way in which a chief could be absolutely alienated and divided

from his people was by pledging him to the English land system and government.

The Irish were further reminded of their essential unity by the great genealogical compilations in which every element
[227] of the population, Celtic and aboriginal, free and unfree, were traced to a common ancestry. Pride in the country which they possessed was maintained by the *Dinnsenchus* or collection of topographical legends dealing with hundreds of places, mountains, rivers, earthworks, roads, strands, venerable trees, in every nook and corner of Ireland—none elsewhere—all evidently things of interest to the whole people. The dignity of their race and history was recalled to them in the semi-legendary history of pagan Ireland—which is really a great epic in prose and verse, in two main sections, the Book of Invasions and the Irish Book of Kings. The subject of this work is simply Ireland. It has no other connecting motive than to satisfy the desire of the Irish to possess a complete and brilliant picture of Ireland from all antiquity. The charge was a solemn one, and carried out by generations of scholars with exact fidelity. There is no parallel elsewhere to the writing down of the great pagan epics five hundred years after Christianity, with no more direct influence of Christianity on them than we might find in the Odyssey or the Iliad.

Nor was their language the least of the spiritual possessions of the Gaelic people—that language which, following their people over Scotland, Lowlands and Highlands and the Isles, remained for some fourteen centuries the symbol of immemorial unity of their race. The pride of the race in their language was beyond that of any other people in Europe outside of the Greeks and Romans. Grammars of Irish were written in the eighth or ninth centuries, perhaps earlier, full of elaborate declensions and minute rules, accounts of obsolete words and forms and esoteric literary jargons, treatises on the Ogham alphabet, dictionaries of celebrated men and women of Ireland from remote antiquity,

numerous festilogies of the national saints in prose and verse, [228]
with their pedigrees and legends. What mediæval language in Europe had a school of grammarians, and at what date? It may seem strange to Englishmen that this affection should have stirred the hearts of pastoral and agricultural people; but no Irish man was far removed from the immaterial and spiritual life of his country. The famous works in verse and prose, the stories, the hymns, and the songs of heroes old and new, were known by heart, and handed down faithfully for centuries in thousands of cabins; and the Irish tiller of the ground in remote places has even in our own day a rich vocabulary of six or seven thousand words. The pleasure and pride of art, so widely diffused among the mass of the people by the Irish scheme of life and education, became a natural part of the Irishman's thoughts. Their main concern in the Danish devastations was the threatened destruction of an ancient order of civilization. Before the "flood of outlanders," says the "Colloquy of the Sages," written probably before 850, "every art will be buffoonery, and every falsehood will be chosen." Poems would be dark, music would be given over to boors, and embroidery to fools and base women so that no more beauty of colour could be expected; everyone will turn his art into false teaching and false intelligence, to seek to surpass his teacher. Instruction and skill would end, they lamented, with lawful princes and sages, belief and offerings, the respect of ranks and families, due honour of the young to the old, the ordered hospitality of the wealthy, and the high justice on the hilltop: "On every hill-top treachery will adventure."

The great expression of Gaelic life was the assembly of the people, those "parles upon hills" that seemed so grievous to Elizabethan rulers. In every Federal State, such as Leinster or Munster, and in every petty State, they were the ever-recurring [229]
guarantee of the national civilization. The feeling of the people is shown by the constant references to "frequent assemblies," "an assembly according to rules," "a lawful synod." The serious

organization of these gatherings in stately form had been brought to a fine art. The business and science of the country was there open to the whole democracy. Many were the directions for the right conduct of those who took part in the assemblies—against stiffness of delivery, a muttering speech, hair-splitting, uncertain proofs, despising books, inciting the multitude, very violent urging, playing a dangerous game to disconcert the meeting, above all against ignorant or false pleading. The authority of the assembly in its exposition of the law was never questioned by the people.

> "Irishmen," wrote an English judge to Henry VIII., "doth observe and keep such laws and statutes which they make upon hills in their country firm and stable, without breaking them for any favour or reward."
>
> "As touching their government in their corporations where they bear rule," wrote an Englishman, Payne, from Connacht in 1589, "is done with such wisdom, equity, and justice, as demerits worthy commendations. For I myself divers times have seen in several places within their jurisdictions well near twenty causes decided at one sitting, with such indifference that, for the most part, both plaintiff and defendant hath departed contented; yet many that make show of peace and desireth to live by blood do utterly mislike this or any good thing that the poor Irishman doth."

A poem of about 1100 A.D. describes how the people of Leinster, by their tribes and families, celebrated their fair of Carman—Carman reputed to have come "from delightful Athens westward." Every third year they held the feast and two years for the preparation. The kings sat in order in their Forud (a word cognate with *Forum*), surrounded by their councillors and
[230] retinue. "Each one sits in his lawful place, so that all attend to them to listen." The women were seated in the same manner, "a noble, most delightful host, women whose fame is not small

abroad." There was a week for considering the laws and rights of the provinces for the next three years. "There aloud with boldness they proclaimed the rights of every law and the restraints." "Annals there are verified, every division into which Erin was divided; the history of the household of Tara—not insignificant, the knowledge of every territory in Erin, the history of the women of illustrious families, of courts, prohibitions, conquests." The accurate synchronisms of noble races, "the succession of the sovereign kings, their battles and their stern valour," "Fenian tales of Finn, an untiring entertainment," proverbs, maxims, royal precepts, occult poetry, topographical etymologies, the precepts of law-givers and sages—all came in their turn; and inscribed tablets, and books of trees, satires, and sharp-edged runes.

While the memory of their origin, laws, and the title of every man to his land, was thus imprinted on the people's minds, every other element of their civilization was displayed. Every day of the seven there was a show of the national sport of horse-racing. Commerce had its three markets—a market of food; a market of live stock, cows and horses; and the great market of "the foreign Greeks," where gold and noble clothes were wont to be, carried from the branching harbours that brought hosts into the noble fair. There were trumpets and music of all sorts, and poets, exerting their utmost power till each art had its rightful meed in proper measure from the king. Professors of every sort, both the noble arts and the base arts, were there selling and exhibiting their competitions and their professional works to kings, and [231] rewards were given for every art that was just or lawful to be sold or exhibited or listened to. The people might enjoy the rivalry of rustic buffoonery, pipes, fiddles, chainmen, bonemen, and tube players, a crowd of babbling painted masks—all in their due place. Everything was provided for—the slope of the steeds, the slope of the cooking, the slope of the embroidering women. And finally the day of solemnity, masses, adorations, and psalm

singing, and the fast of all of them together; and so the assembly came to an end "without breach of law, without crime, without deed of violence, without dishonour."

The king who presided over these assemblies was not a ruler in the Teutonic military sense. Ireland was free from two sources of military rule—the danger of conquest, and the fear of any attempt to force on the people a new and alien law. Protected by distance and the ocean, the island was long secured from foreign conquest: nor did the Irish need a central military power to enforce a native code which was already strong in the allegiance of the people. In this situation of comparative security the natural aim of the Irish was to preserve their local freedom. They objected, as the English after them have done, to military establishments and to compulsory service as systems which were a danger to liberty—and "liberty," as the English officials complained, "was the only thing that Scots and Irish constantly contended for." Herdsmen and ploughmen who carried on the business of the country refused to serve as soldiers for more than a few weeks in the year, and that only after sowing and reaping was done, and the cattle driven to pasture. Ireland was not in fact a military country. The dangers to peace lay mainly in the Gaelic law of
[232] succession to kingship and chieftainship, according to which the best man of the ruling kindred was elected by the freemen. Such a system provided frequent occasions of fighting—in rivalries of candidates and revolts of ambitious aspirants to power, all too ready to look for outside support, no matter where, from a neighbouring chief, a Norman baron, or an English deputy. From such variety of petty conflicts the feudal law of primogeniture saved other countries to some extent, though, as we know, that too was very far from insuring peace or harmony at all times.

Ireland no doubt suffered under this very conservative system of election, come down from the honoured past. The evils, however, were not incurable in a country left to itself. An attempt was already made to lessen them by the custom of

electing along with the chief a Tanist or successor; and we can trace in Ireland also the growing custom of inheritance from father to son. The way of natural development was closed, not by the incompetence of the Irish, but by foreign enemies, who were careful to aggravate the mischief. It was the Danish wars and their results, and far more the wars of the English lord deputies, which made the very life of the tribe depend on military leadership and on that alone. The danger of local strife among independent states was in like manner exaggerated beyond measure when the deputies adopted the ferocious policy of advancing the English conquest by isolating the territories, and forcing them, on one plea or another, into civil war with their neighbours. Every territory had to maintain a retinue of soldiers out of all proportion to the normal state. Natural conditions were overturned, and statesmen then as now crippled the communities they governed with preparations for war in the interests of peace. [233]

In the same way the growth in authority of the high-king was frustrated by external violence. During the Danish invasions the position of the high-king was of great importance as leader and centre of the national resistance, and head of the general assemblies of the country "to bring concord among the men of Ireland." After these wars, when Ireland came more directly under European influences, efforts were made there, as in other countries, to shape a "kingdom" in the modern sense of a centralised monarchy. Such efforts after unity, which in Ireland, as in every other European country, were in any case slow and difficult, found a determined enemy in England from the time of Ruaidhri O'Conor and Henry II. onwards. In English interests, under the English "Lord of Ireland," the island was to have no home-born king "coming to Tara," as the mediæval phrase went, and not even a strong governor of any kind.

> "A phantom government," wrote Richey, "planted at Dublin fulfilled none of the duties of a ruler, but by its presence

> prevented the formation of any other authority or form of rule."

If any leader appeared among the Irish of authority in peace or power in war, the whole force of England was immediately called in to his destruction, and to reestablish confusion and strife. "Ireland were as good as lost," the English said, "if a wild wyrlinge should be chosen there as king."

It cannot be doubted that the Irish system had sprung from the soul of a people with an intense national consciousness, that it bound the various clans under obedience to one common law, that it gave to all the inhabitants, rich and poor, learned and simple, an enthusiasm for their race and country which rooted that law in their hearts, and endowed it with a tenacity of life that
[234] no political misfortune could destroy.

The people were inspired by more than material considerations, and through centuries of suffering nothing but death could extinguish their passionate loyalty to their chief and devotion to their race. English governors could never catch the reason or meaning of that patriotism. "It should seem," said Perrott, the ostentatious proclaimer of English superiority, "that they think, when once they leave their old customs, ... they are out of all frame or good fashion, according to that saying, *They which are born in Hell think there is no Heaven*."

England, however, according to the Unionist teaching, offered a better thing. She "invented" for Ireland a Parliament. What did the Irish make of that? Here we enter on a new range of denunciations—the inadequacy to English ideas and benevolences, not of Iberians and Celts, but of Normans and of English themselves.

Every form of Parliament, the best that England could do, ended in Ireland, according to Mr. Balfour, in a "series of failures." Ireland was already well accustomed in every one of

its territories to meetings of notables and assemblies for public business; and there was no special difficulty in introducing among a people of their training a representative Parliament. But from this "British invention" the Celtic people were in effect shut out, either formally or practically. The Parliament was conferred on Normans, who had so distinguished a history in England, and on English Protestants. And yet, we are told, every experiment of an "Irish" Parliament failed; under the same malign influences, it would seem, as were set forth by a lord deputy under Henry VIII.: "As I suppose, it is predestinate to this country to bring [235] forth sedition, inventions, lies, and such other naughty fruits, and also that no man shall have thanks for services done here."

This seems to have been the view of Mr. Litton Falkiner, who in his Essays has drawn attention to the conspicuous faults of the Parliament as shown in the history of Poyning's Act. That statute, according to him, reduced Ireland to legislative impotence, but the Parliament willingly and with no difficulty passed it; and not only was the bridle placed in the mouth of the Irish legislature with its own assent, but it was so placed by its own desire, and the Parliament long and strenuously resisted its removal. An explanation, suitable to Ireland, for this singularly irrational conduct is given.

> "Not the least curious feature in the history of the subsequent operation of Poyning's Law is the great inconvenience which it occasioned to the English Government, and its corresponding popularity with the anti-English element in the Irish legislature."

The conclusion would seem to be that the atmosphere of the island so contaminated the Anglo-Norman settlers that they exchanged reason for fantastic inconsequence, and replaced self-interest by an insanity of "patriotism." We have here a typical illustration of the way in which the "Irish" Parliament has been thrown under rebuke, and the spirit of its condemnation. It

is interesting to ask whether the facts bear out this theory of unreason, and of a wilfulness inexplicable and characteristic of this island alone.

There is a close parallel between the history of Poyning's Act in 1494 and that of the Union in 1800, so that the one may help us to understand the other. In the fifteenth century, as in the eighteenth, trade and wealth were increasing fast in Ireland
[236] with commercial intercourse of the peoples, and barriers were breaking down between the two races. In both these centuries alike the commercial jealousies of England were quickened by the growth of Irish trade, and its political fears by a question of the Crown—by Irish preference to the House of York over that of Lancaster under Henry VI.—and under George III., by views held in Ireland as to the Regency. Alike with Poyning's Act and with the Union the proposed remedy was to bring Ireland under closer subjection to England. The statute ordered that no Parliament should be held in Ireland till the Council had certified to the King under the great seal of Ireland all the causes and considerations, and the Acts that should pass in it; and had received the King's license under the great seal of England, as well in affirmation of these Acts as to summon Parliament. The means used for carrying this Act and the Act of Union were practically the same; the promise on each occasion was that the Act would ensure the order and liberties of Ireland; while for the unconvinced there remained threats, military demonstrations, and bribery—both subtle and extensive. Every place of authority in the country was newly packed with English officials, all servants of the Lancastrian party in power. A Parliament was called from which all the great earls were absent—Ormond, Desmond, Kildare. This mere shadow of a Parliament—strangers, place-hunters, and men, as we shall see, under sentence of ruin, without natural leaders, controlled by English officials—was required to accept the King's decree for “the whole and perfect obedience of the country.” In Poyning's Law notice was given of the King's

intention to make an Act for the general resumption of his whole revenues since 1327, an Act never equalled by any measure before or since for throwing all civil rights and liberties into [237] the hands of the Crown. From pieces of parchment hanging to it with the autograph of Henry VII. written at the top, it appears that savings were made in favour of various persons exempting them from the operation of this Act. Thus according to their conduct or deserts at the passing of Poyning's Law, men would find ruin or protection at the King's hand. Alike in their ignoble beginnings, Poyning's Law and the Act of Union remained in their later developments the source of dissension and the great battle-ground between English rulers and Irish subjects.

So much for the passing of the Act with “no difficulty.” How it was intended to work by Henry VII. we cannot tell, but the violent methods of later Tudor sovereigns respected no barriers. Whenever Poyning's Act stood in their way, the first remedy was an Act for its “repeal”—that is, an “exposition” how it was to be understood, or an enactment that all statutes of that Parliament were valid, “notwithstanding Poyning's Act.” No Tudor ever proposed to “repeal” that part of the statute which limited the freedom of Parliament: but only to abrogate the formalities which interfered with his own direct method of government. The Dublin Parliament, for its part, clearly saw that if the Act gave a tremendous power to the Crown, it yet held provisions which were a protection, so far as they went, from arbitrary tyranny. The preparing, before a Parliament could be called, of Acts to which the Seal of Ireland had to be affixed before they went to receive the Seal of England, assured some discussion in Ireland, some degree of publicity, and some hindrance to unexpected laws sprung upon it by a foreign and uncontrolled Executive, and rushed through by a packed majority. Parliament, in fact, held that law and recognised order were safeguards to liberty; and its [238] battle in Dublin was for the security of law, even of Poyning's Law, against the mere will of the King and his ministers: a

motive neither trivial nor irrational.

The first conflict arose with the Parliament of 1536-7, which was called to establish what we may call the Protestant succession, to declare Henry head of the Church, to order the suppression of abbeys, and to decree vast confiscations in Leinster to the King's benefit (in many cases estates of members of the Parliament), with the purpose of new "Plantation." It was not likely that such laws would be peaceably drawn up in Dublin and offered to Henry in the form he preferred. On the first day of its session, May 1st, 1536, therefore, the "repeal of Poyning's Act" was ordered—that is, to declare it void for that Parliament. The experiment was new and untried, and the Houses obeyed. By the "repeal" Henry and Cromwell were set free from every restriction. They could send over new and unforeseen bills, neither known nor discussed in Ireland, without agreement with the Irish Council, at any time before or after Parliament opened, and could alter bills during the session as they chose. Every shred of protection to the framing of bills in Ireland, or their discussion there, disappeared. The usurped powers were used to the uttermost. In seventeen days ten Acts had passed the Commons. Cromwell wrote to delay the Act for the Succession if it was still in an incomplete stage, probably for some changes. The King wrote to desire an astounding Act to confer on himself all the land in Ireland. But resistance had already begun. Parliament had attempted to protect the country by providing in their Repealing Act that a number of matters should be excluded from its operation, such as the liberties of
[239] boroughs, etc., and that no laws should be enacted by this Parliament but such as were for the honour of the King, the increase of his revenue, *and* the commonweal of the land. As Acts poured over from England members pleaded that they were contrary to these conditions, and prepared to carry the matter to a court of law. The struggle lasted eighteen months. Parliament was adjourned, contrary to law, six times in the next year. Finally

Commissioners were sent over in September, 1537, carrying with them a series of Acts drawn up in England, and added others of their own devising; all to be passed "notwithstanding Poyning's Act." The limitations which Parliament had attempted to set up in their "Repealing" Act were set aside by a new "repeal," which declared the "mere truth" of the first to be that every Bill was valid which concerned *either* the King's honour, *or* the increase of his revenue, *or* the common weal of the land: and that anyone who brought the question to a suit in any court of law should suffer as a felon.

In this first battle, Parliament, taken by surprise, was defeated. Every attempted safeguard was thrown down, and nothing left but the royal tyranny. "The King's causes in Parliament take good effect," wrote the Commissioners; and twenty-four Acts were passed. Having finished their work, and having discovered in searching among old Acts that this Parliament was illegally held, they hastily dissolved it, making provision to hide its unlawful character.

The Parliament of 1541 which gave to Henry the title of king was the only one of the century in which we find no proposition to repeal Poyning's Act. Other means had been used during four years of widespread and deceitful negotiations (1537-1541) to ensure the King's success. A series of false promises as to rights in land had been cunningly dispatched through the country. [240] There was a careful scrutiny of the coming Parliament. Lists were drawn up for Henry's benefit. The House of Lords was safe. The vast majority of prelates in it were docile nominees of the new head of the Church. Of the score of peers on the list six were reported to Henry as having "neither wit nor company of men"; one was wise in counsel but without any soldiers; and nine were new creations, at the King's bidding—six of them scarcely a month old, some indeed still waiting for their letters patent. In the Common House were divers knights and many gentlemen of fair possessions, but no list of these is given. The House had evidently

been packed: for an Act was passed repealing the old statute against non-residents and proroguing of Parliaments. There was indeed a concession to placate opponents. “From henceforth” the knights and burgesses were to be resident, under penalty of fines—a provision well calculated to disappoint the hopes it raised. Under these circumstances the repeal of Poyning's Act was for once dispensed with. Having secured his title of King, Henry could fling away his Parliament, and no assembly met again for thirteen years.

Queen Mary called her one Parliament in 1556 to carry two Acts which surpassed in terror and ferocity any yet proposed. The Act for the confiscation and plantation of Leinster lands, ordered Leix and Offaly to be turned into the King's and Queen's counties, the first shires made since the time of John; and desired they should be “planted” with “good men.” A second Act gave power to Commissioners to perambulate the whole realm and divide it into shires as they thought convenient, without further
[241] reference to Parliament. Henceforth any Irish chief or Norman lord might learn suddenly that by a mere decree of the Deputy his authority was abolished, his territory dissolved into a chaotic mass of helpless people, under officers speaking a foreign tongue, and laws wholly unknown to them, the land leased out according to English tenure, new taxes imposed, and a Commissioner with his hangmen placed in their midst to govern “in a course of discretion.”

When Parliament met, two drafts of the Act for “the well-disposing” of Leinster lands were “lost.” The loss or embezzlement was perhaps contrived with the hope of resisting any third Act that might arrive after the session had opened, as contrary to Poyning's Law. If so, the hope was vain. An Act was prepared to explain “how Poyning's Act was to be exponed and taken,” and to enact that since events might happen, (as for example the loss of unwelcome drafts) during the time of Parliament necessary to be provided for, which

at the time of the summoning of Parliament were not thought or agreed upon, therefore the Irish Government might send over considerations and causes for new ordinances, and that these being returned under the Great Seal of England might be enacted, notwithstanding Poyning's Act. A third draft was sent over, and the Act of Confiscation passed—the first of the Great Plantations.

That sinister measure, "An exposition of Poyning's Act," was again prepared for Elizabeth's Parliament of 1560, which was called to declare the Queen's Title and her Supremacy over the Church. But the Houses disappeared before it was brought in:

> "The Lord-Deputy is said to have used force, and the speaker treachery.... I heard," said Dr. Lynch, "that it had been previously announced in the House that Parliament would not sit on that very day on which the laws against religion were enacted; but, in the meantime, a private summons was sent [242] to those who were well known to be favourable to the new creed ... the few members present assented, and the speaker won for himself the name of being the chief author of the laws enacted against the Catholic religion."

The Deputy Sussex sought to calm the rage of the Parliament by pledging himself solemnly that the Statute of Uniformity should not be enforced during Elizabeth's reign. So violent was the opposition of lords and chieftains to "the laws against religion," that Sussex, it was said, prorogued Parliament and went to England to consult the Queen. Thus it ended after nineteen days.

After this experience:

> "We have small disposition to assent to any Parliament," wrote Elizabeth to the Deputy in 1566. "Nevertheless, when we call to remembrance the ancient manner of that our Realm, that no manner of thing there ought to be commented or treated upon, but such as we shall first understand from you,

> and consent thereunto ourself, and consequently return the same under our great seal of this our Realm of England; we are the better minded to assent to this your request."

The legal correctness of this regard for Poyning's Act disappeared in the course of three years' preparation for the new assembly. The Parliament met in 1569 to find the Commons packed with strangers, contrary to the renewed law which had been won from Henry VIII. in 1542 against the practice. The gentry of the Pale and the Dublin burgesses protested in vain against the return of strangers for boroughs which they had never even seen: "the more words the more choler." Elizabeth's vast schemes of confiscation and breaking up of the old Irish society were met with hostility. Under pressure of the Deputy, therefore, a second session was held to pass a single bill, the "Repeal
[243] of Poyning's Act"; on the plea that grievous sores known to the high court in Ireland could not be reformed as not having been certified to the Queen. This bill was bitterly opposed: "so jealous were they that they would not in long time enter into the consideration thereof." The remonstrants did in fact force some concessions; that provisions made by the present Parliament for the common weal, the augmentation of the Queen's revenues, and the assurance to her of lands and profits, which were certified under the Great Seal of Ireland, and returned to Ireland under the Great Seal of England, should first be publicly proclaimed in six cities, and only after these proclamations should pass into law, "Poyning's Act notwithstanding."

The way was now clear, and the next session brought the attainder of Shane O'Neill and the tremendous confiscation of Tyrone and other lands in Ulster. A beginning was made of Munster confiscations. The Deputy was to appoint English-speaking clergy to all ecclesiastical dignities in Munster. Other Acts ordered all Ireland to be reduced to shire land; and abolished all Irish and Anglo-Norman chieftaincies or "captainships"

except by special patent (thus depriving the chiefs of the benefit of their indentures), under penalty of death without benefit of clergy, as the law was drafted in England; the Parliament substituted a fine and passed the decree with great opposition, for "the matter misliked them more than the pain." The Queen herself sent letters ordering Parliament to pass a heavy impost which must ruin the Irish wine trade, in which matter "they showed themselves so unquiet that they were more like a bear-baiting of disordered persons than a Parliament of wise and grave men." Taught by experience, the Parliament now insisted on a law to limit the repeal of Poyning's Act, in which they explained their reasons [244] for objecting to any repeal at any time. Before that Act, they said, when liberty was given to the governors to call Parliament at their pleasure, "Acts passed as well to the dishonour of the Prince, as to the hindrance of their subjects, the remembrance whereof would indeed have stayed us from condescending to the repeal of the said statute," save for their persuasion that Sydney through his motion meant only the honour of the Queen *and* the common benefit of the Realm (going back in these words to the first repeal of 1536); but they feared that the like liberty might be abused by other governors, and therefore enacted that none other should ever use the liberty of Sydney, and that no Bill should ever be certified into England for repealing or suspending of Poynings' Act unless it was first agreed on in a Session of Parliament in Ireland, by the greater number of the Lords and the greater number of the Common House, that is by both Houses carrying the Bill by a separate vote.

The Parliament of 1569, distinguished by a high order of public spirit and legal ability, was driven to its fatal close in a general war against those "that banish Ireland and mean conquest," a striking phrase of Anglo-Irish patriots.

A new "Repeal of Poynings' Act" was demanded of the Parliament in 1585. The reason was again the same—for the more convenient passing of Acts to deprive the people of Ireland

of their land and their religion; Elizabeth mainly anxious about her property in land, and the deputy about religious uniformity. There was a Bill to extend to Ireland all the English laws against Popish recusants, and demand the Oath of Supremacy as a test of the fidelity of Parliament: an Act for the attainder of Baltinglas;
[245] another for the attainder of Desmond, and a hundred and sixty more "traitors," and for the confiscation of Munster; one to limit the landowners' old-established rights of conveyancing of land as "likely to tend to disinherit the Queen's Majesty." Such Acts could never be passed under the formalities of Poynings' Law.

The Viceroy, however, had to reckon with two new problems. Representatives of the Irish race sat in the Parliament, Hugh O'Neill in the Lords, some fourteen Irishmen in the Commons. And the effect of the enactment made by the last Parliament was now seen in its enactment that "repeal" henceforth must be carried by a majority in each of the two Houses, voting separately. By fraudulently counting an absent vote Perrott declared the Bill carried by one in the Lords: the Commons threw it out by thirty-five. He prorogued Parliament for three days, and when it met again brought in the Bill; again the Ireland Party in the Commons defeated the Englishmen who supported the Government; and thus overthrew, in Perrott's words, "the repeal of Poynings' Act that should have set them at liberty to treat of that and all other things necessary for the State." The opponents of suspension, he said, desired only to make void the whole Parliament because they could abide no reformation in matters of religion or State; and would bring the new chiefs, O'Reillys, Maguires, and the rest, into jealousy of the Parliament. The landowners and gentry, "the stirrers of Parliament and the lawyers," on their side declared they feared to give despotic power to the Viceroy and distrusted his purpose, "some of the Irishmen either mistaking or conceiving it was framed to another intent than it did pretend, whereby they drew on them the Deputy's disfavour, and displeasure on him
[246] from the Queen."

The defeat of “repeal” showed the Houses their strength. The Lords dashed new Acts proposed against treason and the trial of accessories—statutes namely, said Perrott, for the safety of the Queen. The Commons wrecked the Bill for Desmond's attainder, striking out eight score names of “men of living” and leaving only eight. They refused, moreover, to escheat lands protected by law, and to tax land in a manner tyrannous and contrary to Irish custom. The “disturbers of Parliament” were met by five adjournments in eleven months; but the devices by which these sticklers for the law were finally subdued is too long to tell here. Parliament met at last in April, 1586, to register the royal will. The Lords read and passed the four Acts for the attainder of rebels in Munster. The Commons still resisted for a week. The official intrigue to compel their submission is confused by the bitter wrangle of the Deputy and the Treasurer for the honour of the plot. Finally the Desmond confiscations were “wrought out” of the Parliament with so great difficulty, said Spenser, “that were it to be passed again I dare undertake it would never be compassed”; and the Deputy gave the royal assent to the Bill by which over half a million acres of Desmond land were forfeited by Act of Parliament to the Crown, as the O'Neill land had been forfeited nearly twenty years before. After which Parliament was dissolved, with an oration of Justice Walshe, the Speaker, who, in “the universal comfort of all estates,” asked the Commons “what is there more of earthly felicity that can be required,” reminded them that the escheated lands “accepted by the Queen of us” were of far less value than the smallest portion of Her Majesty's charges for their benefit, and mentioned how they had “willingly consented to attaint and stain in blood Her Majesty's disloyal subjects and unbar the succession of their traitorous [247] lines, to the end that the memory of their names may be quite extinguished.”

Thus after a hundred years the Parliament won its first success in refusing the repeal of Poyning's Act. Mr. Litton Falkiner

calls us to wonder at the “curious circumstance” that “successive Parliaments of the sixteenth century declined on patriotic grounds to abrogate the very statute the repeal of which was to become the greatest triumph of Irish patriotism in the eighteenth century,” and insinuates that we may here see displayed the captious and capricious spirit that infects the “predestinate” peoples of Ireland. Out of the old habit of contempt it has being boldly suggested by some that the independence of Parliament, by others that the Catholic religion, were in no way valued by Irishmen until they made the discovery that these could be used to annoy and disconcert England. Such unworthy suspicions must disappear as we watch the grave conflict of men threatened with ruin, imprisonment, death, in their struggle to defend the first rights of law, property, and religion.

It was a slow battle, with rare and scanty triumphs for defenders of the constitution. Long silence followed the first victory of the Parliament in refusing the repeal of Poyning's Act: it was not summoned again for twenty-six years. Its next meeting was amid dark threatenings. The old sessions in Dublin had been honourably held in “the house called Christ's Church situate in the high place of the same, like as St. Paul's in London”; Parliament was now ordered to hold its debates in the Castle, surrounded by extra troops brought to overawe an assembly which was robbed of even the appearance of free deliberations.
[248] When they objected to being placed over the Castle stores of powder (in a room which had been, in fact, lately wrecked by an accidental explosion of gunpowder) and made a reference to Guy Fawkes, their objections were set aside with a scornful taunt “of what religion they were that had hatched such cockatrice's eggs.” From that time began a new and even more ominous story than before.

A fatal doom in fact hung over the two Houses in Dublin. The Irish Parliament, which at this time had no relation whatever with the English Parliament, depended directly and solely on the

King. The royal policy of Tudors and Stuarts, in their different ways, was to fortify their personal authority over Ireland and its Parliament, and by this means to strengthen the despotic and military power of the Crown; and make Ireland, without or against its will, a peril to the liberties of England. The natural result was to bring the Irish Parliament under the angry suspicion of the English Parliament and people, and create a forced and disastrous hostility. Not only was the constitutional party in Ireland cut off from the natural support of their brethren who were fighting the battle of liberty in England, and separated from its due share in the general struggle for liberty; but the royal policy finally drove the English Parliament to determine that all independent action of the Irish Parliament should be entirely suppressed, and thus brought about a constitutional revolution which for the first time subjected the Irish Parliament to the absolute control, not of the King, but of the English Parliament itself. From this time, it is evident, Poynings' Act and its repeal took a new significance.

The Parliament which "England gave to Ireland," that gift "of British extraction," was, as we know, very far indeed from the Parliament which the English won for themselves. The English [249] Parliament had behind it in effect the people of England. The Irish Parliament was by the Castle policy separated from the people of Ireland, who were utterly excluded, or if cautiously admitted were selected in small and discreet numbers from among those who had cut themselves off from their own people and pledged themselves to the Government. It was sedulously weakened within by perpetual infusion among its high officials, its peers, its prelates, and its members from boroughs and shires, of strangers born across the sea—men whose special mission was to "banish Ireland" and reduce all to subservience to the interests of another country. Its Statutes were treated with negligent contempt: "The same Statutes, for lack they be not in print, be unknown to the most part of your subjects here ...

these of the Irishrie which newly have submitted themselves be in great doubt of such uncertain and unknown laws," the Deputy reported. In 1569 it was proposed, apparently without any reference to Parliament, to print such of the Statutes "*as it was desirable for our subjects to take note of*"; in 1571 Recorder Stanihurst carried to London the roll of 170 statutes which were *thought meet* to be printed by the new English settler, Carew, (perhaps the most hated of all by the Parliament itself) and a few officials—a selection which was in London again corrected by Burghley, and the printing still delayed.

That a Parliament hampered, mutilated, restricted, demoralised, should have made such a stand for the country's interests, testifies to the vigour of constitutional and national life in Ireland. Society indeed is so closely bound together in any country that the most imperfect and exclusive body of its inhabitants must feel to some degree the needs and aspirations
[250] of the whole. Mr. A. M. Sullivan, in the last Home Rule controversy, rightly argued that it was not what the Parliament was that chiefly mattered, but where it was: "Anything will do, if it is only in Ireland," he said, "the Protestant Synod would do." The same need for some representative life of a people in their own land was felt by the Great Earl of Kildare over four hundred years ago. "You hear of our case as in a dream," he cried to the London councillors, "and feel not the smart that vexeth us."

The close of the old Irish polity, the fate of the Irish Parliaments, have a deeper lesson to teach than the supposed faults of the Irish temper, Iberian, Celtic, or Norman. The story of the old Gaelic State, and of the later Anglo-Irish Commonwealth, both alike reveal a power of patriotism, a passion of human aspiration, which cannot find its final satisfaction in material gifts; and which is ill understood by those who deny to Ireland fair fame, dignity, and a lofty patriotism, and offer in their place oblivion, with a promise for the future of Tariff Reform and its financial consequences. The series of failures that have through

seven centuries followed the English dealing with Ireland have their inexorable lesson:

> "That nothing has a natural right to last
> But equity and reason; that all else
> Meets foes irreconcilable, and at best
> Lives only by variety of disease."

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IX.—Ireland As A Dependency. By Professor A. F. Pollard

"The ocean," said Grattan, with reference to the connexion between Great Britain and Ireland, "protests against separation, and the sea against union." The protests of natural forces cannot be ignored, and the history of the relations between the two islands is filled with the efforts of statesmen to find a middle way between the horns of this dilemma, and to adjust the estranging drift of the Irish Channel, the Irish climate, and racial divergence to the bonds of common interest imposed by the Atlantic Ocean and foreign competition upon the British Isles. After a brief eighteen years of uneasy legislative independence, the pendulum swung to the other extreme, and the Act of Union inaugurated a century of restless incorporation; but, for five out of the six and a half centuries of English parliamentary history, Ireland had a subordinate Parliament. Union has been the exception, not the rule, in the relations of the kingdoms.

The mere existence of an Irish Parliament was not, therefore, fatal to England's security or to the growth of its Empire. A Parliament sat at Dublin while England won the battles of Crecy and Agincourt, of Blenheim and the Nile, defied the menace of Rome, defeated the Spanish Armada, and laid the foundations
[252] of British dominion in India, in Canada, in the West Indies, and in South Africa. Spaniards, it is true, landed at Smerwick in 1579 and at Kinsale in 1601, and French troops landed at Carrickfergus in 1760 and at Kilala in 1798; but Spaniards also landed at Penzance in 1593, and Frenchmen landed on English soil countless times from the days of William the Conqueror to their descent at Fishguard in 1796. England has ever been saved by its navy and not by its parliamentary unions, and the attraction to foreign invaders has not been an Irish Parliament, but the existence of Irish discontent. No invasion of Ireland, in

spite of the Irish Parliament, came so near to success as did the Jacobite risings after the Scottish Union.

The recapitulation of these facts is, perhaps, otiose, except to allay fears which sane politicians do not entertain; and it is more to the point to show that the causes of Irish dissatisfaction are historical, and are identical with those which, under similar conditions, produced a similar discontent in England. The notion that the Irish are naturally turbulent and disloyal, while the English are by nature the reverse, is one which could only have grown up after England had rid itself of those irritants which cause the Irish friction. Between the Norman Conquest and the Revolution of 1688 England rebelled against more than half its sovereigns: some were imprisoned, some were expelled, some were assassinated, and some were done to death in more decorous fashion; and English treason and turbulence were once quite as much bywords in Europe as ever Irish disloyalty was in England. The conventional English pictures of Irish disorder could easily be capped as late as the seventeenth century by French descriptions of English lawlessness and barbarity. A French guide-book, published in 1654, declared that England [253] was inhabited by demons and parricides, and a few years later another Frenchman averred that the English were a cruel and ferocious race of wolves. The truth of the matter is that English and Irish alike prefer to manage their own affairs in accord with their own ideas, and are only contented and loyal when this condition obtains. The Revolution of 1688 placed its realisation within the reach of the English people, and there has been no English rebellion since. But the sovereign remedy for disaffection was refused the Irish and the American colonists: the latter rebelled, and, being distant, achieved their independence. The Canadians followed suit in 1837, but found peace and prosperity under a parliament of their own. South Africa was converted to the cause of empire by the same expedient; only the Irish, who are most at England's mercy, have been condemned to nurse their

grievance and denied the conditions of loyalty.

The remedy does not apply, we are told, to Irish disorders, firstly because parliamentary institutions are an exotic[122] unsuited to the Irish soil and temperament, and secondly because they have been weighed in Irish balances and found wanting. It is hard to see why they should be regarded as more exotic in Irish Dublin than in French Quebec: Sir Wilfrid Laurier cannot be termed a failure as a parliamentarian; British parties at Westminster have been inconvenienced by the parliamentary skill rather than by the parliamentary incompetence of Irish members; and the present menace to parliamentary institutions does not come from Ireland. Nor, indeed, is the argument one which we can employ with any consistency, for there is hardly a
[254] word in our legal and constitutional terminology that is not of foreign origin. Parliament itself is not of Anglo-Saxon derivation, and nearly all the things we cherish most have been imported from abroad—our racehorses and our religion, our alphabet and our algebra, our trial by jury and our vote by ballot. Pure-bred civilisations have been rare, inelastic, and unprogressive, and the test of a nation's political capacity lies not in its rigid adherence to its original stock-in-trade, but in its powers of assimilation and adaptability to its environment. It is no reproach to us that we have dethroned indigenous deities, nor to the Irish that they have appropriated our Parliamentary weapons; for it is a poor country which cannot borrow its neighbours' wisdom and profit by their experience.

The misfortune for Ireland was that in the earlier stages of its development it borrowed so little, and retained so much of its primitive tribal decentralisation. England would have been no less unfortunate had William the Conqueror only succeeded in establishing a Norman Pale on this side of the English Channel, and had England retained its connexion with

[122] *Cf.* Mr. Balfour, *The Times*, November 7th, 1911.

Normandy. As it was, the Normans and Angevins cured us of our primitive tribalism, and then left England to work out its own salvation. The severance of Normandy from England converted the descendants of William's companions from a Norman garrison into an English aristocracy, while the successors of Strongbow's followers were maintained by the English connexion as an alien garrison quartered in the barracks of a dwindling Irish Pale. At first, indeed, they had spread a thin veneer of Anglo-Norman conquest over the greater part of Ireland; but baronial feuds only added to the distraction of native septs; and when Edward I.'s premature imperialism provoked a general Celtic reaction [255] under Robert Bruce in Scotland and Edward Bruce in Ireland, Anglo-Norman rule was doomed. The conquerors either threw in their lot with the natives and became more Irish than the Irish, or withdrew within the Pale and maintained a troubled existence by sowing division throughout the rest of the realm. Hence the Irish were always the enemies, seldom the subjects of the English Crown; and outside the Pale there was no English government of Ireland during the middle ages. Constitutional relations only existed between England and the Pale; relations with Ireland outside the Pale were in that state of nature, in which, says Hobbes, the life of man is “nasty, short, brutish, and mean.” The Government had not the means to govern; it felt and it acknowledged no obligations of duty or humanity towards its foes outside the Pale.

This Pale, about twenty miles broad and sixty miles long, was almost as narrow and quite as lawless as the Welsh Marches or the Scottish Borders; and it was the nursery of the English-seedling-parliament in Ireland. A sort of parliament containing knights from a dozen shires had been summoned in 1295; boroughs appear to have been represented first in 1310. It was only designed to supply the financial needs of an English Government, and give statutory form to the edicts of Dublin Castle; and the statutes of Kilkenny (1367), which penalised

everything Irish, were merely striking examples of the ferocity and the futility of its customary legislation. Nevertheless, it began to strike feeble roots in Irish soil, and when, in 1374, Edward III.'s deputy directed the clergy and laity of the Pale to send their representatives to Westminster, their constituents, while obeying, instructed them to reject all financial demands upon Ireland made
[256] at St. Stephen's. Demands made at Dublin were not, however, much more fruitful, and for thirty years in the fifteenth century only one Irish Parliament met. Spasmodic efforts by sovereigns and royal princes like Richard II., Lionel and Thomas (Dukes of Clarence), and Richard (Duke of York,) alternated with longer periods, during which the Crown abandoned the government to the greatest chieftain in the Pale, and made believe that the power he wielded was due to his royal commission. Richard of York, indeed, established a reputation for vigorous rule which won him the support of the Parliament of the Pale in his assertion of an independent kingship in Ireland after his defeat in England in 1459; and the Anglo-Irish, either out of gratitude to him or of spite to the Tudors, afterwards discovered Yorkist features in every pretender to Henry VII.'s throne. Their favour to Lambert Simnel and Perkin Warbeck precipitated Poynings' laws.

These famous enactments were aimed at Dublin Castle rather than at the Dublin parliament. The Crown had always controlled Irish legislation, but the control had been exercised through a deputy, who was often more powerful in Ireland than the Crown; this independence was to cease, and the control of Irish legislation was transferred from the Irish deputy to the English Privy Council. No Parliament was to be summoned in the Pale without the consent, and no legislation introduced without the approval, of that body. Acts previously passed by the English Parliament were declared in force in Ireland, and in practice the English Parliament proceeded to legislate for, though not to tax, Ireland without the concurrence of its Parliament. Poynings also attempted to conquer the native Irish, and to rule the Pale

according to English ways; but the expense proved greater than [257]
Henry VII. could bear, and, with the bit of Poynings' laws in his mouth, the Earl of Kildare was sent back to govern the Pale in the time-honoured fashion.

Ireland was one of the questions upon which Wolsey and Henry VIII. disagreed. The Cardinal's policy was to neglect Ireland and save expenses in that direction in order to act as the paymaster and to pose as the arbiter of Europe, with the result that on the eve of his fall, England's hold on Ireland was said to be weaker than it had been since the conquest. When Wolsey was gone, Henry's imperialism found vent in Ireland as well as in other spheres, and it was stimulated by the appearance as early as 1528 of Spanish emissaries at the courts of Irish chiefs. But the brutal hatred which later conflicts engendered did not inspire the Irish efforts of Henry VIII. His warfare in Ireland was less ferocious than that which he waged on Scotland, or on the monks of England. If he confiscated the lands of Irish monasteries, he shared the spoils with Irish chiefs, and he also confiscated the lands of habitual absentees; and if he proscribed the Earl of Kildare, he gave earldoms to O'Neill, O'Brien, and MacWilliam. Whatever plans for the expropriation of the Irish clans were propounded to his ears, his own policy was not expropriation, but the conversion of Irish chiefs into Irish peers holding their lands of him as their king; and by the common testimony of English and Irish alike, the land enjoyed greater peace and prosperity at the end of his reign than it had within living memory. The destruction of papal jurisdiction was no grievance to the Irish, for pope after pope had prohibited their preferment and restricted Irish sees to men of English race. Even Edward VI.'s Acts of Uniformity, which were applied to Ireland without the authorisation of its Parliament, evoked no [258]
Irish rebellion; and so mild was religious conflict that there was no Irish martyr under Protestant Edward VI. or under Catholic Mary.

The permanent schism between the two races was, indeed, due neither to politics nor to religion, but to the expropriation of the Irish from their land. At the middle of the sixteenth century the antagonism between English and Irish was slighter than that between English and Scots, or that between Britons and Boers in 1900. Men can heal the wounds of the conquered, but those of the disinherited fester for ever, unless the race dies out or restitution is made. The Irish are the only white race that the English have evicted in modern times. They ate up the land piecemeal because there was no Irish State to be subdued by political conquest; because their arts of division, which failed against Scottish national feeling, succeeded against Irish septs; because the English conquest of Ireland was, in fact, a barbarian conquest achieved by a more or less civilised race centuries after the normal age of white barbarian conquests had closed. No conquered States pay ransom with the wholesale confiscation of the lands of private individuals; that is a price which is only exacted from the disorganised and the defenceless.

This process began with an Act of Philip and Mary, supported by the Roman Catholic Church, which was still the Church of the English rulers rather than that of the Irish people; and the Lord-Deputy Sussex was required to permit the Primate to "exercise and use all manner of ecclesiastical censures against the disordered Irishry." Leix and Offaly, where the O'Conors and O'Mores had rebelled under Edward VI., were confiscated to the Crown and converted into King's and Queen's Counties.
[259] They were to be planted partly with English settlers and partly with such Irish as would abjure their native language, laws, and customs. But it took more than half a century to carry out the plantation, and eighteen rebellions broke out before the natives could be eradicated from the soil; even when the miserable remnants had been transplanted to Kerry, many of them straggled back to live as hirelings on lands that had been their own. Such was the new model on which Ireland was to

be moulded into “civility and good government;” and in 1622 a Royal Commission pronounced this plantation to have been well begun and prosperously continued.

Literally, it was a war of extermination, which spread into other parts of Ireland, and brought political and religious issues in its train. A year after the Plantation Act, but before Mary Tudor's death, Sussex wrote that the native Irish were denying England's right to Ireland, and preparing to assist the French and Scots. The events of Elizabeth's reign taught them to look rather to Spain and to the Papacy, and by degrees Philip II., after whom King's County and its capital, Philipstown, had been named, became the patron of the Irish who suffered from the plantation. Religion, too, came into play. The first Jesuit missionaries had returned in despair from their labours on the unresponsive Irish soil. But expropriation left the peasants with little solace save religion, and their religion would not be that of their oppressor; to them Protestantism meant plantation. The links between English Government and Roman Catholic hierarchy had been broken; and Catholicism, which has no natural affinities with nationalism, became the adventitious ally of the Irish people in their resistance to the intruding imperialism of their English foes.

This coalition of hostile forces supplied the English [260]
Government with what it considered convincing arguments for persisting in its course; fresh Jesuit missions to Ireland, and intrigues between Irish chiefs and Spanish ambassadors sped the policy of plantation by provoking rebellion in Munster. The way seemed to have been prepared by the death of 30,000 Irish from starvation in that province within six months, and the pick of England's aristocracy, Raleigh, Grenville, Herbert, Spenser, and Norris, undertook the work of civilisation. They performed it mostly by bailiffs, who let the land at rack-rents to its former proprietors; and the whole fabric vanished in the rebellion which flamed out in 1598 on the news of Tyrone's victories in Ulster. With the assistance of Spain, Tyrone shook English rule in Ireland

almost to its foundations; but they remained firm, embedded in the sea. The Spanish squadrons were annihilated in Kinsale and Castlehaven Harbours, and Tyrone was granted terms of peace. Ireland was conquered as it never had been before, but England had not yet learnt how to pacify a conquered country. Four years later Tyrone and Tyrconnell fled to Spain; the claims of their natural successors were set aside; and their lands were divided among the Scottish and English founders of modern Ulster. Thousands of natives, however, remained as tenants on the land of which they had been robbed, "hoping," wrote the Lord-Deputy, "at one time or other to find an opportunity of cutting their landlords' throats." The unique character and the success of the Ulster plantation were due less to the original planters than to the Calvinistic Scots who found there a refuge from Laud and the Stuarts, and like the Pilgrim Fathers regarded themselves as a people chosen to root out the Amalekite and
[261] Philistine natives. Like the founders of New England, too, their relations with the natives were far worse than those of the southern planters in Ireland, and the southern planters in North America.

Thirty years later the natives of Ulster found their opportunity, and wreaked on their landlords, in the massacre of 1641, vengeance for a generation of robbery and oppression. There ensued a decade of indescribable confusion, in which native Irish, Anglo-Irish, Ulster Scots, English parliamentarians, and Royalists fought one another, until Cromwell repaid the massacre of 1641 by those of Drogheda and Wexford, and by a further process of expropriation called the Cromwellian Settlement. More than two-thirds of Irish land had now passed into the hands of Englishmen; and although the Cromwellians had to disgorge a part of their spoil at the Restoration, it was estimated by Sir William Petty in 1664 that not more than one-third of the land belonged to the native Irish, including in that category the descendants of Anglo-Norman families; of the remainder, about

half belonged to Elizabethan and Jacobean planters, and half to the Cromwellians. Nor was the process yet complete: the new expropriation was followed in 1689-90 by yet another attempt on the part of the Irish to recover their inheritance, and the failure of that attempt by further confiscation. At the beginning of the eighteenth century three-quarters of the land was owned by the English garrison, and the progress of the century was marked by fresh evictions. Political reasons had ceased, but economic causes supplied their place; and wide stretches of pasture were needed in order that the landlords might turn *their* property to the most profitable grazing purposes. Only land that would not do for cattle was left to the Irish peasants; from the bogs there looked up, from the barren hills there looked down, the Roman Catholic disinherited upon the smiling meadows of their [262] Protestant supplanters.

Upon this broadening basis of plantation was developed the Irish Parliament, a Parliament doomed from the first by the very conditions of its being to a sterile and troubled existence. Here and there from the days of Elizabeth a native name may be traced in the lists of its members, but it was almost exclusively the Parliament of a caste, the instrument of oppression. Ten counties only sent representatives to Elizabeth's Parliament of 1560; plantation increased the number to twenty-seven in 1585; and the tale was fairly complete when, after the plantation of Ulster, James I. next summoned a Parliament in 1613. But the “Irish interest” which struggled therein against the “English interest” represented only the Anglo-Irish families, who had struck some roots in the soil and resented the dictation of English officials. The “native interest” had no voice in Parliament until O'Connell's triumph in 1828. Hence the pitiful impotence of this Parliament, the emptiness of the sound and fury of its constitutional debates. The beneficiaries of conquest could not in logic use the armoury of consent. The dependence of the colonists upon England placed their Parliament at the mercy of the English Government.

They relied upon English force to expropriate the native Irish and to proscribe the Roman Catholic religion; and this reliance deprived them of moral and material grounds of resistance to the political, commercial, and industrial tyranny of their masters. The power which gave the planters their land could laugh at their constitutional pretensions. So the Dublin Parliament idly strove to emulate its exemplar at Westminster, and clamoured in vain
[263] for responsible government, for control of the Irish Executive. In spite of its Irish Parliament, Ireland has never been given the chance of governing itself.

But nothing could eradicate the "protest of the sea" against union with England, or the tendency of dwellers on Irish soil to become Irishmen. The Anglo-Normans had grown *Hibernis ipsis Hiberniores* in the middle ages, and nothing short of the Tudor Conquest would have perpetuated English dominion; for even the gentry of the Pale rebelled in Elizabeth's reign against "cess," a form of arbitrary taxation compared in its constitutional bearings with ship-money. In their turn the Tudor planters were gripped by the Irish soil, and resisted the rule of Strafford; and a fresh immigration of Cromwellian settlers alone enabled William of Orange to hold Ireland against Tyrconnell and James II. Even their descendants, too, became part of the "Irish interest" in the eighteenth century; and Pitt's Act of Union was England's final effort to circumvent the insinuating strength of Irish nature.

The more Ireland's Parliament succumbed to Irish ideas, the more it was flouted by England, and the greater the efforts made to secure in it the predominance of the English interest. England, in spite of itself, was creating an Irish nation. It had destroyed the system of septs which it could divide and play off against one another; by imposing on all a grinding tyranny it had crushed out local distinctions and family feuds, and had evoked a national spirit which could not be corrupted by bribes or disarmed by division. Poynings' Laws were the first attempt at the new methods of control which led to the Act of Union. They were

soon found insufficient. Not only must Irish legislation be curbed by the English Privy Council; the English Parliament must also [264] have the power of initiating and passing laws for Ireland; and this practice grew up against which Molyneux vainly protested in 1694. In 1719 the practice was confirmed by an English statute, which transferred to the British House of Lords the appellate jurisdiction claimed by the Irish peers, and expressly asserted the right of the British Parliament to legislate for Ireland and override Irish laws. Similarly the Irish electorate was more and more rigidly restricted to the English interest; members of both houses were, by an English statute of William and Mary, required to be Protestants, and in 1727, by an English statute of George II., Catholics, who numbered four-fifths of the Irish people, were excluded from the franchise.

The same fear of a nascent Irish nationalism was the real motive for the Irish penal code, which assumed its worst features under Anne, and was largely extended under George I. and George II., although no Jacobite rebellion in Ireland threatened those sovereigns, and the only provocation was the silent growth of Irish national feeling. That its cause was not religious is clear, for there was little religious persecution, and the penal code in Ireland was at its worst in the heyday of English latitudinarianism. The design was really to shut out the Irish by means of their religion from political and social influence. Hence their exclusion from the legal and teaching professions, from the university, from the army and the navy, from corporations, grand juries and vestries; hence the barbarous laws by which a son converted to Protestantism could reduce his Catholic father to a mere life-tenant, by which no Catholic could buy or bequeath land or inherit or receive it as a gift from Protestants, by which he could not act as a guardian, a constable, or a gamekeeper, [265] possess a horse worth more than £5, or keep more than two apprentices. A Protestant husband who married a Catholic wife fell under this penal code; a Protestant wife who married a

Catholic husband was deprived of her inheritance; and an Act of George II. declared that mixed marriages should be null, and that the priests who made them should be hanged. Some knowledge of Irish history is required in order to appreciate the virtuous indignation roused by the Pope's *Ne Temere* decree. In the eighteenth century, wives were bribed by the law to turn against Catholic husbands, and children against their Catholic fathers; the fractious wife, the unnatural son had only to feign conversion in order to secure immunity and reward for undutiful conduct, and to deprive those whom they had injured of the management and disposal of their estates. Such was the system begotten by force and fraud through the breach of the Treaty of Limerick, when William III.'s generals, in order to pacify Ireland, guaranteed to the Irish people the enjoyment of their religious liberties. The arts which earlier English Governments had used to set chief against chief and clan against clan, were now employed on a more generous scale to set a dominant caste against the people they ruled, and to place at the absolute disposal of an alien garrison the lives, the liberties, the conscience, the property, and the domestic happiness of the nation it had robbed, maltreated, and betrayed.

Dominion, however, was not in the eighteenth century an end in itself, but a means for securing wealth. The age of commercial rivalry had set in during the latter half of the seventeenth century, and English traders, who had clamoured for the destruction of
[266] the Protestant Dutch, valued their hold over Catholic Ireland as a means for exploiting its markets and crushing its competition. One after another of Ireland's infant industries was massacred to satisfy English jealousy. Strafford's boasted encouragement of Irish linen was a blind to cover his campaign against Irish woollens. In the reign of Charles II. the importation of Irish cattle into England was prohibited because it lowered English rents, and Ireland's magnificent harbours were kept empty by its exclusion from the Navigation Acts, lest its incipient colonial trade should

compete with England's. Deprived of their market for cattle, the Irish developed sheep-rearing and woollen manufactures; in 1699 the English Parliament accordingly prohibited the export of Irish manufactured wool to any country whatever. The hypocritical plea was anxiety to stimulate Irish linen, which the English Parliament thereupon practically excluded by a duty of 30 per cent. Having thus impoverished Ireland, Englishmen based their case against Irish claims to self-government on the thriftlessness of its people.

All classes in Ireland, Catholics and Protestants, landlords and tenants, traders and farmers, were, however, involved in this common misfortune, which in its helpless position the Irish Parliament was powerless to avert; and in spite of the discord sown with malignant ingenuity between the English, the Irish, and the native interests, in spite of the perverted skill of viceroys and primates in maintaining the English faction by purchasing boroughs and corrupting parliaments, a common impulse began to pervade the carefully dislocated members of the Irish body politic. Scandals like “Wood's Halfpence” provoked a national protest in Swift's “Drapier's Letters”; a common feeling began to mitigate the ferocity of the penal code, and to inspire a [267] united demand for Irish freedom from English oppression. The opportunity came with the War of American Independence. Formed to provide a defence which England could not afford, the Irish Volunteers demanded the price for their services, and England had to pay it in Grattan's Parliament. The history of Ireland's packed and bribed and muzzled Parliament affords no proof of Ireland's incapacity to rule itself; rather it shows the lengths of cruelty and violence to which English Parliaments, in spite of their political genius, of their “glorious Revolution” of 1688, of their vaunted love of civil and religious liberty, have been driven by fruitless efforts to govern a gifted people against its will. England sought, and inevitably failed, to rule Ireland on principles the reverse of those on which were based its own

proud liberties and democratic Empire.

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X.—Ireland, 1782 And 1912[123] By Lord Fitzmaurice

The events of 1782 will always loom large in history, and the views of the members of the Rockingham Ministry on the proper relations to be established between Great Britain and Ireland, and the possible course of events had they met with a negotiator less intractable than Grattan, are subjects of more than merely historical interest.

In that ministry the Duke of Portland was Lord-Lieutenant of Ireland, and he took with him Colonel Fitzpatrick as Chief Secretary; Mr. Fox was Secretary of State for Foreign Affairs; Lord Shelburne was Secretary of State for the Home and Colonial Departments, and as such was responsible for the government of Ireland.

The recognition of the claim of Ireland to be a distinct Kingdom, with a right to a separate Legislature of her own for all purposes, was the object of the movement of which Grattan was the leader. That this claim was founded on historic right, and had also on grounds of expediency to be accepted, was admitted by the Whig statesmen of the time in England. But they also saw that there were subjects which the geographical position of [269] the two countries, their past history, and their industrial interests, rendered it desirable and indeed necessary should be recognized as common property. Ireland, in their opinion, was too near to be a separate State with safety to the external relations of Great Britain; she was too distant to be altogether incorporated with due regard to the efficient management of her own internal affairs.

[123] A considerable portion of this chapter appeared in the form of an article in *The Contemporary Review* in the year 1887, but it has been rewritten by Lord Fitzmaurice for the purposes of this work. We have to thank the Editor of the *The Contemporary Review* for his kind permission to make use of the original text—*Editorial Note*.

The Ministry of Lord Rockingham came into office on March 27th, 1782. The moment was one of the gloomiest in English history. The nation had just been stunned by the news of the great surrender at York Town; it was an open question whether the intelligence of the surrender of Gibraltar might not be expected to follow; the power of the fleet to cope successfully with the combined navies of France, Spain, and Holland, was doubtful; an invasion was discussed in every household in the land as a serious possibility, and the resources of the country to meet it were disputed by competent judges. The new Prime Minister was himself a dying man, though the dangerous character of his illness was concealed; the two Secretaries of State were separated by mutual suspicions which were rapidly ripening into estrangement. Ireland was in the hands of the armed Volunteers, and England's difficulty was, as usual, Ireland's opportunity. "The liberties of America were inseparable from ours," Grattan said in 1799, referring to this period; "they were the only hope of Ireland, and the only refuge of the liberties of mankind."[124] The satisfaction of Ireland was therefore, in 1782, the first condition of the safety of England, and imposed itself on the Ministers as their most imperious duty.

[270] The four grievances of Ireland were, in the words of Grattan, "a foreign legislature, a foreign judicature, a legislative Privy Council, and a perpetual army,"[125] and they were set forth in the Amendment to the Address carried by him in the Irish Parliament on April 17th.[126]

> "My opinion," Fox wrote to Fitzpatrick, on April 28th, "is clear for giving them all they ask; but for giving it them so as to secure us from further demands, and at the same time to have some clear understanding with respect to what we

[124] Speech of October 28th, 1738: "Grattan's Speeches," i., 183.
[125] Grattan to Fox, April 18th, 1782: "Fox's Correspondence," i., 403.
[126] "Grattan's Speeches," i., 129.

> are to expect from Ireland in return for the protection and assistance which she receives from those fleets which cost us such enormous sums and her nothing. If they mean really well to their country, they must wish some final adjustment which may preclude further disputes; if they mean nothing but consequence to themselves, they will insist upon these points being given up simply, without any reciprocal engagement; and as soon as this is done, begin to attack whatever is left, in order to continue the ferment of the country. In one word, what I want to guard against is Jonathan Wild's plan of seizing one part in order to dispute afterwards about the remainder."[127]

Lord Rockingham, writing in an exactly similar strain, said: "that the essential points of the Irish demands having first been conceded, it would be the duty of both countries to consider how finally to arrange, settle, and adjust all matters, whereby the union of power and strength, and mutual and reciprocal advantage, might be best permanently fixed;" and he spoke favourably of the appointment of "Commissioners" on both sides, to draw up the heads of an agreement between the two countries.[128] Of a similar character was the language of Lord Shelburne.

> "If," he said, writing to the Duke of Portland, on the day following that on which Fox had addressed the Chief Secretary, "the ties by which the two kingdoms have been hitherto so closely united are to be loosened or cut asunder, is your [271]
> Grace yet prepared to advise whether any, and if so what, substitutions are thought of for the preservation of the remaining connection between us? If by the proposed modification of Poynings' Law, so much power is taken from the two

[127] "Fox's Correspondence," by Lord Russell, i. 412.

[128] Lord Rockingham to Lord Shelburne, May 25th, 1782, "Parliamentary History," xxxiv., 979.

> Privy Councils as they are now constituted, are we to look for any agreement in any new institution of Council, which may answer the purpose of keeping up the appendancy and connection of Ireland to the Crown of Great Britain, and of preventing that confusion which must arise in all cases of common concern from two Parliaments with distinct and equal powers, and without any operating centre."[129]

On May 11th, Fox, in another letter to Fitzpatrick, explained his views; what he intended, he said, was to grant the "concession of 'internal legislation' as a preliminary, accompanied with a modification of Poyning's Law and a temporary Mutiny Bill;" and he hoped that, having made these concessions, "they might be able to treat of 'other matters' so amicably as to produce an arrangement that would preserve the connection between the two countries."[130] The other matters were the Final Judicature and the question of the contribution of Ireland to Imperial expenses. Shelburne suggested the formal negotiation of "the articles of a treaty," for as such, he said, he regarded his proposals;[131] and he urged a little judicious temporizing in the hope that the situation abroad might in the interval improve. But Grattan, recognizing the immense advantage which this situation gave him in negotiating with Great Britain, refused to entertain any idea of compromise. There was not only, he said, to be no "foreign legislature, but there were to be no commissioners" to negotiate a treaty,[132] and there was, above all, to be no delay
[272] in granting all the demands of Ireland. With this information before him, the Duke of Portland, who from the time of his arrival in Dublin had up till this moment encouraged both the Secretaries of State to believe that Grattan would come into their

[129] "Life of Lord Shelburne," iii., 144.
[130] "Fox's Correspondence," i., 417, 418.
[131] "Life of Lord Shelburne," iii., 145.
[132] *See* "Life of Grattan."

views, and might even make concessions[133] in regard to the final appeal in judicial matters, now informed them that the claims of Ireland on all the four principal demands must be conceded, and conceded at once, as the whole country was in a state of the wildest excitement, and was rapidly escaping control.[134] The concession of all the Irish demands was accordingly decided upon. The preliminary steps were taken on May 17th, by a resolution in both Houses of the British Parliament, for effecting the repeal of the 6th of Geo. I., c. 5, the Act by which the right of the British Parliament to legislate for Ireland was declared; and the necessary Bill was then introduced and rapidly passed into law.

At the same time, however, another resolution was adopted in the following terms:

> "That it is the opinion of this House that it is indispensable to the interest and happiness of both kingdoms that the connection between them should be established by mutual consent upon a solid and permanent footing; and that an humble address be presented to His Majesty, that His Majesty will be graciously pleased to take such measures as His Majesty in his royal wisdom shall think most conducive to that end."

On these resolutions Fox commented as follows:

> "Ireland," he said, "would have no reason to complain; the terms acceded to by England were proposed by herself, and all her wishes would now be gratified in the way which she herself liked best. But as it was possible that if nothing more was to be done than what he had stated to be his intention, Ireland might, perhaps, think of fresh grievances and rise yearly in her demands, it was fit and proper that something [273]

[133] "Fox's Correspondence," i., 416; "Life of Lord Shelburne," iii., 143.
[134] "Life of Lord Shelburne," iii., 146.

> should be done towards establishing on a firm and solid basis the future connection of the two kingdoms. But that was not to be proposed by him here in Parliament: it would be the duty of the Crown to look to that; the business might be first begun by His Majesty's servants in Ireland, and if afterwards it should be necessary to enter into a treaty, Commissioners might be sent from the British Parliament or from the Crown, to enter upon it and bring the negotiation to a happy issue, by giving mutual satisfaction to both countries, and establishing a treaty which should be sanctified by the most solemn forms of the Constitution of both countries."[135]

For the moment, however, the hope of commencing negotiations with these objects had to be abandoned, and when, on May 27th, the Royal Message conveying the intention of His Majesty to concede all the demands of the Irish Parliament was delivered in Dublin, the Secretary to the Lord-Lieutenant announced that no measures were then intended to be grounded on the second English resolution of May 17th. For a time, however, the Duke of Portland continued to hope against hope, and to nourish the vain expectations with which from the beginning he had buoyed himself up, and had misled his colleagues. During the month of June he allowed himself to be persuaded by Mr. Ogilvy, the husband of the Duchess of Leinster, and stepfather to Lord Edward Fitzgerald, that Grattan was not really so intractable as he seemed to be, and in a secret and confidential despatch, written on June 6th, he urged that the Irish Parliament should not be at once prorogued, in order to give time for a possible arrangement in regard to common affairs. But on June 22nd he was reluctantly compelled to express his disappointment and mortification at finding that his hopes had proved entirely fallacious, and that
[274] Mr. Ogilvy was a person not to be relied upon. The prorogation of the Irish Parliament was accordingly suffered to take place

[135] Fox: "Speeches," ii., 64, 65.

on July 27th, and here the matter ended.[136] "Thus," exclaimed Grattan to his applauding audience—"thus have you sealed a treaty with Great Britain; on her side the restoration of the final judicature; the extinction of her legislative claim; of her Privy Council; of her perpetual Mutiny Bill; the repeal of the Act of legislative supremacy; on your side satisfaction! And thus are the two nations compacted for ever in freedom and peace."[137]

Subsequently at the time of the Union a controversy arose in regard to these events. Mr. Pitt asserted that the adjustment of 1782 was not considered by the British Ministers by whom it was effected as final in its character; but that, on the contrary, they were fully convinced of the necessity of adopting some further measures to strengthen the connection between the two countries, and he produced the correspondence which had passed in 1782—extracts from which have been given above—as a reply to the lame attempt of General Fitzpatrick, who was still in Parliament, to deny that any such negotiation had been desired by the members of Lord Rockingham's Ministry. General Fitzpatrick had declined to admit more than that the Duke of Portland, during his residence in Ireland, might have entertained a vague idea of some farther arrangement for consolidating the connection with Ireland, but had soon given it up; and Grattan in the Irish Parliament openly accused Lord Shelburne and the Duke of having concealed their views from their colleagues, and said [275] that, above all, Mr. Fox knew nothing of the project contained in the despatch of June 6th.[138] The truth is, that the Rockingham Ministry was in June a house divided against itself, owing to differences of opinion as to the peace negotiation with France and the United States, and was almost in the actual throes of

[136] "Grattan's Speeches," Vol. III., 355, 409; January 15th, February 22nd, 1800. "Fox's Correspondence," i., 426; "Life of Lord Shelburne," iii., 149; "Parliamentary History," xxx., 957 (Speech of General Fitzpatrick).

[137] Speech of July 19th, 1782.

[138] Speech of Grattan, January 15th, 1800: "Speeches," Vol. III., 355.

dissolution. From a letter written by Fox in 1799 to Fitzpatrick, it certainly appears that the so-called "Ogilvy" negotiation never was communicated to him.[139] But the assertion of Mr. Pitt went far beyond the Ogilvy negotiation—if negotiation it can be called. What Mr. Pitt asserted was, not that the correspondence proved that in June, 1782, the Ministers were actually intending to enter on any such negotiation, but that the Prime Minister, the Lord-Lieutenant, and both Secretaries of State, from the very commencement of the correspondence in April, considered the arrangement insisted on by Grattan deficient, and lacking in finality, and were only prevented by the stress of adverse circumstances and the impracticable character of the Irish leaders, from trying to negotiate an agreement, by which Ireland should acknowledge that "the superintending power and supremacy were where Nature had placed them"—viz., in the Government of Great Britain.

What, then, was the view which the British Ministers in 1782 took of the relations which it was desirable to establish between Great Britain and Ireland—the relations which, had events been more favourable, they would have established? Evidently it was not a legislative union, though they wished to retain the final
[276] judicial appeal in London. The object of the Duke of Portland, as he explained in the secret despatch of June 6th, was that an Act of Parliament should be passed by the Legislatures of the respective kingdoms, by which "the superintending power and supremacy" of Great Britain in all matters of State and general commerce would be virtually and effectively acknowledged; by which also a share of the expense in carrying on a defensive or offensive war, either in support of our dominions or those of our allies, should be borne by Ireland in proportion to the state of her abilities; and that she should adopt every such regulation as might be judged necessary by Great Britain for the better ordering and

[139] "Fox's Correspondence," i., 431.

securing her trade and commerce with foreign nations, or her own colonies and dependencies; consideration being duly had to the circumstances of Great Britain. "This plan," Lord Shelburne explained during the debates of 1799, "had nothing to do with a legislative union."[140] "It related," he said, "to what might be called the expense of the system which was carried on under the two Parliaments, in Army, Navy, commerce and finance, and in the great establishments of Church and State; and it did not imply 'bringing the two Parliaments together.' "[141]

From these passages it appears that what the Whig statesmen aimed at in 1782 was to obtain, in the first place, a clear acknowledgment of the Imperial supremacy, or, as they would have said in the language of the time, of the power of Great Britain in "external" as distinct from "internal" legislation; and, in the next place, a contribution from Ireland to the expenses of external administration and policy: the Fleet, the Army, [277] and the diplomatic and commercial establishments. "I humbly conceive," said Burke, who was a member of the Rockingham Government, and the trusted adviser of his official chief, "that the whole of the superior, and what I should call Imperial politics, ought to have its residence here [in London]; and that Ireland, locally, civilly and commercially independent, ought politically to look up to Great Britain in all matters of peace or war, and, in a word, with her to live and die. At bottom, Ireland has no other choice—I mean no other national choice."[142]

Very different were the views of the Irish Parliamentary leaders: not of Grattan only, but of his rival, Flood, as can be gathered from the perusal of the debates in the Irish Parliament, which culminated in the famous struggle between Flood and Grattan on October 28th, 1782, when Flood, having denounced

[140] "Life of Lord Shelburne," iii., 150.

[141] "Parliamentary History," xxxiv., 675, 678; "Memoirs of the Whig Party," by Lord Holland, I. 147; "Life of Lord Shelburne," iii., 554, 555.

[142] Letter on the Affairs of Ireland, 1797.

Grattan as a “mendicant patriot,” and Grattan having retorted by likening his rival “to a bird of prey with an evil aspect and a sepulchral note,” the two leaders left the House in order to solve their differences by a duel, and were only prevented meeting in deadly combat by the interposition of the Speaker, who wisely issued his warrant to apprehend them both.

The contention of Flood was that the mere repeal of the Act of George I. was insufficient, and did not prevent its revival at any future period; that it really left the matter where it stood, and that it was therefore necessary to bring in a Bill for declaring the sole and exclusive right of the Irish Parliament to make laws in all cases whatsoever, internal and external, for the kingdom of Ireland. His desire was to trump Grattan's cards, and destroy
[278] his popularity, which in the following year he all but succeeded in doing, when a decision of Lord Mansfield in the Court of King's Bench enabled him to raise a cry that the independence of the Irish Courts of Judicature was in danger; and a further Act was forced on the British Government renouncing any claim to legislate and confirming the independence of the Irish Courts of Justice.[143] The contention of Grattan was that the relations between Great Britain and Ireland were to be ascertained from the record of the whole of the recent transactions, which were transactions between two independent nations having a common Sovereign; and this being so, he said it was no more possible for Great Britain to reassert her legislative supremacy over Ireland than it would be for her to do so over the American colonies, if the pending negotiations resulted, as they evidently were about to do, in a recognition of the independence of those colonies. Grattan, indeed, went so far as to say that the relations between Great Britain and Ireland were in future to be sought in the law of nations and not in the municipal legislation of either country, which he said was no longer applicable. But both the Irish leaders

[143] 28 Geo. III., c. 28.

agreed that in one way or another the legislative, financial, and judicial links between the two countries were to be severed, however much they differed as to the legal formulas which were to impress and carry out these ideas.[144] [279]

The following propositions can, then, be based on the events of 1782:

(1) That the Irish leaders insisted on the freedom of Ireland from interference by the British Parliament both in internal and external affairs, or, as would now be said, both on Home and Imperial questions. [280]

(2) That the British Ministers were ready to concede the former, and were not ready to yield the latter; but conceded both, owing to the circumstances of the time, and considered the concession final.

(3) That the British Ministers wished to obtain a contribution from Ireland for Imperial purposes, and the

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exalting the importance of the British Parliament, abolished on the one hand the right of the Crown to tax the Colonies by virtue of its prerogative, and on the other asserted a right in the British Parliament to legislate and tax in the "settled" Colonies of the Crown concurrently with the local representative assemblies, and, if necessary, over their heads. The same class of arguments were used both by Colonial and by Irish statesmen against the claims of the British Parliament to interfere as between them and the Crown; but the Irish case was always the stronger of the two, because her advocates were able to start from the admitted right and position of Ireland as a kingdom, with a Crown of her own. To the claims of the British Parliament, the Whig statesmen, recognising their danger in practice, tried to set constitutional limitations, and hence grew up the distinction, on which the elder Pitt relied, between the right of Great Britain to impose by law internal taxation within the Colonies for the purposes of revenue, and her right to levy external taxation for the regulation of Colonial trade. This distinction, however, from a legal point of view, Lord Mansfield showed, would not bear examination, and he laid down the law to be, that the Parliament of Great Britain had an absolute legislative supremacy over her Colonies—and by implication over Ireland—in all cases whatever, whether for internal or external objects; whether to impose a tax, or to regulate trade; whether to levy money, or to make general enactments; and this doctrine it was which was recorded in the Declaratory Act of George III. of 1766,

maintenance of a final appeal to an Imperial Court of Judicature.

(4) That the British Ministers do not appear to have proposed the representation of Ireland in the British Legislature.

In substance the plan proposed by Mr. Gladstone in 1886 was the plan which Grattan rejected in 1782. The objection to any such plan is the probability that if Ireland were to be asked, and were even to consent for the moment to make an appreciable contribution to the common expenses of the Empire, without being given through her representatives any share in the Parliamentary control of the funds so voted, and in the discussion of Imperial affairs—if, in other words, she was made a tribute-paying colony, instead of being treated as a member of a Federal system having an undiminished area of taxation for National purposes—a fresh and formidable grievance would arise in a few years, on the ground that taxation without representation was an intolerable thing, and contrary to the first principles of the Constitution. It was with these considerations present to his mind that Mr. Butt, when leader of the Irish Home Rule Party, in order to get over the difficulty, had proposed that a [281] Federal arrangement should be instituted between Great Britain

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relating to the Colonies, the counterpart of the Declaratory Act of George I., relating to Ireland. (*See* Bancroft, Vol. III., Ch. xix., The Absolute Power of Parliament; "Life of Lord Shelburne," Vol. I., Ch. iv., p. 253.)

[144] Much interesting light has been thrown on the history of the struggle in 1782-1783 between Grattan and Flood, by the publication of the Diary and Correspondence of Lord Charlemont, in the Reports of the Historical MSS. Commission, Twelfth Report, Appendix Part X., 1891. The abstract doctrine of the legislative supremacy of the British Parliament, and not only the practical application of that doctrine, was strenuously disputed by many of the leaders of Colonial Opinion in America as well as in Ireland at the commencement of the XVIIIth century, as a reference to the literature of the Stamp Act and the Declaratory Act of 1766 will show. The doctrine itself was one of the consequences of the Revolution of 1688, which true to the general principle of

and Ireland—*i.e.*, an arrangement under which Great Britain and Ireland should agree to vest certain powers in a purely Irish Legislature and certain others in the Imperial Parliament. The late Mr. Sharman Crawford, who like Mr. Butt was an Ulsterman and a Protestant, held similar views at an earlier epoch, and put them prominently forward during the period which elapsed between the imprisonment of O'Connell and the collapse of the first Tenant-right movement. With their opinion before us, it may be asked—why was no such plan proposed in 1782 by the English statesmen of the day? The answer is not far to seek.

The eighteenth century knew little or nothing about Federal Government. The Constitution of the United States, the parent of all the numerous later schemes of Federalism, was still in the limbo of the future; and it would be as idle to blame the Government of 1782 for not entering on a journey into the region of the unknown, especially at a moment of unexampled public difficulty, as it would be to blame the statesmen of the present day for not anticipating the political discoveries of the next generation, whatever they may prove to be. It was owing no doubt to the idea of Federal Government being practically unknown to the men of 1782, and to the unwillingness of the English mind to strike out on a new and as yet untrodden path in the art of Government, that in all the discussions of that time there is little or no suggestion of instituting a Federal link between Great Britain and Ireland. Some such suggestion was made during the negotiations on the Scotch Union, but it was decisively rejected by England, and only weakly urged by Scotland. The period was, in fact, one when Europe was still under the influence of a set of ideas which worked in an exactly opposite direction [282] to the ideas of nationality and Federalism. The period was indeed drawing to a close; but the whole tendency of history had for two centuries previously been in the direction of large agglomerations of territory and centralization of government, quite irrespective of questions of nationality and race, and that

tendency was still potent in 1782. The idea that the advantages of a national Government, extending over a large territory, might be combined with those of a decentralization of authority by a division of jurisdictions, was not one which the statesmen of the day in Europe had begun seriously to consider. Separation they understood, or an incorporate union: the possibility of an intermediate arrangement they ignored.

And yet an experiment in Federal Government is not to be approached with a light heart, and perhaps one thing only can be said about it with any certainty, that whatever success has attended it, wherever in fact it has worked smoothly, it has been when the powers reserved to the Federal or National Government have been those only which were strictly necessary, and in regard to which differences of opinion would presumably not arise amongst the States forming the Union.

It is the more important to bear these considerations in mind, because of the existence of a widely spread but erroneous idea in regard to the United States Constitution, to the effect that the Federal Government has very numerous and extensive powers in internal affairs assured to it by the jurisdiction of the Federal Court. This Court, it is said, can intervene, under the terms of the Constitution, to arrest the action of the State Governments, and therefore, once given a Federal Court, the success of the Federal
[283] experiment is assured.

But it is necessary to realize that it is only because the powers of the Federal Government are very strictly limited, and that the Federal Court is not overweighted with the assertion of rights, the exercise of which the public opinion of the States might not support, that its jurisdiction, when asserted, is as a rule respected, while over the State Legislatures as such it has no power at all, by way of injunction or prohibition. Nor have cases been wanting from which the precarious character of its powers, and its occasional lack of any sufficient sanction to enforce its decrees, may be gathered, when it has happened that

those decrees have not been in accord with the prevailing opinion of the State within which execution has had to be carried out. In 1812, when a state of war existed with Great Britain, the States of Massachusetts and Connecticut refused obedience to the orders of the Federal Government for the concentration of the militias of all the Northern States on the frontier, giving as their reason that the Constitution only empowered the Federal Government to call out the militia in the case of "insurrection or actual invasion," and that neither of these two eventualities had arisen. These doctrines met with general approval in the two States in question, and were endorsed by their Governors, their Legislatures, and their tribunals, nor were the Federal Courts able to enforce obedience to the commands of the Government at Washington. By a strict limitation of the powers of the National Government to what is absolutely necessary in order to secure the existence of the United States as a nation, the framers of the Constitution of 1787 did as much as it was possible to do, in order to render their work permanent; but they were not able, as De Tocqueville pointed out, even before the war of Secession had come to confirm the foresight of his views, altogether to [284] avoid the dangers which are the natural inheritance of all Federal forms of Government.

The possibility, then, of establishing a Federal connection of any kind between Great Britain and Ireland—that is to say, an arrangement under which certain powers would be vested in an Irish Legislature and Executive, and certain others in a Parliament and Executive common to both countries—depends entirely on whether it is believed not only that such a division of power can be successfully made upon paper—a feat which any constitution-monger can accomplish—but also that public opinion in Ireland will not interpose hopeless obstacles to the assertion of the reserved rights and powers of the Imperial Legislature and Executive.

That under a Federal arrangement there would be any real

possibility of frequent interference from London in Irish internal affairs is not probable, even were such interference legal. The attempt could only end in failure. Much has been said about the supremacy of the British or Imperial Parliament; and some of those who have used this expression apparently mean that every Act of the Irish Legislature and Executive is in some way or another to be reviewed by the British Parliament and Executive; or that in defiance of the plain teaching of history there is to be no responsible Irish Executive. The certain result of this would be to destroy the sense of responsibility in the Irish Legislature, to create endless differences of opinion between the two countries, and to make Great Britain the "whipping-boy" of Ireland, whenever Ireland had done anything foolish, and the British Parliament had not stepped in to prevent it. Reasonable men will continue to differ about the grant of Home Rule; but whatever is granted to Ireland in the way of legislative
[285] or executive right must be given fully and frankly, without looking backward. We must allow ourselves in this matter to listen to the voice of the statesmen of 1782. On the other hand, whatever is reserved must be clearly reserved, with ample guarantees for the arm of the Imperial Executive being long enough and strong enough to put down resistance. But that the power of the Imperial Parliament and Executive could, under any circumstances, be exerted frequently and in many matters, is a dangerous and impotent delusion. That power can only be maintained by carefully selecting and limiting the objects to which it is to relate; and by admitting Irish representatives to their full share—neither more nor less—of the control of Imperial questions in the Imperial Parliament, and securing adequate machinery for the execution of the decrees of the Imperial Government in Ireland when necessary. The arguments against any petty and irritating interference with the internal affairs of Ireland would be just as strong now as those which Lord Chatham used in 1774 against the proposed interference of

the British House of Commons with the Absentee tax which the Irish Parliament was in that year supposed to be about to pass:

> "The justice or policy of the tax," he said, "is not the question; and on these two, endless arguments may be maintained *pro* and *con*. The simple question is, have the Commons of Ireland exceeded the powers lodged with them by the essential constitution of Parliament? I answer, they have not, and the interference of the British Parliament would in this case be unjust, and the measure destructive of all fair correspondence between England and Ireland for ever."[145]

In what way would the British Parliament be more able to interfere in such a case than it was in 1774?

That Great Britain, if she chooses, is strong enough to govern [286] Ireland for a prolonged period against the wishes of the majority of the people of Ireland, is indeed true; and under a strong and consistent Administration, strict and even justice might no doubt produce quiet and a considerable degree of material prosperity, without the constitutional question being touched. But the existence of outward calm and material prosperity has always been a favourite plea with the opponents of political reform. And it is the most subtle and dangerous of all possible pleas, so soothing in character, and making apparently so winning an appeal to plain common sense and to self-evident facts. "Now, after all this," says Lord Clarendon, when describing the period in which England was administered, judged, and legislated for by the Privy Council, "I must be so just as to say that during the whole time that these measures were exercised, and these new and extraordinary ways were run, this kingdom enjoyed the greatest calm and the fullest measure of felicity that any people in any age for so long a time together (for the above-mentioned eleven or twelve years) have been blessed with, to the wonder

[145] "Life of Lord Shelburne," i., 285.

and envy of all the other parts of Christendom." But a few years after the happy period described in such glowing terms by the great historian the Civil War broke out.

If the necessity for a political change exists, sooner or later it forces its way to the front, notwithstanding outward calm. It has been so before, and there is no reason to doubt that it will be so again, because the claim made by Ireland depends on permanent facts which statesmen cannot alter notwithstanding occasional periods of material prosperity and outward calm. As the ultimate solution of existing difficulties it is indicated by the geography and by the history of the island; and these are the two
[287] conditions of every political problem, which it is difficult to surmount or evade. Time may indeed slowly soften the asperities produced by past errors and the crimes of bygone generations; but the geographical conditions of a problem remain fixed and unalterable, and in the long run will be found to be the permanent factor which governs the situation. Not by empty formulas, such as "governing Ireland according to Irish ideas," or, "extending all the liberties enjoyed by the subjects of Great Britain to those of the sister island," shall we advance one yard on our way, or indeed do aught but make it clear to friend and foe alike, that we are cultivating contradictory ideas without even being apparently aware that we are doing so. What we have to do is to resolve to take our stand on the few firm bits of fact which emerge like stepping-stones traversing a quaking bog; and then we may get over, and some day perhaps climb the distant hills which are on the other side. Otherwise we shall go on "filling our belly with the east wind" to the end of time; we shall fish all night and take nothing. These few firm bits of fact are those provided by history and geography. Open the map and look at the situation of Great Britain and of Ireland relatively to each other; observe how they lie near, yet apart; how they are separated by intervening seas, but seas so narrow as to be a bond quite as much as a bar; how they are inhabited by races speaking the same language but

professing different religions; and bear in mind that these are the features of the picture which cannot be altered. This being so, let us next suppose that some stranger ignorant of all the trivial details of the Irish question, on his arrival amongst us, were asked to state what, in his opinion, with the above conditions placed before him, the institutions of two such islands relatively to one another were likely to be, judging from his experience [288] of other countries. Would he not probably reply that the wise statesmen of Great Britain, of whose fame he had heard in foreign lands, had doubtless long ago come to the conclusion that their separation for some purposes, and their union for others, was stamped on the map as the certain and inevitable condition of any satisfactory settlement of their mutual relations, and that, alike to their complete separation and to their complete union, there was one and the same answer: *Opposuit natura*.

But, further, let us suppose him in his turn to inquire what the experience of the past had been in this particular case; and whether the two countries at the present time were entirely united or entirely separate, or were linked by some intermediate arrangement adapted to their relative needs and springing out of them; and suppose that the answer was, as it would have to be, that after several centuries of aggravated strife, they had first tried entire legislative separation, and had then abandoned it for an absolute incorporate union. Would he in that case be astonished if he was informed that history had vindicated geography, and that under neither of these two relations had peace, goodwill, and amity, been the distinguishing characteristics of the relations of Great Britain and Ireland?

To such a traveller it might perhaps be explained as an unexampled portent, that although constitutional liberty, limited only by the right of every Government to suppress crime and repress disorder, had been extended by the larger to the smaller country; that although an equal representation, a wide suffrage and vote by ballot had also been given, and no alien Church

any longer vexed the conscientious scruples of the majority, and
[289] the land system of the country had also been reformed, yet so unreasonable were the minds of the Irish people that they refused to be contented, and were now asking for a modification of the fundamental articles of the existing incorporate union, and that a constant agitation in consequence prevailed.

Might he not reply that he had heard it said by them of old time, that it was a mistake to be too much alarmed by the existence of political agitation; that absolute quiet is not a necessary sign of political health even in a constitutional State; that what is called union within a political system may be a very equivocal expression; that the true union is a harmony, the result of which is that all parties, however opposed in appearance, co-operate towards the common good; that union may even exist in a State where the eye at first seems only to recognize a busy confusion; and that the contentment of the population with the institutions under which they live is the only solid guarantee of their permanence.[146] Englishmen, he might add, in conclusion, had themselves been occupied for two centuries in proclaiming these and similar liberal sentiments from one end of Europe to the other, and the time had now perhaps arrived for applying them nearer home.

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[146] Montesquieu, "Considérations sur la Grandeur et la Decadence des Romains."

XI.—Grattan's Parliament. By G. P. Gooch

Grattan's Parliament was born of the American War of Independence and was slain by the French Revolution. Brief as was its life, it forms the most brilliant and interesting episode in Irish history. Never has the ancient and unconquerable spirit of nationality spoken in more eloquent accents than during the years when Grattan, loyal alike to the British connection and to Irish ideals, had won for his countrymen a measure of self-government. Representing only the Protestant minority, clogged with corruption, and containing its full share of selfish and reactionary influences, it was none the less the focus and the mouthpiece of national feeling. Fairly to judge the Grattan Parliament we must not only recall its limitations and errors but contrast its throbbing vitality with the servitude that preceded its foundation and the creeping paralysis which followed its dissolution.

A long sleep had succeeded the final expulsion of James II. from Ireland. The penal code was perfected into a system accurately described by Burke as most perfectly fitted to degrade and brutalise the human spirit. Catholic Ireland was voiceless and wholly lacking in political consciousness; and the silence of Protestants was only broken by a rare protest from Molyneux, [291] Swift, or Lucas. If any doubt remained under Poynings' Laws as to the complete dependence on Great Britain, it was set at rest by the Declaratory Act passed at Westminster in 1719. The Viceroys before Townshend only spent a few weeks in Dublin every second year for the biennial sessions of Parliament. The Lords Justices governed the country for its English masters by influence and corruption, and the Irish pension list provided grants too degrading to be charged on English revenues. A new era opened when Flood took his seat in 1759 and organised an Opposition, the programme of which included the limitation of parliaments, the revision of the pension list, the creation of a

militia and the independence of the Irish Legislature. The first object was secured in 1768 by the Octennial Act; but at the height of his power and popularity he was captured by the Government, which naturally desired to disarm its most formidable foe. After an interval of independent support, the great orator accepted a salaried office and a seat in the Privy Council in 1775. In the same year Grattan entered Parliament at the age of twenty-nine, and quickly asserted his title to the leadership of the national party which Flood, in an evil moment for himself and his country, had abdicated.

The new leader was favoured by circumstances. While Flood clamoured for the suppression of the American revolt, the Presbyterians of the north loudly applauded the colonists, many thousands of whom had recently emigrated from Ulster. The community of interest was fully realised on both sides of the Atlantic; but Ireland asked for political and commercial autonomy, not for independence. With the demand there rapidly emerged the instrument of its realisation. Ireland was almost
[292] without troops when France declared war in 1778. When it became clear that the Government were unable to defend the island, the Protestant gentry came forward, and in a few weeks a disciplined and enthusiastic force of 40,000 men was under arms. Though organised for defence, the Volunteers, inspired by Charlemont and Grattan, determined to employ their strength in exacting concessions from the British Government. To use the words of Fox, the American war was the Irish harvest. The larger part of the damage inflicted on Irish commerce and manufactures by the legislation of the prominent partner was irreparable; but something might be saved from the wreck. The menacing aspect of the Volunteers and the panic-stricken despatches from Dublin Castle convinced the North Ministry that there was no alternative but to yield. Foreign and colonial trade was thrown open, the embargo on exports was removed, and Ireland was at last free to make use of her resources.

The easy overthrow of commercial restrictions encouraged Grattan to a bolder flight. In 1780 he moved his historic resolution "That no person on earth, save the King, Lords, and Commons of Ireland, has a right to make laws for Ireland." The motion was withdrawn after an impressive debate; but when the Volunteer Convention, which met shortly after, unanimously adopted the demand for self-government, the British Ministry surrendered. In April, 1782, the declaration of legislative independence was brought forward by Grattan in one of his noblest orations. "I found Ireland on her knees. She is now a nation. In that character I hail her, and, bowing in her august presence, I say, *Esto perpetua*!" A new and happier era seemed at last to be opening in the fortunes of Ireland and in her relations with Great Britain. "I am convinced," wrote Burke to Charlemont [293] in words of gold, "that no reluctant tie can be a strong one, and that a natural, cheerful alliance will be a far more secure link of connection than any principle of subordination borne with grudging and discontent." Grattan was fully satisfied with the repeal of the Declaratory Act of 1719; but when the demand arose for an express renunciation of the authority of the British Parliament, the Coalition Ministry of Fox and North passed an Act unconditionally recognising the right of the Irish people to be bound only by laws enacted by the King and the Irish Parliament.

The Grattan Parliament appeared to enter on its career with a fair capital of good will. Irishmen began to feel that they had a country; and though autonomy had been wrested in an hour of weakness by a show of force, there was no trace of resentment in the debates at St. Stephen's which accompanied the renunciation of power. The new constitution seemed to enable Ireland to work out her own salvation without let or hindrance. But the powers which appeared so ample were in reality strictly limited. In the first place, while the Irish Legislature became in theory the peer of the British Legislature, the Irish Executive—the Lord-Lieutenant and the Chief Secretary—continued to be appointed

by and responsible to the British Ministry. Secondly, Irish Bills did not become law till they were sanctioned by the King and sealed by the Great Seal on the advice of British Ministers. Finally, a majority of the Irish Parliament rested not on the free choice of the people or even of the Protestant population, but on the owners of nomination boroughs, most of whom were bound to the Executive by the possession or prospect of titles, pensions or sinecures. Government by patronage survived the Renunciation [294] Act, and reduced the authority of the Grattan Parliament to a shadow. The power of withholding supplies was an empty privilege; for the greater part of the income of the country came from the hereditary revenue, which was independent of Parliament.

The difficulties inherent in the novel situation were speedily revealed. It was Grattan's fervent wish that the Volunteers, their emancipating task accomplished, should dissolve and leave the parliament to carry out its work. Flood, on the other hand, who had rejoined the ranks of the Opposition, had less confidence in the sincerity of the British Government, and desired to retain the weapon that had proved so effective, at any rate till a Reform Bill had placed the Legislature in a position to withstand the insidious assaults of the Executive. Parliamentary reform was the natural corollary of the Renunciation Act. Flood laid his proposals before the Volunteer Convention, and, armed with its approval, carried them to College Green. His object was to emancipate parliament from the control of placemen and pensioners and to break the power of the borough-owners by the extension of the franchise. The fault of the measure was that, contrary to the wishes of Grattan, it perpetuated the exclusion of Catholics from political rights. The Executive opposed the Bill on the ground that it emanated from Prætorian bands, though the Volunteers themselves were held in check by British troops. The whole open and secret influence of the Government was exerted, and the proposals were defeated. Reform was the condition of genuine

autonomy. Without it the Legislature was clay in the hands of the potter. Though a share of the blame falls to the members who saw their influence endangered, the main responsibility for its defeat lies with the agents of the British Government. Having granted legislative equality, England took care to secure that [295] the Grattan Parliament should possess the shadow but not the substance of power.

The next disappointment arose in the sphere not of politics but of commerce. It was the wish both of Pitt, the disciple of Adam Smith, and of Grattan that commercial intercourse between the two countries should be facilitated. But the offer to open the English market was accompanied by a proposal that Ireland should make a definite contribution to Imperial expenditure. She already maintained an army of 15,000 men, a fifth of whom were at the disposal of the British Government while the rest could be employed outside Ireland with the consent of the Dublin Parliament. But Pitt, convinced that free trade with England would stimulate Irish prosperity, felt justified in demanding a share of the increased revenue for the Imperial navy. Grattan disliked the suggestion of anything which could be represented as a tribute, and would have preferred voluntary grants; but he waived his objection, and Pitt's scheme, in the form of resolutions, was approved by the Irish Parliament. At this stage the jealousy of the British commercial classes flamed out, and the scheme, on emerging from the debates at Westminster, was found to have been radically altered. As in its final form it curtailed the independence of the Irish Parliament, Grattan strongly opposed it. A scheme which failed to satisfy England and had lost its friends in Ireland was not worth further effort. Pitt had done his best, but had been overborne by the commercial interests. When the Irish Parliament later declared its readiness to discuss a commercial treaty, it met with no response.

Pitt was bitterly disappointed by his failure, and lost a good deal of his interest in Ireland. He adopted the view of [296]

successive Lords-Lieutenant that genuine parliamentary reform was incompatible with the supremacy of the Executive. “There can, I think, be little doubt,” pronounces Lecky, “that the prospect of a legislative union was already in his mind, and it was probably the real key to much of his subsequent policy.” Dr. Holland Rose quotes a significant letter of Pitt to the Viceroy, Lord Westmorland, in the autumn of 1792. “The idea of the present fermentation gradually bringing both parties to think of an Union with this country has long been in my mind. I hardly dare flatter myself with the hope of its taking place; but I believe it, though itself not easy to be accomplished, to be the only solution for other and greater difficulties.” Thus the Grattan Parliament never had a fair chance. The dual system could only be worked by mutual good will, and if one of the partners withheld her aid, the experiment was doomed. Pitt was not yet openly hostile; but he allowed his agents in Dublin to shape their own course. He recognised that the root of Irish crime was to be found in the tithe system, and suggested in 1786 that tithes should be commuted; yet when Grattan brought forward proposals with this object he allowed the Executive to defeat them.

Pitt's growing dislike of the system of 1782 was reinforced by the action of the Irish Parliament in the Regency crisis. When the King became insane in 1788, the Whigs contended that their patron, the Prince of Wales, should automatically exercise the power of the Crown, while Pitt retorted that it was for Parliament to appoint him Regent, and to define his powers. The Irish Parliament sided with the Whigs, Grattan and the Nationalists on the constitutional ground that Pitt's proposed safeguards were
[297] unnecessary in Ireland, the camp-followers in view of the probable change in the source of patronage. The controversy terminated with the King's restoration to health; but the Prime Minister never forgot nor forgave the encouragement rendered to his enemies at the crisis of his fate.

Pitt had attempted nothing for Ireland since the failure of his

commercial proposals; but the ferment created by the seductive doctrines of the French Revolution determined him to conciliate the Catholics, to whom he had always been friendly and whom he agreed with Burke in regarding as naturally conservative. On being informed of his wishes in 1791 the Irish Government did its utmost to dissuade him, and succeeded in whittling down the concessions till they were scarcely worth granting. Though Flood and Charlemont were immovably opposed to the extension of any kind of political rights to Catholics, and though Grattan always explicitly reserved Protestant ascendency, there was a large body of opinion prepared for a fairly liberal policy; and the new organisation of United Irishmen, founded in 1791 by Wolfe Tone, rested on the recognition of a common effective citizenship. In view of these circumstances, Pitt for the first and last time determined to overrule his agents. The Relief Bill of 1793 enfranchised Catholics on the same terms as Protestants, admitted them to juries, to the magistracy, and to commissions in the Army and Navy, allowed them to receive degrees in Dublin University and to carry arms. This generous measure, which the Executive hated but dared not oppose, passed without difficulty. Though the main merit belongs to Pitt, the acceptance of such far-reaching concessions by a Protestant body is a proof that, left to itself, it was not unwilling to concede substantial instalments of justice to the Catholic majority. Recent attempts to minimise the [298] importance of the Act, on the ground that the franchise without eligibility to Parliament was worthless, misjudge the situation. The measure was hailed by Catholic opinion as a decisive breach with the intolerant traditions of a century; and its easy passage to the Statute-book suggests how different might have been the record and the fate of the Grattan Parliament had Pitt throughout encouraged its more generous intuitions and compelled his agents to support the policy which he knew to be right.

The union of the Portland Whigs with Pitt in 1794 seemed to bring further reforms within sight. Grattan travelled to London to

discuss the situation, and met Fitzwilliam, who was designed for the Viceroyalty. Fitzwilliam was known to favour Parliamentary Reform and Catholic Emancipation, and the liveliest hopes and fears were entertained of a decisive change of system. On learning from Dublin that there was already open talk of the dismissal of the Chancellor and other members of the Ascendency party, Pitt was deeply annoyed. It would be best, he declared, that Fitzwilliam should not go to Ireland; and, in any case, he must understand that no idea of a new system could be entertained, and that no supporters of the Government should be displaced. Shortly before his departure Pitt and Grenville met Portland, Spencer, Windham and Fitzwilliam to determine the policy to be pursued. No notes were made of the conversation, and the Viceroy left England on January 4th, 1795, without written instructions, though well aware of Pitt's general views and wishes. Three days after landing he dismissed Beresford, the head of the Revenue and an inveterate enemy of Catholic claims, who possessed
[299] enormous borough influence and was often described as the King of Ireland. Fitzwilliam afterwards stated that he told Pitt the step might be necessary and that he had acquiesced by his silence. Pitt rejoined that he had no recollection of the incident. In any case a man of such importance should not have been removed without communicating with the Home Government. A few days later the Viceroy informed Portland, the Home Secretary, of the unanimity of Catholics and the readiness of Protestants for a measure of emancipation. Despite pressing and repeated communications, Portland delayed his reply and finally urged him not to commit himself. Next day Pitt wrote censuring the removal of Beresford, but without mentioning the Catholic question. Fitzwilliam replied that Pitt must choose between him and Beresford, and informed Portland that he would not risk a rebellion by deferring the measure. A week later Portland wrote in peremptory terms that Grattan's Bill, which enjoyed the Viceroy's support, must go no further, and on the following day

Fitzwilliam was recalled.

The Viceroyalty had lasted six weeks; but Fitzwilliam is remembered while the phantom rulers who preceded and followed him are forgotten. The episode has a narrower and a wider aspect. That his dismissals were in contravention of the understanding on which his appointment rested was admitted by his personal and political friends in the Cabinet. But though the Viceroy was guilty of disloyalty to his instructions, a strong case can be made out for his policy. He knew that the prevailing system was thoroughly vicious, and he realised that if a policy of conciliation and reform was to be undertaken it could not be effectively carried out by men who were opposed to it. As Pitt had explicitly vetoed a change of system, it would have been wiser to have refused the post. The aims of the two men were fundamentally different. Though in favour [300] of admitting Catholics to Parliament, Pitt thought it safer to defer emancipation till a Union was accomplished, and therefore determined to preserve Government patronage and control for future emergencies. Fitzwilliam desired to govern Ireland in accordance with Irish ideas, in the spirit of the Constitution of 1782 and with the help of men who were loyal to it. In his recent work, "The End of the Irish Parliament," Mr. Fisher, who finds nothing to admire in the Grattan Parliament and little in its founder, suggests that the Fitzwilliam crisis was a storm in a tea-cup, and that the main issue involved was the substitution of the Ponsonbys for the Beresfords as the dispensers of patronage. But Irish tradition is in this case a safe guide as to the character and importance of the incident. Ireland instinctively felt, as India was to feel nearly a century later in regard to Ripon, that Fitzwilliam was a friend. The news of his recall was received with delight in Ascendency circles, and elsewhere with consternation. It was taken as a definite rejection of the Catholic claims, and increasing numbers despaired of achieving any real reform by peaceful means. It revealed in a flash that the autonomy of

Ireland was a sham. From this point the rebellion of 1798 and the Union were in sight.

The new Viceroy, Camden, was an anæmic personality, and with the establishment of Maynooth the tale of reforms came to an end. The uncrowned king of Ireland and the brain of Dublin Castle was Fitzgibbon, who as Attorney-General stood by Pitt in the Regency crisis and had been rewarded by the Chancellorship and the earldom of Clare. In his discriminating study of Clare, the late Litton Falkiner has advanced all that can be said for
[301] the ablest and most ruthless of the opponents of the Grattan Parliament, pointing out that he remained on friendly terms with the Opposition till 1789. Wholly destitute of national feeling, Clare openly scoffed at the Catholic Relief Act of 1793, which the Government was compelled to support. It was from him that emanated in 1795 the fatal suggestion that the King could not assent to the repeal of laws affecting Irish Catholics without violating his Coronation oath. “In forcefulness and narrowness, in bravery and bigotry,” writes Dr. Holland Rose with entire truth, “he was a fit spokesman of the British garrison, which was resolved to hold every outwork of the citadel.” With Pitt's glance fixed on Union and Clare in virtual command of the machine, there was no place for Grattan in his own Parliament. He disapproved the revolutionary republicanism of the United Irishmen and the ascendency principles of Dublin Castle, and refused to encourage the one by attacking the other. After a final attempt in 1797 to procure the admission of Catholics to Parliament and to introduce household franchise, he retired into private life, his Letter to the Citizens of Dublin firing a parting shot at the Government.

The rebellion of 1798 and the French invasions form no integral part of the history of the Grattan Parliament; but they none the less sealed its doom. In his speech on the Union, Clare frankly confessed that he had been working for the Union since 1793, and he began to urge the policy on Pitt in the same

year. Pitt, who had long regarded a Union followed by Catholic Emancipation as the ultimate solution of the Irish problem, was now convinced that further delay was dangerous. In the early part of the eighteenth century the idea of Union was by no means unpopular; but the American war had shaken Ireland from her [302] slumbers, and the debates on the Commercial Propositions and the Regency showed that the Grattan Parliament was jealous of the slightest infringement of the settlement of 1782. But the matter was not to be settled by argument, and no dissolution was allowed. The high-minded Cornwallis, who had succeeded Camden, groaned over his hateful task. "My occupation is most unpleasant, negotiating and jobbing with the most corrupt people under heaven. How I long to kick those whom my public duty obliges me to court! I despise and hate myself every hour for engaging in such dirty work, and am supported only by the reflection that without an Union the British Empire must be dissolved." There was no national opposition to the measure. The Catholics were won by the promises of Emancipation, though they were not informed that the King had already declared his objections to it insuperable. The main fight was waged by the Ulster Protestants from whom had sprung the Volunteers. When the Irish Parliament met for the last time in January, 1800, a majority had been secured by Cornwallis, Castlereagh, and Clare. Grattan had sought re-election and returned to utter an eloquent protest against the destruction of the body that for ever bears his name. He predicted that the Union would be one of Parliaments, not of peoples. To destroy the Parliament was to destroy an organ of national intelligence, a source and symbol of national life. "The thing it is proposed to buy is what cannot be sold—liberty." He reiterated his conviction that nature was on the side of autonomy. "Ireland hears the ocean protesting against separation, but she hears the sea likewise protesting against Union." The warnings of the most spotless of Irish patriots were of no avail. The Grattan Parliament was swallowed up. In his [303]

touching words, he watched by its cradle and followed its hearse.

There is a good deal to be said for the assertion that after the rebellion of 1798 the continuance of the experiment of 1782 was a source of danger to Great Britain in her life and death struggle with France. But there is no ground for the contention that the constitution itself was intrinsically unworkable. Its congenital weakness was that the Executive was responsible not to the Irish but to the British Parliament. Friction between the Legislature and the Executive was thus inevitable; but with tact and goodwill even this anomaly need not have stopped the working of the machine. What would have happened had the British Ministry unselfishly co-operated with Grattan and the moderate Nationalists to secure urgent political and economic reforms we can but conjecture. But we know only too well the effect of withholding such co-operation. There is scarcely a trace in the voluminous correspondence of the Viceroys, except perhaps the Duke of Rutland, of any consideration for the good of the country over which they ruled. Their mandate was to watch the interest of England. When Cornwallis proposed in 1798 that Castlereagh should become Chief Secretary, the King objected that the post ought to be held by a Briton; but his scruples were allayed by the Viceroy's assurance that his candidate was "so very unlike an Irishman" that the appointment would be perfectly safe. There is no ground whatever for the notion that the Parliament was a wholly corrupt and reactionary body. That Grattan was not prepared to endanger the Protestant Ascendency is true but irrelevant; for he was ready to champion such measures
[304] of Parliamentary Reform and Catholic Emancipation as would have transformed Parliament into a tolerable mirror of Irish opinion. There can be little doubt that if the Executive had lent its aid, such measures could have been carried as easily as the Relief Bill of 1793.

In his thoughtful and eloquent volume, "The Framework of Home Rule," Mr. Erskine Childers gently chides Home Rulers

for wasting vain regrets on the Grattan Parliament, in which he loses interest after the rejection of Flood's Reform Bill of 1783. No instructed Home Ruler would dream of setting that celebrated body on a pedestal. We know too well that, in the words of Litton Falkiner, it was a parliament of landlords, of placemen, and of Protestants. It was fundamentally conservative and aristocratic. It was ever ready to pass Coercion Acts. It was no more a council of disinterested patriots than the sister assembly at Westminster. On the other hand a large and influential section of its members was eager to purge it of its baser elements. "With every inducement to religious bigotry, it carried the policy of toleration in many respects further than the Parliament of England. With many inducements to disloyalty, it was steadily faithful to the connection. Nor should it be forgotten that it was on the whole a vigilant and intelligent guardian of the material interests of the country."[147] Though cabin'd, cribbed, confined, it was at least in some degree an organ of public opinion and a symbol of nationality, as the Third Duma, tame though it be, has stood for the principle of representation in autocratic Russia. The duty of British statesmen was to mend it, not to end it. If Grattan's Parliament was a failure, the Union was a greater failure. For the one experiment recognised, however [305] imperfectly, the separateness of Ireland, while the other started from its denial. To use the jargon of the Ascendency party, Ireland was "loyal" before the Union and "disloyal" after it. The clear moral of those chequered years for latter-day statesmen is that a responsible Executive is of more importance than a co-equal legislature, and that having granted autonomy the British Parliament and British Ministers must strive to render it a success. Pitt's Union was not partnership but subjection. The only true Union between countries so different is to be found in loyal comradeship. Against such a relationship history cannot bear

[147] Lecky.

witness, for it has never been tried.

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XII.—"The Government Of Ireland In The Nineteenth Century". By R. Barry O'Brien

I

When you speak to Englishmen about English rule in Ireland they say: "Oh! you Irish are always looking back. You always want to talk about the past. You read nothing but ancient history. You never think of all we have done for you in recent years. Come to modern times; forget the past."

Well, the point is, what are modern times? What date are we to fix for the beginning of good government in Ireland—1800? Scarcely. I do not think that the rankest Tory that ever lived will now attempt to defend English rule in Ireland between 1800 and 1828. In fact, this is what they call ancient history. They will say to you: "Well, of course, we know that the Catholics ought to have been emancipated at the Union, and a great many other things ought to have been done! But what is the good of talking about that now?" The good is, that the lessons of the past are the safeguards of the future. Hence they must be learned.

"Progress," says Lamennais, "is in a straight line. To find it we must go back to the past." Let us take the line of [307] "progress" in Ireland throughout the nineteenth century. In 1800 the Irish Parliament was destroyed; the English Parliament took Ireland in hand. A new era was to dawn upon the country. The Catholics were to be emancipated, measures of social and political amelioration were to be passed, peace and prosperity were to reign in the land. Such was the promise of the Union. How was it fulfilled? The Catholics were not emancipated; measures of social amelioration were not carried; but the Statute book was filled with Coercion Acts passed to crush the efforts of the people in their struggle for justice and freedom.

A chronology of Ireland lies before me. Such entries as these meet the eye at every turn.

1800-1801. Insurrection Act, Habeas Corpus Suspension Act, and Martial Law.
1803. Insurrection Act.
1804. Habeas Corpus Suspension Act.
1807-1810. Insurrection Act, Martial Law and Habeas Corpus Suspension Act.
1814. Habeas Corpus Suspension Act.
1814-1818. Insurrection Act.
1822-1824. Habeas Corpus Suspension Act, Insurrection Act.
1825-1828. Act for Suppression of Catholic Association.

Nothing can give a better idea of the character of English Government in Ireland during the first quarter of the century than the mere recital of these Acts. And then when we look at the Statute book for the measures passed to ameliorate the condition of the people, to reconcile them to the loss of their Parliament, and to give them confidence in the English Legislature, what do we find? At the General Election of 1910, a pamphlet was published in the county——. It bore the title—"What Mr. M—— has done for the people of ——" You then turned over the leaves
[308] and found every page a blank. So is it with the English Statute book, during the years 1800-1829, as far as measures of justice for Ireland are concerned. Out of a total population of 5,000,000 people at the time of the Union, 4,000,000 were Catholics. These Catholics, representing the old Irish race, were treated as outlanders in their own country. Ireland was governed through the Protestant minority who, (themselves the descendants of English settlers), were, under England, the masters of the land. In 1798, Cornwallis had written to Pitt:

> "It has always appeared to me a desperate measure for the British Government to make an irrevocable alliance with a small party in Ireland (which party has derived all its

> consequence from, and is, in fact, entirely dependent upon the British Government), and to wage eternal war against the Papists."

The "desperate measure" which Cornwallis deplored, the British Government adopted. In 1802, Lord Redesdale, the Irish Lord Chancellor of the day, wrote: "The Catholics must have no more political power"; and he added: "I have said that this country must be kept for some time as a garrison country—I meant a Protestant garrison." The policy enunciated by Lord Redesdale was the policy enforced by the English statesmen of the Union. I think it is Lord Acton who says somewhere that nothing stimulates the sentiment of nationality so much as the presence of a foreign ruler. The Irish people saw the hand of the foreign ruler everywhere, and national hatred was naturally intensified and perpetuated.

Besides the question of Catholic emancipation—the question of political freedom—there were many other questions calling for the immediate attention of Parliament. There was the church question, the tithe question, the question of the education of the people, and the eternal land question. The very existence of these questions was ignored by English statesmen. Land was [309] the staple industry of Ireland; yet it was worked under conditions which were fatal to the peace and prosperity of the country. What were the conditions? The landlord let the land—perhaps a strip of bog, barren, wild, dreary. The tenant reclaimed the bog; built, fenced, drained, did all that had to be done. When the tenant had done these things, had made the land tenantable, the rent was raised. He could not pay the increased rental—he had spent himself on the land; he needed time to recoup himself for his outlay and labour. He got no time: when he failed to pay, he was evicted—flung on the roadside, to starve, to die. He took refuge in an Agrarian Secret Society, told the story of his wrong, and prayed for vengeance on the man whom he called a tyrant, and

an oppressor. Too often his prayer was heard, and vengeance was wreaked on the landlord, or agent, and sometimes on both.

> "The landlord," says Mr. Froude, "may become a direct oppressor. He may care nothing for the people, and have no object but to squeeze the most that he can out of them fairly or unfairly. The Russian Government has been called despotism, tempered by assassination. In Ireland landlordism was tempered by assassination.... Every circumstance combined in that country to exasperate the relations between landlord and tenant. The landlords were, for the most part, aliens in blood and in religion. They represented conquest and confiscation, and they had gone on from generation to generation with an indifference for the welfare of the people which would not have been tolerated in England or Scotland."

English statesmen did not understand—did not try to understand—the Irish land question. They believed that force was the best—the only—remedy for agrarian disorders. They did not grasp the essential fact that rack-rents, insecurity of tenure, and the confiscation of the tenants' improvements by the
[310] landlords, lay at the root of the trouble, and that legislation to protect the tenant from injustice and oppression was the cure. The result was that the staple industry of the country was paralysed, and periodical famines, and constant outbursts of lawlessness and crime, almost threatened the very existence of society. No stronger argument can be used to prove the incompetence of Englishmen to rule Ireland, than the ignorance and incapacity shown by English statesmen throughout the nineteenth century, in dealing, or rather in refusing to deal, with this vital question of the land.

English statesmen saw nothing wrong in the exclusive establishment and endowment of the Church of the Protestant minority in a Catholic country, nor did they see just cause for complaint because Catholic peasants were forced, at the point

of the bayonet, to pay tithes to Protestant parsons. Protestant education was assisted by the State. Nothing was done by the Government for the education of Catholics. Thus for the first twenty-eight years of the century the policy of the English in Ireland was calculated to embitter religious feelings, and to inflame national animosities. When Catholic emancipation (granted under the pressure of a great revolutionary agitation) came in 1829 it did not improve the situation because the people saw in it, not the measure of England's justice, but the measure of her fears.

II

All, then, that happened, between 1800 and 1829, served only to make the chasm which separated the two countries, deeper and wider. What happened between 1829 and 1835? I turn once more to my chronology:

1830. Arms Act.
1831-1832. Stanley's Arms Act.
1833-1834. Grey's Coercion Act.
1834-1835. Grey's Coercion (Continuance) Act amended.

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Ireland remained as disaffected and disturbed as ever. Why? Because Catholic Emancipation (delayed for twenty-nine years), was, when carried, practically made a dead letter; the country was still governed, through the Protestant minority, in opposition to the opinions and feelings of the masses of the people; while the incompetence of Parliament to deal with the tithe question, and the land question, led to an agrarian and tithe war, which the Coercion Acts were powerless to stop. In 1831, indeed, Parliament had established the “national” schools, but the scheme was not what the people wanted. Protestants and Catholics alike desired denominational education, but the Government gave them a mixed system. For many years the system was worked

(by a board consisting of five Protestants and two Catholics in a country where Catholics were to Protestants as four to one) in an anti-Irish spirit, and it failed, accordingly, to win popular support or confidence. In truth, the people saw in the "national" schools only institutions for anglicising the country. A Scotch Presbyterian practically managed the system. The books, with one exception, were prepared by Englishmen or Scotchmen. Irish history and national poetry were boycotted. Patriotic songs were suppressed. The limit of folly and absurdity was reached when Scott's "Breathes there a man" was replaced in one of the books by these lines:

> "I thank the goodness and the grace
> That on my birth have smiled,
> And made me in these Christian days
> A happy English Child."[148]

In 1832 a worthless Irish Reform Act, under which the
[312] representation of the country became "virtually extinguished,"[149] was passed against the protest of the Irish members, all of whose amendments, aiming at making it a genuine measure for the extension of the franchise, were contemptuously rejected. Ignorance and prejudice, the absence of all sense of justice, an utter inability to understand the Irish case, a determination to trample on popular rights and to disregard public opinion—these were the characteristics of English statesmanship in Ireland between 1829 and 1835. Mr. Lecky's account of the manner in which Catholic Emancipation was carried out is worth quoting:

> "In 1833—four years after Emancipation—there was not in Ireland a single Catholic judge or stipendiary magistrate. All the high sheriffs, the overwhelming majority of the unpaid

[148] For further details see *Dublin Castle and the Irish People*.
[149] Bright.

> magistrates and of the grand jurors, the five inspectors-general, and the thirty-two sub-inspectors of the police, were Protestants. The chief towns were in the hands of narrow, corrupt, and for the most part, intensely bigoted, corporations. For many years promotion had been steadily withheld from those who advocated Catholic Emancipation, and the majority of the people thus found their bitterest enemies in the foremost places."

No wonder that, Lord Melbourne, in coming into office thirty-five years after the Union, should have found Ireland still a centre of disaffection and disturbance.

III

The Melbourne Ministry was kept in office from 1835 to 1841 by the Irish Vote. O'Connell made a compact—the historic Lichfield House compact—with Ministers. It came to this: They were to introduce remedial measures for Ireland, and he was, meanwhile, to suspend the demand for repeal of the Union. He said to the Irish people:

> "I am trying an experiment, I want to see if an English Parliament can do justice to Ireland. I do not think it can, but I mean to give the present Government a chance, and see what they can do. And I will suspend the demand for repeal to give them a fair trial." [313]

What came of that "fair trial" we shall now see.

The tithe question was the question of the hour. A tithe war had been raging, between 1830 and 1835, distracting the country, and forcing the attention of Parliament to Irish affairs. On March 20th, 1835, the Government of Sir Robert Peel took up the question, and Sir Henry Hardinge, the English Chief Secretary in Ireland, moved a resolution to convert tithes into a rent charge

at 75 per cent. of the tithe. O'Connell, in dealing with Hardinge's resolution, said that no measure relating to tithes would be satisfactory which did not contain a clause appropriating the surplus revenues of the established church to purposes of general utility. Subsequently (on April 7th), Lord John Russell moved:

> "That it is the opinion of this House that no measure upon the subject of tithes in Ireland can lead to a satisfactory adjustment which does not embody the principle of appropriation."

This resolution was carried by a majority of twenty-seven. Whereupon the Government of Sir Robert Peel resigned, and Lord Melbourne became Prime Minister, with Lord John Russell as leader of the House of Commons. What was the upshot of the Parliamentary struggle, lasting for three years, over the tithe question? Simply this. In 1838 an Act was passed, converting tithe into a rent charge of 75 per cent. of the tithe, and containing no appropriation clause. Peel had proposed a Bill of the very same kind in 1835. Russell objected to it, insisting on the necessity of an appropriation clause, and proposing the conversion of tithes into a rent charge of 68% of the tithe. Successful (by the Irish
[314] vote) in the Commons, but defeated in the Lords, he ultimately abandoned his conversion scheme, flung the appropriation clause to the winds, and passed what was really Peel's measure of 1835. Of course tithes were not abolished. The payment of them was, in the first instance, transferred from the tenants to the landlords, then the landlords added the tithes to the rent, so that the unfortunate tenants were still mulcted in one way, if not in the other.

In 1838, also, the Irish Poor Law was introduced under circumstances thoroughly characteristic of English methods in Ireland: In 1833, a Royal Commission was appointed to consider the subject of Irish destitution in reference to the advisability of establishing "workhouses" to alleviate Irish distress. The Commission consisted chiefly of Irishmen, though the Chairman,

Archbishop Whateley, was an Englishman. The Commissioners took three years to consider the subject submitted to them; and, at the end of that time, made a report which, in the light of subsequent events, must be pronounced a statesmanlike document. They said, in effect, that the cure for Irish distress was work, not workhouses. The labouring poor were able-bodied men who only needed employment, and scope for their energies; and should be provided with work which would develop the resources of the country, and remove the causes of poverty. A Vice-regal Poor Law Reform Commission, which reported in 1906, refers to the Report of the Commissioners of 1833, in the following language:

> "It will probably surprise most of those who study the condition of Ireland, and who have considered how to improve it, to find that a Commission that sat seventy years ago recommended land drainage and reclamation on modern lines, the provision of labourers' cottages and allotments, the bringing of agricultural instruction to the doors of the peasant, the [315]
> improvement of land tenure, the transfer of fixed powers from grand juries to county boards, the employment of direct labour on roads by such county boards, the sending of vagrants to colonies to be employed there or to penitentiaries in this country; the closing of public-houses on Sundays, and the prevention of the sale of groceries and intoxicating drink in the same house for consumption on the premises. Such were the recommendations of the Royal Commission of Inquiry into the Condition of the Poorer Classes."[150]

For the sick and impotent poor the Royal Commission reported practically that relief ought to be afforded by voluntary associations, controlled by State Commissioners, and whose revenues might be strengthened by the imposition of

[150] Poor Law Commission (Ireland) Report 1903-1906, p. 12.

a contributory parochial rate. Emigration, as a temporary expedient, was also recommended in certain cases.

The Report of the Royal Commissioners was laid before Lord John Russell. Lord John Russell flung the Report into the ministerial waste paper basket, and despatched a young Englishman named Nicholls, a member of the English Poor Law Commission, to report afresh on the subject. Mr. Nicholls paid a roving visit to Ireland. The Royal Commission had taken three years to consider the question. Mr. Nicholls disposed of it in six weeks. He, of course, made the report that was expected of him. He recommended the establishment of workhouses. The Government brought in a Workhouse Bill, which was opposed by the Irish Members in committee, and on the third reading, but was carried, nevertheless, by overwhelming majorities.[151]

In concluding this story let me quote the following brief
[316] extracts from the Vice-regal Commission of 1903-6:

> "I. The poverty of Ireland cannot be adequately dealt with by any Poor Relief Law, such as that of 1838, but by the development of the country's resources, which is, therefore, most strongly urged.
>
> ---
>
> "III. The present workhouse system should be abolished."

Thus, after the lapse of three-quarters of a century, has the policy of the Irish Commission of 1833 been vindicated, and the policy of the English Parliament condemned.

The Government also took up the question of municipal reform. There were at the time sixty-eight municipalities in Ireland, all in the hands of the Protestant ascendency. It was the policy of O'Connell to preserve all these municipalities and to reform them. The Government tried to carry out his policy, but in vain. Then, in 1836, they carried through the House of

[151] "Dublin Castle and the Irish People."

Commons, a Bill creating a £10 household suffrage in seven of the largest cities, and a £5 one in the others, but the measure was rejected in the House of Lords which desired the abolition of the Irish municipalities altogether. In 1837 the Bill was again passed through the Commons, and again rejected by the Lords. Peel then proposed, as a compromise—a £10 rating franchise in twelve of the largest towns, and a similar franchise in the smaller, provided the Lord Lieutenant allowed them to be re-incorporated. Lord John Russell consented to this proposal on conditions that the franchise in the small towns—corporations *in posse*—should be reduced to £5. For two years longer a struggle was carried on between the two parties, mainly over the question of the franchise in the smaller towns (in the event of their being incorporated). Finally, in 1840, the Government gave way all along the line, passing an Act which abolished fifty-eight municipalities, and [317] conferred a £10 franchise on the remaining ten.

The Melbourne Ministry fell in 1841. O'Connell had kept the Government in office for five years. During that time they had passed useful measures for England; but in their Irish legislation they failed utterly. The Tithe Act was a sham, the Poor Law, passed in the teeth of Irish Opposition, was detested in Ireland, and the Municipal Reform Act has well been described by Sir Erskine May "as virtually a scheme of municipal disfranchisement." When all was over, O'Connell said:

> "The experiment which I have tried has proved that an English Parliament cannot do justice to Ireland, and our only hope now is in the Repeal of the Union."

He then unfurled the banner of repeal, and threw himself heart and soul into the movement.

IV

While the Melbourne Ministry failed utterly in their Irish legislation, the administration of the country by Thomas Drummond (Under-Secretary at Dublin Castle, 1835-1840) was eminently successful. Though there were Coercion Acts on the Statute book they were not enforced. Drummond governed according to the ordinary law, and, by meting out even-handed justice to all, won popular support and confidence. However, on the fall of the Ministry, coercion again soon became the order of the day—thus:

1843-1845. Arms Act.
1847. Crime and Outrage Act.
1848-1849. Habeas Corpus Suspension Act, Crime and Outrage Act, Removal of Aliens Act.

Between 1842 and 1845 Ireland rang with the demand for repeal. Great meetings—monster meetings they were
[318] called—were held everywhere; and O'Connell, by a series of the most eloquent and vehement speeches ever addressed to public audiences, re-awakened the spirit of nationality and intensified the popular hatred of England. In the days of the Melbourne Ministry his policy was a policy of peace; but the English people would not accept the olive branch. His policy now was a policy of war. His case for repeal rested on two main propositions:

> "(1) Ireland was fit for legislative independence in position, population, and natural advantages. Five independent kingdoms in Europe possessed less territory or people; and her station in the Atlantic, between the old world and the new, designed her to be the *entrepôt* of both, if the watchful jealousy of England had not rendered her natural advantages nugatory.
>
> "(2) She was entitled to legislative independence; the Parliament of Ireland was as ancient as the Parliament of England, and had not derived its existence from any Charter

> of the British Crown, but sprang out of the natural rights of freedom. Its independence, long claimed, was finally recognised and confirmed by solemn compact between the two nations in 1782; that compact has since been shamefully violated, indeed, but no statute of limitation ran against the right of a nation."[152]

The Government of Sir Robert Peel put forth its full strength to crush O'Connell, and the repeal movement. In 1844 O'Connell was tried by a packed bench and a packed jury for seditious conspiracy, found guilty, and sent to jail. His trial was one of the most scandalous incidents in the history of British rule in Ireland, during the nineteenth century.

> "The most eminent Catholic in the Empire," says Sir Charles Gavan Duffy, "a man whose name was familiar to every Catholic in the world, was placed upon his trial in the Catholic Metropolis of a Catholic country before four judges and twelve jurors, among whom there was not a single Catholic."

It is well known that the condemnation of O'Connell by this tribunal was too much even for the House of Lords, which [319] quashed the conviction and set O'Connell free.

In 1847 O'Connell died, and a terrible famine swept over the land decimating the people. Before the famine the population of Ireland was 8,175,124, three years afterwards it had sunk to 6,574,278. But that was not the end. The "Young Ireland" party had sprung out of the repeal movement. The "Young Irelanders" began as constitutional agitators. Like O'Connell himself they simply demanded the repeal of the Union. But they gradually became more extreme, and, ultimately, under the influence of the wave of revolution, which swept over Europe in 1848, drifted into insurrection. The rising of 1848 was quickly put down, and the "Young Ireland" leaders were banished beyond the seas.

[152] Gavan Duffy: "Young Ireland."

All seemed lost. Ireland was in despair. Yet the seed, sown by O'Connell and the "Young Irelanders," took root. The fruit was gathered in our own day. Home Rule sprang out of the one movement, and Fenianism out of the other.

> "The spirit of National Independence," says Mr. Froude, "is like a fire, so long as a spark remains a conflagration can be kindled."

The fire of nationality burned low during the Melbourne Administration; but rekindled by O'Connell in 1842, and fanned into flame by "Young Ireland," it was not put out by the misfortunes and disasters in which the first forty-eight years of the Union closed.

V

I have said that land was the staple industry of Ireland. Yet Government after Government failed to realize that the enactment of laws for the protection of the tenant—the protection of his improvements from confiscation by the landlords, protection of himself from rack-rents and arbitrary eviction—were necessary for the prosperity and peace of the country. In 1836 Mr. Sharman Crawford introduced a Bill proposing that the tenant should be entitled, on eviction, to compensation for improvements of a permanent nature made with the landlord's consent; or without his consent, provided that such improvements were, according to the Chairman of Quarter Sessions, necessary for the actual wants of the tenant. This moderate Bill, strongly opposed by the landlords, was read a first time, but it never reached another stage. Parliament having refused to protect the tenants—refused indeed to take the slightest heed of their complaints and grievances—the tenants continued to protect themselves by forming secret societies whose operations struck

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terror in the land. In 1838 the Under-Secretary, Thomas Drummond, boldly told the Tipperary Magistrates, who cried out for coercion, that landlordism was the cause of agrarian crime, and that remedial legislation, not coercion, was the remedy. He said, in memorable words:

> "The Government has been at all times ready to afford the utmost aid in its power to suppress disturbance and crime, and its efforts have been successful so far as regards open violations of the law.... But there are certain classes of crime, originating in other causes which are much more difficult of repression. The utmost exertion of vigilance and precaution cannot always effectually guard against them, and it becomes of importance to consider the causes which have led to a state of society so much to be deplored, with a view to ascertain whether any corrective means are in the immediate power of the Government or the Legislature. When," he continues, "the character of the great majority of serious outrages occurring in many parts of Ireland, though unhappily most frequent in Tipperary, is considered, it is impossible to doubt that the causes from which they mainly spring are connected with the tenure and occupation of land.
>
> "Property," he adds, "has its duties as well as its rights; to the neglect of those duties in times past is mainly to [321] be ascribed to that diseased state of society in which such crimes take their rise; and it is not in the enactment or enforcement of statutes of extraordinary severity, but chiefly in the better and more faithful performance of those duties, and the more enlightened and humane exercise of those rights that a permanent remedy for such disorders is to be sought."

Another fierce outburst of agrarianism in 1842 startled English public opinion, and drew from *The Times* a memorable condemnation of landlordism. The great English journal wrote:

> "With feelings of mingled pain we have witnessed the reappearance of that frightful system of murder and outrage

> which has so long infested the south of Ireland, and in particular the unhappy County of Tipperary.... The evil has arisen in the general system upon which the occupation of land has been based and conducted, and in the treatment of the occupier by the landlord.... A landlord is not a tradesman; he stands to his tenantry, or he ought to do so, in *loco parentis*; he is there as well for their good as his own; they are not mere contractors with him, to hold his land as capital, and pay him the full interest, or incur a forfeiture; they are rather agents placed in his hands, and under his care and protection, for the purpose of working the land, and whose *natural* relation with him cannot be determined except by negligence or ill-conduct.
>
> "If the land be treated as money, and tenantry as borrowers, people may be sure that the landlord will be an usurer. This is *generally* true, but in Ireland the tenant who is thus treated as though he had been an unfettered party to the original agreement, has not the shadow of the character of a voluntary contractor. It is with him, either to continue in the quarter of an acre which he occupies, or to starve. There is no other alternative. Rack-rent may be misery, but ejectment is ruin."

At length in 1843 Sir Robert Peel appointed the famous Devon Commission to enquire into the occupation and tenure of land in Ireland. In 1845 the Commission reported that:

> "(1) All the improvements in the soil were made by the [322] tenants.
>
> "(2) That these improvements were subjected to confiscation, and were confiscated by the landlord.
>
> "(3) That the outrage system sprang from the ejectment system; and
>
> "(4) That it was necessary for Parliament to intervene to compel the landlord to recoup the tenant on eviction for his outlay on the land."

The Report of the Devon Commission proved the case of the tenants up to the hilt. What was done?

In May, 1845, Lord Devon declared in the House of Lords that if a Bill were passed giving tenants compensation for improvements made by them in the land "it would much strengthen the industry of the people of Ireland." In the same year Lord Stanley, in behalf of the Government, introduced a Bill proposing that tenants should be entitled to compensation, on disturbance, for prospective improvements of a permanent nature, made with the consent of the landlord; or, without his consent, provided the improvements had been effected with the authority and approval of a Commissioner of Improvements, to be specially appointed for the purpose. The functions of the Commissioners were to inspect the lands, and to examine and inquire whether they would "bear" improvement; and then, if he thought well of it, to authorise the works contemplated by the tenant and to award, in case of eviction, such measure of compensation as was deemed fair and equitable. This Bill was read a second time, then referred to a Select Committee, and abandoned. In 1846 substantially the same Bill was brought forward by the Government, and read a first time. Then the Government fell and the Bill disappeared. In 1847, Mr. Sharman Crawford brought forward a Bill to extend the Ulster Custom (practically fixity of tenure and free sale) to the rest of Ireland. [323] The Government—a Liberal Government—took no interest in the subject. Crawford spoke to empty benches and the Bill was defeated on the second reading by an overwhelming majority. In 1848 Crawford brought forward his Bill again, and it was again defeated. In the same year the Government brought forward a Bill which was the same as the Government Bill of 1846. It was read a second time, then referred to a Select Committee and heard of no more that session. So far Parliament had done nothing to carry out the recommendations of the Devon Commission—nothing for the protection of the tenants. But in 1849 Lord John Russell passed a Bill for the relief of the landlords—a Bill giving landlords facilities for selling their encumbered estates. This measure is

well known as “The Encumbered Estates Act.” Let me quote what Lord Russell of Killowen said about it before the Parnell Commission:

> “It is hardly conceivable that a Legislature in which Ireland was represented—imperfectly, it is true—that a Legislature purporting to deal with Ireland should have so misconceived the position as to have passed that Act. For what did it do? It sold the estates of the bankrupt landlords to men with capital, who were mainly jobbers in land, with the accumulated improvements and interests of the tenants, and without the slightest protection against the forfeiture and confiscation of these improvements and interests, at the hands of the proprietor newly acquiring the estate. It was intended, I doubt not, to effect good. It proved a cause of the gravest evil.”

What a mockery of legislation! The Devon Commission had reported in favour of the tenant's claims, and recommended the enactment of laws for his protection. Parliament passed an Act introducing into Ireland a new set of landlords who were worse than the old, and leaving the tenant hopelessly at their mercy.

[324] In 1850 the Irish Secretary of the day brought in a Bill (practically the same as Lord Stanley's Bill of 1845) giving the tenant compensation for improvements. The Bill was read a second time, committed, and dropped. In the same year Sharman Crawford again introduced his “Tenant Right” Bill, but it was never read a second time.

In November, 1852 (when the Irish Parliamentary Party held the balance between English parties),[153] the Tory Government introduced a Bill giving to the tenant compensation for improvements, prospective and retrospective, made by him in

[153] “In Ireland,” said Lord Normanby, “the landlord has the monopoly of the means of existence, and has a power of enforcing his bargains which does not exist anywhere—the power of starvation.”

the land. The Bill was read a second time without opposition in December and then referred to a Select Committee. When the Whigs came into office in 1853 they took up the measure which, subject to certain alterations, was approved of by the Select Committee. The Bill was finally read a second time in the Lords and then dropped for the session. It was reintroduced in 1854, and read a second time in the Lords; referred to a Select Committee, condemned by the Committee, and lost. Between 1854 and 1860 Land Bill after Land Bill was introduced by the Irish Parliamentary Party for the purpose of giving compensation to tenants for improvements, but all were rejected. Finally (in 1860), imitating the example of 1849, the Whig Government of the day passed a Land Act in the interests of the landlords. Let me describe this Act in the words of Lord Russell of Killowen. "This was an Act passed to help the landlords, and not one passed for the protection of the tenants. It turned the relation between landlord and tenant from relation by tenure into relation by contract;[154] it gave certain facilities in the matter of proceedings [325] in ejectment; it recognized and formulated what had been an existing law in Ireland—going back for a long period—a state of law unknown in this country. I mean the right of ejectment, pure and simple, for non-payment of rent." The recommendations of the Devon Commission were not only not carried out but were absolutely ignored. Happily however the Act proved a dead letter. "This enactment," said the Bessborough Commission of 1881, "has produced little or no effect. It may be said to have given utterance to the wishes of the Legislature, that the traditional rights of tenants should cease to exist, rather than to have seriously affected the conditions of their existence." It was in reference to the Encumbered Estates Act, and this Act, that Mr. Gladstone once exclaimed in the House of Commons: "In our very remedies we have failed."

[154] Gavan Duffy: *League of North and South.*

In 1866 the Government brought in a Bill to amend the Act of 1860 in the interest of the tenants, but it never became law. The Bill was again brought forward in 1867 and again lost. While every Land Act in the interest of the tenant between 1849 and 1867 was rejected, the Statute book continued to be filled with Coercion Acts. Thus:

1850-1855. Crime and Outrage (Continuance) Act.
1856, 1857. Peace Preservation Act.
1858-1864. Peace Preservation (Continuance) Act.
1865. Peace Preservation (Continuance) Act.
1866-1869 (off and on). Habeas Corpus Suspension Act.

As Parliament treated the land question, so it treated the church question, and every question in which the Irish people were interested. Their complaints, as Bright said, "were met with denial, with contempt, with insult." Ministers, indeed, slumbered peacefully as if there were no Irish question, until they
[326] were rudely awakened in 1867 by the ringing of the "Chapel bell." Fenianism—a Society founded to sever the connection between England and Ireland—brought Liberals and Tories to their bearings; and under the pressure of that great revolutionary organization (which set Ireland in a blaze), the Church was disestablished in 1869, and the first Land Act (which in the slightest degree served the interests of the tenants) passed in 1870. This Act provided that tenants, when evicted, should receive compensation for improvements, and in certain cases, for disturbance. It also contained clauses for the creation of a peasant proprietary, and recognized and legalized the Ulster custom of tenant right. But the Act was a failure. The peasant proprietary clauses did not work; rack-renting continued, evictions increased, and the general discontent remained the same as ever. In these circumstances the Irish members demanded fresh legislation, and introduced several Bills for this purpose between 1876 and 1881. They were all rejected by overwhelming majorities. Then the

Land League came; lawlessness and outrage came; treason and anarchy came; and the Land Act of 1881 was passed in a storm of revolution. The reasons given by Lord Salisbury for not opposing the Bill in the House of Lords are too remarkable, and too little known not to be quoted. He said:

> "In view of the prevailing agitation, and having regard to the state of anarchy (in Ireland), I cannot recommend my followers to vote against the second reading of the Bill."

and in the same speech he added:

> "What will be the attitude of the tenant all this time? He, like the landlord, will be looking to the future, but in a very different temper. He knows perfectly well that all he has hitherto got he has not got because he has moved your convictions, but because he has moved your fears." [327]

"The pivot of the Act of 1881," to use the language of Mr. Forster, was the "Land Court" established to stand between landlords and tenants, to fix fair or judicial rents. Previously, the landlord was master of the situation. The competition for land placed the tenant at his mercy, and he accordingly fixed the rent at his own pleasure. But henceforth rents were to be fixed by legal tribunals; and while the tenant paid the rent so fixed, he could not be disturbed in his holding for a period of fifteen years. Roughly speaking, the Act changed Irish tenancies from tenancies at will practically to leaseholds, renewable every fifteen years, subject to revision of rent by the Land Courts. It also recognised the tenant's right to sell his holding, and provided facilities for the creation of a peasant proprietary.

But the Land Act of 1881 did not settle the land question. The system of dual ownership which it set up was agreeable neither to landlord nor tenant, and both now combined to demand fresh legislation for the purpose of enabling the tenants to purchase their holdings. The Act had destroyed the prestige of the landlords;

they were disgusted with the spectacle of seeing "briefless barristers," (as the Judges of the Land Courts were called), "rambling about the country" and fixing rents independently of their wishes; their occupation as territorial magnates was gone and they were now willing to dispose of their estates, if only they could obtain good terms. The cry of the tenant always had been the "land for the people," and they raised that cry now louder than ever. Extraordinary as it may seem the English Tory party took the lead in responding to it. In 1885 the first of a series of
[328] Tory Land Purchase Acts was passed. By this measure the state was empowered to advance the whole of the purchase money to tenants who had agreed with their landlords to purchase their holdings; forty-nine years were allowed for repayment of the purchase money, at the rate of 4 per cent. per annum. Between 1885 and 1912 six more Land Purchase Acts were placed on the Statute book. With a single exception, all these Acts were passed by Tories. Therefore the Tories take credit to themselves for the policy of land purchase. But rather the credit belongs to Charles Stewart Parnell and the Land League, who, by the revolution of 1881, not only made land purchase possible, but made it inevitable. I cannot here deal with these Acts in detail[155] but the following table gives a list of them and shows how they have worked. It also mentions other Acts which contain provisions for facilitating the creation of a peasant proprietary.

Act.	No. of Purchasers.	Amount of Advances.
I.—Irish Church Act, 1869	6,057	1,674,841
II.—Landlord and Tenant Act, 1870	877	514,536

[155] I have done so in "Dublin Castle and the Irish People," *see* p. 264, *et seq.*

III.—Land Law (Ireland) Act, 1881	731	240,801
IV.—Land Purchase Acts, 1885, 1887, 1888 and 1889	25,367	9,992,536
V.—Land Purchase Acts, 1891, 1896	46,806	13,633,190
VI.—Irish Land Act, 1903	117,010	41,293,564
VII.—Evicted Tenants Act, 1907	550	307,550
VIII.—Irish Land Act, 1909	1,444	422,562
Total	198,842	68,079,580[156]

Mr. Gladstone once said to me that he was deeply moved by the Parliamentary history of the Irish Land question. It was a [329] subject of the greatest magnitude affecting as it did the life of the country. Yet the Imperial Parliament failed for three quarters of a century to realize the importance and the gravity of the case; and even then did not grapple successfully with it.

"A sad and a discreditable story," was his comment.

Nowhere, I repeat, can a stronger argument in favour of Home Rule be found than in the history of the Irish Land Question.

VI

[0] Mr. Commissioner Bailey.

There is one fact in connection with the Government of Ireland during the nineteenth century with which, I think, English Statesmen are but imperfectly acquainted, viz., that the Catholic Emancipation Act of 1829 was an utter failure. It was thought that when Irish Catholics were admitted to the English Parliament all would go well with Ireland. But the Irish Catholic member in the English Parliament was absolutely useless to Ireland; and it was that uselessness which led to the Repeal Agitation, Young Ireland, Fenianism, and the Home Rule movement.

The policy of the English Parliament in truth fostered the idea of Irish nationality. It is, perhaps, within the range of possibility, that good legislation, and good administration might have put out the fire. I know not. But as it was those who made the laws, and those who administered the laws, fed the flame. Every Coercion Act was a nail in the coffin of the Union; and a reminder that the foreigner ruled in the land. When O'Connell was "master of the situation" in 1835, he thought that the opportunity had at length arrived of obtaining important remedial measures for
[330] Ireland. We know how his hopes were disappointed. When the Irish Members held the balance between English parties in 1852, they thought that the time had come for securing a beneficial Land Act; but they also were doomed to disappointment.

In fact between 1829 and 1869 the Irish Members failed to place upon the Statute book one single measure for which the Irish people had loudly called; and the measures of 1869 and 1870 were due to Fenianism and not to parliamentary action.

Between 1870 and 1881 the efforts of the Parliamentarians were again marked by failure, and we know, from Mr. Gladstone himself, that, there would have been no Land Act in 1881 if there had been no Land League. In 1884 household suffrage was extended to Ireland. The General Election of 1885 made Parnell "master of the situation." What was he able to do? He certainly got the Home Rule *Bill* of 1886 and converted the Liberal party to the cause; but he did not win Home Rule. Between 1892 and

1895 a Liberal Government was once more kept in office by the Irish vote. But though a Home Rule Bill was carried through the Commons in 1893 Home Rule was not won. Finally between 1895 and 1906 Home Rule was thrust into the background by an English majority.

Well might Sir Spencer Walpole have written: "The treatment of Ireland made representative Government in Ireland a fraud. It is absurd to say that a country enjoys representative institutions if its delegates are uniformly out-voted by men of another race."

While the Irish representation in the Imperial Parliament was a fraud, the English Administration of Ireland was an outrage on national sentiment. After Catholic Emancipation, as before, it was, in the main, based on Protestant Ascendency principles, which meant not Ireland for the Irish, but Ireland for an English [331] faction. As a rule no man in touch with popular feeling was allowed to have a voice in the government of the country. Catholics as Catholics were habitually excluded from office. Since Catholic Emancipation there has not been a Catholic Lord-Lieutenant, nor a Catholic Chief Secretary. There have been 3 Catholic Under-Secretaries. There have been 3 Lord Chancellors. In the High Court of Justice there are 17 Judges; 3 of them are Catholics. There are 21 County Court Judges and Recorders; 8 of them are Catholics. There are 37 County Inspectors of Police; 5 of them are Catholics. There are 202 District Inspectors of Police; 62 of them are Catholics. There are 5,518 ordinary Justices of the Peace; 1,805 of them are believed to be Catholics. There are 68 Privy Councillors; 8 of them are Catholics. And in other offices, through the whole gamut of the administration, the same principle of exclusiveness was observed. Nor was this all. Catholics who were appointed to office, feeling that they were "suspect" as Catholics, only too often, in order to show that their loyalty was above suspicion, became more Protestant than the Protestants, and more English than the English. "We have now captured the Castle," I heard an Irish Catholic official

say, in reference to a Catholic appointment which had recently been made. The retort was obvious. "No, but the Castle has captured you." In truth, no matter what was the religion of the official, he appeared before the people as the instrument of a foreign government, not as the servant of the Irish nation. Let us remember that it was in the year 1885, not in "ancient times," that Mr. Chamberlain said in memorable language:

> "I do not believe that the great majority of Englishmen have the slightest conception of the system under which this free nation attempts to rule the sister country. It is
> [332] a system which is founded on the bayonets of 30,000 soldiers encamped permanently as in a hostile country. It is a system as completely centralised and bureaucratic as that with which Russia governs Poland, or as that which prevailed in Venice under the Austrian rule. An Irishman at the moment cannot move a step—he cannot lift a finger in any parochial, municipal, or educational work, without being confronted with, interfered with, controlled by an English official, appointed by a foreign Government, and without a shade or shadow of representative authority."

It was not until 1898 that popular control in local affairs was established by the County Councils' Act.

Englishmen often say to me: "What an illogical and unreasonable people you Irish are. At the very time when we were showing our determination to do justice to Ireland, when we had disestablished the State Church in 1869, and passed the Land Act of 1870 at that very time, in the very year 1870, you started the Home Rule movement." Englishmen say many foolish things about Ireland, because they know nothing about Irish history, and indeed give very little serious thought to Irish affairs. The fact that the English State Church was not disestablished for sixty-nine years after the Union, and that an Act for the protection of the tenants and for securing the proper cultivation of the soil was

not passed until seventy years after the Union; and that it took constant agitation and incessant outbursts of lawlessness and crime and finally a revolutionary convulsion to accomplish these things, was a sufficient justification for the establishment of the Home Rule movement in 1870. Had the government of Ireland in the nineteenth century been as good as it was bad, still I hope that the Irish people would not have relinquished their national claims—would not have sold their birthright for any mess of porridge; but they did not get the porridge; rather vinegar and gall had been the offering of England to the "sister" isle during [333] sixty-nine years of "Union." I have said that the seed sown by O'Connell and Young Ireland took root, so did the seed sown by England. Extremes meet. The agitator—the rebel—and the English Government combined to keep the spirit of nationality alive, and to make the demand for Home Rule inevitable and irresistible.

It was on May 19th, 1870, that the Home Rule Association was founded. It was no wonder after seventy years of the Union that failed that the following resolution should have been passed:

> "That it is the opinion of this meeting that the true remedy for the evils of Ireland is the establishment of an Irish Parliament with full control over our domestic affairs."

The objects of the Association were then set forth.

> "To obtain for our country the right and privilege of managing our own affairs by a Parliament assembled in Ireland, composed of Her Majesty, the Sovereign, and her successors, and the Lords and Commons of Ireland.
>
> "To secure for that Parliament, under a federal arrangement, the right of legislating for, and regulating all matters relating to the internal affairs of Ireland, and control over Irish resources and expenditure, subject to the obligation of contributing our just proportion of the Imperial expenditure; [leaving to] an Imperial Parliament the power of dealing with

> all questions affecting the Imperial Crown and Government, legislation regarding the Colonies and other dependencies of the Crown, the relations of the United Empire with foreign States, and all matters appertaining to the defence and stability of the Empire at large...."

At the General Election of 1874, 59 Home Rulers were returned to Parliament. At the election of 1880 the number was increased to 61. At the election of 1885 it was increased to 85, at which figure it stands to-day.

On June 30th, 1874, a motion by Isaac Butt for an enquiry into
[334] the subject of Home Rule was defeated in the House of Commons by 458 votes to 61. Nineteen years afterwards a Bill to establish a Parliament and an Executive in Dublin for the management of Irish Affairs was carried through the House of Commons by the Government of Mr. Gladstone. On the retirement of Mr. Gladstone from public life Home Rule received a set back in England, but to-day it holds the field once more.

If the Land Act of 1870 had been a success instead of a failure it could not have checked the flowing tide. It was in 1871 that Mr. Lecky wrote: "The sentiment of nationality lies at the root of Irish discontent." Ten years earlier Goldwin Smith used the following remarkable language:

> "The real root of Irish disaffection is the want of national institutions, of a national capital, of any objects of national reverence and attachment, and, consequently, of anything deserving to be called national life. The greatness of England is nothing to the Irish. Her history is nothing, or worse. The success of Irishmen in London consoles the Irish no more than the success of Italian adventurers in foreign countries (which was very remarkable) consoled the Italian people. The drawing off of Irish talent, in fact, turns to an additional grievance in their mind. Dublin is a modern Tara; a Metropolis from which the glory has departed; and the Vice-Royalty,

> though it pleases some of the tradesmen, fails altogether to satisfy the people. 'In Ireland we can make no appeal to patriotism; we can have no patriotic sentiments in our school books, no patriotic emblems in our schools, because in Ireland everything patriotic is rebellious.' These were the words uttered in my hearing, not by a complaining demagogue, but by a desponding statesman."

Between 1861 and 1871 the tide of nationality was rising. Fenianism diverted it in the direction of separation. Isaac Butt brought it back to the channel of legislative autonomy. The failure of the Land Act of 1870, the refusal of Parliament to amend it, the renewal of Coercion, the political excitement caused by [335] Fenianism and the definite demand for Home Rule, swelled the tide and gave it fresh force. All the Land Acts passed between 1881 and 1909 have not changed the current of public feeling. Home Rule has not been killed by kindness.

The class which long refused to remove Irish material grievances, now say, that, since some of those grievances have been remedied, the Irish ought to abandon the demand for Home Rule. John Stuart Mill warned the class in question many years ago that if the removal of material grievances were delayed, the time might come when the fight would be for an idea, and that then the Irish problem would be more formidable than ever. The fight to-day is for an idea—the idea of nationality—and English Unionist statesmen do not apparently understand it:

> "Alas for the self-complacent ignorance of irresponsible rulers, be they monarchs, classes, or nations! If there is anything sadder than the calamity itself, it is the unmistakable sincerity and good faith with which numbers of Englishmen confess themselves incapable of comprehending it. They know not that the disaffection which neither has nor needs any other motive than aversion to the rulers, is the climax to a long growth of disaffection arising from causes that might

> have been removed. What seems to them the causelessness of the Irish repugnance to our rule, is the proof that they have almost let pass the last opportunity they are ever likely to have of setting it right. They have allowed what once was indignation against particular wrongs, to harden into a passionate determination to be no longer ruled on any terms by those to whom they ascribe all their evils."[157]

Englishmen thoroughly appreciate the idea of nationality except when it applies to Ireland.

Mr. Redmond has been recently censured because he said, in effect, that material prosperity is not everything. Yet what did [336] Mr. Disraeli say in his inaugural address to the University of Glasgow in 1873:

> "It is not true that physical happiness is the highest happiness; it is not true that physical happiness is a principle on which you can build up a flourishing and enduring commonwealth. A civilised community must rest on a large realised capital of thought and sentiment; there must be a reserved fund of public morality to draw upon in the exigencies of national life. Society has a soul as well as a body, the traditions of a nation are part of its existence. Its valour and its discipline, its religious faith, its venerable laws, its science and erudition, its poetry, its art, its eloquence and its scholarship, are as much portions of its existence as its agriculture, its commerce, and its engineering skill. Nay, I would go further, I would say that without these qualities, material excellence cannot be attained."

That is the true doctrine. The spirit of nationality is the spirit of life. Material progress itself springs from national freedom.

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[157] John Stuart Mill.

XIII.—The History Of Devolution. By the Earl of Dunraven

Before attempting to sketch the history of devolution in connection with Ireland, two somewhat remarkable facts should be mentioned. A widespread impression appears to exist that devolution as a means for solving the Irish political problem is a modern invention, and that I am, in a large measure, responsible for its introduction. I must in honesty disclaim the honour. There is nothing new either in the expression or in its application to Ireland. The term has been freely used by many statesmen, and, as I think I can demonstrate, the advocacy of a scheme of Devolution for Ireland has not been confined to any one of the two great political parties of the State.

The second remarkable fact in connection with devolution, in its latest expression, is the hostile attitude assumed towards it by the Nationalist party. That the programme, modest as it was, published by the Irish Reform Association in 1904 should have been assailed by many Unionists was natural enough, but that any Nationalists should have denounced it with equal or greater bitterness is very difficult to account for. The wiser spirits welcomed the movement. The leader of the party—Mr. John Redmond—alluding to us in America, said: "With these men with us Home Rule may come at any moment," and the [338] Convention of the United Irish League of America spoke of our action as "a victory unparalleled in the whole history of moral warfare." But Mr. John Dillon and Mr. Michael Davitt took a very different view and condemned us in no measured terms. Mr. Davitt at Clonmacnoise on September 4th, 1904, said: "If we are foolish enough to be wiled by Lord Dunraven and Mr. George Wyndham, who is possibly behind this wooden-horse stratagem, we will richly merit the contempt of our race and friends everywhere for so abject a surrender of the National

Movement," and at Enniscorthy, far from agreeing with Mr. Redmond that our assistance was of the greatest value to the cause of Home Rule, he declared that: "No party or leader can consent to accept the Dunraven substitute without betraying a national trust." Mr. Dillon at Sligo accused devolution of being a scheme to "break National unity in Ireland and to block the advance of the Nationalist cause."

Unfortunately these sentiments prevailed, and every effort was made to discredit and obstruct the movement. The attitude adopted towards devolution is natural on the part of anyone whose aim is separation; but, failing that, can be accounted for only by the animosity displayed by the inner group of the party to any expression of opinion, unauthorised by their official stamp. Devolution was anathematised simply because it was suggested as a method of political reform by persons who did not necessarily recognise the infallibility of the Party. It is impossible to believe that by any contortion of thought the theory was really looked upon as a cunningly constructed device for countering, or in some way undermining, Home Rule, for whatever opinion might be held about the personal honesty of myself and those associated with me, very little examination into the question would have sufficed to dispel that delusion. Home Rule up to a point necessarily implies devolution. Devolution is up to a point the same thing as Home Rule. The difference lies in this. Home Rule may be held to mean, has been held to mean, and is now by some held to mean, repeal of the union and separation. Devolution means, and can only mean, as applicable to the existing state of things—the delegation by the one existing authority—the Imperial Parliament—of power to a Parliament or body—call it what you will—created to exercise the power delegated to it. The term of necessity implies supremacy and subordinacy. Devolution may be confined to administration, as for instance in the abortive Irish Councils Bill of 1907; or to legislative functions conferring a status analogous to that of

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Grattan's Parliament, which while enjoying full legislative power exercised practically no executive authority whatever; or it may embrace all the functions of government. The devolution may be large or small, confined or comprehensive. There is no limit save one to the delegating power of the central authority. It can confer whatever legislative and executive functions it pleases, but it cannot divest itself of its power of resumption, and it must remain supreme.

It will be seen therefore that devolution does not connote separation. It is incompatible with repeal, but it is compatible with—it is in fact indistinguishable from, any conception of Home Rule that acknowledges the supremacy of the Imperial Parliament. It is applicable to propositions of reform however small or however large. The modest little Councils Bill already alluded to proceeded by devolution. Complete reconstruction of the United Kingdom on federal lines can be accomplished only [340] by devolution, for to commence operations by restoring Wales to the position she occupied in 1284, and Scotland and Ireland to the status they respectively held in 1707 and 1800, and then to invite them to enter a federal union would be an idea worthy of the pen of a Lewis Carroll in a sort of political "Alice in Wonderland." Ireland's political problem can be solved only in one of two ways. She must be granted either absolute independence tempered only by the precarious tie of a common Crown, or legislative and administrative powers delegated by a superior to a subordinate Parliament. By Home Rule separation may be meant. Separation would, in my opinion, be disastrous to Great Britain and fatal to Ireland. Devolution would be beneficial to both, and it is because the term draws a clear distinction between independence and any form of autonomy short of independence, that I prefer to call myself a Devolutionist rather than a Home Ruler.

That devolution to a local authority, or to local authorities, is the proper remedy for evils affecting Great Britain and Ireland, has been, for various reasons, admitted by responsible statesmen

during the last fifty years. As long ago as 1865 the late Lord Salisbury, then Lord Robert Cecil, enquiring why "a people with so wonderful a soil, with such enormous resources (as the Irish) lagged so far behind the English in the race?" and examining critically all the usual reasons assigned, came to the conclusion that the cause was not to be found in any of them, but was to be sought for in the system of government. "I am afraid," he said, "that the one thing which has been peculiar to Ireland has been the Government of England." About the same time Lord
[341] Beaconsfield went so far as to indicate his desire for a federal arrangement. In a conversation with the American Ambassador in London in the early 'seventies he stated that: "If he had to deal with the situation he would propose to place Ireland in a similar position that New York held in the Federal Government." In 1879 Mr. Gladstone advocated devolution, and devolution on federal lines, for the relief of Parliament.

> "I desire," he said, "I may almost say I intensely desire, to see Parliament relieved of some portion of its duties.... We have got an over-weighted Parliament; and if Ireland, or any other portion of the country, is desirous and able so to arrange its affairs that by taking the local part, or some local part, of its transactions off the hands of Parliament, it can liberate and strengthen Parliament for Imperial concerns, I say I will not only accord a reluctant assent, but I will give a zealous support to any such scheme."

After indicating that the only limit he knew to the extension of local government was the limit imposed by the necessity of maintaining the supremacy of the Imperial Parliament, he went on to say:

> "I will consent to give to Ireland no principle, nothing that is not upon equal terms offered to Scotland and to the different parts of the United Kingdom. But I say that the man who shall devise a machinery by which some portion of the excessive

> and impossible task now laid upon the House of Commons shall be shifted to the more free, and therefore more efficient, hands of secondary and local authorities, will confer a blessing upon his country that will entitle him to be reckoned among the prominent benefactors of the land."

In 1885 Mr. Gladstone, the Duke of Devonshire and Mr. Chamberlain all spoke in favour of devolution. The "Radical programme," published with a preface by Mr. Chamberlain, before the General Election of that year, advocated the creation, in addition to County Councils and District Councils, of elected National Councils for Ireland, Scotland, and (if desired by the Welsh) Wales, to take over part of the duties of the central administration, and also to deal with private Bills, but apparently not with other matters of legislation. The appointment of a Secretary for Scotland had not then been decided upon, but the subject was under discussion, and the writer doubtless expected that greater attention to Scotch legislation would be secured by that means. In the course of his argument he said: [342]

> "Before dealing, as we presently shall at some length, with the case of Ireland, it seems well to say a few words on another object of the first importance, which can be accomplished only in connection with some such extension of the principles of local government as we are now considering. Recent experience has made it perfectly clear that Parliamentary Government is being exposed to a strain for which it may prove unequal. The overwhelming work thrown upon the Imperial Legislature is too much for its machinery.... The Imperial evil is not less than the domestic. What, for instance, can be more deplorable than the systematic neglect at Westminster of Colonial and Indian topics of the highest moment? It is obvious that no mere extension of local government upon the ordinary and restricted lines will relieve the Parliamentary congestion which has long since become a national calamity."

The late Duke of Devonshire expressed, for so cautious a man, pretty strong views on the imperfections of "Castle Government" and on the advantages of devolution. Speaking in Belfast on November 5th, 1885, he defended the Irish Government against accusations which he considered unjust, but added:

> "At the same time, I am perfectly willing to admit that it is very possible and even probable, that the Irish Government as now constituted is not the best fitted in all respects to discharge, still less to undertake new and more important duties. I would not shrink from a great and bold reconstruction of Irish government...."

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He explained that, in his opinion, considerable power ought to be left in the hands of the executive, but added:

> "I would endeavour so to frame those powers as to make them capable of relaxation, perhaps ultimately of relinquishment, in response to any proof we may receive from the Irish people of their fitness for self-government, their fitness for the assumption of those responsibilities."

Later in the same year, Mr. Gladstone, in his address to the electors of Midlothian, used the word "devolution" as, I believe, for the first time in connection with the Parliamentary problem due to the over-pressure of work. He said:

> "It has gratified me to find abundant proof that the country was, and is, fully alive to the vital importance of devolution.... The task of the House of Commons in our time has habitually exceeded what had ever been imposed upon a legislative body in the whole history of the world.... I desire to point out the three cardinal points of the question. First, the congestion of business, now notorious and inveterate, degrades the House of Commons by placing it at the mercy of those among its members who seek for notoriety by obstructing business, instead of pursuing the more honourable road to reputation

> by useful service, or of those who, with more semblance of warrant, seek to cripple the action of the House of Commons in order to force the acceptance of their own political projects. Secondly, it disappoints, irritates, and injures the country by the suspension of useful legislation. And lastly, and perhaps worst of all, it defeats the fundamental rule of our Parliamentary system—that the majority shall prevail.... This country will not, in the full sense, be a self-governing country until the machinery of the House of Commons is amended, and its procedure reformed."

It is possible that Mr. Gladstone had in his mind reform of procedure of the nature of devolution to bodies within the House of Commons such as Grand Committees; but in view of his former utterances it is probable that he foresaw the necessity for devolution on a larger scale. [344]

Mr. Chamberlain continued, even during the Home Rule controversy, faithful in his advocacy of devolution. In a manifesto to his supporters, issued on July 11th, 1886, he appealed to the moderate opinion in Great Britain for a "delegation not a surrender of power," on the part of the Imperial Parliament. He outlined his political aims in the following succinct statement:

> The objects to be kept in view are:
>
> (1) To relieve the Imperial Parliament by devolution of Irish local business, and to set it free for other and more important work.
>
> (2) To secure the free representation of Irish opinion in all matters of purely Irish concern.
>
> (3) To offer to Irishmen a fair field for legitimate local ambition and patriotism, and to bring back the attention of the Irish people, now diverted to a barren conflict in the Imperial Parliament, to the practical consideration of their own wants and necessities.

> And, lastly, by removing all unnecessary interference with Irish Government on the part of Great Britain, to diminish the causes of irritation and the opportunity of collision.

Mr. Chamberlain was acutely aware of the intimate connection between political and agrarian reform, and outlined a general constructive policy which was adopted up to a point later on by the Unionist party under the inspiration of Mr. George Wyndham:

> "It is clear," said Mr. Chamberlain, "that suggested land reform must precede the political change; and until the long-standing quarrel between land-owners and land-occupiers has been compounded, it will not be safe to trust the latter with full control over the property of the former.... But, assuming that the social war which now exists in Ireland were terminated by a reasonable settlement, there are strong reasons for desiring, on the one hand, to relieve the Imperial Parliament of some of the constantly increasing burden of its local work, and, on the other hand, to open up to Irishmen in their own country a larger field of local ambition, together with greater liberty of action and greater personal responsibility."

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The Duke of Devonshire also expressed himself in favour of devolution, provided that "the powers which may be conferred on local bodies should be delegated—not surrendered—by Parliament"; that "the subjects to be delegated should be clearly defined; and the right of Parliament to control and revise the action of legislative or administrative authorities should be quite clearly reserved"; but he urged that "the administration of justice ought to remain in the hands of an authority which is responsible to Parliament."

As recently as April, 1893, in the course of an article in *The Nineteenth Century* Mr. Chamberlain stated that "every Liberal Unionist will readily agree" with a desire "to give to Ireland the management of such of its affairs as can be handed over to

an Irish Assembly without any risk or danger to this country, and, I hope that I may add, without the loss of honour that would be involved if the property and the liberties of all Her Majesty's subjects were not fully safeguarded." It is evident that the Liberal Unionist seceders drew a sharp distinction between separation and devolution. They objected to Mr. Gladstone's Bills because rightly or wrongly they were convinced that they involved separation; but while opposing them on that ground they held fast to their belief in the efficacy of devolution.

After 1893 devolution was little heard of, but about ten years later the theory was revived in the movement with which I became associated. This modern suggestion of devolution was an offspring of the Conference on the land question which was held during the winter of 1902. That Conference produced a profound impression not only on the individuals composing it, but also, with a few exceptions of a retrogressive or perverted type, upon the classes represented, and consequently upon the whole community. The land had been for generations, and for centuries, [346] the cause of bitter strife. The parties represented—indeed some of the individuals representing them had come straight out of the firing line to confer upon a question bristling with difficulties and overlain with passion and prejudice. The Landlords' Convention not unnaturally laughed to scorn the idea of a settlement or even of amicable discussion; but they were wrong—prejudice and passion were put aside and the difficulties were overcome.

The Land Conference—an inspiration of the inarticulate moderate opinion existing in Ireland—proved that frank and honest discussion between Irishmen holding opposing views could be productive of good results, and it naturally occurred to many of those interested that the tolerance, good feeling and good sense displayed in settling so vexed a question might be utilised to find a solution for other problems, social, economic and political, presenting difficulties of a less formidable character.

On March 3rd, 1903, five members of the Land Conference

Committee issued a circular stating that it was "now becoming evident that only in a reasonable system of devolution of legislative powers is to be found the solution of the problem that demands such urgent consideration. In no other way can Parliament be relieved from the ever-increasing strain of public business or the legitimate aspirations of Ireland for some definite form of self-government be met."

The idea was a good one, but somewhat premature. The Land Conference Committee having been appointed for a definite purpose—the settlement of the land question, which had not then been fulfilled, had no authority to deal with any other matter. All men's minds were still occupied with the consideration of the land
[347] purchase problem, and obviously the moment was not suitable for a further step forward. The matter was therefore allowed to drop; but in the summer of 1904, the way for the new—but yet old—policy seemed open. The Land Conference had fulfilled its purpose. The Committee was about to dissolve, and it occurred to some of us that a meeting should be held in Dublin with a view to inaugurating a general policy for the betterment of Ireland. In preparation for the meeting I sketched out roughly what I thought our objects should be, and among them was a larger control for Ireland over her local affairs. The Committee met on August 25th, and two resolutions were passed, one dissolving the Committee and another forming the Irish Reform Association. We then set to work to consider a programme, and on August 26th we adopted the following as setting forth the objects of the Association:

> "Believing, as we do, that the prosperity of the people of Ireland, the development of the resources of the country, and the satisfactory settlement of the land and other questions, depend upon the pursuance of a policy of conciliation and goodwill and of reform, we desire to do everything in our power to promote a union of all moderate and progressive opinion, irrespective of creed or class; to discourage sectarian

strife and class animosities from whatever source arising; to co-operate in re-creating and promoting industrial enterprises; and to advocate all practical measures of reform.

"While firmly maintaining that the parliamentary union between Great Britain and Ireland is essential to the political stability of the Empire, and to the prosperity of the two islands, we believe that such union is compatible with the devolution to Ireland of a larger measure of local government than she now possesses.

"We consider that this devolution, while avoiding matters of Imperial concern, and subjects of common interest to the Kingdom as a whole, would be beneficial to Ireland, and would relieve the Imperial Parliament of a mass of business with which it cannot now deal satisfactorily, and which occupies its time to the detriment of much more important concerns. In particular, we consider the present system of [348] financial administration to be wasteful and inappreciative of the needs of the country.

"We think it possible to devise a system of Irish finance whereby the expenditure could be conducted in a more efficient and economic manner, and whereby the sources of revenue might be expanded. We believe that a remedy for the present unsatisfactory system can be found in such a decentralisation or localisation of Irish finance as will secure to its administration the application of local knowledge, interest and ability, without in any way sacrificing the ultimate control over the estimates presented, or in respect of the audit of money expended, at present possessed by the Imperial Parliament. All moneys derived from administrative reform, together with whatever proportion of the general revenue is allocated to Irish purposes, should be administered subject to the above conditions.

"We think that the time has come to extend to Ireland the system of Private Bill Legislation which has been so successfully worked in Scotland, with such modifications as Scotch experience may suggest, as may be necessary to meet

the requirements of this country.

"We are of opinion that a settlement of the question of higher education is urgently needed, and that the whole system of education in this country requires remodelling and co-ordinating.

"We desire to do all in our power to further the policy of land purchase in the spirit of, and on the general lines laid down in, the Land Conference Report.

"We consider that suitable provision for the housing of the labouring classes is of the utmost importance, and we shall be prepared to co-operate in any practical proposals having the betterment of this class in view.

"Among many other problems already existing, or which may arise in the future, the above-mentioned appear to us to comprise those most deserving of immediate attention, and which afford the most reasonable prospect of attaining practical results; towards their solution we earnestly invite the co-operation of all Irishmen who have the highest interests of their country at heart."

The programme was, as will be seen, socially and economically a comprehensive one; but, so far as political reform was concerned, limited to the devolution of administrative
[349] functions and reform of Private Bill procedure.

Shortly afterwards we explained our views more in detail, and made a further suggestion in recommending a delegation, not only of administrative, but also of legislative functions to the Irish body. On this point, and after giving our reasons for desiring a Private Bill Procedure Act for Ireland, we said:

"... But the disabilities under which Ireland labours are not confined to Private Bill procedure. The problems that affect her well-being, the peculiarities of her position and requirements are such that similarity of treatment does not always involve equal justice ... under existing circumstances the special needs of Ireland do not, and cannot receive,

> adequate attention. Sufficient relief cannot, in our opinion, be afforded by mere amendment in the Standing Orders of the House of Commons. Some delegation of authority is necessary. We believe that power to deal with much of the business relating to Irish affairs which Parliament is at present unable to cope with, might, with perfect safety and with advantage both to Ireland and Parliament, be delegated to an Irish body to be constituted for the purpose.... Parliament should take power to refer to the Statutory Body not only business connected with Private Bill Legislation, but also such other matters as in its wisdom it may deem suitable for reference, under prescribed conditions. The experience gained by this method of *ad hoc* reference would materially assist Parliament in the ultimate grouping into distinct classes of matters to be referred to the Statutory Body."

The document is far too long to quote in full. We dealt critically with the Irish problem as it presented itself to us then, and concluded with a recommendation which, if it had been acted upon, would by now have borne fruit in the shape of information of great value, to the public.

> "... We do not consider it now opportune," we said, "to make more definite proposals on the points herein raised. We are prepared to inquire fully into them if the Association so desire, but we submit that inquiry can be best conducted by means of a Royal Commission, and that the proper function of this Association is to place its opinions and propositions before such a Commission. We therefore recommend the Association to use its best endeavours to secure the appointment of a [350]
> Commission, and to instruct this or some other Committee to prepare a detailed report for its consideration, with a view to placing the same in evidence before the Commission...."

In preparing this second programme we had the invaluable assistance of Sir Antony MacDonnell (now Lord MacDonnell of

Swynford) who occupied the position of Under-Secretary, but on somewhat peculiar terms. Our proposals, which are to be found in full in "The Outlook in Ireland," published for me by Mr. John Murray in 1907, may be considered as cramped and limited in character, but the circumstances in which we found ourselves must be considered. We had to deal with existing conditions. A Unionist administration was in power. Home Rule was in abeyance, by many looked upon as dead and decently buried out of sight for ever. But the Chief Secretary and Under-Secretary were pledged to a policy of administrative and economic reform, and the latter was known to be in favour of some modification of the terms of the legislative union.

It is not necessary to re-open the controversy as to the connivance of the Unionist party, or any of its members, with the early work of myself and others.[158] No ministerial or official comment was made on our first programme published on August 31st, 1904. Mr. Wyndham was away at the time and in his absence I consulted with the Permanent Under-Secretary for Ireland, a proceeding which I felt sure, would meet with the
[351] Chief Secretary's approval. The Unionist Lord-Lieutenant, the Earl of Dudley, was also cognisant of the movement. The second programme was published on September 26th of that year, and on the following day a letter from Mr. Wyndham commenting upon it appeared in *The Times*. After criticising our proposals he said "without reserve or qualification that the Unionist Government is opposed to the multiplication of legislative bodies within the United Kingdom," and declared that such of our "aspirations" as were "unimpeachable" were "prejudiced and not enhanced when they are confused with any plan, however tentative, for the multiplication of legislative assemblies within the limits of

[158] A debate took place in the House of Lords on the subject on February 17th, 1905. The correspondence between Mr. G. Wyndham and Sir A. MacDonnell on the latter's appointment appears as an appendix in "The Outlook in Ireland" (John Murray. 1912.)

the United Kingdom." Mr. George Wyndham, in order not to embarrass his party, resigned his office, but Lord Dudley remained Lord-Lieutenant after Mr. Walter Long had become Chief Secretary. In some later correspondence, published in the spring of 1906, with Sir Edward Carson, Lord Dudley after relinquishing his office stated:

> "(1) That though I fully explained to the late Prime Minister the nature of my connection with what you describe as Sir A. MacDonnell's Home Rule scheme, he never conveyed to me any intimation that he or the Government disapproved, strongly or otherwise, of my conduct, though, of course, I can well believe that you and a few other Ministers disapproved not only of the devolution proposals, but also of any attempt at governing Ireland in sympathy with Irish ideas.
>
> "(2) That I was never asked for and never gave any assurance that it was no longer my intention to act in a manner at variance with my position as a Unionist Lord-Lieutenant. It was not my opinion then, nor is it now, that I ever so acted, and I do not consider that my knowledge of the devolution proposal, still less my conviction that Ireland should be governed according to Irish ideas, is inconsistent with the position which I occupied."

Devolution held the field when a Liberal administration came into power in 1906 and found expression in the Councils Bill. [352] That Bill practically gave to an Irish body control over the great spending departments. It embodied devolution on a large scale, but entirely confined to administration. The Liberal party had passed a self-denying ordinance in respect to Home Rule while still in opposition. Sir Henry Campbell-Bannerman, speaking at Stirling on November 23rd, 1905, said it was "his desire to see the effective management of Irish affairs in the hands of a representative Irish authority"; but he advised Irish Nationalists thankfully to take "an instalment of representative control" ... "or

any administrative improvement" ... "provided it was consistent, and led up to their larger policy." We have it on the authority of Mr. T. P. O'Connor that this declaration "was all that the Irish Nationalist party could have expected at that moment, and it enabled them to give their full support at the elections to the Liberal party"; and, in alluding to the private breakfast-table conference between himself, a friend and Sir Henry Campbell-Bannerman, he informs us that "the exchange of views was brief, for there was complete agreement as to both policy and tactics." Mr. Redmond also, speaking at Motherwell a couple of days after the Stirling speech, announced his readiness to accept any concession "which would shorten and smooth the way to Home Rule."

Notwithstanding these plain declarations Mr. Redmond, having accepted the Councils Bill in the House of Commons, moved its rejection at the National Convention and endeavoured to justify his action at the expense of devolutionists by protesting "that the responsibility for this Bill largely rests upon those who first encouraged this idea of devolution"—a protest in which Mr. T. P. O'Connor joined him. The truth is that in
[353] their Councils Bill the Government went in principle as far as they could under the circumstances. The idea that they, or the Irish Reform Association in general, and I myself in particular, were actuated by a desire to shelve Home Rule by substituting a measure of administrative reform, is pre-eminently absurd. The tactics pursued by the Nationalist party towards the Irish Reform Association and the Government were most unwise. The Association would, had it received the support it deserved, have certainly organised and rendered articulate a body of moderate opinion strong enough to neutralise any immoderate demonstration against the principle of Home Rule on religious, racial, or social grounds. Had the Councils Bill been amended and accepted by Ireland, and, as is probable, had it been passed into law, Ireland would have had an opportunity,

which she would have availed herself of, of proving her aptitude to manage her own affairs, and she would be now in a position of inestimable advantage to her. But neither I nor the Reform Association considered the Bill as satisfying Ireland's reasonable demands. We looked upon it as valuable in itself *pro tanto* and as the honest effort of a Government with self-imposed limits to do justice to Ireland. The Association having considered the matter, passed and published a series of resolutions which space forbids me from quoting in full. To summarise, we criticised the limited transfer of departmental authority, and considered the financial proposals of the Bill insufficient. We regretted "that the Bill entirely excludes consideration of any powers of a legislative character." But, as we thought the Bill constituted an advance towards necessary reforms and was capable of amendment in Committee, we expressed our regret at its summary rejection by the National Convention.

Such is the story of the devolution movement in its modern [354]
expression. Devolution is an elastic though not a vague term. As I have already said, it is incompatible with repeal of the Union. It predicates a union of some sort—connection with a superior delegating authority, but under that union and subject to that authority its powers of expansion are unlimited. If I may be allowed to quote from myself, an evil habit, I thus defined my position in 1907. I then declared it was:

> "... my ambition to see:—
>
> "(1) Cordial, honest co-operation among Irishmen for their country's good. A true, living sense of Irish nationality is necessary. Ireland united can accomplish anything in reason.
>
> "(2) The exercise of moderation and common-sense on the part of Irishmen.
>
> "(3) The creation of friendly, fraternal relations between Great Britain and Ireland on both sides—'let the dead bury their dead.'

> "(4) Recognition by Ireland of: (*a*) Her Imperial mission, her share in the larger nationality covered by the Flag, and her consequent duties and responsibilities; and (*b*) of the political necessities of Great Britain.
>
> "(5) Recognition by Great Britain of: (*a*) Irish nationality; and (*b*) of the economic and social requirements of Ireland, and of her just claim for exceptional treatment."

and I concluded by saying:

> "... My political creed is clear and simple. One Parliament is my centre; its ultimate effective supremacy is my circumference; but, emanating from that centre, and within that circumscribing limit, I desire to see the largest possible freedom of action and self-governing power delegated to Ireland."

That was the opinion I then held and, in its general principles, that is the opinion I hold now. I have endeavoured to obtain such a measure of devolution as was at the time practical of attainment. My ideal is devolution on federal lines—that is to say, devolution
[355] of a character as nearly analogous as circumstances permit, to such an arrangement as would be come to between co-ordinate legislatures federating for their mutual advantages.

It has been necessary to recall the public declarations of statesmen of the Victorian period in order to get a true conception of the devolution movement in proper perspective. Among English statesmen of the front rank we find Lord Beaconsfield, Lord Salisbury, the Duke of Devonshire, Mr. Chamberlain and Mr. Gladstone all admitting the great fact that both for British and for Irish purposes, some scheme of devolution was necessary. It would be easy to multiply instances and to give quotations in profusion, but I have said enough to show that for the last half century statesmen have, for various reasons, advocated devolution. Upon some the necessity has been impressed by

deliberate obstruction in the House of Commons, others have been actuated by a desire to relieve congestion and to restore dignity and efficiency to the Commons House of Parliament. Upon others again the conviction has been forced that, under the system created by the Act of Union, Ireland cannot be well governed or contented; and a few have foreseen that both for domestic and Imperial purposes reconstruction on federal lines is desirable. Yet, in spite of this remarkable expression of opinion, nothing has been done, though the necessity for action has become more and more urgent with every passing year, and though many of the objections felt in former days can no longer be entertained. The doubts felt by the Duke of Devonshire as to the fitness of the Irish people to exercise self-governing power have been dispelled by experience of the working of the Act of 1898. The settlement of the land question rightly deemed by Mr. Chamberlain an essential preliminary to, or accompaniment of, political reform, has been half accomplished under the Act of [356] 1903, and can be fully accomplished by reverting to the principles of that Act.

Many attempts have been made to reform procedure within the House of Commons and all of them have proved inadequate. Owing to an actual increase of business, and to the growing complexity of domestic affairs, Parliament is over-burdened with work to a far greater extent to-day than it was in the seventies and eighties. Since those days the idea of union on federal lines in the Mother Country, as not only desirable in her interest, but as also indicating the path to some larger form of union, has become prevalent. It has become more and more evident that some scheme of devolution is necessary to enable the Parliamentary machine to deal with the great industrial questions that perplex us, and to give adequate consideration to the problems of Imperial policy which press for consideration. Under these circumstances it is indeed extraordinary that this great question has not been settled in the only way by which, in my

humble opinion, it can be settled satisfactorily and permanently, namely, by consent of both the great parties in the State; and it is passing strange to see the leaders of one of the great parties, despite the opinions of their predecessors in title, taking up an irreconcilable attitude towards devolution of any kind. It would be most interesting, but impossible, within the scope of this article to consider how far contemporaneous events in Ireland, faulty tactics on the part of Irish politicians, and the exigencies of party political warfare are respectively chargeable with this lamentable legislative default. The fact is the question has never been considered on its merits. The party system is probably the principal offender, but impatience on the part
[357] of the Irish people, vagueness in the demands put forward by their leaders, inconvenient alliances, vacillating counsels, a short-sighted policy, and mistaken tactics are much to blame.

It is a curious circumstance in the historical development of this policy, that Devolutionists in going forward have come back to the standpoint of the greatest leader the Tory party ever had. Speaking in the House of Commons in 1844, Mr. Disraeli is reported in *Hansard* as saying:

> "I always thought that the greatest cause of misery in Ireland was identity of institutions with England. It has become a great historical aphorism that Ireland is to be the great difficulty of the Minister. Now this is an opinion in which I never shared. I never believed that Ireland would be a great difficulty, because I felt certain that a Minister of great ability and of great power would, when he found himself at the head of a great majority, settle that question. What, then, is the duty of the English Minister? To effect by his policy all those changes which a revolution would do by force. That is the Irish question in its integrity. It is quite evident that to effect this we must have an Executive in Ireland which shall bear a much nearer relation to the leading parties and characters of the country than it does at present."

These principles Mr. Disraeli declared to be “Tory principles, the national principles of the democracy of England.” When a quarter of a century later, and holding a most responsible position, he was challenged in the House of Commons as to this statement of his views, he still declared that: “in my historical conscience the sentiment of that speech was right.”

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Part III. Contemporary Views

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XIV.—Irish Nationalism And Liberal Principle. By Professor L. T. Hobhouse

All through the nineteenth century the cause of subject nationalities was a constant stimulus to British Liberalism. Successive generations hoped and feared, wept and rejoiced with the rebels of Greece, of Italy, of Hungary, of Poland, of the Balkans. Their successes and failures were events of moment in the calendar of British Liberalism, for they were recognised as essential parts of the democratic movement, and the democratic cause was in that century looked upon as one all the world over. Nor was this sentiment ineffective. The moral support of England was in those days recognised as an asset to a cause. Individuals gave direct and tangible assistance, and there were even times when diplomacy moved. Nationalism, therefore, lay close to the heart of Liberalism. Yet there was all the time one nationality whose claims were not so readily understood as those of Greek or Italian, Pole or Bulgar. Ireland was raising a cry, protesting against grievances, formulating demands, which to impartial ears sounded very like those of other subject peoples. Here it seemed was an oppressed nationality at the British Liberal's own door, [362] with grievances which he could redress by his own efforts if he would. Conscious—perhaps a little too conscious—of the rectitude of his intentions, the British Liberal had some difficulty in seeing himself in the light of an oppressor. But under Mr. Gladstone's leadership he learned his lesson in two stages. He began by learning that there were very real grievances to be redressed, grievances resulting from the political subordination of Ireland, in particular the grievances of the Church Establishment and of the land system. But in the course of his remedial efforts he learned further that though oppressive government may do much to hold a nationality together, the redress of grievances does not necessarily loosen the bonds of national unity. While

the Government of 1880-85 still oscillated between concession and coercion, the more adventurous minds began to realize that what they had preached for Italy, Hungary, and Poland must in its due measure, and with all reasonable regard to variation of circumstances, be offered to the Irish people. They were ready for the second stage upon which Mr. Gladstone entered at the end of 1885, and in which, after a brief and memorable struggle, he carried with him the bulk of the Liberal Party. They had learned that the solution of the Irish question lay not in repressing Irish nationality, but in trusting it with the responsibility of self-government.

The Unionist leaders who defeated Mr. Gladstone had nevertheless learnt from him the first of these two lessons. They acquired by degrees a working knowledge of the material grievances of Ireland, and bit by bit they dealt with them, confident that by so doing they would undermine the foundations of the national demand. They reached the first stage of Liberal
[363] education, but refused to advance beyond it. Time, however, has declared against them. The twenty years of resolute government which Lord Salisbury once demanded have gone by, broken only by the three years in the 'nineties, when Liberals held office without legislative power. Ireland is orderly, and, by comparison with the past, prosperous. But Ireland is still Nationalist. The result is to leave the main arguments for Home Rule standing, while several of the old arguments against it are weakened or brought to naught. The Irish community is economically more vigorous, and so far more capable of self-support than it was in 1886. It is no longer a society which can be represented as honeycombed with conspiracies, or given up to disorder. It is no longer in the grip of a land system which necessitated an agrarian revolution, either as the precursor or as the first act of a self-governing Parliament. It is no longer so overtaxed that to maintain the fiscal balance with Great Britain would be to impose a permanent tribute on the smaller and poorer island. But

it remains Nationalist, and the unsatisfied national sentiment of Ireland remains not only a reproach to British Liberalism, but a flaw in the fabric of our national security.

I dwell on the permanence of Irish nationalism, because in dealing with nationality, we are confronted with one of those political forces which may be very real and very stubborn, but which yet are neither measurable in statistics nor easily compressed into the four corners of a rigid definition. What precisely is a nationality, it may be asked, and why should it be so much a matter of concern to Liberals? Liberalism is for self-government, it is true, but, provided that all parts of a country or of an empire are equally represented on a democratic franchise in the governing assembly of the whole, what has the principle of liberty to say further in the matter? Why should it [364] be on the side of division or against unity? It is not ever so. On the contrary, national jealousies, rival patriotisms are constantly thwarting another branch of Liberal endeavour. It must be frankly recognised that the development of nationality in Europe is in large measure responsible for the modern recrudescence of militarism. As a policy of peace and international goodwill, Liberalism has to make some sacrifices, and take some risks in upholding nationality. What does it gain in return? If its ideal is humanitarian, why must it countenance the national idea, self-centred and intolerant as the idea too often becomes?

The answer to this question is written in the history of the dealings of Governments with subject nationalities, Irish or other. The primary object of political Liberalism is to found Government on freedom. This end is not compassed at a stroke by the simple method of establishing a well-oiled representative machine. It involves, to deal with externals only, freedom of speech, of writing, of meeting, of organisation. It involves the security of personal rights as much against the Executive Government as against any private aggression. But when a larger nation forcibly incorporates a smaller one in its system it is

easy to see the difficulty of maintaining order on these lines. A free government in the full sense of the term must be founded on the voluntary adhesion of the mass of the people. This adhesion is not necessarily impaired by the conflicts of interest or conviction which are the inevitable incidents of public life in any community, and which compel now one section and now another to submit to laws or acts of government which it resents. As long as each class feels that its claims, even if overborne in
[365] the end, will not be rejected without adequate understanding and fair consideration, there exist the elements of government by consent. But a smaller nation forcibly incorporated in a larger one does not feel this. The very constitution which is the pride of its masters is the badge of its own subjection. It may have equality of franchise, but its representatives are in a permanent minority. By history, by sentiment, perhaps by religion, race, or language, it has acquired differences of tone and habit. It regards public questions from a different angle. Its emphasis is different, its essentials are trifles to other people, and their essentials are its trifles. Its problems, even when on the surface they appear the same, have a different historic background, are interwoven with special associations, complicated with local and peculiar sympathies and animosities. With these nuances the smaller nation can never hope that the majority will deal, because the majority can never understand them. Not only so but the smaller people will have a pride, memory, and hope of its own. It may have a larger patriotism if its self respect is first consulted, but as long as its independent being is ignored its only collective ambition will be to assert itself. Thus in the subject people the milk of social feeling is turned to gall. All that leads a free people to respect law, to support Government, to take pride in public prosperity, to sacrifice personal to common interest, will work in this case only towards discord and civil strife, and the best men become in a sense the worst citizens. At least they become the most resolute opponents of the established order. The more

opposition develops, and this means the more life flourishes in the subject people, the more the tension increases. Presently definite obstructions arise in the machinery of Government and the ruling democracy, however liberal in its original intentions, [366] is driven into "exceptional" legislation. Constitutional rights are curtailed. Legal securities are suspended, freedom of speech is withheld. These disabilities may either be confined to the disaffected people, in which case the principle of equal rights disappears, or to save appearances as to equality they are made universal, in which case general liberty is impaired. In either event this original condition is set at naught. The essentials of political liberty are violated. Wise and moderate statesmanship may mitigate the mischief. Reactionary statesmanship may inflame it. But the seeds of trouble will always be there as long as the foreign body is embedded in the organic tissues.

But it may be asked, are we always to give way to sectional feeling? History has interwoven many races and they must surely learn to live together. What of French and British in Canada, or of British and Dutch in South Africa? What again of Ulster? If Ireland is a nation, does the nation include the Protestant half of Ulster or does it not? If yes, how can any of our tests of unity stand? If not, how can we recognize Ireland as one nation and not as two? Let us take these questions in turn, and let us consider first the measure and importance to be attached to national sentiment. We are dealing here, it has been admitted, with a force which it is impossible to measure *a príorí* by any external tests. We seem able to judge it only by the event. If in fact Irish nationalism had yielded to the redress of definite grievances, if it had been practically possible to kill Home Rule by kindness, Unionist statesmanship would have been justified. I do not say justified by success, for success is not a judge giving decision by rules of equity. It would have been justified rather in the sense that it would have been experimentally proved to have [367] been founded on a true interpretation of the case. The Unionist

case—at its best—was that Irish nationalism was a passing and superficial sentiment. At its core were certain real grievances, but it was swollen into a mass of imposing appearances, but of loose and flabby texture. The plan was to remove the grievances with one hand, while with the other every ebullition of sentiment into unruly speech or action was steadily repressed. Had the plan succeeded it would have shown that Irish nationality was an illusion, or at best a thin and insubstantial product of a passing historical phase. In so far as it has failed it has shown that Irish nationality is a reality, deep rooted in the past, and to be reckoned with permanently in the future. In a word the test of nationality lies in history. If the life of one people can be absorbed into that of another so that free Government can proceed unimpeded, not violated by the habitual resort to "exceptional legislation," the union is justified by the event. If on the other hand the demand for autonomy remains clear and persistent, through evil report and good report, through coercion and concession, through adversity and prosperity, in days of disorder when despair has reigned and in law abiding times rendered calm by hope, there is the proof that nationality is a vital principle, and a permanent force with which liberty must make its account.

How is it then that by the gift of autonomy, time has succeeded in fusing French and British peoples into the nation of Canada, and why do we see a similar fusion proceeding between British and Dutch in South Africa? The question arises partly out of the common confusion between race and nationality. Race is a matter of physical kinship, and kinship is one of the bonds that
[368] tend to unite people and at the same time in a measure to separate them from others. But it is only one bond among many. Most modern nations, our own conspicuously, are blends of many races, and are united not so much by common ancestry as by the possession of a common country, common interests, common traditions, a common mode of life and sentiment. Further, where two or more races are intermixed, there is no means of endowing

them with independent Governments. The same writ must run over the whole territory. Hence there are three possibilities. One is that one race should hold the reins of power, as generally happens when white and black live together. Another is that the country should be governed from without, and this will generally mean that the administration leans on one of the races within, and makes of it an "Ascendency" caste. The third is that the two races should seek to live together and govern themselves with mutual toleration. This is the experiment which has succeeded in Canada, and is succeeding so far as the white races are concerned in South Africa, and which is to be tried in Ireland. In proportion as it succeeds the two races blend, and a new nationality is formed.

But still it may be asked, why should not Ulster claim to be a nation? True, she is but a fragment of Ireland, but then Ireland is but a fragment of the United Kingdom, and St. George's Channel is not so very formidable a dividing line as to make all the difference. Our whole argument, it may be said, has rested on the rights of minorities, and Ulster is a minority. Why should not Ulster also be a nation? This at once suggests the counter-question, does Ulster claim to be a nation? Let us bear in mind that the term Ulster is a mode of speech, and that what is meant by it for these purposes is half Ulster, or the city of [369] Belfast with some adjacent counties. Does Belfast, we should more rightly ask, profess and call itself a nation? Not if its desire is, what we have always understood it to be, to remain directly subject to the British Parliament. It is in fact, the focus of an old, but decayed Ascendency caste, and its desire is to retain what it can save from the wreck of the Ascendency system. With this demand Liberalism can have no sort of sympathy. If Belfast would condescend to put her case with a little more moderation, and a little allowance for the two sides of the question, it would be easier to meet her views. As long as she declines to make her account with the fact that the great majority of Ireland is

Nationalist, and that British Liberalism is resolved to do justice at last to nationalism, she rules herself out of the discussion, and leaves it to British statesmen to act for her rather than with her. Belfast is a Protestant and industrial centre in a land which is predominantly Catholic and agricultural. On both counts she may fear some inequality of treatment, and on both may legitimately receive guarantees. On the major question, that of religion, every Home Rule scheme has proposed ample guarantees and the present Bill does not fall short under this head. The problem of financial and commercial interests is more complex, but it is difficult to see how an Irish Parliament, responsible for the financial soundness of the country, could do anything to cripple the industries of Belfast without being fully aware that in so doing it would be killing the goose that lays the golden eggs. The discussion of this question, however, I must leave to those who are dealing with the financial provisions of the Bill. On the main point we may ask whether, if the Bill is to pass, Belfast will deliberately and persistently demand to be left out of its scope,
[370] and separated from Ireland in the sense and degree in which Ireland will be separated from the direct control of Great Britain. If such a demand is put forward not merely in order to wreck Home Rule, but as a substantive proposal seriously intended, it will constitute a new fact. Belfast will then be, indeed, claiming recognition as a miniature nationality, and the claim will be fairly weighed. At present it can only be regarded as highly improbable that such a claim should be maintained or even put forward except in a fighting mood. That Belfast should sustain her opposition to the whole Bill is perfectly natural, but given that there is to be Home Rule as one of the fixed conditions of a settlement, her natural position is that of a centre and rallying point for the dispersed forces of Irish Protestantism. That this is her true function in the Irish Parliament, Belfast must be as well aware as she is that her influence in that Parliament will be more than proportionate to her numerical strength.

We have spoken of nationality as a centrifugal force, as one of the influences tending to division. But there is another side to the question. When a nation obtains self-government it undertakes a new responsibility. It must keep its own peace, balance its own finances, have regard to its own common economic interests. This common responsibility does not make for division. It makes for unity. It enforces a sober regard for the claims of each part. It dictates a measure of mutual consideration which is not developed as long as one party within the country is taught to lean upon an outside power. In the past history of Ireland each party has alike been taught constantly to look to Westminster for its wants, to Westminster for redress of grievances, to Westminster perhaps for vengeance on its foes or at lowest for the means of keeping them in order. This is not the atmosphere in which [371] mutual toleration grows. When Irishmen understand that they must go of themselves unaided and uncontrolled from without they will learn like other men that they must pull together if they are to keep off the rocks. The national element will have the majority in the Irish Parliament, and the first object of this element will be to make Home Rule a success. That they can do only by securing the co-operation, even if it be the grudging and unadmitted co-operation, of the opposition. But Belfast is not bound to content herself with these general probabilities. She has only to formulate intelligible demands consistent with the establishment of a Dublin Parliament to be assured of a respectful and considerate hearing. If she would be content to rest her case on the same basis as that of Irish nationalism itself, recognising that nationalism must have its rights and submitting only that she in turn is a lesser nation within a nation, it would be possible to deal with her. As long as she stands on her own claims she rules herself out of the discussion.

There are many who regard the recognition of nationality as at best a regrettable necessity. They lay stress on those centrifugal tendencies that we have admitted and they feel that the greater

need of mankind is for unity. But the unity which they desire can only come through the development of life in many different centres and with luxuriant divergencies of character. The doctrine of Mazzini that every nation had its own peculiar function to fulfil in the life of humanity was not pure fancy. It is easy to recognise that the leading modern nations have each, in fact, contributed something distinctive, something that would have been blurred and dulled if all had been of one speech and under one rule.

[372] Division has meant unrest, friction, war, and suffering. But it has been a necessary condition of collective vitality. Self-respect and self-confidence are necessary to a people that are to do great things, and these they cannot enjoy to the full so long as they are conscious of a mastery that galls their pride. Ireland has contributed to our literature her peculiar strain of humour and of romance, tinged with the melancholy of her historic ill-fortune. The graver tone and gentler view she will never lose, for they belong to a people who will always have behind them the memory of the centuries of that undeserved suffering which opens the eyes of men to the nature of the human tragedy. But the distinctive Irish quality may henceforward be shot with a brighter thread catching the light from her assured future as a nation. As a nation she has her part to play in the English-speaking Commonwealth, questioning the successful practicality of a dominant people with the irony, and tempering its prose with the romance born in the centuries of her probation in the valley of the shadow.

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XV.—The Imperial Parliament

(I) The State Of Parliamentary Business. By Cecil Harmsworth, M.P.

There is one argument for conferring self-government on the people of Ireland that appeals with irresistible force to many ordinary members of Imperial Parliament. This is the urgent necessity for relieving Imperial Parliament of "provincial" business and setting it free to devote its best energies to the ever-increasing legislative and administrative needs of the empire.

Every year the amount of business that falls to be transacted in the House of Commons grows in volume. Every year fresh proofs are afforded that the legislative machinery of the House of Commons is not only unequal to the strain imposed by the growing volume of business, but that it is incapable even of dealing effectively with the affairs that have always been regarded as coming within its special province. For instance, the House of Commons has practically lost all control over the details of finance. It is true that a fairly generous allowance of Parliamentary time is allotted to the Estimates, but the House rarely, if ever, comes to close grips with the nation's balance sheet, or indeed with the details of any particular vote. Yet a vigilant supervision over finance is one of the primary functions of the House of Commons. [374]

How far the recently established Select Committee on Estimates will be able to assist in promoting national economy remains to be seen. The creation of such a body has not met with universal approval in the House itself. As in the case of all parliamentary Committees, no matter how influential their

personnel, the House as a whole may not be found willing to accept the decisions of the new Select Committee as authoritative.

In the sphere of Bill legislation, the condition of things is even worse. Notwithstanding the desperate shifts which have been resorted to in recent years to secure the dispatch of business, we are confronted in every succeeding session with greater congestion in the House of Commons. Big Bills are hustled through with the aid of every undesirable expedient known to parliamentary procedure, and little Bills in pathetic shoals are massacred at the end of each session. The plain fact is that we have not sufficient time in which to do anything properly. No matter what strain we impose on the physical endurance of Members, no matter how far we invade the undoubted privileges of the House of Commons as a deliberative assembly, Parliament is less and less able to fulfil its manifold duties as the paramount legislature in a world-wide state. The damage to local interests is scarcely less serious. Irish finance, for instance, and Irish legislation suffer from the disability of Imperial Parliament to give them due consideration.

Let it not be supposed that the House of Commons is unconscious of its own demerits as a legislative machine. It is nearly sixty years since Sir John Pakington's Committee was appointed to consider "whether by any alteration in the forms and proceedings of this House, the dispatch of public business
[375] would be more effectually promoted." Committees with similar references were set up in 1861, in 1878, and in 1886. As a result of these inquiries two Standing Committees were established at the instance of Mr. W. H. Smith in 1888. The relegation of measures of the second rank to the two Standing Committees was expected to lighten the legislative burdens of the House of Commons very considerably, and this result was in some measure achieved. But the problem of congestion was so far from being solved that it was thought necessary to appoint yet another Committee (Sir Henry Fowler's) in 1906. This Committee recommended the setting up

of four Standing Committees, and it is under this system that we are now working. With considerable diffidence I advance the opinion that an even larger use of Standing Committees might be made than has yet been attempted. Part II. of the National Insurance Bill was sent “upstairs,” and the result amply justified what was regarded by cautious Parliamentarians as a daring experiment. But this part of the Insurance Bill was in a large degree uncontroversial. The House of Commons is jealous, and naturally jealous, of its rights over controversial measures of the first class, and has never yet shown any readiness to accept as conclusive the decisions of Standing Committees. Nor should it be forgotten that attendance on a Standing Committee imposes a severe strain on members who are also keenly interested in the business of the House itself. By the time Mr. Speaker takes the chair at a quarter to three o'clock, the members of such Committees have often completed a very fair day's work.

Meanwhile, other and more questionable expedients for facilitating the dispatch of business were coming into general use. It is to Mr. Joseph Ronayne, a member of the Irish Parliamentary Party in the 'seventies of last century, that we owe [376] the policy of organised and scientific obstruction in the House of Commons, and, as a consequence, the drastic use of the closure. Mr. Ronayne was a back-bench member of the Irish Party, of unobtrusive manners but of settled opinions. He was profoundly dissatisfied with the unaggressive tactics of Mr. Isaac Butt, the then leader of the Irish Party.

> “We will never make any impression on the House,” he said, “until we interfere in English business. At present Englishmen manage their own affairs in their own way, without any interference from us. Then, when we want to get our business through, they stop us. We ought to show them that two can play at this game of obstruction. Let us interfere in English legislation; let us show them that if we are not strong enough

> to get our own work done, we are strong enough to prevent them from getting theirs."[159]

Mr. Ronayne found in Mr. Joseph Gillis Biggar an apt pupil. Mr. Biggar used to say: "The English stop our Bills. Why don't we stop their Bills? That's the thing to do. No Irish Bills; but stop English Bills. No legislation; that's the policy, sir, that's the policy. Butt's a fool, too gentlemanly; we're all too gentlemanly." Mr. Biggar's oratory is happily now only a tradition. It was not good oratory of any kind, but it effected its purpose. More skilful exponents of the art of obstruction have appeared since Mr. Biggar's day, but none more successful. The expedient may have been justifiable in the case of a small minority struggling unavailingly against an overwhelming and indifferent majority. It is quite true that during the mild reign of Mr. Butt the British political parties treated legislative proposals emanating from the Irish Parliamentary Party with scant courtesy. It is equally true that obstruction in the House of Commons proved a potent
[377] incentive to the more careful consideration of Irish claims. We have travelled far since those days, but obstruction remains as one of the most formidable weapons in the armoury of an opposition. The British political parties have, when in opposition, made full use of a device that Mr. Butt regarded as "undignified, useless, and mischievous." And not only is obstruction with us, but its hateful if necessary corollary, the closure, has tended every year to become more oppressive. The parliamentary historian of the future will note that it was on June 10th, 1887, that "closure by guillotine," that monstrous variant of an accursed type, was first proposed in the House of Commons. A few days later the guillotine fell on several of the most important clauses of a new Crimes Bill. So closely associated with Ireland are the most recent and most detrimental changes in the procedure that governs the debates in our Imperial Parliament!

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[159] Mr. Barry O'Brien's "Life of Parnell." Vol. I., p. 93.

Obstruction or no obstruction, closure by guillotine or by compartments has come to stay as long as our Parliament attempts the otherwise impossible task of legislating for several provinces, and an empire at the same time. Nowadays almost every great Bill is subjected sooner or later to the guillotine. Let us see what this means. A debate in Committee, let us say, has been in progress for some days or weeks. Discussion has been free, and only occasionally, perhaps, has the ordinary form of closure been exercised. A bare half dozen clauses have been disposed of. There remain four or five score more clauses and a motley group of schedules. It becomes obvious that unless something is done to speed up the machinery, the Bill will never get through the House. Then it is that the leader of the House braces himself to his most unwelcome task, and, rising in his place, proposes a rigid time-table for the discussion of the remaining clauses and [378] schedules. A certain number of days are allotted, and to each portion of time is allotted a section of the Bill. Thus, a whole Parliamentary day may be allotted to three clauses. The whole of this day, perhaps, is spent in debating the first line of the first of the three clauses. However this may be, the guillotine falls with remorseless severity at the end of the allotted day, and only Government amendments to the undiscussed parts of the three clauses are taken. Could anything be more clumsy? Was it possible for the ingenuity of man to invent a less businesslike remedy for the congestion of business in Parliament? Indeed, the absurdity of the system is universally acknowledged. I know of no more distressing spectacle than that of the leader of the House of Commons exerting himself to excuse a policy that he, in common with all who reverence the House of Commons, holds in detestation. On such occasions as this, the arguments advanced for what is confessedly a rude invasion of the rights of free speech are of a set pattern. It is urged that the debate has now been in progress for so many days or weeks, and that little advance has been made. Regret is expressed that resort

should be had to such an unpopular device as the guillotine. But by what other means, it is asked, is a Government to carry controversial measures? After all, the time-table proposed is a generous one, having regard to all the circumstances of the case, and is certainly more generous than that allowed by the party opposite on such and such an occasion in the past. The leader of the Opposition, in rising, lays his hand on his heart and calls the House to witness that if on former occasions he has made use of the guillotine, he has done so far less frequently than the
[379] head of the present administration, and with an entire absence of the levity that marks the present proceedings. The guillotine resolution is carried. There are ineffectual ebullitions of wrath on the opposition side of the House, and there are sinking hearts on the Ministerial Benches. On every such occasion it is felt in all parts of the House that a deadly blow has been aimed at the dignity and the prestige of Parliament.

But the House of Commons is meant to be a deliberative assembly! It holds still the highest place among the democratic assemblies of the world, and its rules and forms and customs have been adopted with unquestioning veneration, wherever democratic communities have set up legislating for themselves. In point of *personnel*, recent Parliaments have shown no falling off from the standards of other days. In manners, in public spirit, in devotion to parliamentary duty, and in the range of their knowledge and experience, the members of the present Parliament compare most favourably with their predecessors in any Parliament in our history. If they are gagged and closured and guillotined, it is not because their speeches would be unworthy of the place or of the occasion. The simple reason is that there is no time for them. The mother of Parliaments is trying to do the work of four or five Parliaments, and is signally failing in the attempt.

Let this be noted. Though the outcry against the guillotine closure, whenever it is proposed to be exercised, is loudest on the

opposition side of the House, the guillotine operates just as much to the disadvantage of private members on the Government side. They are expected to support the Government Bill in broad outline, but they are under no obligation to support it in every detail. They entertain, and are entitled to entertain, their own views as to points of detail, and are no more willing than [380] members opposite that their pet amendments should be sacrificed arbitrarily at the end of an allotted day. Indeed, since they are, *ex hypothesi*, devoted to the main principles of the Bill, they are likely to be even more solicitous than members of the Opposition that the Bill should be as perfect in detail as in its general scope. Little wonder that under the operation of the guillotine, private Ministerial members tend more and more to become passive and, in the long run, indifferent spectators of the drama that is enacted on the floor of the House when a great Bill is going through, and it is in this respect and not in any other, I think, that modern Parliaments are inferior to others.

There are other aspects of the question that might be dwelt on at some length, if this were the proper occasion. Since it is recognised in all parts of the House that a great measure is not and cannot be adequately discussed under the guillotine closure, a dangerous practice has grown up of leaving difficult matters to be decided by Government departments or by new authorities set up under the Act. Under the National Insurance Act, for instance, the Commissioners are invested for certain purposes with all the legislative prerogatives of the three estates of the realm! I must leave that matter to the constitutional authorities. I am concerned for the moment merely to show that the guillotine closure is a clumsy, unbusinesslike, and dangerous expedient that cannot be regarded as having solved in any satisfactory degree the eternal problem of congestion in a Parliament that attempts to cope at the same time with the local affairs of three or four provinces, and with the affairs of an empire.

Relief might doubtless be found in the more frequent use [381]

of what is known as the "kangaroo" closure. This method of dealing with business in Committee was first regularized in 1908. Under this system, power is given to the Chairman to select such Amendments as he believes to be really important, to the exclusion of others. The burden of responsibility thus thrown on the Chair is felt to be enormous, and it is chiefly on this account that the kangaroo closure has been very sparingly exercised.

I say that the setting up of four Standing Committees, and the institution of the guillotine closure have so far failed to relieve appreciably the pressure of business in the House of Commons. Another method has been tried that might reasonably have been expected to produce more fruitful results. I refer to the prolongation of the session of Parliament. In 1906 we had an autumn sitting. In 1907 we sat until August 28th. In 1908 we had an autumn sitting. In 1909 we sat for practically the whole year. The session of 1910 was agreeably diversified by a strenuously contested General Election at either end of it. In 1911 we had yet another autumn sitting, and this year we are threatened with a continuous session extending from February until Christmas time. True enough, a good part of the work of these sessions was wasted by the action of a House of Lords which has since lost some of its powers for obstructive mischief, but it will be observed that of the first class measures destroyed by the Lords, only two—the Education Bill (in a different form), and the Scotch Small Holders Bill—have subsequently made considerable demands on the attention of the House of Commons. The time gained by extending the sittings of these several Parliaments has been chiefly wanted for new legislation.
[382] Even if the House of Lords had found it convenient to pass the Liberal measures which it rejected, the pressure of business in the House of Commons must have necessitated the resort to autumn sittings in two or three of the years under consideration. Now, it is a commonplace that autumn sittings are permissible only in very exceptional circumstances. From the point of view

of all Members of Parliament, autumn sittings are an unqualified disadvantage. Members, like other folk, want their holidays, and, unlike other folk, have constituencies to look after. Ministers of the Crown who are members of the House of Commons stand in even greater need of holidays than private members, and are not less under obligation to cultivate their constituencies. In addition, they need leisure for the preparation of the great Government measures that are to figure in the King's Speech, Departmental Bills for the ensuing session, and generally for the overhauling of the work of their departments. It is astonishing that the work of the great administrative departments should have been done so well in recent years when regard is had to the extreme pressure under which Ministers have been working. If Sir H. Campbell-Bannerman and Mr. Asquith had not had at their command an abundance of administrative talent of a high quality, there must have been during the last six years many cases of failure in the management of the important Parliamentary Offices of State. One of the chief functions of a Parliamentary Minister in charge of a department is the infusion of new ideas, the re-assembling and adaptation of old machinery, the bringing up to date of an organisation that may have served its purpose well in the past but is no longer adequate to the enlarged requirements of modern times. For such work as this there must be time for cool deliberation. It is scarcely possible for the most capable Minister [383] to devise schemes of administrative reform amidst the excited rumours of the lobbies and the innumerable distractions of life in the House of Commons. Less responsible members of the House of Commons than Ministers find that it is well-nigh impossible to think clearly during the session of Parliament.

Other methods have been proposed for saving time in an overburdened House of Commons. There is the proposal that measures that have reached a certain incomplete stage in one session should be revived at the same stage in the next session of the same Parliament. A Select Committee of unusual authority

discussed this matter in 1890. Among the members of the Committee were Mr. Gladstone, Mr. Balfour, Mr. Chamberlain, Mr. John Morley, Mr. Goschen, Sir William Harcourt, the Marquis of Hartington, Mr. Dillon, Sir Edward Clarke, Mr. T. W. Russell, Mr. Labouchere, and Mr. Sexton. Proposals for abridging the procedure on partly considered Bills had been mooted in 1848, in 1861, and again in 1869, but the objects in view of the earlier Committees entirely differed from those of the Committee of 1890. The proposal emanated from the House of Lords, and the original design was to give the Upper House power to hang up Bills coming from the House of Commons. The Lords complained, as they have often complained since, that Bills were sent up to them at a period of the session too late to admit of the exercise of the Lords' rights of revision and amendment. They urged, too, and with some force, that Bills were frequently sent up to them which had not been adequately discussed in the lower House. They desired, therefore, to possess themselves of the power to hold over such Bills to another session. Needless to say,
[384] such a proposal as this excited fierce opposition in the House of Commons, and the deliberations of 1848, 1861, and 1869 came to nothing. The Committee of 1890 set out with wholly different intentions. Its object was merely to obviate reiterated arguments in the House of Commons on the same subjects and to save the time of the House. Thanks in a large measure to Mr. Balfour's advocacy the Committee reported that the carrying over of Bills should become the practice of the House, as it is indeed the practice of almost every Parliament in Europe. A formidable minority, however, led by Mr. Gladstone, reported against the proposal, and nothing has yet been done to give effect to the wishes of the majority. To this day the “massacre of the innocents” is a melancholy feature of our proceedings at the end of a session. I doubt myself whether “carrying over” will ever be adopted as a part of the established and regular practice of the House of Commons. Ministers look with cold

disfavour on the proposal. They are generally suspicious of private members' little Bills, and private members themselves are not ordinarily enthusiastic about the legislative bantlings of other private members.

One other remedy has been suggested for hastening the dispatch of business in the House of Commons—the limitation of speeches. For every member who made speeches in the House of Commons half a century ago fifty make speeches now. It is not, I think, that we are more loquacious than our ancestors or more greedy of the ready publicity that is accorded to any sort of speech in Parliament. Many interests are now represented in Parliament that were not directly represented at all in the earlier days, and the problems of a more numerous population and of a more complex civilisation make corresponding demands on the time [385] of the House of Commons. The serious man who represents these great new interests in the House of Commons never consciously squanders the time of the House in unnecessary speech. No doubt the prevailing fashion of oratory is marked by diffuseness and lack of discipline, but it is to the comparatively modern scandal of deliberate obstruction by speech that we owe the guillotine and all its attendant evils. From time to time there has been earnest debate as to whether a time limit to speeches should be fixed. That any such policy is difficult of achievement is proved by the fact that even the existing Standing Order against irrelevance and tedious repetition has fallen into almost complete abeyance.

What is the ultimate remedy for the congestion of business in the House of Commons? Who can doubt that it is the delegation of provincial business to provincial assemblies? There has been, I say, no lack of expedients. The setting up of four Grand Committees, the institution of the guillotine as a regular feature of House of Commons procedure in regard to every first-class measure, the frequent resort to autumn sittings—these methods have been tried and found wanting. Little prospect of relief is afforded by any projected limitation of speeches or by

the carrying over of Bills. Meanwhile, as we have seen, the legitimate claims on the attention of Parliament grow with the needs of a growing population and of an expanding empire. In part it is the problem of new wine in old bottles. Our Parliament was not constructed for its present purposes. Originally it was the legislature for England alone. The provincial affairs of Scotland were first imposed on it, and then those of Ireland. Concurrently, the management of an empire, as varied in its legislative and
[386] administrative requirements as the various climates it enjoys, has been added to our responsibilities. You may if you like regard our present House of Commons as an Imperial Legislature stooping from time to time to the consideration of provincial business, or as a provincial Parliament rising in its moments of inspiration to the discharge of high Imperial duties. The same Parliament that has to decide to-day some small matter of purely local Irish or Scottish concern must settle a national strike to-morrow, approve the naval strategy of the Empire, or frame the constitution for a people. To the executive that is responsible to the same Parliament are entrusted all the tremendous issues of peace and war. It is a supreme testimony to the genius of the British peoples for government that we have voyaged so far without shipwreck everywhere except in the region of Irish affairs.

By all admissions we have made a mess of Ireland. With singular and unwonted perverseness we have refused for more than a hundred years to apply to Ireland the principles of self-government that have justified their application in every province of the Empire that is mainly inhabited by people of our own race. We have risked and we have incurred the disaffection of the Irish themselves; we have imposed on them and on ourselves untold suffering and expense; we have imperilled the whole fabric of our Parliamentary institutions.

It is this last aspect of the problem to which earnest consideration is invited in these few pages. The efficiency of Imperial Parliament is a matter of Imperial concern. By

no other means than by maintaining Imperial Parliament at the highest pitch of efficiency can we be assured of good government throughout the empire. I do not myself shrink from any of the logical consequences of the line of argument I have adopted. [387] A truly Imperial Parliament representing England, Ireland and Scotland and, it may be, each of the more important Dependencies of the Crown—that is the goal towards which we should press. But the Irish claim, so far as the claims of the United Kingdom are concerned, was first presented, is most urgent, and must first be satisfied. If we could but rid our minds of party bias, Home Rule for Ireland would be universally regarded as the first step forward in the direction of Imperial efficiency. It is unquestionably a condition precedent to the re-establishment of our control over our own legislative machine.

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(II) The Tendency Towards Legislative Disintegration. A Review Of The Statute Book. By H. de R. Walker

The Act of Union between Great Britain and Ireland was the end of a definite epoch of political concentration. England, Scotland, and Ireland had at last been brought under a single Parliament, with equal and complete legislative authority over the whole of the three Kingdoms. But Union was not accompanied by uniformity, especially in the case of Ireland. Ireland, when joined in a legislative union with Great Britain, was in fact left in possession of separate Administrative, Financial and Judicial institutions. With the separate judicial system I am not further concerned, but at a time when the grant of extended self-government to Ireland is under consideration, I contend that it is of great utility to observe how far Irish Administration and

Irish Finance are actually distinct and separate at the present time. Moreover, whatever may have been the intention of the statesmen of the period of the Union, it has also been found
[389] to be necessary, owing to the diversity of the institutions, to pass in the Parliament of the United Kingdom, a large number of statutes solely applicable to Ireland. I do not assume that what is now separate should in every case be transferred to the new Irish Authority, nor that what is now done in common should not be so transferred; but I do contend that the existing differentiation should largely guide us in connection with the forthcoming proposals. On the other side, our opponents might of course urge that, as we have already got separate laws and separate administration for Ireland, we obtain under existing arrangements all the diversity that is required, and that we have herein an argument against Home Rule rather than in its favour.

We must, therefore, carry the matter a step further. We may say that the separate laws and separate administration, while not conclusive as to the need for Home Rule, will be found to provide a basis for its inception if it can be shown on other grounds to be desirable; but, as it is not my intention to enter upon the general merits or demerits of Home Rule, I pass on to submit the practical consideration that the separate laws and the separate administration for Ireland, as worked in connection with a single Parliament, not only work badly in themselves, but are prejudicial to the orderly development of Parliamentary government. This is my case, and if I can prove it, we should either do away with these separate arrangements or cease to work them in connection with a single Parliament. But it will be easy to prove further that the separate arrangements cannot now be consolidated. There is a continuous tendency to accentuate them in accordance with the requirements of the situation. We shall, therefore, be driven to the conclusion that we must have recourse
[390] to a separate Parliament for Ireland in order to be able to work these separate arrangements in a satisfactory manner.

In order to substantiate these contentions, I shall discuss the existing position as regards Irish Legislation, at the same time giving some attention to Finance and Administration in their legislative aspects. The uniformity in Anglo-Irish Finances which has been developed during the nineteenth century is still qualified by a certain differentiation. Separate departments of administration involve separate estimates of expenditure; and separate laws may involve separate grants of money.

The authors of the Act of Union did not attempt to establish uniformity between Great Britain and Ireland in the matter of either administration or finance, but they followed the precedent of the Union between England and Scotland in the concentration of all legislative powers in a single body, the Parliament of the United Kingdom of Great Britain and Ireland. But Union did not necessarily mean uniformity, and the united Parliament found itself at once compelled to pass separate and different Acts for the several portions of the United Kingdom.

In this branch of our subject it will be convenient not to confine our attention to the separate Irish laws, but, since many laws are also passed separately for England and for Scotland, to take a wider view and consider how far Parliament legislates in common for the whole of the United Kingdom, and how far separately for one or more of its component parts. And it follows therefrom that any conclusions that we may form as to the delegation of legislative powers are likely to apply in kind if not in degree to England and Scotland as to Ireland. In the administrative sphere, of course, the position is by no means the same as between the three countries. Scotland has at present no [391] important central department at Edinburgh other than its Local Government Board.

It was largely owing to the maintenance under the Union of the separate administration in Ireland, combined with the retention during the first sixteen years of the separate exchequers, that Parliament was obliged to legislate separately for the different

portions of the United Kingdom. These were the years of the Napoleonic wars, when very heavy taxation was imposed; and, not only was a separate Act passed, according to the custom of the time, for each article that was to be taxed, but this taxation was, on account of the separate exchequers, imposed by separate Acts for Great Britain and for Ireland. In these circumstances it is not surprising to find that the most numerous Statutes of the first twenty years of the century were those whose application was confined to Great Britain or to Ireland, and that they considerably exceeded in number those which applied to the whole of the United Kingdom or to England alone. After the amalgamation of the exchequers in 1817, the annual average of Statutes applying to Great Britain dropped at once from thirty-five to seven, and gradually decreased still further, since most of the financial measures were passed thenceforward for the whole of the United Kingdom alike. But Ireland, in spite of the financial amalgamation, continued to call for a large amount of separate legislation, and the annual average of Statutes applying solely to Ireland dropped no more than from thirty-one in the decade 1811-20, to nineteen in the following decade, at which point it remained fairly constant during the greatest part of the nineteenth
[392] century. Throughout this period, the average annual number of what I call "United Kingdom" Statutes ranged between forty-nine in the decade 1861-70, and thirty-two in 1881-90, and of Statutes that applied solely to England between fifty-eight in 1881-90, and twenty-three in 1801-10. It should be added that the numbers are those of the Public Acts alone, and they would be much higher, particularly in the later years, if the Local and Private Acts were included in the enumeration. But the public Statutes are obviously alone relevant in any enquiry as to the extent to which the Union of the Parliaments has led to legislative uniformity, and it is very significant that, even upon these public matters, Parliament has been unable at any time since the Act of Union, to avoid the necessity for a large amount of separate

legislation for Ireland.

The figures up to 1890 are taken from Mr. T. A. Spalding's "Federation and Empire," which contains many interesting particulars, and I have worked out the figures for the two succeeding decades, but not exactly on the same basis. Mr. Spalding includes the Provisional Order Confirmation Acts which were not distinguished from other Public Acts until the middle of last century, but I omit them as not partaking of the character of general legislation, and the number of separate Acts given for England, Scotland and Ireland is considerably reduced by this omission.

In my first table, which gives the total, not the annual average, I divide the Public General Acts into two wide categories: those, which I term "United Kingdom" Statutes, that apply to the Dominions, the Colonies, or India, as well as those which apply to the United Kingdom as a whole; and those, which I term "State" Statutes, that apply to England, Scotland or Ireland alone, to any two of these three countries, or, in a very few [393] cases, only to the Channel Islands or the Isle of Man.

Public General Acts, 1891-1910.

	United Kingdom.	State.	Total.
1891-1900	295	336	631
1901-1910	252	206	458
Total	547	542	1,089

It will be noticed that there is a curious approximation between the numbers in the two columns, and nearly half the legislative output of Parliament thus takes a form which is at any rate contrary to the spirit of the Act of Union. Excluding financial measures during the few years when the exchequers of Great

Britain and Ireland continued to be separate, it would have been anticipated that the legislation under the Union would be uniform, or at least tend to uniformity, and it is very significant that, after more than a hundred years, so much separate legislation should still be required for the several portions of the United Kingdom. But I will postpone any further comments on this situation until I have shown how the "State" Acts are divided up as between the three countries and what are the principal subjects with which they deal.

From my classification of the "State" Acts according to countries, I have omitted the twenty-one Acts which apply solely to the Channel Islands and the Isle of Man, one Scottish and Irish Act, and one Welsh Act; and, as to Wales, I may take the opportunity to say that I do not prejudge its claim to separate treatment in any measure of Home Rule all round, but that I shall
[394] not specifically mention Wales in this paper, partly in order to avoid the repeated enumeration of the four countries in the place of England, Scotland and Ireland, partly because the claim of the Principality, so far as it may be based on laws and administration that are distinct from those of England, is exceedingly weak. Education, however, is already separately administered, separate Insurance Commissioners have been appointed for Wales, and an important Welsh Intermediate Education Act was passed in 1889, just before the period that is covered by the following table.

"State" ACTS, 1891-1910.

	England.	Scotland.	Ireland.	Great Britain.	England and Ire-land.	Total.
1891-1900	140	74	72	17	21	324
1901-1910	78	37	57	14	9	195

Total	218	111	129	31	30	519

The above table shows, so far as mere numbers are concerned, how far the pressure upon the Parliament of the United Kingdom would be removed if it were relieved of the responsibility for English, Scottish and Irish legislation, respectively; and, in view of the relative population of the three countries, we cannot be surprised at the conclusion to be drawn from the figures that the main cause of the legislative congestion lies in the fact that the laws relating exclusively to England and those applying to the United Kingdom as a whole, have to be passed by one and the same Parliament. We should, then, seek for some form of delegation which would remove English and Scottish, as well as Irish legislation, from the purview of the existing Parliament; but, in the meanwhile, the figures show that the removal of the Irish [395] business would relieve matters appreciably, and it is probable, without counting the Home Rule Bills, which should not be regarded as exclusively Irish measures, that the Irish legislative proposals take more of the time of the House of Commons than would be represented by the proportion which they bear to the total legislative output.

I now pass to the subject-matter of the Acts of Parliament; and I again turn to Mr. Spalding's book. He has made a most interesting analysis of the statutes up to the year 1890, from which it appears that Parliament had been unable to legislate by Acts applying over the whole of the United Kingdom whenever it had had to deal with the administration of justice and the laws relating to any of the following subjects: the tenure and occupation of land; the holding, transfer, and devolution of property (including land); the Church; the poor; local government, rural and urban; roads, railways, and canals; and education.[160] These are the subjects, that is to say, on which Parliament had been obliged to

[160] "Federation and Empire," p. 315. (H. Henry & Co., 1896.)

pass separate laws for the different parts of the United Kingdom, and the study of this centrifugal tendency seemed to me so important that I have continued (on the next page) the analysis for the following twenty years.

The first impression derived from this table is that the division between the subjects on which the legislation covers the whole of the United Kingdom, and those on which it has a narrower application, is much the same as during the earlier period. Parliament continues to legislate separately for the "States" in the matters in which it has been its practice so to do, and this in itself is a very significant consideration in view of the strong
[397] contrary inducement resulting from the growing congestion of Parliamentary business. Thus, taking the last three headings on the list, we see that in regard to Education, the Poor, and the Church, all the legislation during the twenty years was of a "State" character, while the very numerous Acts relating to Local Administration were in almost every instance equally limited in their application. When we pass to Law and Justice, and to Land and Agriculture, we find that the "State" predominance is not quite so marked, but even so, there were three times as many "State" as "United Kingdom" laws, and we conclude that, though the pressure of Parliamentary business is against it, "State" legislation continues to hold the field over a wide and varied range of legislative activity.

Public General Acts.—United Kingdom.[161]

Date.	1891-5	1896-1900	1901-5	1906-10	Total
Imperial.	24	12	13	15	64
Army and Navy.	15	25	18	14	72

[161] This Table has already been published in a chapter which I contributed to "Home Rule Problems," edited by Basil Williams (King, 1911).

Conditions of Employment.	10	9	5	10	34
Benefit.	6	5	2	5	18
Finance.	37	30	29	28	124
General Administration.	40	21	20	31	112
Trade and Commerce.	6	12	9	18	45
Traffic.	4	1	3		8
Law and Justice.	16	4	5	14	39
Land and Agriculture	7	4	1	8	20
Local Administration	3	4	1	3	11
Education					
Poor Law					
Church					
Total	168	127	106	146	547

States (England, Scotland And Ireland, Separately, And Combinations Of Any Two Of Them).

Date.	1891-5	1896-1900	1901-5	1906-10	Total
Imperial.					
Army and Navy.					
Conditions of Employment.					
Benefit.					
Finance.	3	10	4		17

General Administration.	7	10	8	7	32
Trade and Commerce.	9	6	9	12	36
Traffic.	4	4			8
Law and Justice.	40	43	9	31	123
Land and Agriculture.	23	11	7	22	63
Local Administration.	49	55	23	34	161
Education.	9	10	11	10	40
Poor Law.	4	15	4	2	25
Church.	3	10	2	1	16
Total.	151	174	77	119	521

At the other end of the scale are the subjects on which Parliament is always able to legislate for the whole of the United Kingdom by a single Statute. The Imperial Laws are those which are promoted by the Foreign, Colonial, and India Offices, and concern our relations with Foreign Powers or with some portion of the British Empire. The Army and Navy laws include not only the Naval and Military Works Acts, but any Acts dealing with the Territorial and Reserve Forces. The next two classes may be bracketed together as Labour Laws, but are distinct according as they relate to the conditions of employment of the workers, for instance, in shops, coal mines, or factories, or to the benefits which accrue to them through Workmen's Compensation, Friendly and other Societies, and Old-Age Pensions. In both these cases, also, all the laws apply to the whole of the United Kingdom as do the great majority of the laws in the next two headings of Finance and General Administration. The “State” Acts under Finance are

those by which Parliament has made grants towards the local [398]
expenditure upon education and towards the relief of the land from local burdens, and has done so separately for the three countries; and the "State" Acts of General Administration deal with the Central Departments which are maintained separately for England, Scotland, and Ireland. The heading of traffic is of dwindling importance, and the enumeration ends with trade and commerce where the "United Kingdom" laws have a slight numerical superiority.

I have confined myself here to a few summary remarks upon the different legislative headings as I have discussed the matter in greater detail elsewhere;[162] nor do I wish to enlarge upon the conclusions that might be drawn from the figures. The South African War is evidently responsible for the greater number of Military Acts in 1896-1900; and the slowing down of the Parliamentary machine during Mr. Balfour's Administration is reflected in the smallness of the total legislative output in 1901-5. Moreover, since the Unionists were in power throughout 1901-5, and the Liberals throughout 1906-10, there is scope for a direct comparison of the records of the two Governments, but such considerations have no bearing upon our present purpose.

On the contrary, I hope that the opponents as well as the supporters of Home Rule would agree that, since Home Rule involves a division of legislative powers between the Parliament of the United Kingdom and the Irish Parliament, it is not only pertinent, but necessary, that we should make ourselves acquainted with the lines upon which Parliament has, in practice, divided up its legislative business. For, while the point should not be pressed too far, I would suggest that the separate Irish [399]
laws, and, for that matter, the separate English and Scottish laws, constitute a kind of internal devolution, which is all the more significant because Parliament has not been actuated by

[162] "Home Rule Problems," pp. 67-72. (King, 1911.)

any preconceived purpose; and that the subjects which are now dealt with by "State" laws are, for that very reason, those of which Parliament should naturally be relieved under any scheme of Home Rule. Similarly, it might be claimed that Parliament should retain those powers which it is now able to exercise in common for the whole of the United Kingdom; but the position is not the same in the two cases. In its anxiety to economise time, Parliament does not hesitate to render its measures applicable to the whole of the United Kingdom by appending to them clauses which regulate separately the application of the provisions to Scotland and Ireland; and where these "application clauses," as they are called, are long and complicated, it is probable that separate measures for the different parts of the United Kingdom could be adjusted more closely to the local requirements. On the other hand, we may be sure that Parliament would not have passed, for instance, separate Local Government Acts for England, Scotland and Ireland, each of which took up much of its time, unless it had been obliged to do so; and we may assume, whenever such separate Acts are passed, that Parliament had some strong reason for its action, though, of course, I do not imply that Parliament has legislated also for England and Scotland on every subject on which it has passed an Act that related exclusively to Ireland.

But it may be said that, while I have sufficiently described these separate laws, I have not explained why they are passed,
[400] nor have I given any reason why they must be continued. The separate laws are passed because England, Scotland and Ireland have in many respects distinct and different institutions. In Ireland, for instance, neither the position of the Church, nor the organisation of the police or of the Courts of Justice, nor the law in regard to the tenure of land, nor the system of education or of local government in general, is the same as in England or in Scotland; while Ireland is also subject to an exceptional code of criminal law. And the institutions of

England and Scotland differ also very widely from one another. "After a long period of intimate union between England and Scotland," said Lord Lothian, in 1887, in a speech in the House of Lords upon the proposed enlargement of the powers of the Secretary for Scotland, "people are apt to forget how entirely distinctive and different the administration of Scotland is from that of England. There is almost no point of resemblance. There are different forms of religion and different social forms affecting almost every portion of Scotland. There is a different code of education—an entirely different code of education—and different systems of agriculture. There are also different systems affecting the law of lunacy and parochial laws, and almost every other department."[163] And these differences between the three countries, which are the direct cause of the distinctive laws, must surely be regarded as permanent, seeing that they have persisted since the respective Acts of Union. Neither Scotland nor Ireland would willingly surrender its separate judicial and ecclesiastical institutions or its separate machinery of administration. Indeed, the prevailing tendency favours increased differentiation, and it has the support of Unionists as well as of Liberals. The Unionists have recently created new Irish Departments in Dublin, such [401] as the Department of Agriculture and Technical Instruction, and when the Liberals had re-established the office of Secretary for Scotland after a lapse of nearly a century and a half, the Unionists proceeded to add considerably to its powers.

We may thus take it as axiomatic that, in the absence of Imperial Federation, or of a proposal such as Home Rule whereby Parliament can be relieved of some of its legislative duties, it must continue to occupy itself with five different categories of laws: Imperial laws, affecting the British Dominions beyond the seas; laws applying to the whole of the United Kingdom; and laws which relate exclusively to England, to Scotland and to

[163] "Parliamentary Debates," Vol. CCCXVIII., p. 688.

Ireland. Moreover, while each legislative sphere has its parallel sphere of administration, the sole and supreme authority, except so far as the Dominions look after their own affairs, is centred, as with the legislative power, in a single body, the Government of the United Kingdom, which holds an absolutely unique position in the extent and variety of its responsibilities. In both these functions, then, we may have serious doubts as to how the system works, but I am unable to give any direct evidence in regard to the Executive. Though it is inherently improbable that a small group of men should be able adequately to supervise so varied a collection of interests, the subject is obviously one in which it is almost impossible to obtain precise information. The Cabinet of 1880-5 was not altogether happy in its multiplex activities, and complaints were rife of the neglect of home affairs during the South African War. Speaking generally, indeed, the Unionists, according to their adversaries, subordinate domestic to Imperial interests, while the critics of the Liberals would say
[402] that the Liberals reverse the process. And there we may leave the question, while agreeing, I hope, that Home Rule, or preferably Home Rule all round, would be beneficial so far as it would relieve the pressure upon a Cabinet that can scarcely fail to be overworked. And if there is any doubt as to the Cabinet there can be no doubt that Parliament is overworked to a very grievous extent. Irrespective of the strain upon individual numbers, it is admittedly unequal to the efficient discharge of its manifold functions. It cannot do all that it should do, and much of what it does do, it does without proper discussion. As to the first of these shortcomings, I am glad to be able to quote from an article in the *Round Table*[164] for December, 1911, in which, after a detailed comparison of the time that is available to the House of Commons with the demands that are made upon it, the conclusion is reached that "the legislative requirements of

[164] A Quarterly Review of the politics of the British Empire, which is entirely free from any partisan prepossessions.

the country are too great for the available Parliamentary time." And, as to the absence of proper discussion, the reader may be referred to the remarks on every occasion when the use of the guillotine closure is proposed, while the final inadequacy of the House of Commons is implicit in the recent admission of the Prime Minister, when proposing the guillotine motion upon the National Insurance Bill, that, without a resort to this method of procedure, the House cannot carry out the duties which it is required by the country and the interests of the Empire to discharge. Moreover, it should be borne in mind that, in trying to get all this diverse work out of a single Parliament, Governments have not only grievously restricted its legislative powers, but have also reduced the opportunities for discussion on administration and finance which are at least equally important functions of any supreme Parliamentary authority. [403]

But the agitation in connection with the National Insurance Act will keep public attention sufficiently focussed upon the manner in which Parliament does its legislative work, and I pass from the amount of the work to the consequences arising from its variety. As the Cabinet must supervise both domestic and Imperial affairs, and Parliament must deal separately with these two branches of legislation, so the electorate should not overlook either the Imperial or domestic views of those who seek its suffrages. But an elector may be faced by the difficulty that he likes the Imperial views of one candidate and the domestic views of the other, while the same man must represent him in both of these aspects in the House of Commons. In 1900 the Liberal supporter of the South African War was confronted with this dilemma in an acute form; and, in view of subsequent disputations, it may be taken to have been unfortunate that the party which won the elections of 1900, almost entirely on Imperial considerations, should thereby have been placed also in charge of our domestic concerns. And there was a similar confusion of issues in 1906, when, because a man was a tariff reformer or a free-trader, it

did not necessarily follow that, in the former event, he was for, or, in the latter, against, the Conservative policy in regard to the liquor trade or religious instruction in the elementary schools. No small advantage, therefore, would accrue from Home Rule all round in the fact that separate categories of issues would be placed separately before the constituencies.

And the electoral confusion is reproduced in the House of Commons; for there can be no doubt that the Liberals
[404] suffered under this disability in the Parliament of 1900, and the Conservatives in that of 1906. But, in the case of the Member, the connection with so many diverse interests has also other objectionable consequences. Supposing he sits for an English constituency, his responsibility extends to Scottish and Irish laws and administration, as to which he will know little or nothing, while his constituents will usually be indifferent as to what he may do. Illustrating this matter from my own experience as an English county Member, I may say, regarding my votes upon the Scottish Small Landholders and Valuation Bills, and the Irish Evicted Tenants and Land Bills, that not one of these subjects brought me any letter from a constituent, or was the occasion of any reference whatever in the course of any of my political meetings. And, since there is no reason to suppose that other English constituencies would feel or act differently, all these votes of English Members are in reality irresponsible, and they are to be condemned upon the principles of representative Government. For, in spite of the observance of its outward forms, its true spirit is absent wherever there is a failure of the healthy interplay of influences between a Member and his constituents; and here again, Home Rule all round could alone relieve the situation. Through the establishment of separate Parliaments in England, Scotland and Ireland, a Member's work in each of these bodies would be confined, as regards public affairs, to matters by which his constituents were or might be affected and in which there was the normal and proper relation between the electors

and those whom they had elected.

Moreover, there is a further evil effect arising from the inevitable indifference of constituents to much of the legislation which does not apply to the country in which they live. In [405] view of the divergence of interests and diversity of classes represented in every Parliament, there is probably no legislature in which there is not a tendency to "log-rolling," by which I mean arrangements among Members to support measures about which they do not care in return for help with measures in which they are particularly concerned. This temptation will be greater when the Parliament is not only overworked, as is the case here, but the struggle is intensified by the rivalry between English, Scottish, and Irish claims upon its attention. In the resultant situation, indeed, arrangements of a "log-rolling" character are likely to be made even upon the wider issues, and the fact should not be overlooked that they are rendered more easy because so many laws are passed separately for England, Scotland, and Ireland. In theory, of course, as Professor Dicey claims, it is the duty of a Member, whencesoever returned, to consult for the interests of the whole nation, and not to safeguard the interests of particular localities or countries; but in practice he cannot do it. The subjects for legislation are so complicated that he cannot make himself acquainted with them as they affect each of the three countries, and the pressure upon Parliament is so tremendous that he is almost bound to try to get for his own country a fair share of such time as is available. It is, therefore, wiser to bow to the inevitable, and enable the English, Scottish, or Irish Member, as the case may be, to look after his own concerns in his own Parliament, untroubled by the presence of others who do not understand his business and will not be called to account by their constituents for what they may do, while leaving the control of all common affairs, as at present, to the Parliament of the United Kingdom. [406]

There are, however, valid reasons why Ireland has a pre-

eminent claim to priority of treatment. Ireland has been much less successful than England or Scotland in securing that Parliamentary action should be in accordance with the wishes of the majority of its Members in the House of Commons. Where the representatives of three countries together constitute a legislative body, it is probable that each of these countries will at some time or other be under the sway of a majority different from that which would be formed if its own representatives alone decided upon its composition; but it is clear that this fate is less likely to overtake the country which has a great numerical preponderance in the legislature in question. Thus, taking the period since 1885, England, holding 465 of the 670 seats in the House of Commons, was only in this position from 1892-5, for at the two elections in 1910 there was almost a tie in the return of 226 Ministerialists and 239 supporters of the Opposition. And this great preponderance of one of the countries adds to the likelihood that the others may have the majority of their own representatives in a minority of the whole representation. I have not been discussing the separate case of Wales, and so I will only say that, of the 30 Welsh Members, on no occasion in the twenty-seven years have the Unionists been able to muster more than 8; and Scotland has scarcely responded more closely to the swing of the pendulum in England. Though the Unionists were in power for fifteen out of the twenty-seven years, they had a majority in Scotland, and that a very small one, only in the Parliament of 1900. But Scotland on the whole does not come off badly, since it is not the practice of the Members from the other countries to vote down the Scottish representatives. Where
[407] Scotland does suffer is in their inability, owing to their numerical weakness, to secure a fair share of attention for Scottish domestic concerns. A law on Scottish Education, for instance, though it got into the Queen's Speech for 1900, was not enacted until 1908, and the Scottish Members never have more than one day in the Session for the discussion of all the Scottish Estimates. When

we pass to Ireland, it is difficult to make any similar comparison, for, though the Nationalists sit permanently in opposition in the House of Commons, it does not follow that they should be classed as being opposed to the Liberals as well as to the Unionists. If we regard them as opposed to both of the principal parties, then, when the Liberals have been in power, every Irish Member with one single exception must be reckoned to have been among their opponents. But, if we prefer to base our calculations upon the sort of informal understanding which has existed during most of the time between the Liberals and the Nationalists, we must confine our attention, from the present point of view, to the years of Unionist Government, and we find that, of the 103 Irish representatives, the number of Irish Unionists during those periods has never exceeded 23 and has been as low as 19. Thus, putting the various figures which have been quoted into percentages, it becomes evident that England has had to live under a Liberal Government when the Unionists (in 1892-5) had 58 per cent. of the total English representation; Scotland has had to live under a Unionist Government when the Liberals (in 1886-92) had 60 per cent. of the total Scottish representation; whereas Ireland has had to live under a Unionist Government when the Nationalists had as much as 81 per cent. of the total Irish representation. And it must be borne in mind that, while England and Scotland are only rarely governed in opposition to the wishes of the majority of their representatives, Ireland has [408] continued to be preponderantly Nationalist irrespective of party fluctuations in Great Britain.

In these circumstances, Ireland, whether in its Nationalist or its Unionist constituencies, never expresses any other opinion than for or against Home Rule. We regret the confusion at all elections in the United Kingdom between Imperial and domestic issues, but at least we get an idea of the views of the electorate in Great Britain on some big Imperial question, or as between Free Trade and Protection. In Ireland we get nothing of the kind;

it is impossible to say, for instance, whether Ireland is in favour of Tariff Reform or not; and the votes of the great majority of its representatives in the House of Commons are usually given, not with reference to the views of their constituents on the question under discussion, but solely in relation to the attainment of Home Rule. Now, this attitude of the Nationalists is evidently adopted because Irish domestic concerns are decided in the House of Commons by men who are not Irish representatives; and it may be remarked that Scotsmen, and even, to some extent, Englishmen, are also liable to have their wishes on purely domestic affairs over-ridden by the representatives of the other countries, but that they do not, on that account, subordinate everything else to the effort to release themselves from this anomaly.

But, apart from the consideration, as we have seen above, that the Irish have been the principal sufferers, the Irish electorate are entitled, if this is a free country, to choose the issue which shall be put forward, and we should sympathise with them when they ask to be allowed to manage their domestic affairs without interference, in accordance with the principles of representative
[409] government. It is immaterial how far the Irish Nationalists have actually been able to get their own way in the House of Commons, for their efforts have usually been in vain until after a lawless agitation in Ireland, which, as a means of securing redress for grievances, is as demoralising to the legislator as to the elector. And when the law for which the Irish have asked has been passed without any such outside pressure, it is evident that the votes of the majority of the Irish representatives would have been useless unless sufficient English and Scottish Members had been willing to fall in with their wishes. Every Irish Nationalist knows, therefore, that a majority of the Irish representatives is by itself utterly unable to carry a purely Irish measure through the House of Commons, however often it may have been advocated, and however large may have been the Irish majorities in its favour; and representative government cannot

fail to be brought into disrepute in Ireland, on account of its futility under existing conditions. Moreover, if representative institutions are to work well, there should be, so far as is possible, in every constituency supporters and opponents of the Government on the current questions of the day, for it is only by constant discussion and interaction that we can secure a sound relation between Parliament and the country. But nothing of the kind takes place in Ireland. Through their dissociation from the division into parties that prevails in Great Britain, the bulk of the Irish people are not informed as to the views on topics other than Home Rule of the Liberals, Unionists, or Labour men. In the greater part of Ireland, the Nationalist candidate is returned unopposed or is opposed only by another Nationalist; and when this is so, the party in power, whether it be Unionist or Liberal, is usually without any machinery by which its case is put before the electorate. Elsewhere, in Ireland, the Unionists have their [410] organisation against Home Rule, and so far the Liberals are even in a worse position, for, though they have had the supreme control of affairs for the last six years, there are not half a dozen constituencies in Ireland where they have any means by which they can learn the views of the people or explain the policy of the Government. And yet Ireland, like the rest of the United Kingdom, is supposed to live under representative institutions! No doubt I may be reminded that the Nationalist Members are in touch with local opinion in Ireland, and that they are the informal allies of the Liberals; but the Nationalist attitude is concerned with little else but Home Rule, and it is just because, in existing circumstances, the Irish do not declare themselves, or perhaps even form an opinion, on ordinary political issues, that our representative system has broken down so much more severely in Ireland than in England or in Scotland.

And thus I conclude my survey of the practical working of the Act of Union. I have shown that the domestic affairs of the three countries are, in continuance of what was done before the Union

of the Parliaments, or as the result of subsequent developments, ordered in many respects separately for England, Scotland, and Ireland, and that there is no question in any quarter of the elimination of these separate arrangements. But they have led, as has been further demonstrated, to many difficulties in connection with our system of Parliamentary government, and it is only by the sub-division of the responsibilities between two or more Parliaments that such difficulties can satisfactorily be overcome. We have, therefore, valid grounds for the advocacy of Home
[411] Rule, apart from the particular claims of Ireland, though they, of course, serve to strengthen the argument; and, in considering what form the proposals should take, we cannot do better than study carefully how far England, Scotland, and Ireland are now governed in common and how far each of the three countries is governed separately. For the subjects in which there is now separate treatment are those which would be transferred under Home Rule with the smallest breach of continuity, or rather, in the natural course of our constitutional evolution.

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(III) Colonial Forms Of Home Rule. By Sir Alfred Mond, Bart., M.P.

One of the most important elements in the problem of Home Rule must be the relation between the spheres of legislation to be retained by the existing Parliament, and those to be allocated to the subordinate Irish Legislature. Such demarcation will be applied later to the other local Parliaments which may be created for England, Scotland and Wales. The creation of subordinate legislatures, together with the retention of a central Parliament, must necessarily lead to the study of federal systems already in existence in the Empire, and of the mutual relations of similar

bodies within such federations. It is true that a certain influential school of political thought is rather disposed to compare the position of the future Irish Parliament to that of the Dominion Parliaments in their relations with the Parliament at Westminster. The effort, however, to draw an analogy between Ireland in her relations with Great Britain, and the relations existing between the three Dominions and the United Kingdom is most misleading. The difference between those dominions and Ireland is indeed far more striking than the similarity, whether they are compared either from the point of view of area, of present and future population, or of geographical position. The narrowness of the strip of sea that separates Ireland from Great Britain places it from [413] a military and naval standpoint in a very different position to that of Canada, Australia, or South Africa. Whereas the great distance at which these Dominions are situated imposes upon them the necessity of creating their own defensive forces, a separate Irish Navy or Army would have no *raison d'etre*. Again, not only the distance but the different environment and climate of these Dominions, and, particularly in the cases of Canada and South Africa, their greater non-British population, naturally promote the development of a sense of national entity and therefore of a desire for a greater measure of national independence than is felt or demanded by Ireland, in spite of her strong national sentiment. Supposing for argument's sake, that the whole of the Canadian, Australian, and South African Dominions formed geographically with Great Britain one continuous territory such as the United States of America, it is clear that there would have been no call for granting the various Dominions the almost sovereign powers which they now enjoy. What would most probably arise in such a hypothetical case would be a single federal complex, comprising a central authority or parliament and a large number of state legislatures.

As a matter of fact the form of government of these various Dominions and their relations to the Mother Country are largely

a geographical accident. It is impossible to conceive a system of "Home Rule all round" in which England, Scotland, Wales and Ireland would have the same positions and powers as Canada, Australia and South Africa, and would maintain the same relations towards each other as all three Dominions now occupy towards the United Kingdom. Nor could such an idea
[414] be entertained by any one framing a constitution, intended to be the commencement of the federalisation, first of the United Kingdom and afterwards in due time of the British Empire, when circumstances and the growth of public opinion render it possible to secure the representation of the Dominions in an expanded Imperial Parliament.

In a truly federal system such as those of Canada and Australia, the citizens who elect representatives direct to the Federal Parliament to deal with the broader issues and interests of the Commonwealth, are naturally fully represented. If the Irish Legislature is to be precluded from dealing with Imperial matters, it is obviously only just that the Irish people, as citizens of the Empire, should send a proportionate number of representatives to the Imperial Parliament to express their views on Imperial subjects, and, under a perfect federal system, the expression of their views would be confined to Imperial subjects. This would consequently necessitate the continued presence of a certain number of Irish members at Westminster. In view of the fact that the "in and out" system, which caused so much criticism of Mr. Gladstone's Bill, has been in force for over forty years in the Hungarian Parliament at Budapest, in which the Croatian representatives are only entitled to vote on matters affecting the whole Kingdom, while precluded from voting on those affecting Hungary alone, it is evident that the practical inconvenience cannot be anything like so great as has been imagined. But whatever inconvenience might result to the Government from the presence of Irish representatives in such circumstances, it certainly cannot be allowed to outweigh the injustice of leaving

such a large section of the British electorate, as is the Irish people, unrepresented in a chamber which deals with matters that may very seriously affect their interests. Mr. Asquith's [415] hint at the possibility of such a change in the Standing Orders of the House of Commons as will distribute legislative business between English and Scotch Standing Committees, suggests a method of combining the retention of the Irish members at Westminster, with their exclusion from participation in other than Imperial matters.

Of course in framing a new constitution to meet at once the legitimate national aspirations of the Irish people and the requirements of the Imperial power, we cannot pedantically follow any existing model or precedent, or drive any analogy too far. It is not intended, by drawing attention to the fact that the local rather than the Dominion Legislatures constitute the better models, in any way to impair the prestige of the future Irish Parliament, or to lessen the readiness to meet all reasonable demands of the Irish party and people, or to withhold powers necessary to make self-government a success. But it is essential to bear in mind that the primary condition of permanent success is a measure that will work with the least possible friction on both sides while satisfying legitimate Irish demands.

With these points in view, it is therefore proposed to examine shortly the constitutions of the three dominions already referred to, with the object of showing what are the powers reserved by them for the Federal Governments and what are those attributed to the different States comprised in the federations, in order to deduce from them some parallel applicable to the case of Ireland—of course, as already indicated, with such modifications as may be rendered necessary by special circumstances.

It will be well to begin with the Canadian Constitution as the oldest, dealing afterwards with the Constitutions of the [416] Australian Commonwealth (1900) and of the South African Union (1909).

The British North America Act, 1867, expressly sets forth the classes of subjects which can be dealt with by the Federal Parliament "for greater certainty, but not so as to restrict the generality of the foregoing terms of this section," that is to say, the liberty given to the Central Parliament "to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces." Thus, in Canada, the "residuary" or unspecified classes of subjects are reserved for the Central or Federal Parliament.

Section 92 provides that in each province the legislature may exclusively make laws on the following subjects:

> The amendment of the Constitution of the Province, except as regards the office of Lieutenant-Governor;
>
> Direct taxation within the province for provincial purposes;
>
> The borrowing of money on the sole credit of the province;
>
> The establishment and tenure of provincial offices, and the appointment and payment of provincial officers;
>
> The management and sale of the public lands;
>
> The establishment, maintenance and management of prisons, hospitals, asylums, charities, in and for the province;
>
> Municipal institutions in the province;
>
> Shop, saloon, tavern, auctioneer, and other licences, for provincial, local or municipal purposes.
>
> Local works and undertakings, excepting:—
>
> "(*a*) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province.
>
> "(*b*) Lines of steam ships between the province and any British or foreign country.
>
> "(*c*) Such works as, although wholly situate within the province, are before or after their execution declared by the [417] Parliament of Canada to be for the general advantage of

> Canada or for the advantage of two or more of the provinces."
>
> The incorporation of companies with provincial objects; marriage and property and civil rights in the province;
>
> The administration of justice in the province, civil and criminal jurisdiction, together with the imposition of punishment by fine, penalty, or imprisonment, and generally all matters of a merely local or private nature.

Subsequent paragraphs provide that the provincial legislatures may exclusively make laws in relation to education, provide for uniformity of laws in certain provinces, and also deal with agriculture and immigration, with the proviso, however, that such laws shall have effect only so long and as far as they are not repugnant to any Act of the Canadian Parliament.

In the case of the Australian Commonwealth, it is the powers of the Central Parliament that are strictly defined and restricted, contrary to the course followed in the Canadian Constitution. As an indication of the powers left to the State Parliaments it may be well to specify the powers of the Central Parliament as set forth in the Constitution Act, Paragraphs 51 and 52:

> Trade and commerce with other countries, and among the States; taxation; bounties; borrowing money; postal, telegraphic, telephonic, and other like services; naval and military defence; lighthouses, &c.; astronomical and meteorological observations; quarantine, fisheries, census and statistics; currency, coinage and legal tender; banking, other than State banking; insurance; weights and measures; bills of exchange and promissory notes; bankruptcy and insolvency; copyright, patents and trade marks; naturalisation and aliens; foreign corporations, and trading or financial corporations within the Commonwealth; marriage and divorce; invalid and old-age pensions; the service and execution throughout the Commonwealth of the civil and criminal process, and the judgments of the courts of the States; the recognition throughout the Commonwealth of the laws and judicial proceedings of the States;

immigration and emigration; the influx of criminals; external
[418] affairs; control of railways for naval and military transport; the acquisition, with the consent of a State, of railways of the State; railway construction and extension; conciliation and arbitration in industrial disputes extending beyond the limits of any State; etc.

Paragraph 107 provides that every power of the Parliament of a Colony shall, unless exclusively vested in the Parliament of the Commonwealth, or withdrawn from the Parliament of the State, continue as before. Paragraph 109 stipulates, however, that when a State law is inconsistent with the law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Certain powers specifically granted to the State Parliaments are set forth in the following paragraphs, which are of sufficient interest to be cited textually:

> "112. After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State; but the net produce of all charges so levied shall be for the use of the Commonwealth; and any such inspection laws may be annulled by the Parliament of the Commonwealth.
>
> "113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.
>
> "114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

"115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

"117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

"118. Full faith and credit shall be given, throughout the Commonwealth to the laws, the Public Acts and records, and the judicial proceedings of every State. [419]

"120. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision."

In South Africa where, owing to local circumstances, a purely federal system was held to be inappropriate, the powers granted to the subordinate provincial legislatures are much more restricted than in Australia and Canada. In the "South Africa Act, 1909," Paragraph 59 simply provides that the (Central) "Parliament shall have full power to make laws for the peace, order, and good government of the union," a formula similar to those used in the Canadian and Australian Constitutions as also in the Gladstonian Home Rule Bills. On the other hand, several paragraphs in Section 5 dealing with the provinces almost recall the centralising tendencies of France, such as for instance, the provision that the Governor-General in Council is to appoint the administrator, or Chief Executive Officer, of the province, in whose name all executive acts relating to provincial affairs shall be done—an official who presents a certain resemblance to the French Prefect.

The powers reserved to the Executive Committee of the Provincial Council, presided over by the Administrator, comprise:

Taxation within the province;

The borrowing of money on its sole credit;

Education, other than higher education;

Agriculture;

Hospitals, charitable, municipal and other local institutions;

Local works and undertakings within the province, other than railways and harbours and bridges connecting two provinces;

The imposition of fines, penalties, or imprisonment for enforcing provincial laws and generally all matters which, in the opinion of the Governor-General in Council, are of a merely local or private nature in the province.

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Taking the Canadian Constitution as the most workable model, let us consider in the light of that instrument what powers it would be reasonable to hand over to an Irish Legislature. There are two ways of proceeding in framing any such Constitution. One is to grant general powers with specific limitations, the course followed by Mr. Gladstone in his two Home Rule Bills. The second is to specify the powers to be given to the subordinate Legislature, outside of which it cannot act. Good reasons may be advanced for both methods; but in view of the difficulty of accurately foreseeing all the needs and necessities to be provided for by a new legislative body and the great risk of overlooking important matters, the inclusion of which later on might encounter very serious obstacles, the method of giving general powers with exceptions and restrictions specified in the Act seems the more workmanlike of the two.

If the latter course be adopted, following the precedent created in the Bills of 1886 and 1893, the new Legislature will acquire general powers to make the necessary laws for the peace, order and good government of Ireland. The powers thus granted in general terms will of course be very extensive, comprising, as they must, the liberty of raising taxes, borrowing money, and

dealing with education, public worship, property and civil rights, land, factory and company laws, the administration of justice, licensing, etc., etc.

In connection with taxation the important question arises whether the power should be granted to any unit of a federal state to impose Customs Duties. In the models we have referred to no local legislature is entitled to deal with Customs or Tariffs. Indeed all three Constitutions expressly provide that there shall be free trade within the limits of the federation. It is inconceivable [421] that a British Parliament should ever grant, or that the Irish representatives should ever ask for, powers which would enable Ireland to set up a radically different fiscal system to that adopted by the rest of the United Kingdom. Thus the precedents established by the Constitutions of the different Dominions would undoubtedly have to be followed. There is a further question to consider, namely, how and to what extent it will be possible to reconcile any conflict that may arise between the powers exercised by the central and local legislatures in collecting taxes. For instance is the income tax to be retained as a purely Imperial tax, or is the Irish Parliament to have power to levy, either in substitution for it or in addition to it, an income tax of its own? The same question arises with regard to excise duties. As no income tax is imposed in any of the three self-governing Dominions referred to, their constitutions throw no light on this point. Nor does the Constitution of the German Empire, as there the income tax is a state and not an Imperial tax. A solution of this problem might be possible on two lines. One by allowing the Irish Government to impose its own income tax, paying a fixed contingent to the British Treasury. The second method would be to allow the Irish Parliament to make additions to the British tax, in the way that German municipalities are allowed to make additions to the State income tax. Something of this kind seems contemplated under the Government Bill.

In the Dominions licenses for the sale of alcoholic liquors,

excise duties, and land taxes are all imposed by the States. They might also be very well made State, that is to say Irish, taxes in Ireland. The future financial relations between Ireland and Great
[422] Britain, however, are dealt with in another chapter.

In considering what subjects would naturally be withdrawn from the jurisdiction of the future Irish Legislature, as of other subsequent British local legislatures, it will be well to see which of these exclusions are common to the Canadian and Australian Constitutions. These are: trade and commerce, indirect taxation, borrowing money, postal, telegraphic, and telephonic services, naval and military defence, lighthouses, etc., quarantine, fisheries, census and statistics, currency, coinage and legal tender, banking, other than State banking, weights and measures, bills of exchange and promissory notes, bankruptcy and insolvency, copyrights patents and trade marks, naturalization and aliens, marriage and divorce. There are also a few differences in the matter of exclusions between the two Dominions. For instance, Canada's list of reservations for the Central Parliament begins with “The Public Debt and Property,” for which there is no exactly corresponding heading in the Australian Constitution. This Canadian list also includes navigation and shipping, savings banks, the criminal law and penitentiaries. On the other hand the subjects reserved for the Central Parliament in Australia, comprise, *inter alia*, bounties, insurance, other than State insurance, trading or financial corporations, invalid and old-age pensions, immigration and emigration, “external affairs,” control of railways for military and naval transport purposes, railway construction and extension, industrial conciliation and arbitration, etc.

The essential exclusions from the jurisdiction of State Legislatures are, of course, national defence, treaty making powers, laws affecting foreign trade and shipping, lighthouses, coinage and legal tender, trade marks, patents and copyrights to which might very well be added factory legislation, company

legislation and the laws affecting negotiable instruments. It [423]
would seem a pity to break up the legislation on subjects that are less of local than of general interest, thus adding to their legal difficulties by diversity of legislation. As regards factory laws the question of the position under international conventions of an Irish Legislature demands specially careful consideration. There are, at present, two international conventions relating to factory laws, namely, those concerning the prohibition of white phosphorus in match manufacturing, and night work by women in industrial occupations. It is likely that they will shortly be followed by others regulating the hours of work of women and young persons and prohibiting night work by boys under eighteen. It is desirable that the advantages of such conventions should be retained for the Irish industrial worker.

The justification of most of the exclusions just enumerated is sufficiently obvious and their enforcement in most of the Dominion Constitutions show that by common consent they have been accepted as reasonable, as for instance those dealing with national defence, treaty-making, peace and war, and the rights and privileges of the Crown.

There remains, perhaps the most important point of all, namely the control or power of restriction to be exercised by the Imperial Parliament over the legislation of the new Irish Legislature by means of a veto. The Canadian Constitution confers upon the Dominion Government the same powers of disallowance of Acts of the provincial legislatures as belonged to the Imperial Government prior to 1867. According to Sir John Bourinot ("Parliamentary Procedure"), the Minister of Justice in 1868, laid down certain principles of procedure which have been generally followed up to the present time. On receipt of the Acts passed [424]
in any province they are immediately referred to the Minister of Justice who reports upon them. If the Minister considers an Act free from objection and his report is approved by the Governor-General in Council, such approval is forthwith communicated

to the Provincial Government. The Minister of Justice makes separate reports on those Acts which he may consider: (1) as being altogether illegal or unconstitutional; (2) as illegal or unconstitutional in part; (3) as, in case of concurrent legislation, clashing with the legislation of the general Parliament; (4) as affecting the interests of the Dominion generally. It has also been the practice (adds Sir John Bourinot) in the case of measures only partially defective, not to disallow the Act in the first instance, but, if the general interest permits such a course, to give the local government an opportunity of considering the objections to such legislation and of remedying the defects thereof. In his book "How Canada is Governed," Sir John Bourinot makes some pertinent remarks upon the method of dealing with such cases:

> "The Governor in Council can within one year from its receipt disallow an Act of a provincial legislature, and consequently prevent it becoming law.... As a rule it is the wiser policy to obtain an opinion from the Courts in all cases of doubt ... rather than use a political power which is regarded with suspicion by the provinces. The law allows such reference to the Supreme Court in Canada."

In Australia, where the powers of the States were established long before the Commonwealth came into existence, there is no direct power of veto, but in 1903 and subsequently, Acts were passed by the Commonwealth Parliament giving the High Court jurisdiction in matters arising under the Constitution or involving
[425] its interpretation. Thus, in the words of Mr. W. Harrison Moore, Dean of the Faculty of Law in the University of Melbourne, in his "Constitution of the Commonwealth of Australia," "the Commonwealth Government and the State Governments are in their relations independent and not hierarchical. There is no such general supervision of the State in the exercise of the powers belonging to it as is enjoyed by the Dominion Government over the Provinces of Canada.... The observance

by the Commonwealth Government and the States of the limits set to their powers is secured by the action of the courts whose judicial duties may involve the determination of the validity of the authority under which acts are done, whether that authority is the Crown, a subordinate legislature, or any whatsoever save the Imperial Parliament."

If the Canadian example be followed the Imperial Parliament will retain powers of control of such a far reaching character over Irish legislation, as ought to dispel the fears of timid souls who are reluctant to entrust the Irish people with the task of working out their own destiny. The Canadian veto has not been a dead letter, but has exercised its restraining influence, both actively and passively, over the Provincial Legislatures, which have naturally been averse to allowing matters to come to a crisis necessitating its use. Further, to follow precedent, the interpretation of the powers to be granted by the new Irish Constitution should rest in the last resort in an appeal to the Privy Council.

With both these safeguards inserted in the Home Rule Bill much of the objection commonly felt against the creation of an Irish Parliament, an objection largely due to loose thinking, should disappear. It may be argued that both in Canada and Australia disputes do occasionally occur between the State [426] Legislatures and the Central Parliaments as to their respective rights. That is one of the inevitable disadvantages of a federal regime, but, as a very distinguished Canadian statesman once said to the writer, the counterbalancing advantages of a de-centralized system far outweigh all such drawbacks. No student of current politics can be blind to the fundamental fact that the amalgamating of the Parliaments of Scotland, Ireland and England into one legislature, without at the same time unifying the legislation of those countries, has produced a state of congestion and overwork which cannot be permanently tolerated. In existing circumstances neither matters affecting the whole Empire nor local legislative needs can secure a sufficient expenditure either

of energy or time to do them justice. By partially reversing the process of unification through a devolution of powers to local legislatures we should be following a precedent that has proved successful in other parts of the Empire and in foreign countries while at the same time putting our action into harmony with the true process of evolution.

[427]

XVI.—Contemporary Ireland And The Religious Question

(I) A Catholic View. By Monsignor O'Riordan

It is as characteristic of those who have fallen in fortune to talk of their wealth as it is of the consumptive to talk of their health. It is natural. If they were conscious of having the reality they would not feel the need of convincing others that they had it. For a like reason those speak most of virtues and gifts who have them least. One rightly suspects the spirit of those who keep insisting that all are intolerant who think and act on other principles and in other ways than theirs. The word tolerance has met the fate of other words which denote excellent things; it has come to be misused. "Tolerance," like "religion," "liberty," etc., has become a shibboleth, and like these it has been run to death.

When we speak of tolerance we necessarily refer to evil of some sort. In the matter of truth or untruth we are said to tolerate what is untrue, or what we think to be untrue. In the matter of right or wrong, we are said to tolerate what is wrong, or what we think to be wrong. If one says that he is tolerant of that in another which he himself believes to be true or right, he speaks as one who does not understand what he says. It is the same as saying that he is tolerant of his own convictions; in fact, that he tolerates himself. One is said to be tolerant of that in another which he [428] thinks to be erroneous or wrong. Now, every principle which a man holds is a law to him. He may be mistaken; his principles may be false; but whilst he holds them as his principles he cannot under pain of inconsistency disown them in word or deed. No man has proprietary rights in principles. One has no right to compromise them. One may not barter them away, may not

make them the basis of a policy of give and take. To do so would be to treat them not as principles but as mere opinions. Principles are things to stand on, not things to play with as with pawns on a chessboard. He who, whilst he professes some principle of belief or conduct in religious or civil life, is ready to agree with his neighbour in the opposite shows little regard for truth and little sense of duty. He who for the sake of some convenience is prepared to play with his principles has practically no principles at all. Such is one who professes universal toleration, although no person would be more pained at being thought an unprincipled man. It is a logical necessity for everyone to be intolerant of principles opposed to his own. In matters of mere *opinion* one may be, and ought to be, tolerant of the opinions of others, since in face of those opinions he cannot claim an objective certainty for his own. Let us illustrate this. A rationalist who denies the existence of any higher than natural causes cannot admit any event to be miraculous. He may ascribe it to some hypothetical natural cause, or he may have no cause to assign; but he cannot on principle assign a supernatural cause, for the simple reason that he ignores anything above the natural forces which come within the sphere of experience. Thus the rationalist who claims tolerance as his characteristic virtue is intolerant of any doctrine which supposes the supernatural. He must be so, or he lets the
[429] ground go from under his feet. Again, the Protestant on his principle of private judgment must be intolerant of any doctrine which supposes an infallible authority on earth claiming a divine commission to teach us the meaning of divinely Revealed Truths. A Catholic who believes in a Church of divine institution, one, visible, infallible, cannot be tolerant of a doctrine which makes different Churches belong by equal right to Christianity, each whilst conflicting with the others claiming Christ for its Founder. For the same reason a Catholic cannot be tolerant of a theory which holds all religions to be equally useful; that is, equally useless. He cannot be tolerant of any theory which involves a

denial of Catholic doctrine, since he acknowledges an infallible authority as the source of the Catholic doctrine which he holds. I am now and here neither asserting nor denying any theory or any doctrine, Catholic or non-Catholic. I am only setting forth the inconsistency implied in the toleration of principles opposed to one's own, whatever those principles be. Is it then irreclaimable prejudice, or indifference to the obligation of principle, that makes some persons throw up their arms and raise a cry of horror when they hear that some Catholic has been excommunicated for having denied or questioned some Article of Catholic faith? What is taken as a matter of course and of common justice in every society and in every club in the country, namely that one who is false to his society and unfaithful to its rules deserves expulsion, is stigmatised as intolerance and moral tyranny in the Catholic Church. There are certain rules in every association which a member may not break under pain of expulsion. But a man may say what he likes, write what he likes, do as he likes; may deny every doctrine, despise every principle, and may nevertheless have, according to some, a right to remain [430] a member of the Catholic Church out of which only Romish intolerance would drive him.

Everyone then, whatever be his religious, philosophical, political, or social principles, must be intolerant of principles which are opposed to his own. Tolerance, however, claims a place in matters of opinion. But must not one think another's opinions false if they are opposed to his own? Certainly; but, being only opinions, one has no right to claim a monopoly of certainty for one's own as against those of others. Opinions have no claim to the privilege of principles. And what is true in theory of opinions holds in practice in matters of principle. One cannot, it is true, be tolerant of principles opposed to his own; but others must not suffer at his hands because they own principles which are not his. Everyone must have credit for honesty, since one cannot fathom the depths of another's conscience. The Catholic Church,

not to speak of its individual members, disowns such a pretension as that; *Ecclesia non judicat de internis* is a maxim in Catholic theology. Thus, Catholic teaching, whilst it binds Catholics to be intolerant of principles and doctrines which it condemns, obliges them also to be tolerant of those who hold those principles and doctrines for the sake of the sincerity which it presumes in those who hold them. If we compare this tolerance, imposed as a duty by Catholic teaching, with the unlimited tolerance professed by some who assert the autonomy of individual reason, we shall find a contrast between, for instance, the noble tolerance of St. Francis de Sales and the bigotry of Voltaire. They were fellow countrymen. Each had great natural gifts, mental acquirements, and uncommon literary power. St. Francis lived a century before Voltaire, and, therefore, nearer to what would now be called
[431] those traditions of bigotry from which Voltaire helped so much to set us free. Yet the latter let his pen splutter on all who dared to differ from him; the former in all his controversies dressed his arguments with honey instead of vinegar. That charity which disposes one to see good faith and honesty of purpose in persons in spite of their errors, is the only true source whence the spirit of toleration must flow into civil society. Toleration coming from any other source can give no guarantee of permanence; for it begins with expediency, and ends with it. But the toleration which separates a man's sincerity from his possible errors, and which in civil life ignores the latter for the sake of the former, is founded on principle, and is above expediency or the changing combination of human affairs.

The sincerity of a man who professes tolerance of principles which he believes to be false is to be suspected; he should be taken as one who is practically indifferent to truth or error. One can rely on the fidelity of him who professes tolerance of others, in spite of some personal views of theirs which he abhors, because of the sincerity with which, as he presumes, they entertain those views. But if they should so obtrude those views into public life

as to affect the rights of him who repudiates them, it becomes another matter. That would be an aggression on the civil rights of others; and no person should let himself be made a victim in the name of toleration.

Now, it is a significant fact that Catholic Maryland, before American Independence came, was the one State in America in which no person had to suffer civil disabilities for conscience sake. Members of Protestant sects who had to fly from the intolerance of more powerful Protestant sects in New England States always found toleration and a home there. Bancroft, the [432] Protestant historian of the United States, writes of Maryland:

> "Its history is the history of benevolence, gratitude, and toleration. The Catholics who were oppressed by the laws of England were sure to find a peaceful asylum in the quiet harbours of the Chesapeake, and there, too, Protestants were sheltered from Protestant intolerance."

It is an equally significant fact that later on the non-Catholics of Maryland, in the day of their power, placed grievous disabilities on the children of those Catholics who had given their exiled fathers a refuge in their hour of need.

I will now consider how far those principles which I have set forth have found application in Ireland. I know no country where tolerance and intolerance are more talked of than there. It is sometimes good to talk tolerance, but it is always better to practise it. The word is not heard so much from Irish Catholics. Their relation to it is that they are constantly engaged in defending themselves from charges of intolerance poured out upon them from the vantage ground of ascendency. I doubt whether it is worth while to assure our accusers that those charges are not deserved. Those who call us intolerant in spite of our conduct will discard our assurance in spite of our word. He who is in the habit of calling his neighbour intolerant is not likely to trust him as truthful. There are in every race and class individuals of an

intolerant spirit. It has always been so, and will always be so. Those exceptions will remain in spite of the highest principles of a religion, a race, or a class. The spirit of intolerance will be found in individuals within a class, as well as between classes; and in actual life society subdivides itself down to the units.
[433] Religion has been for the past few centuries the great cleavage line along which the spirit of intolerance is supposed to play in the distribution of privileges and power in civil life in Ireland. How are we to determine on which side tolerance and intolerance lie? Not certainly by witnesses on either side giving testimony in their own favour. We had better let facts speak then; or, if we accept the evidence of persons, we should hear what they have to say only of those of the other side.

The Synod of Kilkenny met in May, 1642. It was held by the Catholic Bishops of Ireland in connection with the Kilkenny Confederation. That Confederation was National and Catholic; part of its purpose was to support King Charles against those who sought to dethrone him. He did not personally deserve much sympathy from the Irish Catholics; nevertheless, who were the Loyalists then? Ireland was in a state of war, and the rebels were not the Catholics. Now the 18th Decree of the Synod of Kilkenny is as follows:

> "Wee ordaine and decree that all and every such as from the beginning of this present warre have invaded the possessions or goods, as well moveable as unmoveable, spirituall or temporal, of any Catholic whether Irish or English, *or also of any Irish Protestant* being not adversaries of this cause, and doe detaine any such goods, shall be excommunicated, as by this present Decree wee doe excommunicate them, if admonished they do not amend, &c."

That Decree speaks for itself; it protects Protestants equally with Catholics. The "Lawes and Orders of Warre," issued by Castlehaven the following year, and the conduct of the

Confederates throughout, show the same spirit of toleration which is expressed in the Decree of the Bishops.

Another test of tolerance came with the restored power of Irish Catholics half a century later. How did they use their opportunity? Lecky knew it as well as anyone of his time; he [434] was moreover out of sympathy with the religious and national ideals of the Irish Catholics. Now Lecky, referring to deeds of violence which took place in Ireland, writes ("History of Ireland in the Eighteenth Century," Vol. I., pp. 408, 409):

> "Whoever will examine these episodes with impartiality may easily convince himself that their connection with religion has, in most cases, been superficial. Religious cries have been sometimes raised, religious enthusiasm has been often appealed to in the agony of the struggle; but the real causes have been conflicts of races and classes, the struggle of a nationality against annihilation, the invasion of property in land, or the pressure of extreme poverty. Amongst the Catholics, at least, religious intolerance has not been a prevailing vice, and those who have studied closely the history and character of the Irish people can hardly fail to be struck with the deep respect for sincere religion in every form which they have commonly evinced.... In spite of the fearful calamities that followed the Reformation, it is a memorable fact that not a single Protestant suffered for his religion in Ireland during all the period of the Marian persecution in England. The treatment of Bedell during the outbreak of 1641, and the Act establishing liberty of conscience passed by the Irish Parliament of 1689 in the full flush of the brief Catholic ascendency under James II., exhibit very remarkably this aspect of the Irish character."

Referring to that Catholic Parliament of Ireland, he says (Vol. I., p. 117):

> "The members of the House of Commons were almost all new men, completely inexperienced in public business, and

> animated by the resentment of bitter wrongs. Many of them were sons of some of the 3,000 proprietors who, without trial and without compensation, had been deprived by the Act of Settlement of the estates of their ancestors. To all of them the confiscations of Ulster, the fraud of Strafford, the long train of calamities were recent and vivid events. Old men were still living who might have remembered them all, and there was probably scarcely a man in the Irish Parliament of 1689 who had not been deeply injured by them in his fortunes or his family. It will hardly appear surprising to candid men
> [435] that a Parliament so constituted, and called together amidst the excitement of a civil war, should have displayed much violence, much disregard for vested interests. Its measures, indeed, were not all criminal. By one Act, which was far in advance of the age, it established perfect religious liberty in Ireland, &c."

From that time till our own the Catholics of Ireland have had little opportunity of showing whether they were tolerant or otherwise. During the long and dreary meantime the problem before them was not what sort of civil life they should live, but whether or how they could manage to live at all.

So late as 1759, Lord Chancellor Bowes, in giving judgment in a famous trial in Dublin, declared that "The law did not suppose a papist to exist in Ireland." I have no desire to recall the story of how toleration fared in Ireland down to recent times. It is not necessary, and it is a disagreeable recollection. He would be very bold or very credulous who would think of doubting or denying what that history has been. I take up "Thom's Almanac" of half a century ago, and I find that so late as that time the public offices were occupied almost exclusively by non-Catholics, from the Lord-Lieutenancy down to the Clerkship of Petty Sessions; and I think that it was so down to the office of the rural process-server. How did it come to pass that Catholics were kept outside, and that non-Catholics got within? Surely not that Catholics willingly

yielded all public positions to their neighbours! The arrangement was therefore made by the other side. And what was the reason of that monopoly? Surely not that no Catholic was capable of any civil position except that of paying rates and taxes to the Crown and rent to the landlord. The exclusion was clearly the political penalty which Catholicism had to pay for its principles; the monopoly was the political premium which was awarded to those of the other side. [436]

The Catholics of Ireland have been gradually working their way towards civil equality. But every step has been disputed. Every claim for civil equality made by those who formed the vast majority of the population and who bore the burden of civil duties was met with a charge of intolerance, and with a protest against intruding religion into the affairs of civil life. That is to say, those who had already secured for themselves political and social privileges through religious exclusiveness raised the cry of religious exclusiveness against the vast majority of the population for claiming their just share of civil rights as they bore their share of civil duties. Catholics had either to remain resigned to their condition, or to protest against their faith being made a bar between them and civil justice. In doing so they have not sought to intrude religion into purely civil affairs; they rather have sought to extrude religious intolerance which, having taken up its abode, slammed the door in their face. Thus when Catholics claimed their civil rights it was called religious exclusiveness; when their neighbours were privileged by religious exclusiveness it was called civil rights.

(II) Catholic Tolerance in Practice.

Just a century ago Wm. Parnell, an Irish Protestant who knew Irish Catholics and their history well, wrote that “The Irish Roman Catholics are the only sect that ever resumed power

without exercising vengeance." Let us see if he was a true prophet as well as a true historian. When he wrote his "Historical Apology of the Irish Catholics" they were helpless, and almost hopeless. During the past eighty years they have been gradually
[437] regaining instalments of their civil rights. Their numerical strength could, in nearly every corner of the country, use those rights which they already have as an instrument wherewith to avenge the past. Have they, in fact, used their power thus?

For the sake of saving space I pass over Government and other such nominations. A better test of tolerance and intolerance is to be found in the statistics of public appointments to responsible positions which are elective. We get in that way a better key to the popular feeling.

Now, in recent centuries, and till 1842, Dublin was not allowed to have a Catholic Lord Mayor. It elected O'Connell at its first opportunity. And were the Protestant citizens ostracized henceforth? Since then it has had 23 Protestant Mayors and 38 Protestant Sheriffs. At present, its City Marshal, its City Surveyor and his assistant, Superintendent Electrical Engineer and four assistants, Drainage Engineer and two assistants, Superintendent Medical Officer of Health, Veterinary Inspector, Collector of Market Dues, and several other important offices are entrusted to non-Catholics. And the Catholics form the vast majority of the population.

In Belfast, the non-Catholics are about twice the number of the Catholics. The Corporation has never had a Catholic Mayor. Until a few years ago, when the City wards were re-distributed by order of Parliament, there was no Catholic Member of the Corporation. There are about 440 salaried officials, of whom about 10 are Catholics; and that these hold no office of importance may be seen at once in the fact that their combined salaries do not amount to more than £800 a year; whilst the Corporation pays in salaries about £70,000 a year. The anomaly is felt; and the apology made for it is that the Catholics hold offices quite in

proportion to the rates they pay. It is implied that the Catholics [438]
are poor and pay little rates. The apology is not more creditable than the anomaly it is made to explain. It appears to be the custom in Belfast for the landlords to pay rates for the houses rented from them; the tenants thus pay rates in their rents. That practice nullifies the apology.

I pass now to the Counties. Co. Cork has a population of 403,000; of which 365,000 are Catholics, and 38,000 are non-Catholics. Of the salaried officials in the County, 151 are Catholics and 40 are non-Catholics.

Co. Tipperary has a population of 160,500; of which 151,000 are Catholics, and 9,500 are non-Catholics. There are 60 salaried officials, of whom 43 are Catholics and 17 are non-Catholics.

Co. Kerry has a population of 165,000; of which 160,000 are Catholics, and 5,000 are non-Catholics. There are 112 salaried officials, of whom 93 are Catholics and 19 are non-Catholics.

Co. Clare has a population of 112,000; of which 110,000 are Catholics, and 2,000 are Protestants. There are 68 salaried officials, of whom 62 are Catholics and 6 are Protestants.

So much for the South; let us pass to the North.

Co. Antrim has a population of 196,000; of which 40,000 are Catholics and 156,000 are non-Catholics. There are 65 salaried officials, of whom 5 are Catholics, and 60 are non-Catholics.

Co. Armagh has a population of 124,000; of which 56,000 are Catholics, and 68,000 are non-Catholics. There are 50 salaried officials, of whom 3 are Catholics and 47 are non-Catholics.

Co. Tyrone has a population of 150,000; of which 82,000 are Catholics, and 68,000 are non-Catholics. There are 52 salaried officials, of whom 5 are Catholics, and 47 are non-Catholics. [439]

Co. Fermanagh has a population of 65,000; of which 36,000 are Catholics and 29,000 are non-Catholics. There are 75 salaried officials, of whom 17 are Catholics and 58 are non-Catholics. It will be observed also that in those counties supposed to be Protestant, the Catholic population of Tyrone, Armagh, and

Fermanagh is 174,000, whilst the Protestant population is only 165,000. In Co. Antrim only, the Protestants are in a vast majority. And in Ballymoney, Antrim, Portrush, and some other towns of that county, there is not 1 Catholic in any elective body. On the other hand, I find that in Clonmel, Co. Tipperary, where the Protestants are to the Catholics in the proportion of 1:9 of the population, they are in the proportion of 1:4 in the Borough Council. In Kinsale, Co. Cork, where the Protestants bear an extremely small proportion to the Catholics, they are as 1:4 in the Borough Council.

Nine years ago, through much trouble and correspondence, I made an inquiry into the provision made in Irish workhouses for the religious interests of their Protestant paupers. I made an analysis of the results, some of which I quote here from the 18th Chapter of "Catholicity and Progress in Ireland" (pp. 346-350).

> "In 1882 there were 163 workhouses in Ireland; but some have disappeared, or have been amalgamated since then. At present there are 48 of these in which there is *usually no Protestant* inmate. The Protestant Minister—
>
> In 7 of these receives no salary.
> In 1, a salary of £4 a year for attending to nobody.
> In 5, £5, ditto
> In 2, £6
> In 17, £10
> In 2, £12
> In 4, £15
> In 5, £20
> In 4, £25
> In 1, £30

There are 25 workhouses with only *one* Protestant pauper in each, and the Protestant chaplains receive in each £21 a year on an average. There are 12 workhouses with only *two* Protestant paupers in each on an average: there is a Protestant chaplain for each; they receive on an average £21 a year. There are 12 workhouses with only *three* Protestant paupers in each on an average. Each has a Protestant chaplain: they receive on an average £30 a year. There are 5 workhouses with only *four* Protestant paupers in each on an average: their Protestant chaplains receive an average salary of £20 a year. There are 5 workhouses with only *five* Protestant paupers in each on an average: their Protestant chaplains receive an average salary of £33 a year. There are 7 workhouses with only *six* Protestant paupers in each on an average: their Protestant chaplains receive salaries of £25 a year on an average. There is 1 workhouse with *seven* Protestant paupers on an average: the Protestant chaplain receives £30 a year. There are 2 workhouses with *eight* Protestant paupers in each on an average: in 1 of these the Protestant chaplain gets £25 a year, in the other £30. In all those workhouses I have named there are 194 Protestant paupers on an average; and the Protestant chaplains receive a combined salary of £2,000 a year for attending them. Now nearly all the Guardians of those workhouses are Catholics; those who pay the poor rates are nearly all Catholics.

I do not write these facts in complaint: rather with pride. I give them as evidence of the sort of religious "intolerance" which is practised by Irish Catholics on those few Protestant paupers; who indeed are so few that their having to be in a workhouse at all is not creditable to the wealthy Protestants of Ireland. The [441]
money spent in the vain attempt to proselytize a certain degraded remnant of the Catholic poor, if spent on those few Protestant paupers, would make workhouse life unnecessary for them.

(III) The Papal Decrees.

A great noise has been made about the *Ne temere* Decree, and the recent *Motu proprio*. They have been used to illustrate a phase of Catholic "intolerance" which is supposed to constitute a constant danger to society. I hope to make plain that those who have raised the cry have been shouting into space, and that, moreover, they have been throwing stones out of glass houses. Those laws have been made for Catholics only; Catholics only are bound by them; therefore only they have a right to protest if there be any cause of complaint. Or are we to understand that Catholics are not free to have their own religious rules and usages without the approval of outsiders? It will be answered: Certainly, but this *Ne temere* Decree might affect Protestants also. How? Well, it ordains that unless Catholics get married before an authorised priest the marriage is null; they are not married. Hence, if a Catholic and a Protestant attempt to get married before a parson or a registrar, as the law of the land allows, there is no marriage in the eyes of the Catholic Church, and the Catholic party is bound in conscience to disown it. That is what has been said; but it is not correct. What the Catholic party would be bound in conscience to do in such a case is to set things right by making it a valid marriage. But what if the parties will not comply with the *Ne temere* [442] law? Then they go their own way, and the Catholic Church has no more to say to them. But if the Catholic party, getting conscience-stricken, should determine to disown it as a marriage, will not the Protestant party be the sole sufferer? Not at all; because the Protestant party can appeal to the law of the land for conjugal rights, since in the eyes of the law the marriage is valid; and an attempt by the Catholic party to contract marriage with anyone else would be punished as bigamy. On the other hand, if the Protestant party should for any reason determine to disown it as a marriage, the Catholic party cannot in conscience appeal to the law of the land for conjugal rights; because according to

the Catholic conscience there are no conjugal rights, since there is no marriage. It should be observed that, also in the case of two Catholics, there is no marriage if they attempt to get married before any other priest than the authorized priest. The *Ne temere* Decree was meant for Catholics only. It was not at all meant for Protestants, and it can only affect a Protestant through a Catholic. Now, the Catholic Church does not wish a Protestant to marry a Catholic. Quite otherwise. In fact, Catholics are forbidden to marry Protestants without a special permission, which is not given without good cause assigned. But if any Protestants should desire to marry Catholics, they know the conditions they have to fulfil. If they object to those conditions they are quite free to seek some other partner less tied by religious conditions than a Catholic is. If a Protestant say, "I like this Catholic, but I don't like these conditions," the Catholic reply is simple and straight: "If you want the Catholic you must take the conditions too; it is intolerant conceit for you to expect that the Catholic Church should shape its discipline to make it fit in with some possible [443] affections which might some time or other possess you."

The result of all the noise made about this *Ne temere* Decree has been just what those who have made the noise little thought of, and least of all desired; namely, it has left them without a shadow of excuse, or even the semblance of a grievance. Their cry has become their nemesis. It has so promulgated the Decree that they, no more than Catholics, can plead ignorance of it, or of the consequence of not observing it. Hence what they in future do in regard to it, they will do with their eyes open; and if they count the cost they have only themselves to blame.

But if these remarks I have made help to silence the *Ne temere* cry, another like grievance is not far to seek. It is remarkable that, whilst there are several Catholic marriage laws the import of which is exactly the same as that of the *Ne temere* Decree, we never hear a word said about them. Here is one: A Protestant has a sister-in-law who is a Catholic. His wife dies. His Catholic

sister-in-law marries him without the necessary dispensation. That marriage is null in the eyes of the Catholic Church. But it is valid before the law of the land since the Deceased Wife's Sister's Marriage Act was passed. That Protestant and his deceased wife's Catholic sister are precisely in the same predicament in which a Protestant and a Catholic are who attempt marriage in defiance of the *Ne temere* Decree. There are other similar instances amongst the Catholic marriage laws. There have been for centuries. The *Ne temere* Decree itself is but a slightly modified form of one three centuries old. Thus, if the *Ne temere* cry is serious, the party who raised it have been standing at the mouth of a volcano for generations, and have escaped unhurt. Why then have those
[444] other Catholic marriage laws been left in place, whilst the *Ne temere* Decree has raised a storm? The only difference one can see is that the *Ne temere* Decree happened to appear on the eve of some parliamentary elections, and the consciences of some scrupulous persons were suddenly awakened to the danger it brought.

Tu quoque is not a logical reply; but at the tail of an argument it does not come amiss. Well, then, in England the law recognises no other marriages than those contracted before the parson or the registrar. Let a Protestant and a Catholic therefore get married before a priest, without the presence or knowledge of the parson or the registrar, it is a valid marriage in the eyes of the Catholic Church and binds the conscience of the Catholic party; but it is no marriage in the eyes of the law. So far the case is the exact converse of the *Ne temere* Decree. But it goes farther; for it holds not only in the case of a Protestant and Catholic but also in the case of two Catholics. The law of the land will not recognise a marriage contracted by two Catholics in their own church and before their own priest, unless the registrar or the parson be present. On the contrary, the *Ne temere* Decree does not in any sense touch the case of two Protestants. Now, Catholics think, and justly so, that a priest is quite as qualified

a witness for the marriage of Catholics as the parson is for the marriage of Protestants, or as the registrar is for the marriage of either. The Catholics have in this a real grievance; and they feel it; yet their consciences have not been so wounded nor their hearts so broken as to think of exhibiting them bleeding before their country upon election hustings. Political consciences show strange phenomena.

What is decreed by the *Motu proprio* has been in force since the Constitution *Apostolicae Sedis* was published in 1869. Yet [445] during those forty-two years nobody seems to have been hurt by it; and nobody seems to have been concerned except Catholics till lately. The *Motu proprio* obliges Catholics, under threat of excommunication not to bring ecclesiastics before lay tribunals without the permission of their bishop. It binds ecclesiastics equally with lay Catholics. It does not, and cannot, touch non-Catholics in any sense; a very plain proof of which is that it threatens with excommunication those to whom it applies. That censure of excommunication should convince anyone that the *Motu proprio* cannot possibly apply to non-Catholics. They are not within the Church; and how could those be put outside it who have not been within it? It applies to Catholics only, whether lay or cleric. But not to all Catholics. The Holy Office issued a Decree in 1870 in which it declared that "the excommunication does not affect subordinates, even though they be judges." A Catholic functionary acting in his official capacity does not come under the Decree. It will at once then be seen how unfair are the following words spoken by Mr. Campbell, who represents the Dublin University in Parliament. Speaking at a meeting in Dublin on January 4th, 1912, he said of two Irish Catholic Judges: "They might be called upon any day in the exercise of their duty to their Sovereign to put the law in force against a Catholic priest. If they did so, *ipso facto* they incurred excommunication." He thus explained the meaning of the *Motu proprio* for his audience, in face of the following words which he also read for his audience.

The excommunication is against "those who compel, whether directly or indirectly, lay judges to summon ecclesiastical persons before lay tribunals." Thus the excommunication is against *those*
[446] *who compel* the judges; so that Mr. Campbell's interpretation implies that *the judges* are one and the same with *those who compel them*. Catholics, then, and Catholics only (clerics as well as lay) are forbidden to bring ecclesiastics before lay tribunals, without the permission of their bishop; which permission, the Holy Office decrees, "the bishop shall never refuse, in case he fails to reconcile the parties." If a Catholic (lay or ecclesiastic) thinks that an ecclesiastic, for instance, owes him a debt, and the ecclesiastic denies it and refuses to pay, the Catholic (priest or layman) who makes the claim is bound by the *Motu proprio* to have recourse to the bishop first, in order to have the matter arranged amicably. If the bishop fails to settle it, he is not left free to give or refuse his consent to have the case brought before the Civil Court. The Holy Office decrees that "he shall never refuse." Even in those times and countries when and where Ecclesiastical Courts existed to try the civil cases of clerics, the purpose of the *Privilegium Fori* was not to grant ecclesiastics any immunity from the civil law of their country, but to provide that in their civil cases they should be tried by an Ecclesiastical Court. The privilege was not as to the law of the land, but as to the court that was to try them according to that law.

What the *Motu proprio* orders is just what Catholic instinct moves every Catholic worthy of the name to do. In Ireland and everywhere, Catholics, and many Protestants also, if they think they have a cause of complaint against a priest, for debt or otherwise, make known their case first to his bishop. If the bishop fails to compose the question, then they bring the case before the lay tribunals; permission to do which, as the Holy
[447] Office lays down, the bishop "shall never refuse."

I have explained the meaning and scope of this *Motu proprio* as though it applied to Ireland. But according to the evidence of

Cardinal Cullen, the highest authority on Canon Law who has lived in these countries for a century, the Caput *Cogentes* of the *Apostolicae Sedis* does not hold in Ireland; and that being so, the *Motu proprio* does not apply to Ireland, for it is a confirmation of the Caput *Cogentes*.

What this awful *Motu proprio* orders, then, is just what fraternal charity, a sense of the fitness of things, even common sense, would suggest. So befitting does the procedure ordered by the *Motu proprio* appear to a writer in the January number of *The Review of Reviews* that he says, "it might very well be extended to all Christian men, whether lay or clerical"; and he suggests that the civil authorities in England would do wisely to take a leaf out of the book of Pius X.

As a matter of fact, something parallel to it exists in every society. There is not an association of any kind in England, Ireland, or elsewhere, which has not some rules which bind its members under pain of expulsion. In Chapter VII. of his "Middle Ages," Hallam writes:

> "The spiritual Courts in England, whose jurisdiction is so multifarious, and in general so little of a religious nature, had, till lately, no means of compelling an appearance much less of enforcing a sentence, but by excommunication."

He writes in a note:

> "By a recent Statute, the 33 Geo. III., c. 127, the writ, *de excommunicato capiendo*, as a process in contempt was abolished in England, but retained in Ireland."

Both in England and in Ireland there are, of course, rules for expulsion, or excommunication, in every union, society, and club in the country. But a rule more like the *Motu proprio* than any [448] that I know of, is in the constitutions of the Dublin University which Mr. Campbell represents in Parliament. According to Letters Patent 13 Charles I.:

> "All domestic differences shall be examined, and if possible decided within the College.... He who brings another into Court, without the consent of the Provost and the majority of the Senior Fellows, shall be expelled from the College."

It is in every particular like the *Motu proprio* of which Mr. Campbell spoke, in a Catholic city and country, as "an arrogant and insolent decree" which "aims a deadly blow at the sanctity and security of property." I do not believe that he was conscious of the offensiveness of his words. But such has been the fruit and habit of Protestant privilege in Ireland. Some, even men of position and education like Mr. Campbell, remain as if unconscious that the "old order changes." They fail to fit themselves into the change which a century has made; and "If in the green wood they do these things, what shall be done in the dry?" Catholics, whilst they have their own thoughts about the constitutions and rules of other Religious Bodies than theirs, do not meddle with or question them. The *Ne temere* Decree and the *Motu proprio* are, as I have explained, for the discipline of us Catholics exclusively. We do not seek for them the approval of outsiders. But we cannot help thinking that the diatribes to which we have been subjected in connection with those two Pontifical Acts have been inspired rather by political and social jealousy than by a spirit of toleration or love of fair play. I hope that most non-Catholics who read what I have written will be disposed to agree with me.

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(IV) Some Protestant Views.

(1) A Church Of Ireland View. By Canon Courtenay Moore, M.A.

It is under a deep sense of both privilege and responsibility that I contribute this article—of privilege because I feel very sensibly the honour done me in asking me to write it—and of responsibility because of the service it may or may not prove to be. A word about myself may be pardoned and may not be inappropriate.

I should know something about Ireland, as I was born in Ulster, in which province I lived for seventeen years, and naturally I then and there learned to know something of the manners and customs and feelings of Ulstermen. From Ulster I migrated to Leinster, where I spent eight years in the city of Dublin, six of these years in the University of Dublin, in which ancient seat of learning I was for four years a student in Arts, and for two in the Divinity School. On my ordination in 1865, I entered on clerical life in the Diocese of Cloyne, County of Cork; in which diocese I have remained ever since for the long period of close on forty-seven years. Therefore I say I ought to know something of Ireland and the Irish question; having been born in Ireland and having lived so long in it in three out of the four provinces. Moreover, I have been a regular student of Irish history, to some extent of the Irish language, and of Irish Archæology, and, as an Irish Antiquary, [450] I have seen much of my native land in each and every Province. Strangers seem to think it very easy to make up their mind on the Irish question—you have only to take a return-ticket from Euston to Killarney, or from Paddington to Rosslare and the thing is done! I once heard His Grace Dr. Healy, the Archbishop of Tuam, tell a story about the way to acquire an English accent. He said that a certain Dublin Alderman, with a fine Dublin brogue, crossed from Kingstown to Holyhead; the passage was a rough one; there was much of "the wonderful up-and-down motion, that comes from the treacherous ocean." So much indeed that the poor alderman lay sick in his berth in Holyhead harbour, and returned in the same boat without landing. But—"lo and behold you, sir," as we say in Ireland—he came home with a

fine English accent, which he never lost in later life! Well, some English visitors seem to have the same impression about the rapidity and facility with which they can make up the Irish question. "God help them" is all one can say. I am really not jesting or romancing at all! Within the present week an English literary lady called on me to interview me. Unfortunately I was out at the time, but she left a message to the effect that "she was going to write a book on Ireland," and wished to talk to me about it! She had only been in the country a few days when she came to this conclusion! This reminds me of the story of a certain English nobleman who, when making the grand tour of Europe, found himself at Rome. He had an interview with the Pope of the period. He asked him could he see and know Rome in a few days time? The Pope replied: "You will imagine you know a good deal of it by that time." "Well in a few weeks?" "You will then
[451] know less." "In a few months?" "Still less." "In a few years?" "Hardly anything at all."

Well, is not this a parallel for the Irish question? It requires the study of a life-time almost to grapple with it at all—at least in any fairly satisfactory and complete form—in any really candid and impartial way. I may perhaps be permitted to say that another educational force in my own training on the subject has been, that I love intensely the country and the people. Froude opens his charming essay "A Fortnight in Kerry" thus:

> "We have heard much of the wrongs of Ireland, the miseries of Ireland, the crimes of Ireland; every cloud has its sunny side; and, when all is said, Ireland is still the most beautiful island in the world, and the Irish themselves, though their temperament is ill-matched with ours, are still amongst the most interesting of peoples."

This affectionate feeling should not be left out of consideration by outsiders who wish to understand the Irish Question. It has exercised an undying and indestructible influence upon the people

of the country, and in certain respects a most beneficial influence. For example, many outsiders foolishly imagine that Irishmen are very volatile and variable; in some minor respects they may be, but in the main, no—it is absolutely otherwise. Can you find in the history of any other country greater fidelity to her own religious and political ideals than Ireland has shown over and over again—as we say "ever and always?"

Perhaps the preface to this paper seems unduly prolonged, but the reader must bear with it somewhat further, as it is necessary.

An objector may say to me that I have no right to speak for my fellow Irish Churchmen *en masse*, as regards their relations with their Roman Catholic fellow countrymen. Well, in answer to such an objection, which may be natural enough, there [452] are several replies. I intend to speak from my own first-hand, definite, personal, life-long experiences, such as they have been. And is not the inference sufficiently fair and logical that others of my clerical brethren, similarly situated, have had just the same, or much the same, experiences if they would record them? I do not claim that our Roman Catholic neighbours have been kinder to me than to other Protestant clergy. Testimony from us in the South and West of Ireland is more valuable than testimony from Ulster. In Leinster, Munster and Connaught, we are brought more directly and distinctly face to face with the Roman Church. She has a dominant, nay, a pre-dominant position in these three provinces, and yet I hold that this vast numerical superiority of position does not lead to intolerant or unkindly action. I believe that there is far more real kindly feeling and kindly intercourse between Protestants and Roman Catholics in these Irish provinces than there is in Ulster—and, therefore, I maintain that Irish Protestant Churchmen who live in these provinces, have a far better right to judge and speak of the relative attitude of the two churches than the people of Ulster. For we, who do so live, have a larger knowledge and experience and outlook than the men of Ulster, whose views are in every sense

narrower—geographically, politically and religiously. They indeed need to be reminded of the German proverb: “Hinter dem Berge sind auch Leute” (Behind the mountains there are also people). We all need to study this saying. Behind the mountains of our knowledge, of our civilisation, of our success and activity; behind the mountains, let us also say, of our ignorance, of our
[453] pride and prejudice, of our contempt—there are also men.

Of course it is much pleasanter to be able to feel kindly and to speak kindly of the great majority of one's fellow-countrymen if it can be done truthfully, as we believe it can—than to have to say and do the contrary. Even allowing for a certain element of unreality and exaggeration and insincerity, is not the uniform tone of too many political speeches much too violent and even occasionally too vitriolic? But I have little or no temptation to err in this respect, as the bulk of what remains to be said in this paper is chiefly concerned with facts. Two years after my ordination, the Fenian Rising occurred; this took place in 1867. I saw something of it, not of the Fenians themselves, but of the flying columns which were then scouring the country in pursuit of them. The police barrack at Kilmallock was attacked, and Protestant gentry living near Kilfinane in the same county, viz., Limerick, left their houses for several nights and took refuge with the Constabulary. There was at that time living at Kilfinane as rector, the Rev. George Wren. He was, as a clergyman, greatly beloved and respected. When some of his parishioners, most of them gentry, were leaving their homes for police protection, the Roman Catholic farmers in the parish waited on the Rev. George Wren at the rectory, and begged and intreated of him not to leave it, assuring him that “no one should lay a wet finger” on him or any member of his family. In consequence of this interview the Rev. Mr. Wren held his ground, and was the only Protestant gentleman in the immediate district who did so. It was exceedingly creditable to him, and to the deputation who waited on him. I have never forgotten this incident.

I remember well the excitement produced in Irish church circles by Mr. Gladstone's Church Act in 1869 and 1870; how it [454] was denounced, condemned and deplored; how it was described as fraught with wreck and ruin to Protestant interests. One clerical speaker warned Queen Victoria that she might have "her Crown kicked into the Boyne" (if she gave her Royal assent), as James II. had. A friend of my own, a captain in the Army, assured me he was prepared to wade knee-deep in blood to fight the Bill.

We are not unaccustomed to politicians of this type even now! Well, Mr. Gladstone passed his Church Act, which has proved in many respects a great blessing to the Irish Church. She gained self-action and independence thereby; her finances have been so skilfully administered and the liberality of her members has been so great that she has now a realised capital of over nine millions! It is estimated that for her numbers she is, in money, the richest Church in Christendom. None of us who belong to her would revert, were the offer open to us, to the state of her condition and circumstances prior to 1869—"Out of the eater came forth meat, and out of the strong came forth sweetness." How true that parable of Samson's has often proved with regard to changes which were, at first, denounced and dreaded, and afterwards regarded with gratitude! Generally, the effect produced on Irish public opinion by Mr. Gladstone's Church Act, on the whole, was in time beneficial. It removed what was at least a "sentimental grievance" from Roman Catholics. It also taught them before very long that the Church of Ireland could exist as a voluntary institution; and some Nationalists from time to time have even said that the efficient and capable management of the Representative Church Body of the Church funds was an object lesson in favour of Home Rule. [455]

Every one at all familiar with this subject knows that 1881 was a very terrible year in Ireland; it is unnecessary to enlarge upon the painful fact. Then, or thereabouts, I went to see a

land-agent whose life had several times been attempted. It was in the summer; he was writing at a tall, stand-up desk, on the upper ledge of which lay a revolver. I sat down by an open window to enjoy the fresh air, from which he immediately pulled me away and deposited me in a corner of the room under shelter of a wall, not of glass. Presently we adjourned to the dining-room for lunch. This was also an arsenal or place of arms; a double-barrelled gun lay on a sofa. When my friend opened a press to obtain "the materials"—Irishmen will know what is meant—I saw therein a brace of horse-pistols. After lunch we went out for a walk, my friend carrying his gun under his arm, and, I suppose, his revolver in his pocket. A policeman armed with a loaded rifle, followed a few yards in our rear. Life under such circumstances could not have been very agreeable. Would anyone like to revert to it? Surely not. In the same year I was visiting an Irish landlord who was very seriously ill; his home was about four miles distant from my glebe house; sometimes I had to go to see him by night. One morning the doctor, who had been with the patient for several hours, was anxiously inquired of by the ladies of the family how their father was. "Well, all I have to say to you," said the doctor, "is, that you may be very thankful that your father is allowed to die quietly in his bed such times as these."

Well, what has improved such terrible times? Has it not been remedial legislation in different directions—legislation respecting the Church, the Land, and Education. Yet in all
[456] such cases remedial legislation has been initially denounced by a certain party as "Socialism," "Sacrilege," or by some equally strong expletive. And yet, what has been the result of these so-called "Socialistic" and "Sacrilegious" measures? Has it not, on the whole, and in the main, been good, decidedly and undeniably good? Let us apply our Blessed Lord's text: "By their fruits ye shall know them." "Can any man gather grapes of thorns or figs of thistles?" So, then, when I look back to these past painful experiences, and see how all proposed remedial legislation was,

in the first instance, denounced and vilified, and when I recall how the results in time have refuted all the prophets of evil, I am quite inclined to say, is not the balance of evidence in favour of the view that something very much the same will be the case, and will happen with Home Rule? It is now constantly described by one leader as "A Nefarious Conspiracy." Of course, different Parliamentary orators have their own favourite vocabularies, but is it not very much a case of:

> "All now is wrangle, abuse and vociferance."
>
> "One is incisive, corrosive;
> Two retorts nettled, curt, crepitant;
> Three makes rejoinder, expansive, explosive;
> Four overbears them all, strident and strepitant;
> Five.... O Danaides, O Sieve."
>
> "Now they ply axes and crowbars;
> Now they prick pins at a tissue;
> Fine as a skein of the Casuist Escobar
> Worked on the bone of a lie—To what issue?
> Where is our gain at the Two-bars?"

Juvenal said of some Roman lawyers of his own day: "Iras et verba locant." They still do it. [457]

Here perhaps I may with advantage introduce some remarks made by me in Cork City on March 21st at a meeting of the County Technical Instruction Committee on the occasion of proposing a vote of congratulation to our Chairman the Bishop of Cloyne, on having gained a verdict in his favour in his Libel Action against the *Dundee Courier*:

> "I would like, Sir, to say a few words just in explanation of this motion. It is the first opportunity that we have had of doing this since the trial, and as other public bodies have passed votes of congratulation to the Bishop, it is specially becoming

that we should do so, as he is Chairman of our Committee. I first made the acquaintance of the Bishop in 1893, when I was making a little antiquarian tour in the County Kildare with another antiquary, and on arriving at Maynooth we ordered some dinner at the hotel there. I was anxious to see Maynooth College, we went on there, and we happened to see Dr. Browne, who was then President of Maynooth; and he with true Irish hospitality at once invited us to stay to dine, which we did, and I had a pleasant experience of his hospitality and kindness on that occasion. And I must say that my own experience of him since he became Bishop of Cloyne has always been the same, that by tact and kindness and courtesy he has gained our regard and respect. I think I might venture to say in connection with the present controversy about the introduction of Home Rule into the country—which has, of course, caused a great deal of excitement—it would not be natural to expect that such a measure would be received in silence, but surely it is possible that the people who want to discuss this question should discuss it on non-controversial grounds. I think, for example, it should be discussed on financial grounds or on constitutional grounds, and apart altogether from religious grounds. But I fear there are too many controversial politicians, and that this religious element in the discussion has not only dominated it, but has become predominant, and is greatly to be regretted; and it seems to me that this action against the *Dundee Courier* is an illustration of this, and that the Bishop found it necessary to vindicate his character against unfounded charges which were capable of being made political capital of. It seems to me that the argument comes to this, that people raise controversial arguments which involve the very serious charge that the
[458] lives of the Protestants and the property of the Protestants in the country would hardly be safe under the new Parliament. Now this is a very serious indictment, and I wonder whether the people who make this consider its seriousness and the injury it does to both sides. I think it does those people

who make this charge much harm—it tends to make them censorious and uncharitable, and it naturally embitters the people against whom this charge is made—that is, four-fifths of the population of the whole country. I am afraid that there are too many of these controversial politicians at work. I have lived all my clerical life in the County Cork for over forty years, and my own impression when I hear charges of this kind flung broadcast about the people of Ireland is this—that the people who make them really can't know how happily, for example, we get on in the province of Munster, how much kindness there is, and how much real good feeling—genuine good feeling prevails between Protestant and Catholic."

"I can certainly say for myself with perfect truth that during my long residence in this county, for a period of over forty years, I never received anything but kindness and consideration, and during that long period the county has been agitated very seriously. I remember the Fenian Rising in 1867, the Church Act in 1869 and 1870, and I remember other troubles in the county, but, personally speaking, I never received anything but kindness and consideration. A short time after my ordination I was told by a senior clergyman of the diocese how to act towards the people. He said: 'I will give you a recipe—be friendly to the people in this county and you will find that they will be friendly to you,' and I certainly found them so without a single exception or contradiction."

The Bishop was from home when this meeting took place, but on his return he wrote me a very kind and complimentary letter from which I quote a few sentences:

"Bishop's House,

"Queenstown.

"*April 2nd*, 1912.

"DEAR CANON COURTENAY MOORE,—Allow me to congratulate you most sincerely on the tone and character of your speech, which has done much to foster among us all,

charity, peace and brotherhood. I have heard all manner of men speaking of your action on that occasion in the highest
[459] terms of praise."

"When there lies round about us so much good to be done by our common united forces, why should we spoil the opportunity of doing good by senseless and generally ill-founded suspicion and quarrels?

"Yours faithfully,

"ROBERT BROWNE.

"*Bishop of Cloyne*."

I desire to add an extract here from a letter written to me by the late Rev. Father Horgan, P.P. of Kilworth, Co. Cork. He was a very cultivated man; he had been for eight years in the Irish College at Rome and had also made a voyage round the world. He had "read in the book of the world," and in addition to his extensive and accurate knowledge of theology he had acquired a great knowledge of Art from his residence in Rome. About two years before his death he wrote me a very touching letter from which the following is an extract:

"I have given up all thoughts of change of place. My outlook and my hope are homewards, and may the good God support and strengthen us both to and through the end which awaits us to our rest."

I fear there may be too much egotism and too little reticence in my placing such kindly and even confidential communications as these before the public, yet my motive for doing so is simply to show how much real kindly feeling and friendly intercourse exist between members of the Roman Catholic and Anglican Churches in Ireland, especially in those districts where the vast numerical predominance of the former Church might, as some suppose and suggest, provoke her to intolerance, which in my opinion is not the case at all. Of course I do not profess to do more than offer a general opinion founded on my own personal

experience, and on my knowledge of Irish history in the past. [460]
But when I look back upon the past and think for example on the state of Ireland during the "Tithe Wars," as described by such a writer as Lecky, and on my own recollections of Ireland in the days of the Land League, and compare with these periods the present happy and peaceful condition of the country, and ask myself what has produced such a blessed and beneficial change, is not the answer plain enough that it has been the progress of healing and remedial legislation? Well, then, if impending legislation in the direction of Home Rule is a further concession to national sentiment and likely to prove a further development of and outlet for national knowledge of what the country requires, and an application of her own energies and resources for the purpose, why should one dread and deprecate the experiment? I have lived through too many Irish crises to be afraid of another. I do not venture to speak dogmatically, still less despairingly, but I feel on the whole that this new departure will tend to good like its predecessors. I am inclined to ask, why should the Roman Catholic people of Ireland persecute Protestants, if Home Rule be granted—some will say, oh, because they will then have greatly increased power and influence in their own hands, and they will therefore be tempted to use it, and will use it in this direction. I find it hard to believe this, I am very slow to believe it, judging from my own experience of Ireland. May I not put it in this way plausibly and reasonably enough: why should not such an extension of self-government gratify the Irish National Party, and produce even better and still more kindly feeling towards their Protestant fellow countrymen than already exists? If we must make a calculus of probabilities in such an event, ought we not to take into account the mollifying influence of the possession of increased powers, just as much as the temptation [461]
to misuse them in the direction of intolerance. Besides, will it not be the policy of the leaders of the Home Rule movement, should it become an accomplished fact, to conciliate—much

rather than to coerce—those who oppose the movement? As Mr. Redmond has recently said, "some repudiate Ireland, but Ireland will not repudiate them." We may for a time in the near future have a period of some unrest, anxiety, possibly even danger, but we must hope that this will pass. Certain Irish proverbs show something of the tone of the national mind. Here are a few: are they not very instructive and descriptive?

"One must cut the gad nearest the throat."

"The first thread is not of the piece."

"A small share of anything is not worth much, but a small share of sense *is* worth much."

"It isn't day yet."

"Nil lā fòs e."

All these proverbs show that Ireland has "learned to labour and to wait:"

"Look not mournfully into the past,
It comes not back again ...
Wisely improve the present, it is thine.
Go forth to meet the shadowy future without fear and with a manly heart."

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(2) A Presbyterian View, By Rev. J. B. Armour, M.A.

The question of Home Rule for Ireland has been discussed from all sides now for more than a quarter of a century: and at present it holds the field. Everything from the constitutional, commercial, and religious aspect of the problem has been said in an italicised form. The history of the controversy has shown considerable change of view, at least on the part of the opponents of the measure, and the bitterness against the idea has become in many cases a mere scream, a sign that the foundation of their objections to the proposal is giving way. At the first mention of

Home Rule, the majority of the constitutional lawyers entered the lists, and satisfied themselves that the measure would violate the constitution, lead to the dismemberment of the Empire, and the final separation of Ireland from the Crown. The stipendiary politician, of whom we have many, especially in the North of Ireland, said: "I thank thee, O Jew, for teaching me that word," and rang the changes on the word "separation," dubbing every adherent of the Liberal cause as a separatist. The saner constitutional lawyers have come to the conclusion that the idea of separation has no foundation in fact, and could not, if mooted, have the slightest hope of success. A community which has not [463] the power of raising an Army or a Navy could hardly venture on rebellion. Ireland is largely an agricultural country, and, seeing that the farmers in a few years will be sitting under their own vine and fig tree, possessors as well as tillers of the soil, it is almost unthinkable that even five per cent. of the population would think of risking their all in an enterprise which could not be successful, and, if successful, would close against them their best markets. The Irish people are sometimes credited with a double dose of original sin and folly, but their sense of humour would save them from such a cut-throat policy. The soldiers they have sent into the British Army, taken from the lower strata of social life, have proved as loyal to the British Crown as the Scotch Highlanders. The Curragh, and other camps for soldiers in Ireland, will not be broken up when Home Rule comes. The fear of Home Rule leading to separation has receded to the background of the controversy, and is now the monopoly of obscure politicians.

I am asked to say something on the question from a Presbyterian point of view. It is a little difficult to state the number of those in favour of the measure, and of those not actively opposed thereto, especially as those who pose as exponents of Presbyterianism have set themselves, with considerable success, to destroy the right of free speech and to ban the right of private judgment as a pestilential heresy—two of the essential factors in

living Protestantism. To hamstring these principles is to leave Protestantism with a name to live, though it is dead. These Anti-Home Rulers have been threatening, and are carrying out their threat, to boycott any parson who shows signs of scepticism about the infallibility of their *credo*. Boycotting is a serious offence, if
[464] practised in any form in the South and West of Ireland, but it is the eleventh Commandment of the Anti-Home Rulers among the Protestants, and is being observed with greater strictness than any of the Ten Words. Under the reign of TERRORISING PREJUDICE it is not easy to indicate the number of those, especially in the Presbyterian Church, who refuse to make Anti-Home Rule an article of a standing or falling Church. But the drastic methods used to repress free speech, and the right of private judgment on a political question, are indications that the secret disciples of Home Rule are not only a large but an increasing number. As one who has believed in Home Rule for many years, as one who, while treated with courtesy and kindliness by leading Unionists, has been thrice stoned by their noisy followers, I venture to give an *apologia pro mea vita*.

(*a*) I accept the principle of Home Rule for Ireland because it is the principle of the Presbyterian Church Government applied to secular affairs; a principle which has worked well in the Colonies where there are mixed races and religions; a principle which is a fundamental one in the United States of America; a principle which, truly democratic, has proved itself the salt of social life wherever applied, and, in the case of our Colonies, has been a link binding the Colonies with hooks of steel to the British Crown. Why or how it will lead to red ruin and the breaking up of laws in Ireland is not very clear, save to the "dryting prophets" of the dolorous breed. As a matter of fact, that principle of Protestantism was suggested to the Catholics by Protestants. The idea of Home Rule for Ireland was bred in the brain of some Fellows of T.C.D. Isaac Butt was its Cicero, and Parnell brought the idea into practical politics. Home Rule

is the child of Protestant parents, and its adherents in all the branches of Protestant Churches are many. All the Unionists of [465] the saner type admit the common sense of the principle, and they say that if Ireland were Scotland they would have nothing to say against an Irish Parliament for purely local purposes. But they insist that a true principle, if administered by Irishmen, would lead to a reign of terror and tyranny. The answer to that is this. The Conservative Government has already granted the half of the principle in the establishment of County Councils, which Lord Salisbury said would be more mischievous than Home Rule pure and simple—though in spite of his *ex-cathedra* opinion he set them up. The Irish Conservative papers at the time said bitterly that the Councils were the half-way house to Home Rule. In existence now for years, they have worked wonderfully well without a tithe of the evil predicted to follow in their train. People argue on the question as if the Irish representatives would never take a statesmanlike view of any matter for the public good, and as if Protestantism would have no share in the deliberations of an Irish Parliament with a fourth of the representatives in Dublin Protestants, and with an upper House nominated with a view to the protection of minorities. The belief that democracy in Ireland would become a persecutor of Protestants and a robber of the commercial classes can only arise in the minds of those who hate democracy and all its works, though the democratic principle wherever tried has been the parent of much that is good in social life. It is becoming the conviction of the thinking portion of the Protestant world that the question MUST be settled by the one party or the other on lines satisfactory to Irishmen generally; and notwithstanding the whirling words uttered by the landlords and their entourage at Balmoral, it is firmly believed that Mr. Bonar Law would like to have a hand in establishing an Irish [466] Parliament for Irish affairs.

(*b*) Home Rule would undo to a large extent the evils of the paper Union of 1800, modifying racial animosities, introducing

a new spirit of patriotism and healing the sores of long standing. The means by which the Union of Ireland with England was effected were so destructive of everything moral in political life that every thinking man denounces them as infamous, and they are without a defender past or present. It is tolerably certain that 90 per cent. of the Protestants of Ireland, including a large number of the landlords who refused to be bribed, were as bitter against the destruction of the Irish Parliament as their descendants are against its restoration. Listening to the harangues against an Irish Parliament, one can only conclude that the applauding auditors regard their ancestors as fools. To have a dance on the graves of one's ancestors may be a new amusement, but it is hardly respectful to the memory of brave men whose opinions of the hurtful effects to Ireland from the Union and the loss of a legislature have been fully justified by events. Nobody can say that the Union has been a success. For fully seventy years of the nineteenth century the government of Ireland was a legalised tyranny, the whole political power of making and administering laws for Ireland was in the hands of the landlords, who were allowed to rob and spoil at their will the Irish tenants, Protestant and Catholic. A tenant's Protestantism did not save him from a rack rent; it often increased the rack rents. For generations the tenants of Ireland had to pay between five and ten millions beyond what was just and fair, and those millions might as well have been cast into the Irish Channel as far as bringing any
[467] benefit to Ireland was concerned. The Imperial Parliament is heavily in debt to Ireland for the spoliation of the Irish farmers and labourers which it permitted. Irishmen of all creeds, as they look back on a long spell of slavery, have no right to join in singing pæans to the Union. If changes were made in the laws bringing a modicum of justice to Irishmen, giving them a right to call their votes their own, and a right to part of the property they created, the predecessors of the Unionists of to-day have no claim to credit for the changes, as they fought with the same

savageness they are showing towards Home Rule against the introduction of the ballot, and took as their motto “tenants' rights are landlords' wrongs.” The thanks of Irishmen are due to the Liberal Party, led by Mr. Gladstone, and backed powerfully by the Nationalist Members. Unionists of every colour are dwelling on the prosperity of Ireland, quoting statistics about the tremendous increase of sheep and swine. They forget two things, one of which is that Ireland since the Union has lost 50 per cent. of its inhabitants, but they say “What of that? We have a large increase of sheep and swine, the true index of a nation's prosperity.” The Founder of our faith did not agree with the Unionist conception of the relative value of sheep and men. He said: “How much is a man better than a sheep,” a saying which covers an Irish Catholic as well as a Protestant Home Ruler. Men are better than sheep, Unionists notwithstanding. Then they forget that Ireland's prosperity, whatever it is, began with Mr. Gladstone's legislation, which the Conservatives held would ruin the country and break up the Empire. His legislation was the introduction of the democratic principle into politics, and democracy has proved itself worthy of acceptation. Home Rule is the extension of the democratic idea, and in spite of all that [468] has been said in strident tones against the measure, its acceptance will tend to social health and wealth, and not one hundredth part of the evil its opponents associate with its passing can result therefrom. The prophecies about the evils resulting from Liberal legislation have been falsified in every instance. The Ballot Act would have upset the Throne, according to the Tories, but the Throne is on a firmer basis now than it has been since the days of the Conqueror. The disestablishment of the Irish Church was to ruin religion, but after more than forty years religion in the Episcopal Church of Ireland is healthier than ever. Home Rule will “heal the breaches of many generations.”

(*c*) Home Rule in Ireland, so far from ruining Protestantism, will give Protestantism a chance of being judged on its own

merits. *Hitherto Protestantism has been handicapped by its political associations.* The system so long in vogue of compelling the Irish peasant to pay tithe for the support of an established Church where the peasant never worshipped, evoked the dislike of the majority of our countrymen for Protestantism and all its works. If that cause of active hatred was removed, the fact that Protestantism was still the religion of the majority of the landlords who demanded more than their pound of flesh from the tenants did not commend that form of religion as a gospel of love. Then the fact, so evident still, that the bureaucracy which is ruling Ireland is largely Protestant, the highest positions of dignity and emolument in connection with the State machinery being held, not by Protestants of all sects but by those belonging to a certain sect, has not been conducive to unprejudiced views of Protestantism as a religious system. The fear that the management of the State machinery will not
[469] remain in the hands of the descendants of the ascendency party is perhaps the strongest factor in opposition to Home Rule. As far as the Presbyterian Church is concerned, its members cannot possibly under Home Rule have a less share in the offices of emolument and dignity than they have had all down the years from 1800 to 1912. Protestantism will enter on a new career as a spiritual rather than a political force, and will prove its right to have its share in our country's welfare. Persecution for conscience sake is a game played out, as the practice of persecution for religious opinions has hurt the persecutor more than the persecuted. Persecution cripples industry, and, as the world has become very practical, fears of persecution are to be largely discounted, especially as it would be rather difficult to persecute the fourth of the inhabitants. *Some* of those who are exploiting the persecuting bogey for political ends have not much religion to persecute. The fears of a militant Catholic Duke who hates Home Rule, and who is credited with intriguing at Rome against it, ought to modify the fears of timid Protestants

who urge that Home Rule must necessarily mean Rome Rule. To their credit, Irish Catholics, alone in the Catholic world, have never been known to persecute for religious beliefs. A martyr for conscience sake has never been heard of in Erin. On April 11th of this year, a letter was addressed to Mr. Redmond, signed by the leading Protestants of Dublin, in which they assert that Protestants have always been treated with courtesy by their Catholic neighbours in the south and west, and in which they repudiate the idea of persecution in the future. They send Mr. Redmond a considerable subscription for his fund as a proof that their letter is not words, but an expression of well-grounded conviction. I have no fear for true Protestantism in the future, [470] either in Ireland or elsewhere, though political Protestantism has had its day.

(*d*) Instead of diminishing, Home Rule will increase, the commerce of Ireland. It is curious that, at all the Conventions called to denounce Home Rule, the fear of the ruin of commerce has been more prominent than the fear of the destruction of the Protestant religion. They have been reversing the great rule of life "Seek ye first the Kingdom of God and His righteousness and these things shall be added unto you." So obviously has the commercial side been thrust into the front rank of this controversy that a cynical friend—worthy to be a brother of the Member for Sark—has suggested that the meetings should have been opened by a hymn to commerce: "O God of Commerce help us, for the man from Waterford intends to cut down your groves." A more fantastic idea or one more devoid of all probability never took possession of men. Democracy has always been favourable to commerce, and commercial prosperity follows in its train. To imagine that a Parliament in Dublin would heap taxes on the rich is unthinkable, as any taxes on Ulster would weigh as heavily on other parts of Ireland. The Irish people of any creed are not fond of paying taxes, and one might take it for granted that a change in the administration of Irish affairs will not necessitate increased

taxation. The administration of the Government machinery in Ireland is the costliest in any country, and is bound to decrease largely as the country settles. The cost of bills promoted by Irish Corporations for needed corporate improvements is enormous, and it frightens social reformers from attempting to get things which stand in the way of public good set right. No statement was ever further from the truth than that which is made so
[471] often, that the Imperial Parliament is ready to amend every real Irish grievance. There are hundreds of necessary reforms which would contribute to the prosperity of the country. These cannot be attempted because of the cost and the difficulty of getting them discussed in the Imperial Parliament. If settled in Dublin, they could be better done at one fifth of the expense. The Commerce of Ireland stands to gain by Home Rule. An increase of commerce always leads to a spirit of tolerance.

To those of my fellow religionists who are frightened by the very term—Home Rule, I would say "Who is he that will harm you if ye are followers of that which is good?"

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(3) A Nonconformist View. By Rev. W. Crawford, M.A.

It must be a matter of constant surprise, to those who have been accustomed to distinguish political from religious questions, to find religion for ever obtruded into discussions of the Irish problem. Can't men follow their religious convictions under any form of government? they will impatiently cry; why then complicate an already difficult subject by importing considerations on which some men appear always to be least reasonable? But it may as well be recognised at once that "religion" is generally at the base of the opposition to Home Rule, and that the British government of Ireland, as it is responsible for that peculiar feature of the case, must in all equity find a solution of the problem and a remedy for those evils which have embittered Irish life for centuries, and which

to-day stand as the one great obstacle to England's last act of reparation for the wrongs of the past. An alien Church has been disestablished; a tyrannical land system is at enormous cost being revolutionised; and now the traditional animosity of Protestant to Roman Catholic, manifested in the general opposition of the Churches of the Reformation in Ireland to the demand for Home Rule, and enforced by every argument which the history of centuries can afford, must be dealt with. [473]

The errors of a dark past cannot be undone; but each successive measure of conciliation has brought increased contentment and prosperity to the country; and, sure as there is a God in heaven, the repeal of the last and greatest wrong, an Act of Union which no honest historian can defend, will be the harbinger of lasting peace. To deal at once with the Protestant attitude to Home Rule, the Churches in an overwhelming majority stand solid against it. The opposition is confined to no class, being, if anything, more bitter and unreasoning in the lower grades of society. It is impossible to give any accurate estimate of the number of Protestant Home Rulers, and the much advertised totals of 95 to 98 per cent. of Unionists are mere fictions, as there never has been a poll taken on the question; and for easily understood reasons those in favour of suspected or unfashionable causes are slow to declare their opinions or convictions. Liberalism is essentially “vulgar” in Ireland; and Nationalism is taboo in all polite society. That exclusive clique, among whom heredity, tradition, and “Church principles” reign supreme, has had a long ascendency in Ireland. In affluence amid poverty, with every advantage of education and influence over the unprivileged many, their pride has been to stand aloof from popular causes, and to decry every agitation for redress. Isolated Liberals, too few and scattered to form a community, have had to lie low, or risk their social position and business prospects. Of late years there has been some access of courage, and an increasing number in all professions and trades, except those directly dependent for

support on the upper classes, have greatly ventured in taking a stand on the people's side. Among the younger generations, the
[474] choicest spirits, true followers of Davis Emmett and Fitzgerald, have always been found on the popular side; but, on the whole, heredity prevails, tradition rules, and convention, under the guise of religion and Empire, drills the Protestant mass on the side of Unionism.

Ulster is the crux of the Home Rule problem; and Protestantism is the *raison d'étre* of its opposition; as we are being ever reminded by Church assemblies, Orange lodges, and political orators whose interest in the welfare of so Puritan a faith is admirable indeed, and full of promise for their future. The "religion" may sometimes appear to be of a peculiar political cast, and difficult to reconcile with ordinary Christianity; but such as it is, in it a serious fact has to be reckoned with. Its genesis, as well as the present condition of Ireland, can be understood only in the light of the history of the last four centuries. The attitude of Protestantism generally does not need a separate discussion, being marked by the same characteristics (as it originated, for the most part, in the same events) as that of the North of Ireland. It is in the confiscations and plantations of the seventeenth century that the origin of political Protestantism is to be found. That nefarious plan of conquest and government was old as the Normans; but it is to the later phases of it adopted by the English rulers from James I. to Cromwell that the establishment of the Protestant races and families now in possession of the land may be traced. Recollect that the planters were English and Scotch Protestants put in possession of the lands and homes of Irish Roman Catholics, who were relegated to Connaught, and farther, or held in complete subjection by the conquering race. Their religion was proscribed, and all civil rights were denied them. No doubt the object was rather to extinguish a nation, than a creed;
[475] but the fact remains that in his paternal solicitude, "the interests of His Majesty's *Protestant* subjects were his greatest care, and

must first be provided for" (17 & 18 Charles II.); and the "mere Irish" were sacrificed for the purpose. The "settlements" of Ireland resulted in the fact that to a very large extent the history of Ireland until to-day is involved in the land question, and in the doings of contending religious factions.

Thus favoured by the State, and supported in their armed possession of property and ascendency, the Irish Protestants developed at once the masterful qualities so natural to the British in relation to subject races, loyalty to their benefactors whose garrison they were, stern adherence to the religion which was the badge of their predominance, and a firm determination, at all cost to others, to maintain a state of affairs so favourable to their welfare here and hereafter.

To hark back thus to a distant past, seeking the origin of the events of the present, may appear unnecessarily provocative of bad feeling. It is pleasanter to dwell on the social amenities and Christian charities which have often marked the relations of Roman Catholic and Protestant neighbours, and do so more than ever to-day; but in view of the present struggle they are merely misleading accidents, and the intolerant spirit that displays itself in threats of armed resistance, or in the "Ulster" of Rudyard Kipling with its:

"The faith in which we stand,
The Laws we made and guard,
Our honour, lives and land,
Are given for reward.
To Murder done by night,
To Treason taught by day,
To folly, sloth and spite,
And we are thrust away."

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is more truly characteristic of the historical fairness and temper of that past in which we seek the origin of the problem now confronting the British people. The history of the past dominates minds on both sides of the conflict. Peasants have very long memories, and traditions wrought into every fibre of their being control their outlook on current events in a way quite inexplicable to those who enjoy a wider range of vision and are occupied with modern interests. The horrors of Scullabogue and the heroism of Saintfield are still recounted with vivid detail in the cabins of Wexford and Down; and the relative condition of the two nations in Ireland must be radically altered before the bitter memories of the past and the passions they evoke in the name of religion, will cease to frustrate all movements toward peace and progress. The mention of "two nations" will be eagerly seized by opponents as a fatal objection to the establishment of a native government. And so it would be, if the differences were ineradicable in their nature, or agreement on the principles of government impossible between men of different faith in Ireland; but the past has abundantly proved that neither supposition is true. In every century as men have been uninfluenced by the machinations of party leaders, or freed from clerical control, they have agreed to struggle for the good of their common country. Presbyterians have led "the rebels" in many a bloody fight, the liberties of Ireland were never more gloriously vindicated than in the Protestant Parliament of Grattan, and the latest struggle for legislative independence has found its earliest and most trusted leaders among the Protestant gentry. "More Irish than the Irish themselves," there have always been found some, yielding to the glamour of Irish climate, character and life, who have forgotten

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the animosities of religion to combine in prayer and sacrifice for the good of their adopted country. Further, the principles on which the Home Rule demand is based are those professed by men of every creed in the free countries of the world, and in

Ireland, too, when men are not blinded by prejudice or traditional fears. The two nations will be welded into one; and "Ireland a nation" will become something more than a patriotic toast, when, for the first time in history, the representatives of all creeds form its Parliament, for Ireland can as ill afford to lose the dour virtues of the Ulster-Scot as of the most dreamy Munster Celt.

The refusal to recognise Irishmen's right to Nationality, when English, Welsh and Scots are "nations" is a curious relic of the old attitude towards[165] "England's oldest foe." They inhabit, at all events, one land, and it is an island. A people variously constituted, they breathe its air, cultivate its soil, speak the same language with even a brogue of their own, enjoy the usual intercourse of ordinary human beings in social, commercial, educational and political pursuits, with common interests, problems, difficulties, and aspirations (*pace* Ulster). They have a history more ancient than that of Saxon England, and a continuous Christianity as devoutly held for seventeen centuries as in any country of Europe; they have marked characteristics, admirable or otherwise, according to taste and temper, but which the world of art, literature and religion seems to value. But because their ideals do not commend themselves to some thrifty settlers on their lands they are to be denied the status and privileges of a nation.

In any attempt to reach the truth as to the justice and expediency of granting Home Rule to Ireland, it is absolutely futile to waste [478] time in answering the stock arguments of party platforms, special pleading to support a foregone conclusion, half-truths backed up by most remarkable incidents, "fresh in the memory" of the speaker, or invented by his heated imagination. To contradict falsehoods, debate plausible conclusions, or quote instances to the contrary is equally vain, for the distinction between *propter* and *post hoc* is often as inscrutable to the ordinary mind in

[165] *See* Kipling's "Ulster."

politics as it is in medicine. We must fall back on recognized principles; and leave it to our opponents, on whom the burden lies, to show reason why these should not be applied to Ireland as to other parts of the British Empire, or why Irishmen, because mostly Catholics, are to be refused the natural rights of freemen.

"What in the world do you want?" is the cry indignantly repeated in Belfast conventions, as if it had not been answered a thousand times. Well, once more; it is self-government, so far as that is compatible with the interests of the Empire, to which Ireland belongs and must still belong unless a mighty convulsion of nature puts it elsewhere. It is the right of every civilized and progressive people, the grant of which to its dependencies is the glory of the British Empire, and in preparation for which it governs its subject races in India or Africa. Is Ireland less fit after nine centuries of English government to rule itself on constitutional lines than Canada or the South African Union? Possibly it is; for the centuries have been a weary apprenticeship in misgovernment rather than in constitutional methods; but all the more surely does the long experiment stand condemned, and it may well give place to saner methods. As in personal, so in national life, the sole condition of mature development is
[479] responsibility. The father or ruler who jealously denies it to one come to years of discretion is a bungler or a tyrant, ignorant of the first principles of education. For all these centuries the Irish race has been in leading strings; and those most guilty of multiplying and tightening the bonds are naturally the enemies of its independence and of the only method ever discovered by God or man to secure the growth of virtue, the acquisition of strength, or the fulfilment of personal and national promise. Experience is the best, the only, teacher of practical politics; and the mistakes and losses in life incurred by folly or ignorance are our best discipline. To charge a people with incapacity who have never been trusted with power is the resort of stupid malice. Irishmen have vindicated before the world their fitness to fight its battles,

or command its armies; as captains of industry they have led in every land, and the British Empire above all is indebted to the statesmen, proconsuls, travellers, scholars and divines that have issued from the race. What a people to be denied the elementary rights of self-government! If Unionists are sincere in deploring the absence of a true spirit of citizenship in the Irish, what have they ever done to encourage it? Sympathy with men's difficulties, appreciation of their virtues, co-operation in their efforts, Christian charity and trust—these, and not suspicion, distrust, misrepresentation and opposition, should have been the Protestant contribution to the growth and happiness of a people, whom in private life they themselves always admit to be generous friends and neighbours.

Self-government must be based on representation, and the right of majorities. Recognized universally in the Empire, this simple dictate of justice is to be denied to Irishmen in their own land, because the great majority is Roman Catholic. "It is not constitutional" said Gladstone in 1886, "to refuse the demand of [480]
five-sixths of the duly elected representatives of a country"; and ever since then the representation has never changed nor has the demand abated. That it is resisted in the name of Religion, not Politics, we are not allowed for one moment to forget; and no one in Protestant circles is unfamiliar with the assertion, how ardently Home Rule would be welcomed if it were not for the Priest in politics and the dread of "Rome Rule." But let it be recognized that under free institutions it is the right of the majority to rule, irrespective of their religious creed; and that to deny that right in Ireland is to establish a tyranny of the minority—an oligarchy in these days of Democracy! Nothing can exceed the sincerity of men, good but blinded by prejudice, when on Belfast platforms they declare their desire for equality and hatred of ascendency. But what a ludicrous fallacy they fall into when with the same breath they assert their resolve never to submit to the Government of the great majority of their fellow countrymen.

In other words they, a small minority, contend for a union with the Parliament of another country for this express purpose, that by the aid of its votes they may override the unanimous wish of three-fourths of the people of their own land. This is the very gist of the Anti-Home Rule demonstration in Belfast on April 9th. It was not Irish in any true sense. The platforms crowded with sixty members of Parliament representing British Constituencies, presided over by noblemen such as a Grand Master of Orangemen and a great coal owner who has practically ceased to be an Irish landowner, addressed by eminent counsel who have transferred their services to the English bar for reasons best known to themselves, ex-ministers and aspirants to office in
[481] a Unionist administration—it was a brave show of party political force; but nothing can hide or minimize the fact that it is all avowedly an effort to support and intensify the claim of about half the population of Ulster, and one-fourth of the population of Ireland, to resist and overthrow the rights of Irishmen to the privileges of representative government. If the Unionists of Ireland sincerely desire equality and disavow ascendency in their own country, let them prove it by being willing to accept the conditions of life and legislation naturally imposed by the will of a majority, in the discussion of which they will possess and exercise a fair, or according to their ability, a preponderating degree of influence. But let them cease to demand in their country the predominance of social, political and religious ideals, natural perhaps to England and Scotland now, but alien to Ireland, and secured only by foreign, that is non-Irish, votes.

The representation of minorities on a complete system of proportional voting is an absolute necessity in Ireland. Considering the number of the population, there is very marked and wide-spread variety of opinion. The Orangemen of the cities are often democratic Radicals, however much evil associations may at times corrupt their good manners; Catholic Irishmen, even the clergy (notwithstanding the *semper eadem* cry), are

sharply divided by lines of severance that will appear when the present unnatural combinations pass out of sight, Unionist and Nationalist becoming meaningless; Nonconformists here, as elsewhere, differ from Episcopalians on important subjects; Molly Maguires, Sinn Feiners, Gaelic Leaguers have something to say as regards Irish life worth hearing; and all must find a voice in any true representation of the country's thought and purpose. The United Kingdom, too, probably needs such a reform in representation, and cannot do better than witness the trial of the [482] experiment on the political body of the sister island.

It is on such fundamental principles of government the argument for Home Rule stands, and Liberalism at all events would be untrue to its very genius in hesitating to confer the boon. Irish Home Rule has been the touchstone of Liberalism, and it is not by any accident that Unionists, who abandoned their old creed to refuse Ireland's plea, became arrant Tories, and have ceased to exist as a political party.

The objections made by Protestants are formidable and specious. They appeal to passion rather than to reason; they exploit religion in opposition to Christianity; they ignore history and flourish on journalism; they forget humanity's claims in their zeal for sectional interests.

The stock argument in Belfast appears to be that in the interests of “Empire” Home Rule is impossible. Yet Ireland was under the British Crown when 42,000 volunteers were enrolled under Lord Charlemont and the Duke of Leinster to protect her shores from foreign foes; the stigma of the word “Separatist” has been repudiated by every responsible Irish statesman; and so long as Britain's naval and military power lasts, the secession of 4 millions of people within one hour's sail is an absolute impossibility, should any one desire “the dismemberment of the Empire.” Let candid Englishmen consider a simple question; which is the more likely and the more intimidating, menace to the Empire: a discontented, disloyal and impoverished Ireland, or

one proud in its self-dependence, grateful to its benefactor, and united by every consideration of mutual protection and benefit? Or which will be of most credit to Britain in the estimation of her
[483] Colonies and of the civilized world?

Timid Ulstermen deplore "the loss of their birthright in the Empire"; their civil and religious liberties, they say, are imperilled, their commercial prosperity is sure to suffer. It is hard even to imagine the conception they have formed of their countrymen. Is it as fools or rogues, slaves or tyrants, they wish to caricature the inhabitants of the land, in which they so reluctantly dwell, for the delectation of ignorant foreigners? For none other can be imposed on by such diatribes. Are Irishmen engaged in a struggle for 150 years to gain independence and the rights of men, to signalize their victory by denying civil and religious liberty to their fellows; or are a people whose own industries have been ruined in the past by legal restraints on trade, whose enterprise and efforts to establish new industries and foster old ones are being rewarded with a few gleams of prosperity, dull or wicked enough to wish to injure commercial or manufacturing triumphs in the north of which they are proud? Ask the commercial travellers from Ulster, who enter every town in Ireland, whether their wares are scouted and themselves insulted because of Orange bluff or threats. No! Irishmen are neither fools nor bigots.

The ordinary method of producing prejudice on these topics is to recount the crimes and outrages that have darkened the past of Irish agrarian life. No one can deny their existence, or palliate their enormity. They were the inevitable incidents of war; one of the most bitter ever waged over such a period of years. It was a war of rebellion against misgovernment, of revenge for political crimes, a frantic struggle for life and home on the part of a peasantry down-trodden, ejected, starved; it was the last and successful phase of a great agrarian movement to secure the rights of free born men in the land they tilled.

Many crimes have been committed, but who can distribute the [484]
blame? and any fair historian will recollect the exasperation under which they were committed, the failure of every attempt at redress, the findings of Royal Commissions disregarded and the promises of politicians forgotten, the evictions and legalized tyranny of rack-renting landlords, and the steady decrease of this violence as constitutional agitation has gained a hearing and a more humane spirit has inspired Parliamentary action. But such crimes as were committed were never acts of religious persecution or violations of the civil liberties of Protestants as such. Roman Catholics who opposed the national movement, or sided with the party accountable for the wrong, suffered also; and it is absolutely unjust and unhistorical to quote the violence of an angry and a maddened people as prophetic, or even suggestive, of similar wrongs likely to be perpetrated under an Irish Government. If the Irish Roman Catholics desired to persecute Protestants, there has been plenty of opportunity to do so; and, in three-fourths of the country, life could have been made intolerable and impossible to farmers and merchants dependent on the goodwill of their neighbours. Yet a universal testimony to the contrary is borne by Protestants of every class and party in the middle and southern counties where Romanism is predominant. The charges of intolerance freely levelled at the Protestant of the north in connection with certain notorious incidents of the political campaign have been repelled and, it was supposed, answered by reference to the boycotting outrages of the land struggle; but what unprejudiced critic would ever admit that such incidents could be paralleled with, or afford any justification for, the petty tyranny to which men have been subjected in Ulster, because they dared to differ in opinion from the majority and to [485]
utter the expression of their deliberate convictions?

One of the most curious arguments relied on now against Home Rule, is the prosperity of Ireland under the Union. It used to be Ireland's miserable poverty and thriftlessness that

were assigned as proof of its unfitness for self-government; now the blessed effects of the self same Union have produced such prosperity that self-government is not needed or even wanted!

A daring orator in Belfast proclaimed "the independent Parliament of Ireland a dismal failure, and the Imperial Parliament a distinct success." The improved condition of Ireland is a matter of deep gratification, specially as a foretaste of a better future. But to boast of the prosperity of a country with its population reduced by one-half in fifty years, with its poor little agricultural holdings of a £10 valuation extending to one-half of the total, its sodden fields and ill-drained lands, its treeless hills and undeveloped mineral resources, its famished peasants and shoeless children carrying sods of peat to the village school, is a heartless jibe emanating from the wealthy capital of the North. The "distinct success" of a century of so-called Union government is an equally audacious flight of fancy. Most people would wish to find a contented people, living under the ordinary laws of constitutional government, advancing industries, growing population, and plentiful food as the tokens of a distinct success under a government of ever-increasing wealth and power: but seven famines desolated the land during the century; "for thirty-five years after the Union, Ireland was ruled for three years out of every four by laws giving extraordinary powers to the Government; and in the next fifty years (1835-1885) there were
[486] only three without Coercion and Crime Acts."[166] That for the boasted success of Unionism in Ireland! The present prosperity is due to the National movement, in response to which Gladstone secured the tenant right for the farmer, and disestablished the Church, commencing that long series of beneficent but belated reforms which have inspired the Irish people with hope, and of which the last and crowning gift of independent self-government awaits completion.

[166] "Irish Nationality" (Home University Library.)

To return to the more distinctly religious aspects of the question, though all that means liberty and progress ought to appeal to every Protestant's warmest sentiments, let us examine briefly the alleged dangers arising from the power of the Roman Catholic priesthood and their influence on a national government. It is ungenerous to forget all but the seamy side of the Priest's influence in Ireland. In many a dark day he was the poor man's only champion, and he has won a place of love in the people's heart not lightly granted or easily lost. But no one familiar with Irish life fails to notice a change in the relations of priest and people whether it be a portent of good or evil. The spread and consolidation of democratic feeling, the many ties between the cabin in Ireland and the children's home in America, the spread of education and the influence of the Press, are exercising in Ireland, as similar causes do elsewhere, a deep influence on the simple piety, or as some call it, the superstition of the people. The cry “no priest in politics” prevails as never before; and that their sphere of influence in limited to questions of faith and morals is being widely recognized by the clergy themselves. Influences at work in European Catholic countries must more and more reach Ireland, and possibly its danger is not from clericalism but from a slackening hold of the only form of Christianity that has ever [487] won the heart of the people. At all events Roman Catholicism in Ireland has never been an aggressive force forcing its faith on other communions, but seems content to be let alone and to minister to its own adherents unmolested, as it has not been in the past.

When Protestant interests such as education, temperance, Sunday observance, marriage laws, and morals generally, are said to be in imminent danger, what is it that is meant exactly? On such subjects there are interests that are essential, and others that are matters of opinion: very important to those who think them right, but of no weight to others. As to legislation on these questions, if Protestants imagine they have any claim or

chance to impose their views in a National Parliament as they have been accustomed to do, or try to do, by aid of English votes at Westminster, the sooner they are disillusioned the better. But if they are satisfied to secure essential interests, such as thoroughness in education, increased sobriety by temperance reform, sanctity for marriage, and liberty for Sunday observance according to the conviction of each, what ground have they to fear that the influence of the Roman Catholic clergy will be cast on the side opposed to their aims? There is a very wonderful ignorance in the mind of the ordinary Protestant as to the attitude of the Catholic clergy on moral and social questions. In temperance, for instance, no Church in Ireland can rival in extent or efficiency the work of the Capuchin Fathers, the Redemptorists, or the Pioneers, an organization formed by a Jesuit priest, and rivalling in thoroughness and success the "Catch-my-Pal" crusade of the Presbyterian Church. In education, too, of every grade
[488] the Roman Catholic Church advances with extraordinary zeal. True, there are Protestants who complain of the Roman Catholic opposition to "mixed education"—a palpably unfair complaint, whose underlying motive is a sectarian hope to weaken the hold of religion on the people. There has been nothing like unanimity among the Protestant Churches on the same subject. Each of them has tried its best to secure in the educational sphere its own denominational interests. It was the cry "Hands off Trinity" that killed Mr. Bryce's University Bill, which would have united the youth of Ireland in one grand university, in which Trinity might have been the proud leader of Irish University education. That legislation on education should be demanded on the lines of a mixed system is quite unreasonable, being a matter of very divided opinion; but as to the keen and successful competition of the Roman Catholic schools and colleges with all the older institutions in the country there is no question among those who know.

As to the moral interests of the community, it is a rather

daring assumption that they will be imperilled under a distinctly Nationalist government. The reputation of the Irish race for pre-eminence in the domestic virtues is a well established fact, and no incidents of later years can cast even a passing shadow on the fair fame of her sons and daughters. The standard of religious observance on such a matter as Sunday may be different from that of the Protestant Churches. In practice the latter have not much to boast; and experience gives no reason whatever to fear any interference with the freest pursuit of their religious convictions. The decree *Ne temere* and cases of the undoubted miscarriage of justice arising from it have created much discussion and distrust as to the validity, under an Irish Parliament, of the marriage bond. The sanctity of that bond in the eyes of the [489] Roman Catholic Church, to whom it is a Sacrament, cannot be doubted; and if the object of the decree is, as it appears to be, to prevent mixed marriages, it ought to win the approval of many Protestants who strongly condemn such alliances; but it is for the civil law and the Executive of any government to provide that marriages legally celebrated shall be upheld by all the power of the State. And Ireland, according to Mr. Asquith's Home Rule Bill, has no reason to dread any failure in that duty. As to the decree commonly known as *Motu proprio*, it never has been promulgated, or acted on, in Ireland or elsewhere in the British dominions. It was unearthed, after centuries of existence, by a party newspaper, and exploited for all it was worth, and a great deal more, to embitter anti-Catholic prejudices, and score a point in the Irish discussion.

As to Guarantees, opinion is much divided among Protestants. They are at best a temporary device to allay fear; and can never be a substitute for the real and honourable safeguards to be found in freedom and publicity of discussion, the spread of enlightenment and toleration, the growing spirit of Christian brotherhood and goodwill. The provisions in the Government Bill appear to be ample; but all paper guarantees are easily evaded, and it is on

more permanent and spiritual assurances Protestants must rely.

Seldom has Protestantism had a finer chance than she will have in Ireland under self-government, if only, inspired with the spirit of her Master and the love of her native liberty, she seeks not to grasp power, but to render service, if her idea of character be not the "old man" with his haunting memories of wrong done and suffered, but the "new man" of the Gospel, inspired by a fresh enthusiasm for the realisation of the Divine purpose in regenerated human society. No Protestant Church will perhaps ever be the Church of Ireland, as one powerful communion with a touch of the old arrogance claims to be; yet Protestantism may add something to the national piety and progress, nay, she may be another bulwark to the Christian faith in days of strain and stress, if she can exhibit to a naturally religious people a tangible proof of the possibility of uniting the Apostolic creed with the intellectual demands of modern progress, and in this way help to save the youth of Ireland from a desolating materialism. Thus Protestantism may yet be enabled to make some pious reparation for many an unholy deed done in her name to the most generous people under the sun.

[490]

Footnotes

Credits

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