Title: The Irish Constitution

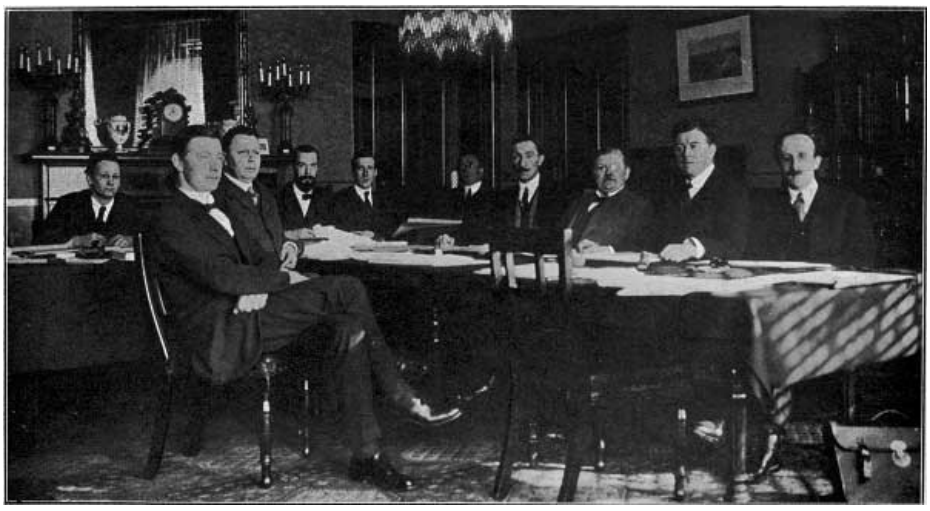
Author: Darrell Figgis

Release Date: May 30, 2010 [EBook #32612]

Language: English

Credits: Produced by Brian Foley and the Online Distributed Proofreading Team at https://www.pgdp.net (This file was produced from images generously made available by The Internet Archive/American Libraries.)

THE IRISH CONSTITUTION



Larger Image

THE CONSTITUTION COMMITTEE IN SESSION.

From left to right:—R. J. P. Mortished (*Secretary*), John O'Byrne, B.L.; C. J. France, Darrell Figgis (*Acting Chairman*), E. M. Stephens, B.L. (*Secretary*); P. A. O'Toole, B.L. (*Secretary*); James MacNeill, Hugh Kennedy, K.C.; James Murnahan, B.L.; James Douglas. (Prof. Alfred O'Rahilly and Kevin O'Shiel, B.L. were absent from the Session).

THE IRISH CONSTITUTION

EXPLAINED

BY
DARRELL FIGGIS

MELLIFONT PRESS, LTD.
KILDARE HOUSE,
WESTMORELAND STREET, DUBLIN

I INSCRIBE THIS BOOK
TO MY FRIEND
ARTHUR GRIFFITH

CONTENTS

Introduction

[Pg 5]

IRELAND AND A COMMUNITY OF NATIONS.

The articles that are now gathered together in this little book were first published in the *Irish Independent* at the invitation of its Editor. They were not written for publication in book-form; and they naturally suffer, in their present form, from the conditions that were first imposed on them, conditions proper to their original setting. With the exception of two of them, they were written rather in a spirit of exposition than in a spirit of analysis and criticism; and this intention was only departed from because it seemed that the two matters so dealt with departed, with differing degrees of flagrancy, from the original purpose of the Constitution, which was to make the mechanism of Government malleable at every stage to the will of the people of Ireland.

Whether one believes ardently in the faith that the will of a people should under all circumstances prevail, and that the forms of Government should at all times be submissive to that will, is indifferent. That is a question for the individual, with which I do not presume to interfere. One need only believe with l'Abbé Coignard that "a people is not susceptible to more than one form of government at the same period," to believe, further, that if one

asserts the derivation of all power and authority from the popular will, if that will be once fairly and honestly ascertained, it then follows that the will of the people is sufficient to itself, and that all forms of government must be made malleable to it. On that supposition, all frustrations and obstructions of, and impediments to, the constant exercise of that will must of necessity be cogs in the machinery of government; and for that reason in two articles I turned from exposition to criticism. [Pg 6]

Apart from these two matters, I held to the essentials of exposition, without turning aside to criticism of details; and I based that exposition on the original plan and structure, which are preserved in the present draft, of the Constitution. It is right that the Fundamental Law of a State should be fully discussed and debated before it be enacted; and when that debate occurs criticism will find details enough to fasten upon. But at the present moment it is the essential plan that matters—not the feudal trumperies with which it is adorned, like stage jewels stuck upon a comely and decent garment, marring its simple truth, but not otherwise injuring its effectiveness for its purpose. And it was because it seemed to me that these two matters departed from the spirit of this essential plan, by placing important parts of the Judiciary and the Executive beyond the ready control of the people or the people's representatives, that I dealt with them as I did. Apart from them I kept away from criticism.

Similarly I did not deal with certain matters anterior to the Constitution, in the light of which the Constitution can alone be understood. They lay out of sight of these articles, though they were essential to them, since they brought the Constitution, in its present form, into being. Chief among these is the historical fact that Ireland has, by Treaty, confirmed by the act of her Legislature, consented to enter a Community of Nations known at the moment as the British Commonwealth of Nations. We may disagree with this act; but it is an international fact; and without it the Constitution would not be what it now is. This factor in the result is therefore worth brief attention, by way of introduction to the present publication of these articles.

To anyone familiar with the constitutions of the nations that now comprise the Commonwealth of Nations the present Constitution will speak in an unaccustomed language. It is unlike any of them. It has clearly been planned as the result of a distinct and separate conception. The causes of the difference are, however, not very difficult to discover, and once seen are plain to understand. They constitute what may prove to be an international factor of the very first importance. [Pg 7]

These causes fall under, broadly, two heads. The first is that Ireland is not what these other nations were when their Constitutions were first framed. Nor is Ireland, indeed, what they are now. Canada, for example, and Australia, are English Colonies, first established by white men in a coloured population. The greater part of these white men draw their traditions and inspiration, their habits of thought and habits of public conduct, from the rootstock of the English nation. They look to England as their mother-country. But Ireland is an ancient nation and a mother-country in her own right. She has herself peopled the earth with her children. Her empire is as far-flung as England's. And if it is not based on military might, but linked by ties of memory, pride and love, it has not therefore proved itself any the less powerful internationally at times of crisis and danger for the mother at home.

Moreover, it was she who, when in the eighth and ninth centuries Europe fell into decay after the barbarian inroads, re-established and rebuilt European civilisation, sending her scholars with her books into every part of the continent of ruin. It was her missionaries, indeed, who first brought Christianity to England, and her scholars who taught the first English poet his letters. Before the name of England was heard, the name of Ireland was known and respected. She possessed an intricate, if uncompleted national polity when the neighbouring island was peopled by distinct and scattered populations of conquerors. By virtue of these ancient dignities she was accorded international rank long after England had risen to nationhood, and when invasion had brought her national polity to ruin and silenced the voice of poet and scholar. [Pg 8]

These are not matters merely of the past. If they were, they could be dismissed to the antiquity in which they would lie. But they live in the consciousness of a nation to-day; and therefore to-day they are a factor, to neglect which would be to neglect a prime element without which neither the present nor the future may be understood. Only the sentimentalist waves out of sight considerations that are unpleasant to him. The realist faces every element of being, conscious or unconscious; for he knows that only out of the sum of all those elements can life proceed, or creation begin.

For these ancient dignities have passed into the consciousness of every sort of Irishmen. It was, for example, Molyneux who, in his *Case of Ireland Stated* at the end of the 17th century, first among modern Irish writers based an argument upon them. Molyneux was an English colonist. In the wars of Tirconnell and Patrick Sarsfield he had fled to England, returning only when Ginkel the Dutchman had won the field for his master, now monarch of England. He regarded the ancient nation with aversion. Yet when the English Parliament harassed what he proudly conceived to be the ancient liberty of Ireland, he stated the case of that nation, stated it as his case, in a public document of historic moment; and the English Parliament caused his book to be burned by the public hangman.

The sorest part of his book was his reference to the Council of Constance of 1416. This Council may rightly claim to be the first of modern international congresses. At it a certain

question of precedence had arisen between France and England, which was referred to the Court of Heralds. In the judgment which was given it was stated as an international ruling that Europe was first constituted from four nations. These nations, in the order of their precedence, were Rome, Byzantium, Ireland and Spain. And Molyneux, the English colonist, [Pg 9] proudly referred to this ruling, and based a great part of his case upon it.

The breed of Molyneux is alive to-day. Political differences have divided it from the ancient race which furnished its arguments. But the pride is the same; the sense of possession is essentially the same, obscured though it may have been by the causes of difference; and when a new alignment of political parties has blent the two points of view into one outlook, and made the whole consciousness to merge in one, the living factor of ancient nationhood will arise with a new strength.

That strength will prove a factor for the future. The cause of it is registered in the present draft Constitution; and it is the first of the two causes that make it unlike those of the other nations with which Ireland is now confederate and co-equal. The second cause is curiously like, and yet curiously unlike, to the first. It is also derived from the fact of nationhood, but from the achievement of nationhood at the other end of history.

For the other nations of the Commonwealth are themselves not now what they were when their constitutions were first framed. They were then but colonies, on whom their mother-country was pleased to bestow constitutions—and if the pleasure was not always the most noticeable part of the bestowal, the legal smile did not diminish the fact of the gift. In their constitutions, therefore, the apron-strings are very much in evidence. It is clear from them that the mother did not propose to let the children wander far from her control, even though she permitted them to walk with their own feet. Not only in the actual provisions of these constitutions, but in their very conception and plan, drawn exactly according to English methods and from English experience, it is evident that a state of perpetual tutelage was imagined for the peoples to whom they were given.

That has now changed. The colonies have come to be nations, very jealous of their nationhood. They have grown with experience, have moved onward with time, and it would [Pg 10] go hard with anyone who attempted to remind them of what, nevertheless, their constitutions are a continual reminder. The consequence is that the provisions of these constitutions cannot be enforced since they do not square with experience. They encumber the documents which contain them as so much dead timber. They are sometimes carelessly, and more often dishonestly, described as legal fictions. But they are not legal fictions. They are dead letters—dead timber which a wise woodman would soon hew away. Life and experience have outgrown them; and this growth finds expression—if, unfortunately, not the full expression that might at one time have seemed possible—in the present draft Constitution. For under her Treaty with England Ireland agreed to take equal rank in the Community of Nations with the other members of it. Specifically she accepted the “law, practice and constitutional usage” of Canada; and that constitutional usage implies, not the dead timber of the Canadian Constitution, but the living tissue of her constitutional experience.

These two causes, then, have joined together to produce the draft of the Irish Constitution. From them was created the original plan of the Constitution, according to which Ireland takes her place, not only generally among all nations in virtue of her ancient right, but specially in a certain confederacy of nations in virtue of a Treaty of Peace, signed between her plenipotentiaries and England’s plenipotentiaries, and approved by both legislatures. To the most casual glance, it is indeed a most modern and forward-looking document; yet it draws from so ancient a fountain-head. And the conjunction of these two may prove of searching value, if rightly used, to Ireland’s influence in the world—provided that there be peace at home, without which a nation is nought. That influence may not be of the same kind as one had hoped before the Treaty of Peace was signed. But even if it be not of the same kind, its measure need not be less. It cannot be so immediate; and that is loss; but it may with wisdom and firmness prove ultimately to be more extensive. Whatever the means, the [Pg 11] end remains the same; and that end is the contribution in the comity of nations of the fruits of personality—without which neither men nor nations can plead a justification for life.

For when a nation such as Ireland joins a confederacy so composed, she by the mere fact of her addition transfigures the whole. This is not a fanciful figure of speech. It is a literal description of what has already occurred. In the case of no other nation of the Community, for example, has its advent been signalled by an International Treaty. That, in itself, is a transfiguration of the whole. Similarly, other nations of the Community had protested the co-equality of each and all; but the protestation had remained a protestation until it was formally declared for each and all by the claim made by and recognised for Ireland.

So it has proved in the very case of this Constitution. The full height of nationhood is the recognition of sovereignty; and the completest act of sovereignty of which a nation may be capable is to confer its Constitution on itself. With the exception of Great Britain, none of the other members of the Community were, when their constitutions were enacted, capable of this. Each of them received its Constitution as bestowed, not by the Act of its own Legislature, but by the Act of a suzerain Legislature. And that shortness of national stature remained until it was removed by the addition of Ireland to the Community. For Ireland will receive her Constitution by the Act of her own Constituent Assembly, not by the Act of any

suzerain Legislature. Whether the Constitution be or be not adopted by any other assembly neither gives nor detracts from the national authority it will possess. If it be so adopted, it will be adopted, not as giving it authority, but as the completing Act of ratifying the Treaty. That is to say, it will be adopted by the Parliament of Great Britain as concluding the interest of that Parliament in the international bargain of the Treaty; and it will be passed and prescribed by the Irish Assembly as giving it full force and effect in Ireland. And that is a full sovereign act. But, since all the members of the Community are declared to be co-equal, the advent of Ireland, therefore, has given the recognition of sovereignty to them all, and raised each to the full height of nationhood. [Pg 12]

The consequences of this are at the moment difficult to foresee fully; but they are consequences that the addition of Ireland to the Community has created, though in the fullness of time they were ready for her advent. It is certain that they will reach far and strike deep, not only within the Community, but towards other nations, not members of the Community. Already as between the six full members of the Community the thought of Empire belongs to the past; and the word and feudal trappings will follow the thought. Indeed, though the foolish trappings remain, in the text of both the Treaty and the Constitution the word has already begun to be supplanted by the word Community. And though it be true that words are only words, it is equally true that words are the parasites of thought, and cling to the mind long after their original uses are forgotten. To cause the relinquishment of an ancient word is itself a liberal accomplishment of no mean sort, as psychologists know; and none can say where new conceptions will not lead when once the barrier of words has been broken down.

These are, however, considerations for the future; and the future is only for those who are worthy of it—and not always even for such. Already a considerable change has been wrought; and that change is registered with all its faults in the present draft Constitution. The nation that caused the change is the same nation still, in spite of sad scattering of its national strength. It is still an ancient nation: not a colony: never a colony: deeply conscious of its historic heirlooms and prescriptive dignities. Ireland is still a mother-country, fully resolved to employ her empire of memory and love for the purposes which she and it judge worthy. Her place and power in the Community will prove to be of no mean degree, and of no small meaning for the nations outside that Community, as well for the peoples and nations within it, if she rally her strength around her and prove worthy of her destiny. When she shall have conferred a Constitution upon herself, within the limits of her contractual obligation in the Treaty, she will not have foresworn her heritage (unless she elect to do so); she will not have diminished her strength (unless she choose to dissipate it); but she will be able by a persistent purpose, of which she has already given her pledges, to contribute in the future as she contributed in the past, with a security that has not been allowed her for many centuries, to the benefit of nations. And it is to this end I dedicate this little book. [Pg 13]

[Pg 14]

The Irish Constitution [Pg 15]

I.

WHAT IS A CONSTITUTION?

During the early days of the second French Republic a customer entered a bookseller’s and asked: “Have you a copy of the French Constitution?” “We do not,” the bookseller politely replied, “deal in periodical literature.”

Now, to any student of history such a story is a sure indication of the time of which it is told. He need not inquire to know that the time was one of revolution, change, and unsettlement. He also knows the mind of the people of that time, for insecure conditions beget a nervous, restless fear. And these things are significant. They reveal a quality of constitution-making that is not always, or easily, remembered. For whatever changes may proceed in legislation —however many and rapid they be—as long as the Constitution, written or unwritten, remains intact, the State at least is stable and its foundations are secure.

Plainly, therefore, nothing should be written into a Constitution that is of a temporary, experimental, or questionable nature, or which should fall to the lot of ordinary law-making and the changing convenience of practice. A Constitution is that which is permanent, as far as anything in this world may be permanent. Even to amend it, or add to it, requires in all countries (except England, where the Constitution has not taken a written form) a procedure quite different from that of ordinary legislation. To change it, or recast it, requires a revolution. Such a revolution may not be accompanied by bloodshedding, or it may, but it is certainly accompanied by insecurity and unsettlement. [Pg 16]

It should, therefore, be the business of constitution-makers to prescribe only what to them is fundamental and irrefutable; to lay down the secure foundations of their State; and to leave all other matters to the experience of the nation, without seeking to shackle that experience by provisions that time may not commend. Otherwise, a convulsion may be necessary to get done what ordinary legislation could have accomplished without affecting the stability of the State.

This, then, is the first definition of a Constitution, that it contains the Fundamental Law of a State, and only the Fundamental Law. In England there is no such thing as a Fundamental Law. It is claimed by English constitutional lawyers that this is because Parliament is sovereign; but the historical truth is that in England Parliament exercises a sovereignty in fact which the King is supposed to exercise in theory; and any attempt to make the theory square with the fact by the writing of a Fundamental Law would lead, perhaps, to a surprising situation.

Yet in England certain fundamental rights are recognised, with which Parliament would not lightly tamper; and these amount in effect to a Fundamental Law, holding a higher rank than ordinary laws. In practically all other countries such rights are set forth in a document, different from all other legal documents, inasmuch as unless these other documents observe the conditions required in the first, and do not conflict with its provisions, they are null and void. In both sets of documents the laws of the realm are to be found; but the two sets of laws are of different sorts. One is fundamental and permanent; the other is by contrast casual and changeable.

This, then, is the second definition of a Constitution, not only that it contains the fundamental law of a State, but that it prescribes the manner in which all other laws must be made, and put limits and restrictions on all other law-making. In the American phrase, it is a “Frame of Government.” [Pg 17]

In English the words Constitution and Legislation do not carry on their face the relation of one to the other, and the distinction between them. In Irish the case is different. In Irish the word for Legislation is *Reacht*, and the word for Constitution is *Bunreacht*—fixed and foundation legislation. But even the distinction so simply carried on the face of these words does not complete the relation of one to the other. For that relation is precise; and consists in the fact that all laws comprising the *Reacht* must be built upon the foundation of the *Bunreacht*, and must be contained within the fixed limits of the *Bunreacht*. The moment they attempt to build elsewhere, or go outside those limits, that moment they cease to be binding on any citizen; and all citizens may claim the protection of the courts of law against them.

From this follows the third definition of a Constitution, which is that it contains the highest and completest sovereign act of a nation. A nation may confer a Constitution on itself, and that Constitution may contain no declaration that the people are sovereign; but the fact that the nation did so make their own Constitution is itself a declaration of sovereignty. Declarations of sovereignty in the body of a Constitution may be very wise; and they are always pleasant; but they are not necessary.

Similarly, a nation may make a Constitution for itself, and in that Constitution confer the chief executive authority on a person to be known as a king; and that person may be known in name as a sovereign; but the fact that he derives his power from the Constitution is evidence that, not he, but the people, are sovereign. His is only a sovereign name; theirs is the sovereign reality.

Such Constitutions were made in 1814 by Norway, in 1830 by Belgium, and only last year by “Jugo-Slavia.” In the last case the kingly line already existed before the Constitution was framed, and an oath was prescribed in it, according to which the King swore “to maintain the Constitution intact.” In the first two cases the kingly lines were not chosen until the Constitutions had been framed, when the chosen dynasties stepped into the places appointed for them, and carried out the functions defined for them. In each case, however, the authority of the king sprang, not from the divine right of kings, but from the divine right of the people, as set forth in the sovereign act of giving themselves a Constitution. [Pg 18]

How different the power of kings such as these from the power of the French monarch who in the 18th century declared, “L’Etat, c’est moi”—“I am the State.” He was right. He was sovereign. Sovereignty had to reside somewhere; and until the people arose and declared that it resided in them, and expressed that declaration in a formal Constitution, it continued to reside in the ruler who claimed it.

When, however, in 1787, the thirteen American States “ordained and established a Constitution” for their Union, then in the modern world the people came by their own. France quickly followed the example, but as a result of the wars which followed the world was thrown back into reaction. Throughout the 19th century, however, the statement of democratic sovereignty as a fundamental law of the State found expression in Constitution after Constitution; with the result that now, in modern practice, the existence of a Constitution is practically identical with a statement of national sovereignty.

There has hitherto been one chief exception; and that exception is of striking interest at the present time. For within the British Empire the theory has been that there is only one sovereign assembly, the Parliament at Westminster. It is true that the Constitutions of

Canada, Australia and South Africa were each drawn up by Constituent Conventions in the countries themselves; but by the prevalent theory none of these peoples were competent to confer these Constitutions upon themselves. They were not, that is to say, sovereign; and before the Constitutions they devised therefore could come of effect they had to be passed as Imperial Acts by the Parliament at Westminster. [Pg 19]

Yet that also has now changed. Ireland has wrought the change; and the deep influence of that change cannot be foretold. For the Dail elected to pass the Constitution will act, not as a Constituent Convention, but as a Constituent Assembly. It will not only devise the Constitution, with the present Constitution before it as a Bill for discussion, but, having devised it, will prescribe it; and thus, through their elected representatives, the people of Ireland will have conferred it on themselves as their Fundamental Law.

That is a sovereign act; and that act will differ in no degree from a similar act by any other sovereign people. From this, however, one last consideration follows; and, though it is simple, it is not usually remembered. For if the passing of a Constitution is an act of full sovereignty, and if that Constitution, being a Fundamental Law, restricts and limits all future law-making, then the assemblies to come which will pass those future laws will not be sovereign.

They will not be able to do what they will, and they will not be able to act as they will, for they must obey the requirements and act within the limits of the Constitution, as prescribed by the first Assembly, which alone was of full sovereignty. For this reason every nation has gone to great care to choose persons of special competence for the body which is to act as a Constituent Assembly—the body, indeed, which is to act as the first, and, so long as that Constitution shall remain, the last Sovereign Assembly of the nation. The act of prescribing a Constitution being the highest act that a nation can make, care has always been taken to make it the fullest and the freest. For, once done, it cannot be undone, except at great trouble, and perhaps as the result of great convulsion.

[Pg 20]

II.

THE PLAN OF THE CONSTITUTION.

To draw up a plan is almost inevitably to express a philosophy. In shaping the sequence and proportion of the parts which are to comprise the whole, the trick of the mind will out; and it is in that trick of the mind that, ultimately, all philosophies are contained. Perhaps there are few who, after consideration, would deny this in all the ordinary (greater or lesser) concerns of life; but many will think it strange in a matter so dry as the drafting of a Constitution. Yet even in the drafting of a Constitution it will be found equally true.

A Constitution may be likened to a pyramid, the apex of which is the Executive Authority, and the base the People. The first question that therefore at once arises is, where shall one begin first with this pyramid? But before this question can be answered, another must first be met; and it is, whether the base is hung from the apex, or whether the apex rests on the base? What relation has the Executive Authority (whether kingly, presidential or consular) to the People, and the People to the Executive Authority; and which, names and titles apart, is ultimately the Sovereign? These are ripe questions; and only in the making of the plan can they be answered.

I have already shewn that the writing of a Constitution is itself evidence that the people are sovereign, even though no statement to that effect is included in the writing. But when one comes to look in the Constitutions of the world it is curious to note the persistence with which that truth is overlooked. The Canadian Constitution, for example, having provided for the Union of Provinces by which the Federation was created, begins at once with the statement that “the Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen.” Nothing has been said about a Legislature —nothing about the people of Canada. The Constitution begins at once with an Executive Authority which nothing has brought into being, and which therefore exists of its own right, original and indefeasible, all things else in the Constitution depending from it. The pyramid is hung from heaven, for the philosophy of the plan is to be found in the mediaeval myth of the Divine Right of Kings. [Pg 21]

The Constitution of Canada consequently proceeds downwards from that apex to the Legislature; and in that Legislature, according to the philosophy, the Senate comes before the Commons. “There shall,” it says, “be one Parliament for Canada, consisting of the Queen, an Upper House, styled the Senate, and the House of Commons.” As for the base, it is found nowhere at all. The interest is exhausted before it is reached; and the People are not mentioned.

I have taken the Canadian Constitution because it is specially mentioned in the present draft of the Constitution of *Saorstat Eireann*; but the same supposition is found in many other constitutions, such as those of Denmark, Sweden, South Africa. In them are to be found the relics of the mediaeval theory of government, of a divine authority conferred on a family, which therefore ruled of its own right; and of its own grace summoned the subjects of that

authority for counsel and advice. Therefore in these constitutions it is assumed that the sovereignty is above and the subjection below—even though no one to-day supposes that the practical facts are what they assume them to be.

In the Irish Constitution, as in most modern constitutions, this order is inverted. The sovereignty is below, and the subjection is above. Never once throughout the Irish [Pg 22] Constitution (either in its original or its present form) are the people once considered as subjects, but always as sovereign citizens. The pyramid is based on the broad earth, in the divine right of the people; and a beginning is therefore made with the base, proceeding upward to the apex. The plan in fact is reversed because the philosophy is different.

The Constitution of *Saorstat Eireann* begins with the people, and with a statement of the sovereignty of the people. "All powers of Government," it says in Article 2, "and all authority, legislative, executive and judicial, are derived from the people and the same shall be exercised in *Saorstat Eireann* through the organisations established by or under, and in accord with, this Constitution." In this Constitution, therefore, the people of Ireland establish their own right, original and indefeasible, and all things and persons and institutions named or created by or under it depend from them. That is in the present, as it was in the original, draft. Whatever institution or organisation is established to act on their behalf, acts under an authority conferred by them; and in accord with the specific bestowal of that authority; and not otherwise. Whatever person or power is named, is named to act on their behalf; acts under the same authority; in accord with the specific bestowal of that authority; and not otherwise. The people confer of their own right; and what they may confer they may withdraw. If the authority they confer be abused or transgressed, it ceases thereupon to have any sanction or reverence, and possesses no binding effect. That is to say, in the terms of my figure, the apex of the pyramid rests on the base, is hung from no mythical divine right of kings, and has no support outside the people of Ireland.

The people, consequently, are citizens of a free state, not the subjects of authority. It is necessary, therefore, at once to state who are the citizens of this state, and what constitutes their citizenship. This the next article proceeds to define. In this article the whole question of future citizenship is referred to legislation. It properly belongs to legislation, since it [Pg 23] includes a number of complex matters and details quite unsuited to a Constitution. Yet there must be an original citizenship, otherwise the service of the state could not begin. Article 3, therefore, states what constitutes the original citizenship of Saorstat Eireann; and leaves all matters "governing the future acquisition and termination of citizenship" to be "determined by law," making it a constitutional provision, however, that "men and women have equal rights as citizens." And Article 4 provides that the official language of that citizenship shall be the Irish language.

From these original citizens, and from whomever shall be admitted to citizenship in the future, all the authority of the State derives under the Constitution. They are the base of the pyramid, and it is they who in the Constitution (according to the plan on which it is framed) confer on certain persons and organisations definite powers of Government in Ireland. But the authority which can confer, can also withhold; and from the powers which they grant, certain matters are withheld. For there are matters which comprise the fundamental rights of their sovereignty, with which no Government created by them can interfere. If the Government had existed, or had claimed to have existed, of its own original right, it could, being itself sovereign, have acted as it pleased; and in past times it did so. But since Government under the Constitution exists only by reason of an authority conferred by a sovereign people, these Fundamental Rights of their sovereignty are kept apart; and no authority—legislative, executive or judicial—and no power of Government is conceded the right to touch them.

Therefore in the first section of the Constitution, where the original authority of the people is stated, certain matters are withheld. They are described as *Fundamental Rights*. The liberty of the Person, the Inviolability of the Dwelling, Freedom of Conscience and the Free Practice and Profession of Religion, the Free Expression of Opinion, Free Assembly, Free [Pg 24] Association, Free Elementary Education, and the Inalienability of Natural Resources, are each dealt with in successive articles as forming the essentials of these rights. Before any powers are conferred, before any organisations or institutions of Government are created, these matters are put to one side and reserved. They belong to the people. None shall interfere with them. The people are sovereign, and they so decide.

Such is the plan, for such is the philosophy. The first section of the Constitution, therefore, includes what may be described as the base of the pyramid, resting on the soil of Ireland and established in the right of the People of Ireland. From that base the pyramid is built up toward the Executive Authority, in section by section, giving the logical order in which power is derived. Each section is based on that which precedes it; for the order is the same as in the original draft, and therefore the plan is preserved.

[Pg 25]

III.

THE MAKING OF LAWS.

All powers of Government may derive from the people, but the people cannot of themselves govern themselves. In simple small communities the people may gather together and frame the manner of their government from meeting to meeting (and only then when ancient custom has given them the practice and expectation of such assemblies); but among nations for a people to discipline and rule themselves it is necessary that they bestow recognised and definite powers of government on representatives of their choice. Such representatives, to be sure, have a habit of conceiving that they are rulers of their own right. Cases have even been known where they have endeavoured to obstruct the right of the people to depose them. But the truth is that such representatives are merely a convenience. They are a people's instruments, and no more. Without them the achievement of a common agreement, and the formulation of laws based on that common agreement, would prove so cumbersome as to be impossible. A people must therefore tolerate them with good humour; and keep them under proper control. And when such representatives have been chosen, they together form an organised body for the making of laws, and for the supervision and control of the execution of such laws.

Obviously, then, once a Constitution has stated the sovereign source of all authority, and defined the fundamental rights of that sovereignty, it is essential that it should prescribe the manner in which laws shall be made for the peace, order and good government of the whole [Pg 26] people. The second section of the Constitution, therefore, deals with the *Legislative Provisions* of the State. The most important of these, manifestly, is the creation of an organisation of representatives; but, owing to the tendency of representatives to arrogate powers to themselves, of late years the peoples of many States have insisted on a direct voice in the checking, and even in the making, of laws. This direct voice has been exerted by means of two instruments known generally as the Referendum and the Initiative. Wherever these prevail, the Assembly of Representatives is given only a limited power in the making of laws, the sovereign authority reserving to itself a constant and continuous control over its action. And in our Constitution both these instruments are given a place. For it is a sound rule that the people are generally better than their representatives—wiser of counsel, more disinterested of judgment—and it is therefore provided in the Constitution that there shall be an Assembly of Representatives, but that the people may require of that Assembly that laws be referred to them for final decision, or that laws be made to suit their desire.

The most important part of these legislative provisions, however, is the setting up of a National Assembly, or Synod, to be known as the Oireachtas. This is to be formed of two Houses, Dail Eireann and Seanad Eireann. There are many powerful arguments against the two-chamber system. In the end they all resolve themselves into a question of ultimate responsibility. In a simple illustration, if there be one thimble and one pea, it is easy enough to know where the pea is. But directly a second thimble is brought up beside the first, the difficulty of placing the pea becomes at once a problem. On the other hand, the arguments in favour of a second-chamber system also resolve themselves into a question of responsibility. For if there is only one chamber, without a second to check it and act together with it, there is, it is argued, a greater likelihood of its acting in an irresponsible manner, and of its running into hasty, ill-advised legislation. Its members, having acquired [Pg 27] the habit of concerted action, may moreover strike a bargain behind the people's back, even while preserving all the forms of opposition and discussion. With the two instruments of the Referendum and the Initiative in operation this danger is less likely, provided that the people be sufficiently alert. Yet it exists. In most countries, therefore, two chambers are the rule; and in our Constitution it is provided that there shall be two chambers, care being taken to fix responsibility ultimately in the first in case of doubt or delay.

Given two chambers, the difficulty is the creation of the Second Chamber. The First Chamber causes little difficulty, and is mainly a matter, not for the Constitution, but for an Electoral Law. The Second Chamber is a matter for the Constitution. Indeed, the question and creation of a Second Chamber, and the formation of the Executive Power, are the two foremost problems for the making of every Constitution. The first difficulty is to find for the Second Chamber a sufficient constituency, and the second difficulty is to find for it a proper function; and both these problems are essentially matters for the Constitution of a State. To answer both of them satisfactorily is the difficulty; and an examination of the constitutions of other countries reveals that in few cases have they been answered even to general satisfaction.

As for the constituency, it is clear that this cannot be the same as for the first chamber, otherwise the two Houses are simply repetitions. That is one consideration to be remembered. There is another. For from earliest times mankind has desired to call into its special councils those who have distinguished themselves in the conduct of its affairs. Folk may disagree with such persons, but they defer to them and hear them. What may be called the Senatorial Person is a recognised factor in the history of all nations. In the push and jostle of entry to the First House—where special and local interests are represented—such a Senatorial Person is most likely to be thrust aside, even if he or she be inclined to mingle in [Pg 28] the fray. He is consequently lost to the councils of the nation. How shall a place be found for him or for her; and when the place is found, what shall be the measure of his or her counsel?

Other nations have answered these problems in divers ways. None has answered them as they are answered in the Constitution of *Saorstat Eireann*. For it is clear that if there is to be a Second Chamber, the right place for such a Senatorial Person is in that Second Chamber,

since only thus is it possible to avoid making one chamber a mere copy of the other. In some countries, therefore, the Second Chamber is composed of persons on whom a title has been conferred—and on their children who succeed to that title. In other countries the Second Chamber is created by nomination—with at least the ostensible wish that only Senatorial Persons will be appointed. Both these methods have led to corruption. Both, moreover, have led to one fatal fault. For Second Chambers are mainly of value at times when the First Chamber is likely to rush to a mistake; and at such times no people are inclined to give careful heed to the counsel of persons whom they have not themselves chosen to give that counsel. They may be exactly such persons as they themselves would have chosen; but the fact that they did not choose them, the fact that they came there by the accident of birth, or the power of money, robs them of authority just when their authority is most required.

For this reason, the people's own choice of Senators is necessary to their efficiency and authority. In countries formed out of a Confederation this difficulty is evaded by the creation of the Senate from the Federated States, while creating the First Chamber directly from the whole people. But where there are no Federated States the people's direct bestowal of authority cannot be evaded if friction and loss of strength are to be avoided. Thus one returns to the original problem, which is, how the people shall choose a Senate which will not be a copy of the Chamber of Deputies, and how the Senatorial Person will find his way to [Pg 29] the councils of the nation, bringing with him an unanswerable authority.

Our Constitution meets this by making the whole country one constituency for the election of the Senate. The Deputies are elected from localities where they are known, and the special interests of which they are qualified to represent. Over those interests the major interest of the whole nation stands guard. It would be possible for persons to enter the Chamber of Deputies who are not known outside their own localities, but who are qualified to represent those localities. But by making the entire country one constituency for the election of the Senate, no merely local interest will have power to secure election. And thus it will be possible to find a place for the Senatorial Person from, as the Constitution reads, "citizens who have done honour to the nation by reason of useful public service, or who, because of special qualifications or attainments, represent important aspects of the nation's life." These persons are to be elected by Proportional Representation; and in order that the business of election shall not prove too cumbersome it is appointed that one-fourth of the Senate shall retire every three years, and that before each election a list shall be prepared by both Houses consisting of at least three times as many persons as there are vacancies to be filled.

Such form the two Houses of the Oireachtas. Their relation to one another is carefully defined. The Seanad is created as an advisory and delaying body, and the ultimate responsibility is given to the Dail. But endowed, as it is, with so strong an authority, vested in it by the entire nation voting as a whole, it is unlikely that its criticisms and advice can be neglected. For such criticisms will be furnished in the course of debates that will be read by the whole people; and behind them there will always be the possibility of appeal to the whole nation by Referendum, which the Senate can compel by a three-fifths vote. The Senate and the people, therefore, are placed in a watchful alliance over the acts and [Pg 30] proceedings of the Dail. Indeed, it is not unlikely that in the future the Senate and the people (by Referendum) will often be found in practical alliance against any attempt of the Dail to arrogate power to itself. The Senate has the power to make it so—a power of greater worth to it, and to the nation, than any constitutional right arbitrarily to obstruct legislation or to make legislation abortive.

[Pg 31]

IV.

THE PEOPLE AS LAW-MAKERS.

More is spoken of the two instruments of the Referendum and the Initiative (particularly the former) than is known about them; for in the countries where they have been adopted, folk use them and do not talk about them, and where they have not been adopted folk talk about them with ardour or with fear but without knowledge. Briefly they may be described as a retention by the sovereign people of sovereign authority over the making of laws.

The case is not without an historical parallel. In earlier times in other states the sovereign was the king, who said, "L'Etat, c'est moi." He was therefore the law-maker, by supreme right. He might summon the estates of his realm—Lords and Commons—to advise and counsel him; and he might, normally, allow their acts without his interference; but, being sovereign, he reserved the right to cause those acts to be referred to him for the final act of his will; and he at all times reserved the right to send a message to them instructing them to make laws on matters that seemed to him to require attention. This he did, being the sovereign. His parliament was the legislature of the State, but he preserved the Referendum and the Initiative, and held them as his sovereign authority over the authority deputed to the legislature.

When, however, sovereignty passed to the people, they assumed the attributes and the functions of that sovereignty. Where once the king's person and the king's dwelling, for

example, had been declared to be inviolable, now (as in our Constitution) the people's persons and the people's dwellings are declared to be inviolable. And where once the king reserved the right to veto and to initiate legislation, so now (as again in our Constitution) the people reserve the right to veto and to initiate legislation. And this is the plain and simple meaning of the two instruments of the Referendum and the Initiative. Their effect is to shift sovereignty from the parliament to the people, where the revolutions of the 17th and 18th centuries shifted sovereignty from the king to the parliament. [Pg 32]

It frequently happens that theories (for whatever they may be worth) are carried to their logical ends by practical people and not by theorists—for theory generally lags in the rear of practice. So it happened in this case. For it was the soberly practical and conservative people of Switzerland who in modern times first devised the Referendum, and then the Initiative. Since then they have been adopted in many countries, chief of which are Belgium, Australia, and many of the American States; and they appear in most of the constitutions recently adopted in Europe. But it is in Switzerland that they can most usefully be studied, for there they have a solid experience of ninety years continuous practice behind them.

The Referendum came first; and in its modern form was first adopted in the Constitution of the canton of St. Gall in 1831, the second and third articles of which read:

> Art. 2.—The people of the canton are sovereign. Sovereignty, which is the sum of all political powers, resides in the whole body of citizens.
>
> Art. 3.—It results from this that the people themselves exercise the legislative powers, and every law is submitted to their sanction. This sanction is the right of the people to refuse to recognise any law submitted to them, and to prevent its execution in virtue of their sovereign power.

From St. Gall it spread to each of the other twenty-two cantons, and to the legislation reserved to the Federal Assembly. Everywhere it is either compulsory for every law to be submitted to the people by Referendum, or for laws to be submitted when a given number of electors, within a limited period of time, have demanded that the Referendum be exercised, some of the cantons having adopted it in one form and some in another, the Confederation adopting it in the optional rather than in the obligatory form. Then, after the Referendum, followed the Initiative with quick pace, by which the people asserted the right, not merely that laws may be submitted to them for their approval or rejection, but that a given number of electors (in writing) may demand that the Legislature proceed without delay to legislate on any matter that they judge to be of sufficient importance. [Pg 33]

At first sight measures such as these appear to be revolutionary and drastic. In practice they have proved to be conservative. The mere existence of the Referendum has proved to be a check on legislation that might otherwise have been carried by parliamentary manœuvring for votes. The people, in actual fact, have proved to be both purer and more conservative than their representatives; and the tendency towards economy in the expenditure of public moneys has, in the main, been not the least benefit it has conferred. People are little inclined to study bills debated in the national assembly when they realise that they are powerless to change or check the measures it may pass. The power to throw out their representatives at the next general election is only a limited form of freedom, and it is illusory in face of the fact that those representatives are generally chosen by powerful political organisations which take care to select pliant and obedient tools. Only at times of great crisis does the wish of the people become vocal; and even then it is more usually neglected than not. But with the Referendum in their hands (especially with the Initiative added to it) the will of the people is always present. The people can hasten legislation where it moves slowly. They can retard it where it presses too fast ahead. They themselves can make the pace. And the effect on themselves is that, with this added responsibility, they take a quick interest in their own concerns. In the first place they break up the power of political organisations; and in the second place they themselves become alert and educated citizens, responsible and intelligent guiders of their own destinies. [Pg 34]

Nor are these the imaginings of theory. They are the practical outcome in every country or state where the Referendum and Initiative have been adopted. They have especially been the result in Switzerland, where, by means of the Initiative, the people have insisted on measures being passed that no political party would have dared to undertake. For there are many questions that cut clean across all parties, which dare not offend a majority or a minority, and where therefore the unity of the party comes before the interest of the nation. But minorities from all parties may join, and in Switzerland have joined, together to press for their adoption, with the consequence that the National Assembly has had no alternative but to frame legislation to deal with them. And when such legislation has come before the people by the Referendum, the people have in many cases adopted them.

The presence, therefore, in our Constitution of both the Referendum and the Initiative is therefore a sign that the people of Ireland are to be rulers in their own house—not merely as against foreign control, but as against the dominance of political parties. It means more. It means that responsibility is now definitely reposed in them. There are provisions which, in the present draft of the Constitution, could with advantage be changed. For to require, in Article 43, that a petition from the people of not less than "one-twentieth of the voters then on the register" is necessary (in the alternative of a vote of three-fifths of the Senate), before a measure may be put to the Referendum, is to impose an almost impracticable, and

certainly an extremely difficult, task. It reveals a fear of the exercise of the Referendum that [Pg 35]
experience in other countries does not justify. With the wide franchise allowed in the Constitution, the tendency will be to play into the hands of political parties, and one of the purposes of the Referendum is to destroy the power of political parties. Yet a slight change here may easily be made. And the essential fact is that the people of Ireland, having asserted the fact of their sovereignty, and defined its qualities, proceed to exercise its functions by holding over the Oireachtas the two instruments of the Referendum and the Initiative.

How will those functions be exercised? It is impossible to say, except that there is no education like the education of responsibility.

[Pg 36]

V.

THE EXECUTIVE POWER.

I have likened a Constitution to a pyramid, the base of which is the People, and the apex the Executive Authority. In all pyramids, it is the apex that first catches the eye, not the base; yet it is from the base upward that democratic constitutions are built. Usually it happens in most countries that the Executive masters the Law-making body, and that the Law-making body in turn masters the People. It is therefore necessary to remember, and to emphasise, that the true order is the other way about, the People being the master of the Law-making body, and the Law-making body the master of the Executive. In the degree in which that true order is asserted, and observed, the health of the State is preserved. In the degree in which it is neglected, or frustrated, there is suspicion, irritation, discontent. And as it is always the Executive which tends naturally, where it does not intrigue deliberately, to upset that order, by gathering all power into its hands, obviously the provisions respecting the formation and maintenance of Executive Power are the most critical part of every Constitution.

It was a wise man, and an experienced, who said that it did not matter to him who had the making of laws, so long as he had the administration of them. “For forms of government let fools contest,” said the poet; “That which is best administered is best.” And as the administration of a State is reposed in the care of the Executive Power, for the most part beyond the sight of the Law-making Assembly of the people, it is essential that the [Pg 37]
Constitution should provide that the Executive should at all times, and with the utmost flexibility, lie in the control of the Legislature. Otherwise, whatever safeguards may be provided that laws carry the consent of the people, the people will in the end find themselves baffled, unable to track into the thicket of secret decisions the will that they have elsewhere endeavoured plainly to express.

It is therefore the plain duty of every Constitution to keep the Executive simple and flexible, responsive always to the will of the Legislature, as the Legislature should always be responsive to the will of the people. Crises will arise in the history of every nation when the powers of the Executive require to be strengthened; and at such times those powers will be readily conceded. But it is the Legislature and the people which must decide; and the Constitution must leave them free to do so. It is no part of the duty of a Constitution to provide for a time of crisis, and to make that provision fixed and rigid for all later times, when circumstances will have completely changed.

All that it is the absolute duty of a Constitution to do is to state how the Executive shall be formed, and to define its responsibility to the Legislature. The rest may be left to the practice of the future. Certainly to indulge in experiments in a Constitution respecting so vital a part of it as the Executive (experiments unlike anything yet attempted in any Constitution in the world) is an extremely hazardous proceeding. Nor are such experiments necessary in a Constitution, since they may be tried in the course of ordinary legislation, and surrendered if they prove impracticable. It is one thing to experiment—which a Constitution should allow. It is another thing to be pledged to one’s experiments for ever—which is what a Constitutional provision is intended to mean.

The experimental nature of the provisions for the Executive in the present draft of the Constitution is manifest. They are unlike anything in any Constitution. They are quite unlike [Pg 38]
the provisions in the Swiss Constitution, from which the inspiration is supposed to be derived. Switzerland is a Confederation, consisting of twenty-two sovereign cantons, where only limited powers are conferred on the federal authorities. The twenty-two sovereign cantons differ widely in religion, language, habits and traditions. They are jealous of the federal authorities, and jealous of one another, and therefore insist that the Federal Council (which acts as the Executive), as well as the Federal Assembly, shall be representative directly of the languages, religions and traditions of different parts of the country. Certain of the larger towns and cantons, indeed, claim prescriptive rights to the appointment of members of the Federal Council. This Council, therefore, is appointed for the whole term of the Assembly by the two chambers of the Assembly sitting together, and are chosen by the two chambers, as the Constitution says, “from among all Swiss citizens eligible to the National Council.” The members of the Council may speak, and propose motions, in both chambers, but they may not vote in either, for they form a separate institution outside the

Assembly.

It is well to see what are the provisions for the Executive Power under the Swiss Constitution in order to note how widely the Executive in our draft differs from them. Good or bad, our draft stands or falls by itself, and cannot depend from the Swiss example, from which it differs both in itself and in the circumstance which it is designed to meet. The intention may be of the noblest; but intentions are only prophecies; and the Fundamental Law of a Constitution is scarcely the place to commit a whole people to a prophecy. The intention is to overcome party government, and is conceived at a time when parties are divided along lines that do not represent the economic issues that ordinarily influence the course of legislation. For parties, in so far as parties represent true economic issues, are a natural and inevitable medium for conducting the government of a country. Where parties [Pg 39] do not represent such issues, but are held together by unnatural organisations, they do, it is true, obscure the orderly government of a country. The remedy is to be found, not in an enforced and arbitrary creation of an Executive, but in the right election of the Legislature, of which the Executive must be a reflection if the Legislature is to work harmoniously with it, and keep a constant control over it. To attempt by arbitrary provisions to create an Executive that does not accurately and at all times reflect the Legislature (on whatever party lines that Legislature be composed) is automatically to remove that Executive from the continuous control of the Legislature. And it is surely the essential business of a Constitution to insist that that control be emphasised, not diminished. Otherwise, whatever be the intention, the Executive will become irresponsible, government will fall into the hands of rulers who can only with difficulty be removed, and constant friction will ensue.

Such is the broader line of argument. In detail the Executive provisions of the present draft seem even less defensible. For authority is reposed in an Executive Council formed of two parts. Of twelve Ministers, it is stated, four must be members of the Chamber and eight must not be members—or, if they were members before, they cannot continue to be members, and must resign. It is true that on the motion of the President of the Council these four (who are members of the Chamber) may be increased to seven; but the draft makes it perfectly clear that according to the normal procedure under the Constitution the proportions are to be four and eight; and it is on the normal, not on the exceptional, procedure that attention must therefore necessarily be laid.

Eight out of twelve Ministers, therefore, are not permitted by the draft to be, or to remain, members of the Legislature. If they were members before their appointment as Ministers, they must resign. Consequently, within a few days of a General Election, bye-elections become necessary in respect of so many Ministers as were elected as deputies—although [Pg 40] other Ministers who are elected as deputies may continue to remain both as Ministers and as deputies. The General Election, however, was held under the Constitution on the principles of Proportional Representation. But bye-elections, in such a case, cannot be held according to Proportional Representation. They become a party tussle between two or more candidates. The first effect of this arrangement, therefore, is to increase the number of elections, with their confusion and unrest, to create party contests in their strongest form, and to undo the proportional representation of the nation in the Legislature. Someone of an entirely different party might be returned in such a bye-election from the person who resigned on appointment as Minister; and the representation of minorities be directly injured as a consequence.

That would be the immediate result. The next to follow would be that the nation would find itself faced with the danger of an Executive within an Executive. For the eight external Ministers are to be appointed for the whole life of that Chamber. They are to be nominated by a Committee itself specially elected for that purpose. They cannot be removed during the life of that Chamber unless the Committee finds that they have been guilty of malfeasance, incompetence or disobedience to the will of the Chamber—definite sins of omission which are not always easily susceptible of proof. This is of itself sufficient to remove them from constant control by the Chamber. But the four internal Ministers are, for some reason, to be appointed in quite a different manner, and they hold office by quite a different tenure. They are to be appointed on the nomination of the President of the Council. They can at any time be removed by an ordinary vote of the Chamber. They must therefore study the Chamber, and devise their policies to suit its will, for they are subject to its constant control.

The whole twelve, it is true, are said to form one single Executive Council. But what are the chances of this? Is it not only too clear that the four internal Ministers, since they can be [Pg 41] removed by an ordinary vote (which the eight cannot), will frequently, and in most larger matters, meet and act separately together in coming to their decisions? Will not necessity drive them to this? But this would mean at once, not one Executive Council, but two—one within the other. This is acknowledged to be a dangerous practice. We know what happened in England when during the European war a similar practice was adopted, and how soon it became necessary to change it. And is it not equally clear that they will, and must, use the majority that keeps them in power to make the eight external Ministers subservient to their will, if their policies cross, without calling them into council? For the policies of all Ministers cross, and inter-cross, and should do so if there is to be a harmonious and healthy administration, especially in questions and policies of finance.

Ultimately the temptation will always be present to these four internal Ministers to get subservient persons nominated to the positions to be held by the eight external Ministers.

They themselves will have come to power by a majority of the Chamber. Of that majority they will be the acknowledged leaders; and it would be strange if they did not use that majority to find eight external Ministers to their liking. But where this happened (as happen it certainly would, in the ordinary human probabilities of the situation) a very remarkable result would come to pass, unlike anything in the history of representative government. This is, that the Four would in practice dictate the Executive policy of the Eight, but they would not be answerable to the Chamber for the administrative conduct of those eight departments. They would require what must be done, but they would not themselves be responsible for the manner in which it was done, or whether it were done at all. For the Eight would have been nominated for the life of the Chamber by a special Committee, they would not be members of the Chamber, they would not be susceptible to a vote of lack of confidence, but could only be removed when the Committee which nominated them had found them guilty of some public misconduct in their administration. [Pg 42]

The first result of this amazing separation of executive and administrative responsibility would be that the Chamber, looking from one to the other in the attempt to fix the ultimate responsibility, would find itself with only the vain shadow of control. For the Eight would in theory be responsible to it, but in practice—certainly on all major matters of policy—would be directed by the Four. Yet the Four could not be held responsible for the doings of the Eight. And the second result would be that the Eight would be little more than Civil Servants. Yet they would not be Civil Servants. They would neither be Ministers nor Civil Servants, having neither one kind of responsibility nor the other.

The baffling consequence would be that the Chamber would not only lose control over the Eight, but, because of the same division between executive and administrative responsibility, would lose control over the whole Executive (including the Four) in respect of functions ascribed to the Eight. It is in the details of administrative practice that the control of the Legislature is usually most important; and it is in just these details that, by the division of the Council into two kinds of Ministers, with different methods of appointment and removal and different sorts of tenure, that the Chamber will under these provisions have lost its control. It is true that it would have the remedy of putting out the Four; but few Chambers, having appointed the head or heads of a Government, desire to throw them out except on some fundamental, paramount issue. The remedy might be worse than the evil; and thus, by its reluctance to take so drastic a step, and by the division of responsibility, it would lose its continuous control over the Executive which is the very breath of legislative freedom.

It is unnecessary to point, further, to the danger of nominating a large part of an Executive under these circumstances through a Committee. It is notorious that Committees are, or can be made, more easily accessible to intrigue than larger assemblies. The Chamber itself should be its own Committee for the selection of Ministers, on the recommendation of the President of the Council, with whom they would have to work. This provision still further removes the Executive from the control of the Chamber. And so the order of responsibility is inverted, which the plan of the Constitution elsewhere so constantly emphasises. For the People may at all times, by the Referendum and the Initiative, control the Legislature. But the Legislature cannot, under these provisions, at all times and so simply control the Executive. And so control fails just at the point where authority tends most to arrogate power to itself. [Pg 43]

Incidentally, also, the Legislature loses what generally has proved its greatest source of strength. For the best informed critics of any Chamber are those who once were Ministers, who appreciate the responsibility of Ministers, and who temper their words as members with their knowledge and experience. But, under these provisions, a member who is appointed as one of the external Ministers ceases to be a Member. If he therefore finds it incumbent on him to resign, because of disagreement with his colleagues of the Executive (Inner or Outer), he ceases to be both a Minister and a Member, and his service and knowledge are lost to the Chamber—not to speak of the loss of detailed information on the cause of the particular issue of his resignation, on which the Chamber may wish enlightenment. Indeed, such a provision as this seems peculiarly arbitrary and meaningless.

There is, indeed, much virtue in the liberty of the Chamber to appoint as Ministers persons who may be specially qualified, but who may not be members. In the jostle at the hustings to enter a Chamber of but two hundred members it is unlikely that the best ability would always succeed, if it were so much as willing to share the fray. A Legislature should therefore not be hampered in the choice of its Executive by restricting that choice to two hundred persons. If persons, not members of the Chamber, were appointed as Ministers, clearly they could not vote; but they could be present, could speak, and could propose motions on behalf of the Executive of which they were members. But the whole Executive should share an equal responsibility, and be subject at all times to the continuous control of the Legislature, of which they are the servants, not the masters. [Pg 44]

[Pg 45]

VI.

THE JUDICIARY.

The three organic parts of every Constitution are the Legislature, for the making and enacting of laws, the Executive, for the execution and administration of laws, and the Judicature, for the interpretation and enforcement of laws. These three comprise the powers of Government which a people bestow on certain organisations which they create for that purpose, in the sovereign act of conferring a Constitution on themselves. The authority which such organisations shall henceforward exercise in Ireland derive, under the Constitution, from the people of Ireland; and from no right or power, pretended or real, existing elsewhere.

The first of these three organic parts, obviously, is the Legislature, since laws cannot be executed or interpreted until they first exist. The second, equally obviously, is the Executive, since laws, having come into existence, must first be put into execution before they can be liable to interpretation, or before they can be said to require enforcement. But when a Legislature and an Executive have been brought into existence, as necessary organisations for a people's government of themselves, a Judicial organisation at once becomes necessary. For no law can so be made as of itself to fit each particular case. Laws, by their nature, are of general meaning, and must be interpreted to the particular instance where its construction is questioned. And there is (unhappily) no law that is not sometimes altogether challenged, and set at defiance, when therefore the law made by the people at large must be [Pg 46] enforced on the individual, and its defiance punished.

Unfortunately few people regard their Judicature with the same pride of possession with which they (sometimes) regard the Legislature, and even the Executive. Even when folk disapprove of their law-makers and their ministers, they disapprove because they conceive they have acted mistakenly on their behalf, whereas they conceive of judges as having acted from a malignancy inborn in them or in the system, with the kind of disapproval reserved for those who are created and are destined to act against their behalf. That is—in most countries, and especially in Ireland—a legacy from evil days, when judges were not the people's judges, but whips sent forth through the land by some person who claimed to be sovereign. With the reversal of sovereignty, however, the judges become the people's judges; the courts are the people's courts, where the laws of their own making are interpreted; the judicial system is the people's system; and it is for the people to insist that this attitude is observed, not only by them, but by those who interpret the laws and administer justice. For, under the Constitution, no judge sits in any court in the land save by an authority bestowed on him by the people, in the Constitution which they confer on themselves. And it is for the people to remember that fact; for only by that memory will it be recognised in the courts themselves—and, indeed, only thus will it deserve to be recognised there.

It is not, however, necessary that the details of the judicial system should be worked out in the Constitution. It is not, indeed, desirable that they should be (a consideration worthy of attention, not alone here, but in connection with the provisions for the Executive also), for such details belong to later legislation. All that is required in the Constitution is the general outline of the Judiciary, and a statement of its organic relation to the other parts of the powers of government created under it. How that outline will be completed, and the details of the organic relation made good, must be dealt with in a subsequent Judiciary Act, [Pg 47] preceded probably by a Judiciary Commission established to review the whole of the present system and to report to Government on the changes required. In the meantime the present system will continue, subject to the principles and plan of the Constitution, which is the law fundamental to the later Act, and therefore at once of effect in respect of its general principles and plan.

According to that plan the entire system of courts and titles that derive from ancient feudal practice is abolished. A new and simple system comes into existence, comprising a number of courts, civil or criminal, of original instance and a Court of Final Appeal. The Court of Final Appeal is to be known as the Supreme Court, and the chief of the courts of first instance as the High Court. In these courts all cases are entered, and the Civil Authority of the Nation is made paramount in all circumstances. "The jurisdiction of Courts Martial," says Article 69, "shall not be extended to or exercised over the civil population save in time of war, and for acts committed in time of war, and in accordance with the regulations to be preserved by law. Such jurisdiction shall not be exercised in any area in which the civil courts are open or capable of being held, and no person shall be removed from one area to another for the purpose of creating such jurisdiction." Moreover, soldiers themselves are relieved from Courts Martial, unless they are on active service, except for purely military offences. For Article 70 reads: "A member of the armed forces of the Irish Free State not on active service shall not be tried by any Court Martial for an offence cognisable by the Civil Courts."

It may be asked, however, how safeguards such as these, together with the qualities of sovereignty declared in the Constitution to be the Fundamental Rights of the people, shall be protected. For it is a temptation to all governments to find an easy way out of difficulties by riding roughshod over rights and safeguards, however earnestly they may be declared. There is only one answer. In the making of constitutions there can be only one answer. It is [Pg 48] that the Judiciary is the People's Judiciary, and the third part of the organic whole of Government which the people create. Article 64, therefore, reads that "the judicial power of the High Court"—with appeal to the Supreme Court—"shall extend to the question of the

validity of any law having regard to the provisions of the Constitution." The Judiciary is the interpreter of laws. It is therefore the interpreter of the Fundamental Law. And it is therefore the interpreter of the Fundamental Law and the protector of the Fundamental Law, as against all other laws of the Legislature that may violate it, not to say arbitrary acts of the Executive that may neglect it.

It must be so. There is no other way to protect the guarantee of fundamental rights written carefully in a people's constitution. Without some such provision a Constitution might be written in water, and its guarantees set aside by any powerful executive, or any executive not instantly answerable to the people's will. A provision of this kind is, therefore, a necessary democratic safeguard. It is true that in the United States the judicial review of the Supreme Court over legislative and executive acts has led to unfortunate decisions and much acrimonious discussion. The evils of an institution are always apparent, and no institution but has its evils. The evils that would have come into existence had that institution not been there, however, are not apparent. They are the incalculable part of the bargain; and, being incalculable, are inevitably neglected in argument. Yet they may prove to be the overwhelming factor of the argument. So it is in this case. It would be blindness to neglect it. The mere existence of the Judicial Review in the United States has unquestionably prevented many an arbitrary act of the Executive in defiance of the rights ensured by the Constitution; and if the Supreme Court has, as it undoubtedly has, abused its power of interpretation, the remedy is, not to sweep away that Judicial Review, and so to jeopardise the provisions of the Constitution, but to amend the Constitution in plainer terms, or to [Pg 49] amend the Supreme Court. For it is plain that without Judicial Protection of the Fundamental Law (as the Judiciary is required to protect, interpret and enforce the ordinary law) its clearest provisions could be neglected at pleasure.

I may take only one instance. Article 9 of the Constitution protects the right of free expression of opinion, the right of free assembly, and the right of forming associations not opposed to public morality. Now it hardly needs to be said that no Government likes the expression of opinions hostile to itself. And no Government likes associations formed to bring its hour to an end. Under the Constitution the minorities of the day have the honest chance of becoming the majorities of the morrow in a peaceable manner. But what would be the worth of this honest chance before a powerful Government unless these protections, these rights of a sovereign people, were placed in the care of the third institution of the Constitution, the institution entrusted with the interpretation and enforcement of laws?

It is true that the Judiciary may abuse its power (since power is nearly always abused) by interpreting social reform, let us say, to be "opposed to public morality." But in this connection, it is right to remember, first, that judgment is not reserved only to one Court, but to two Courts—to the High Court, with appeal to the Supreme Court. And it is right to remember, next, that the people have always in their possession the instruments of the Initiative and the Referendum, by which they may require either the Fundamental Law or later laws to be amended to meet their need. There are, therefore, considerable safeguards in the Constitution against abuse. Yet, even so, because one-fourth of a fundamental right may be jeopardised by an abuse of the Judicial Power, that is no reason why four-fourths should be surrendered to the abuse of the Executive Power.

Therefore the Judiciary is placed in care of the provisions of the Constitution, not to imperil [Pg 50] but to protect them. The rights conferred in the Constitution are the People's rights. The Constitution is the People's Constitution. The Judiciary is the People's Judiciary. It is for the people, by alert and active citizenship, to make them so in every real sense.

[Pg 51]

VII.

THE QUESTION OF APPEALS.

In the section dealing with the Judiciary one provision lends itself at once to criticism. It is hostile, on the face of it, to the entire spirit of the Constitution. It has everywhere created bitterness and irritation among the other co-equal members of the Commonwealth of Nations, which Ireland has now joined. If the purpose of life, therefore, is to learn from experience as one may reasonably believe, in spite of an apparently united conviction to the contrary, a new State at the outset of its career would be well advised not to create trouble for the future, and others would be well advised to honour that quite reasonable wish. And yet in this provision there lies hid a principle of very great meaning, if it could be extracted, separated from its feudal lumber, and wrought upon creatively.

I refer to the provision at the end of Article 65. The article itself reads:

> "The Supreme Court of the Irish Free State shall, with such exceptions (not including cases which involve questions as to the validity of any law) and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court. The decision of the Supreme Court shall in all cases be final and conclusive, and shall not be reviewed or capable of being reviewed by any other Court, Tribunal or Authority whatsoever."

To which, in the present draft, the following apparently contradictory words are now added: [Pg 52]

> "Provided that nothing in this Constitution shall impair the right of any person to petition His Majesty for special leave to appeal from the Supreme Court to His Majesty in Council or the right of His Majesty to grant such leave."

According to this article as it now stands the Supreme Court of the Irish Free State is the highest court of appeal for all citizens of that State; but if any citizen, or any corporation, desires to affront the sense of those amongst whom he, or it, lives, he or it may carry a case elsewhere, outside the country altogether. This is known as the right of appeal to the Judicial Committee of the Privy Council. The right is rooted in the principle of Crown prerogative—a prerogative which has been removed in the highest questions of life and death, but which apparently exists in smaller matters, although there too it has been described by no less an authority than Professor Berriedale Keith as "in process of obsolescence," so far as the other members of the Commonwealth are concerned.

Apart from the theory of the matter, however (a theory vested in an outworn feudalism), what is its effect in practice? That practice can be investigated on its merits, without the least prejudice; and it will be found that it has not produced justice, and that it has proved fruitful of increasing irritation and anger.

In the first place, such a right of appeal out of the country defeats the ends of justice by placing a premium on wealth. It has so proved among the other members of the Commonwealth. It is obvious that it must be so. For it requires a large purse to carry a case out of the country, once it has been well handled in at least two courts at home. Therefore the experience in Canada, Australia and S. Africa is that only strong corporations take advantage of such a right of appeal, because only strong corporations possess the moneys, [Pg 53] and only strong corporations can afford to defy local feeling, since local feeling cannot react easily against anything so powerful while so intangible as a corporation.

In the second place, it defeats the ends of justice because it is an appeal to a court where the local circumstances are not familiar, and where it may even happen (as it will certainly happen in the case of Ireland) that the very axioms of the law may not be rightly apprehended. For a central court of appeal of this kind supposes uniform circumstances and uniform law. Now the circumstances manifestly are not uniform. Yet neither is the law likely to be uniform. The example of S. Africa may be taken. In S. Africa the law in force is Roman-Dutch law, not the English Common Law. It has therefore proved that the Judicial Committee has been required to handle an instrument with which it is unfamiliar. The same will apply in Ireland, where it has already proved, notoriously, that the principles of the law known familiarly as "Brehon law" have worked in opposition to the black-letter precedents of English law.

In addition to this, however, it is to be remembered that the lawyers composing the Judicial Committee are obviously unfamiliar with the principles underlying the structure of our Constitution, since they are quite unlike the principles with which they themselves have to deal. One need not argue which are the better. It is enough that they are unlike. A mechanic cannot be supposed to deliver impartial justice between two farmers in a matter of farming economy. The famous case of the Loch Neagh fisheries is enough to prove that only those who are familiar, not only with Irish circumstances, but with Irish history, can expect to deliver justice in Irish matters.

Moreover, there is a further consideration, which the plain facts of the case require should be firmly stated—and which the experience of other nations of the Commonwealth emphasises. It is that under the chief of the two heads under which such appeals to the Judicial Committee would fall the very intention to do impartial and indifferent justice could [Pg 54] not presumed in advance. For all such appeals involve two classes of cases. The first deals with appeals from interpretation of the ordinary law. The second deals with appeals from interpretations of the Fundamental Law of the Constitution. Now appeals from an interpretation of the ordinary law heard in some country where the principles of that law are unfamiliar would, as has been indicated, involve injustices enough; but they would concern only the individual or some corporate enterprise. The injustice would exist; but it would be limited; and lawyers of another country might be supposed to wish to search for justice, even if the trading enterprise had its seat in their own nation and the individual were Irish. But a Constitution is the very charter of a nation's freedom.

Cases concerning an interpretation of the Constitution are vital to a whole people, and, as between two nations, vital to international safety and polity. And such cases could, under the circumstances, only arise between two nations, Ireland, whose the Constitution is, and England, whose the Constitution is not, and where parties might arise to power who would intrigue to impeach that Constitution. Moreover, in England it is frequently the practice to recruit the higher offices of the Judiciary, not from men of acknowledged skill in the achievement of equity, but rather from men who have snatched a casual eminence in the heat of party strife, men of political passions and political prejudices, who have come to the front by the very profession of partisanship. It is such men who will form for the most part the lawyers of the Judicial Committee. Even if the road to that Committee were of the straightest and purest legal character, no reasonable person would expect it to deliver impartial judgment on the Fundamental Law of another nation, especially if an adjustment of the liberties of two nations were concerned, one of those nations being, more than

conceivably, their own. But since the road is, admittedly, neither of the straightest nor of the purest, the expectation of impartial and indifferent justice would be a fool's dream. And where a Court exists from which a people presumes injustice in advance, the wells of security and good order are at once poisoned. [Pg 55]

Yet, even supposing that these questions of justice are neglected, how is the system likely to work? How has it, in fact, worked elsewhere? Assume that a case has been decided in a certain way by the Supreme Court in Ireland. It is carried to the Judicial Committee, which decides in favour of the opposite party. How is such a decision of the Judicial Committee to be put into effect? Such cases have occurred in Australia; and the Australian High Court has refused to recognise the decisions of the Judicial Committee, or to give them effect. Special legislation therefore at once became necessary; but the obvious fact which emerged was that the Judicial Committee had no machinery to put decisions into effect which were contrary to local feeling. Of the last of these cases the Australian Premier said at the "'Imperial Conference,' 1917," that the "decision was one which must have caused great embarrassment and confusion if it were not for the fortunate fact that the reasons for the Judicial Committee's decision are stated in such a way that no Court and no Council in Australia has yet been able to find out what they were."

It is little wonder that Mr. Hughes in the same speech should have said that "Australia's experience of the Privy Council in constitutional cases has been, to say the least of it, unfortunate." He also read an extract from a resolution of the Final Court of Appeal of New Zealand, which declared of the Judicial Committee that "by its imputations in the present case, by the ignorance it has shown in this and in other cases of our history, of our legislation, and of our practice, and by its long delayed judgments, it has displayed every characteristic of an alien tribunal."

The spokesmen for the other States present were equally emphatic. "I think," said Sir Robert Borden for Canada, "we have had just about enough Appeal Courts, and I think the tendency in our country will be to restrict appeals to the Privy Council rather than to increase them." "There is," said Mr. Rowell for the same State, "a growing opinion that our own Courts should be the final authority." "You know what our opinion is in S. Africa," said Mr. Burton. "In our Constitution we have abolished the right of appeal to the Privy Council as a right. There is no such right with us at all, but the Constitution merely says that any right residing in the King in Council to grant special leave to appeal shall not be interfered with." [Pg 56]

These utterances, and the entire course of history on this matter, reveal an irritation which has grown with experience. The mechanism is merely a mechanism, and it has not worked well. It has injured harmony, and it manifestly has not brought justice. Even assuming that the Irish courts should agree that the decision in any individual case appealed from should stand, it could equally well argue that that decision could not be held to govern other cases; and the effect of such a decision would be to make the appeal nugatory in law.

Besides all of which, the right to allow such appeals to the Judicial Committee is based, ultimately, on the acknowledgment of the supremacy of British legislation; and the plain intention of our Constitution is that this supremacy is not acknowledged, each party to the Treaty being a co-equal member of a larger Community. Not only, therefore, are the practical reasons against such a right of appeal, but there is no substance in the Constitution to make such a right allowable.

There is, indeed, nothing that can be said in favour of such a provision, from the point of view either of justice, of law, of equity or of harmony. If it be destined to remain, it is to be hoped that it will remain a dead letter. Otherwise it will lead to boundless friction and ill-will, internal and external.

Yet there is an excellent principle embedded in this provision. It is very deeply, and perhaps almost inextricably, embedded; but it is there. For if a number of nations are to join together as co-equal members of a Community, plainly there should be some common Court to which all can appeal with equal confidence. Ireland and England, for instance, have made a Treaty. Either side may violate that Treaty. Who is to judge between them? Is the appeal to be to the arbitrament of strength? If so, what of the co-equality of the Community? It becomes an idle phrase, however separate one may claim to be from the other. [Pg 57]

The case may be carried even further. A case exists for such a Court, not only in respect of their interdependent relations, but not less in respect of their internal relations. It may even happen that the citizen of a State, or a combination of citizens, may have a plain case to be carried to such a Court as against their State, if a Court of sufficient impartiality could be established. States are not always immaculate of justice, particularly to minorities.

Can such a Court be found? I believe it can. An exposition of the present draft of our Constitution is not the place to give the details of such an alternative. It is sufficient to say that there is such an alternative, for which provision could therefore be made in substitution of the present provision, against which the requirements of justice and the entire experience of the Commonwealth rises in evidence.

[Pg 58]

VIII.

FUNCTIONAL COUNCILS.

It is the duty of a Constitution, not merely to provide for the present, but to leave itself lissom and flexible for the development of the future. If those developments can in any way be foreseen, it is its duty further, to indicate them by allowing specifically for them, without of necessity pledging the future to them. How far these indications may profitably be carried is a question not so easy to answer. Times differ. Constitutions made at a time of fixed social and political ideas, are necessarily fixed in their provisions. Constitutions made at a time, such as the present, when social and political ideas are rapidly shifting and changing must needs indicate the likelihood of change in certain directions; and make allowance for such changes. It is therefore striking to notice that in nearly every Constitution made during and since the Great War such indications are scattered freely. And from that fact alone the historian of the future could tell with assurance that these were years of rapidly changing conceptions.

We in Ireland cannot but have a share in these changes. Fortunately for us, heirs of an ancient tradition, in looking forward we look backward, and in looking backward we look forward. We may, and often do, use phrases identical with those used by other nations; but in many cases it will be found by the thoughtful student that what to them is often social theory, to us is a slumbering historic memory. Very frequently this will be found to be the case. [Pg 59]

An indication of this kind, that looks both forward and backward, is to be found in Article 44 of our Constitution. This article has aroused considerable interest. It reads:—

> "The Oireachtas may provide for the establishment of Functional or Vocational Councils representing branches of the social and economic life of the Nation. A law establishing any such Council shall determine its powers, rights and duties, and its relation to the government of the Irish Free State."

As a matter of curious interest it happens that the German Constitution contains an article very similar to this; but the conception had been in development in Ireland for some years. It had, indeed (as I endeavoured to shew in a little book on *The Gaelic State*, published in 1917), been a slumbering memory of the Irish Nation during the centuries when the characteristic political conceptions of the people were frustrate and idle, as they may now be put into practical development. It had been worked out in practical detail for one of our largest and most important industries in the Report on Sea Fisheries of the *Commission of Inquiry*, published in 1921. And it had actually, though imperfectly, been in operation for another great industry since 1896 in the Council of Agriculture.

What, then, are these Functional (or Vocational or Occupational) Councils for which provision is made, and on what political or social conception do they rest? One need not travel outside the present draft Constitution to discover the need for them. For in this Constitution, as in most constitutions, the people are, outside this one Article, considered in only two of the three relations that go to make up their lives, and which therefore constitute the complete life of the Nation. All the persons of the State are considered either as individuals or as citizens. But these two descriptions do not exhaust their lives. In addition to being individuals and citizens they are also workers in some craft, industry, trade or profession. Indeed, it is seldom they have time to be individuals, and it is seldom they are reminded that they are citizens. For good or for ill, these are only occasional parts of their lives. But they are never permitted to forget the parts they are required to play in the social and economic life of the Nation. [Pg 60]

The Constitution establishes their rights as individuals putting these rights beyond the reach of interference either of those who make or those who execute the law. It also establishes their rights as citizens, certifies the manner of their action as citizens, and derives all authority in the State from those rights and actions. But these are only the lesser, however supremely important, parts of our lives. The greater part of our days is, for each of us, packed with the thoughts are cares of our functional lives. We are more frequently, in the intake and output of our lives, blacksmiths or architects, or whatever else, than we are individuals or citizens. Have we not rights and duties there too, both for ourselves and to the Nation; and should not the Constitution make provision for this, the larger part of our lives, as well as for the lesser parts? Can provision be said to have been completely made either for our own lives or for the interplay that constitutes the life of the Nation if this aspect be neglected?

We are faced at once with a difficulty. Seeing that we have the experience of it, it is easy to perceive how we can be represented in the State as citizens. How can we be represented in the State in respect of our functions? To answer this question one may turn to an instance that lives before us, an example from elder days when such an order of society was familiar. For in old Ireland (as in other nations) guilds were a recognised form of the industrial life of the nation. They were also, though not known by that name, a recognised form of the professional life of the Nation. And as a relic of those times we have to-day what is in effect a guild of Lawyers. The lawyers of Ireland, for example, are organised as a whole, with a Council representative of the profession as a whole. That Council, representative of all who [Pg 61]

practice as lawyers, is a responsible body, not only to the lawyers who are represented in it, but to and in the State on behalf of the legal profession. It is responsible for the honour and good conduct of lawyers. It is responsible for the economic maintenance of its constituents. No lawyer is allowed to practice except by consent of the Legal Council—that is to say, except by the consent of all other lawyers. The legal profession as a whole—in the legal sense, as a Person—protects its own honour, protects the individual lawyer, protects the public interest (in theory, at least), and requires a guarantee of efficiency and rectitude from every lawyer before he is allowed to practice his profession.

So it was in ancient Ireland. At that time, when the Assembly of the Nation met, the lawyers, or 'brehons,' met in a Council of their own. The administrative heads of each unit of local government met in a Council of their own. The Recorders, or *Seanchaidhe*, of the local petty states, met in a Council of their own. And each Council was responsible for the administration of its own concerns. Each Council drew up its own regulations, for the conduct of it own duties in the State, and for the protection of its own 'functional' rights. Each Council, in the modern legal phrase, was a responsible 'Person,' and was by the State, as it existed at that time, entrusted with the conduct and administration of its own affairs, subject to the general execution of the public interest.

It lay with the Assembly of the Nation to co-ordinate the whole in the public interest. Whether this was or was not done effectively in olden times is indifferent to the present problem of Functional Councils in the modern State, with its better organisation and more perfect national sense. The problem of organisation is very real, but it does not affect the necessity of functional representation and functional responsibility in the State. It is, for example, absurd that persons unfamiliar with architectural problems, however highly placed [Pg 62] in the nation they may be, should be entrusted with architectural decisions that require special training and knowledge. It is equally absurd that a person unfamiliar with the needs of the Fishing Industry should, because for political reasons he should happen to be chosen as Minister of Fisheries, make proposals and be responsible for decisions that affect the present livelihood of fishermen and the successful future of the Fishing Industry. These matters must be reposed in the care of representative Functional (Occupational or Vocational) Councils, that should be required to render account, on the one hand, to the Function which they represent, and, on the other hand, to the State on behalf of that Function.

When such an organisation of the social and economic life of the Nation has been achieved, then, and only then, will it be possible to say that all parts of the life of the Nation have been brought within the reach and authority of the Constitution. It may be objected that these matters lie in the future. That is true. The Constitution allows for them, and by allowing for them indicates that they should be, and probably will be, the natural development of the future of the Irish Nation.

Draft Constitution of the Irish Free State [Pg 63]

PRELIMINARY.

These presents shall be construed with reference to the Articles of Agreement for a Treaty between Great Britain and Ireland set forth in the Schedule hereto annexed (hereinafter referred to as "the Scheduled Treaty") which are hereby given the force of law, and if any provision of this Constitution or of any amendment thereof or of any law made thereunder is in any respect repugnant to any of the provisions of the Scheduled Treaty, it shall, to the extent only of such repugnancy be absolutely void and inoperative and the Parliament and the Executive Council of the Irish Free State shall respectively pass such further legislation and do all such other things as may be necessary to implement the Scheduled Treaty.

[Pg 64]

SECTION I.—FUNDAMENTAL RIGHTS.

Article 1.

The Irish Free State/Saorstat Eireann is a co-equal member of the Community of Nations forming the British Commonwealth of Nations.

Article 2.

All powers of government and all authority legislative, executive, and judicial, are derived from the people and the same shall be exercised in the Irish Free State/Saorstat Eireann through the organisations established by or under, and in accord with, this Constitution.

ARTICLE 3.

Every person domiciled in the Irish Free State/Saorstat Eireann at the time of the coming into operation of this Constitution who was born in Ireland or either of whose parents was born in Ireland or who has been so domiciled in the area of the jurisdiction of the Irish Free State/Saorstat Eireann for not less than seven years is a citizen of the Irish Free State/Saorstat Eireann and shall within the limits of the Irish Free State/Saorstat Eireann enjoy the privileges and be subject to the obligations of such citizenship, provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship [Pg 65] in the Irish Free State/Saorstat Eireann shall be determined by law. Men and women have equal rights as citizens.

ARTICLE 4.

The National language of the Irish Free State/Saorstat Eireann is the Irish language, but the English language shall be equally recognised as an official language. Nothing in this Article shall prevent special provisions being made by the Parliament/Oireachtas for districts or areas in which only one language is in use.

ARTICLE 5.

No title of honour in respect of any services rendered in or in relation to the Irish Free State/Saorstat Eireann may be conferred on any citizen of the Irish Free State/Saorstat Eireann except with the approval or upon the advice of the Executive Council of the State.

ARTICLE 6.

The liberty of the person is inviolable, and no person shall be deprived of his liberty except in accordance with law. Upon complaint made by or on behalf of any person that he is being unlawfully detained, the High Court/Ard Chuirt and any and every judge thereof shall forthwith enquire into the same and may make an order requiring the person in whose custody such person shall be detained to produce the body of the person so detained before such Court or Judge without delay and to certify in writing as to the cause of the detention [Pg 66] and such Court or Judge shall thereupon order the release of such person unless satisfied that he is being detained in accordance with the law.

ARTICLE 7.

The dwelling of each citizen is inviolable and shall not be forcibly entered except in accordance with law.

ARTICLE 8.

Freedom of conscience and the free profession and practice of religion are inviolable rights of every citizen, and no law may be made either directly or indirectly to endow any religion, or prohibit or restrict the free exercise thereof or give any preference, or impose any disability on account of religious belief or religious status, or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at the school, or make any discrimination as respects State aid between schools under the management of different religious denominations, or divert from any religious denomination or any educational institution any of its property except for the purpose of roads, railways, lighting, water or drainage works or other works of public utility, and on payment of compensation.

ARTICLE 9.

The right of free expression of opinion as well as the right to assemble peaceably and without arms, and to form associations or unions is guaranteed for purposes not opposed to public morality. Laws regulating the manner in which the right of forming associations and [Pg 67] the right of free assembly may be exercised shall contain no political, religious or class distinction.

ARTICLE 10.

All citizens of the Irish Free State/Saorstat Eireann have the right to free elementary education.

ARTICLE 11.

The rights of the State in and to natural resources, the use of which is of national importance, shall not be alienated. Their exploitation by private individuals or associations

shall be permitted only under State supervision and in accordance with conditions and regulations approved by legislation.

SECTION II.—LEGISLATIVE PROVISIONS.

A.—The Legislature.

Article 12.

A Legislature is hereby created to be known as Parliament/Oireachtas of the Irish Free State/Saorstat Eireann. It shall consist of the King and two Houses: the Chamber of Deputies/Dail Eireann and the Senate/Seanad Eireann. The power of making laws for the peace, order and good government of the Irish Free State/Saorstat Eireann is vested in the Parliament/Oireachtas.

[Pg 68]

Article 13.

The Parliament/Oireachtas shall sit in or near the city of Dublin or in such other place as from time to time it may determine.

Article 14.

All citizens of the Irish Free State/Saorstat Eireann without distinction of sex who have reached the age of twenty-one years and who comply with the provisions of the prevailing electoral laws, shall have the right to vote for members of the Chamber of Deputies/Dail Eireann, and to take part in the Referendum or Initiative. All citizens of the Irish Free State/Saorstat Eireann without distinction of sex who have reached the age of thirty years and who comply with the provisions of the prevailing electoral laws, shall have the right to vote for members of the Senate/Seanad Eireann. No voter may exercise more than one vote and the voting shall be by secret ballot. The mode and place of exercising this right shall be determined by law.

Article 15.

Every citizen who has reached the age of twenty-one years and who is not placed under disability or incapacity by the Constitution or by law shall be eligible to become a member of the Chamber of Deputies/Dail Eireann.

Article 16.

No person may be at the same time a member both of the Chamber/Dail Eireann and of the Senate/Seanad Eireann.

[Pg 69]

Article 17.

The oath to be taken by Members of Parliament/Oireachtas shall be in the following form:—

> I ..... do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established, and that I will be faithful to H.M. King George V., his heirs and successors by law in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations.

Such oath shall be taken and subscribed by every member of the Parliament/Oireachtas before taking his seat therein before the Representative of the Crown or some person authorised by him.

Article 18.

Every member of the Parliament/Oireachtas shall, except in case of treason, felony, or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of either House, and shall not be amenable to any action or proceeding at law in respect of any utterance in either House.

Article 19.

All reports and publications of the Parliament/Oireachtas or of either House thereof shall be privileged and utterances made in either House wherever published shall be privileged.

[Pg 70]

Article 20.

Each House shall make its own rules and Standing Orders, with power to attach penalties

for their infringement and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.

ARTICLE 21.

Each House shall elect its own Chairman and Deputy Chairman and shall prescribe their powers, duties, and terms of office.

ARTICLE 22.

All matters in each House shall, save as otherwise provided by this Constitution, be determined by a majority of the votes of the members present other than the Chairman or presiding member, who shall have and exercise a casting vote in the case of an equality of votes. The number of members necessary to constitute a meeting of either House for the exercise of its powers shall be determined by its Standing Orders.

ARTICLE 23.

The Parliament/Oireachtas shall make provision for the payment of its members and may in addition provide them with free travelling facilities in any part of Ireland.

[Pg 71]

ARTICLE 24.

The Parliament/Oireachtas shall hold at least one session each year. The Parliament/Oireachtas shall be summoned and dissolved by the Representative of the Crown in the name of the King and subject as aforesaid the Chamber/Dail Eireann shall fix the date of re-assembly of the Parliament/Oireachtas and the date of the conclusion of the session of each House provided that the sessions of the Senate/Seanad Eireann shall not be concluded without its own consent.

ARTICLE 25.

Sittings of each House of the Parliament/Oireachtas shall be public. In cases of special emergency either House may hold a private sitting with the assent of two-thirds of the members present.

SECTION II.—LEGISLATIVE PROVISIONS.

B.—THE CHAMBER OF DEPUTIES/DAIL EIREANN.

ARTICLE 26.

The Chamber/Dail Eireann shall be composed of members who represent constituencies determined by law. The number of members shall be fixed from time to time by the Parliament/Oireachtas, but the total number of members of the Chamber/Dail Eireann shall not be fixed at less than one member for each thirty thousand of the population, or at more than one member for each twenty thousand of the population: Provided that the proportion between the number of members to be elected at any time for each constituency and the [Pg 72] population of each constituency, as ascertained at the last preceding census, shall, so far as possible, be identical throughout the country. The members shall be elected upon principles of Proportional Representation. The Parliament/Oireachtas shall revise the constituencies at least once in every ten years, with due regard to changes in distribution of the population, but any alterations in the constituencies shall not take effect during the life of the Chamber/Dail Eireann sitting when such revision is made.

ARTICLE 27.

At a General Election for the Chamber/Dail Eireann the polls shall be held on the same day throughout the country, and that day shall be a day not later than thirty days after the date of the dissolution and shall be proclaimed a public holiday. The Chamber/Dail Eireann shall meet within one month of such day, and shall unless earlier dissolved continue for four years from the date of its first meeting, and not longer. The Chamber/Dail Eireann may not at any time be dissolved except on the advice of the Executive Council.

ARTICLE 28.

In case of death, resignation or disqualification of a member of the Chamber/Dail Eireann, the vacancy shall be filled by election in manner to be determined by law.

[Pg 73]

SECTION II.—LEGISLATIVE PROVISIONS.

C.—The Senate/Seanad Eireann.

Article 29.

The Senate/Seanad Eireann shall be composed of citizens who have done honour to the Nation by reason of useful public service or who, because of special qualifications or attainments, represent important aspects of the Nation's life.

Article 30.

Every University in the Irish Free State/Saorstat Eireann shall be entitled to elect two representatives to the Senate/Seanad Eireann. The number of Senators, exclusive of the University members, shall be fifty-six. A citizen to be eligible for membership of the Senate/Seanad must be a person eligible to become a member of the Chamber/Dail Eireann, and must have reached the age of thirty-five years. Subject to any provision for the constitution of the first Senate/Seanad the term of office of a member of the Senate/Seanad shall be twelve years.

Article 31.

One-fourth of the members of the Senate/Seanad Eireann exclusive of the University members shall be elected every three years from a panel constituted as hereinafter mentioned at an election at which the Irish Free State/Saorstat Eireann shall form one [Pg 74]
electoral area and the elections shall be held on principles of Proportional Representation. One member shall be elected by each University entitled to representation in the Senate/Seanad every six years.

Article 32.

Before each election of members of the Senate/Seanad Eireann (other than University members) a panel shall be formed consisting of:—

(a) Three times as many qualified persons as there are members to be elected of whom two-thirds shall be nominated by the Chamber/Dail Eireann voting according to principles of Proportional Representation and one-third shall be nominated by the Senate/Seanad Eireann voting according to principles of Proportional Representation; and

(b) Such persons who have at any time been members of the Senate/Seanad (including members about to retire) as signify by notice in writing addressed to the President of the Executive Council their desire to be included in the panel.

The method of proposal and selection for nomination shall be decided by the Chamber/Dail and Senate/Seanad respectively, with special reference to the necessity for arranging for the representation of important interests and institutions in the country; Provided that each proposal shall be in writing and shall state the qualifications of the person proposed. As soon as the panel has been formed a list of the names of the members of the panel arranged in alphabetical order with their qualifications shall be published.

[Pg 75]

Article 33.

In the case of the death, resignation or disqualification of a member of the Senate/Seanad Eireann (other than a University member) his place shall be filled by a vote of the Senate/Seanad. Any Senator so chosen shall retire from office at the conclusion of the three years period then running and the vacancy or vacancies thus created shall be additional to the places to be filled under Article 31. The term of office of the members chosen at the election after the first fourteen elected shall conclude at the end of the period or periods at which the Senator or Senators by whose death or withdrawal the vacancy or vacancies was or were originally created would be due to retire; Provided that the fifteenth member shall be deemed to have filled the vacancy first created in order of time and so on.

In case of the death, resignation or disqualification of a University member of the Senate/Seanad, the University by which he was elected shall elect a person to fill his place, and the member so elected shall hold office so long as the member in whose place he was elected would have held office.

SECTION II.—LEGISLATIVE PROVISIONS.

D.—Legislation.

Article 34.

The Chamber/Dail Eireann shall in relation to the subject matter of money bills as

hereinafter defined have legislative authority exclusive of the Senate/Seanad Eireann.

A money Bill means a Bill which contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration or regulation of [Pg 76] taxation; the imposition for the payment of debt or other financial purposes of charges on public moneys or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; subordinate matters incidental to those subjects or any of them. In this definition the expressions “taxation,” “public money” and “loan” respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes.

The Chairman of the Chamber/Dail shall certify any bill which in his opinion is a money bill to be a money bill, but, if within three days after a Bill has been passed by the Chamber/Dail, two-fifths of the members of either House by notice in writing addressed to the Chairman of the House of which they are members so require, the question whether the Bill is or is not a money bill shall be referred to a Committee of Privileges consisting of three members elected by each House with a Chairman who shall be the senior judge of the Supreme Court able and willing to act and who, in the case of an equality of votes, but not otherwise, shall be entitled to vote. The decision of the Committee on the question shall be final and conclusive.

ARTICLE 35.

The Chamber/Dail Eireann shall as soon as possible after the commencement of each financial year consider the Budget of receipts and expenditure of the Irish Free State/Saorstat Eireann for that year, and, save in so far as may be provided by specific enactment in each case, the legislation required to give effect to the Budget of each year shall be enacted within that year.

[Pg 77]

ARTICLE 36.

Money shall not be appropriated by vote, resolution or law, unless the purpose of the appropriation has in the same session been recommended by a message from the Representative of the Crown acting on the advice of the Executive Council.

ARTICLE 37.

Every Bill initiated in and passed by the Chamber/Dail Eireann shall be sent to the Senate/Seanad Eireann and may, unless it be a Money Bill, be amended in the Senate/Seanad Eireann and the Chamber/Dail Eireann shall consider any such amendment; but a Bill passed by the Chamber/Dail Eireann and considered by the Senate/Seanad Eireann shall, not later than two hundred and seventy days after it shall have been first sent to the Senate/Seanad, or such longer period as may be agreed upon by the two Houses, be deemed to be passed by both Houses in its form as last passed by the Chamber/Dail; Provided that any Money Bill shall be sent to the Senate/Seanad for its recommendations and at a period not longer than fourteen days after it shall have been sent to the Senate/Seanad, it shall be returned to the Chamber/Dail which may pass it, accepting or rejecting all or any of the recommendations of the Senate/Seanad, and as so passed shall be deemed to have been passed by both Houses. When a Bill other than a Money Bill has been sent to the Senate/Seanad a Joint Sitting of the Members of both Houses may on a resolution passed by the Senate/Seanad be convened for the purpose of debating, but not of voting upon, the proposals of the Bill or any amendment of the same.

[Pg 78]

ARTICLE 38.

A Bill may be initiated in the Senate/Seanad Eireann and if passed by the Senate/Seanad shall be introduced into the Chamber/Dail Eireann. If amended by the Chamber/Dail the Bill shall be considered as a Bill initiated in the Chamber/Dail. If rejected by the Chamber/Dail it shall not be introduced again in the same session, but the Chamber/Dail may reconsider it on its own motion.

ARTICLE 39.

A Bill passed by either House and accepted by the other House shall be deemed to be passed by both Houses.

ARTICLE 40.

So soon as any Bill shall have been passed or deemed to have been passed by both Houses, the Executive Council shall present the same to the Representative of the Crown for the signification by him, in the King’s name, of the King’s assent, and such representative may withhold the King’s assent or reserve the Bill for the signification of the King’s pleasure; Provided that the Representative of the Crown shall in the withholding of such assent to or

reservation of any Bill, act in accordance with the law, practice, and constitutional usage governing the like withholding of assent or reservation in the Dominion of Canada.

A Bill reserved for the signification of the King's Pleasure shall not have any force unless and until within one year from the day on which it was presented to the Representative of the Crown for the King's Assent, the Representative of the Crown signifies by speech or [Pg 79] message to each of the Houses of the Parliament/Oireachtas, or by proclamation, that it has received the Assent of the King in Council.

An entry of every such speech, message or proclamation shall be made in the Journal of each House and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the Records of the Irish Free State/Saorstat Eireann.

ARTICLE 41.

As soon as may be after any law has received the King's assent, the clerk, or such officer as the Chamber may appoint for the purpose, shall cause two fair copies of such law to be made, one being in the Irish language and the other in the English language (one of which copies shall be signed by the Representative of the Crown to be enrolled for record in the office of such officer of the Supreme Court as the Chamber/Dail Eireann may determine) and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies so deposited, that signed by the Representative of the Crown shall prevail.

ARTICLE 42.

The Parliament/Oireachtas shall have no power to declare acts to be infringements of the law which were not so at the date of their commission.

ARTICLE 43.

The Parliament/Oireachtas may create subordinate legislatures, but it shall not confer thereon any powers in respect of the Navy, Army or Air Force, alienage or naturalisation, [Pg 80] coinage, legal tender, trade marks, designs, merchandise marks, copyright, patent rights, weights and measures, submarine cables, wireless telegraphy, post office, railways, aerial navigation, customs and excise.

ARTICLE 44.

The Parliament/Oireachtas may provide for the establishment of Functional or Vocational Councils representing branches of the social and economic life of the Nation. A law establishing any such Council shall determine its powers, rights and duties, and its relation to the government of the Irish Free State/Saorstat Eireann.

ARTICLE 45.

The Parliament/Oireachtas has the exclusive right to regulate the raising and maintaining of such armed forces as are mentioned in the Scheduled Treaty in the territory of the Irish Free State/Saorstat and every such force shall be subject to the control of the Parliament/Oireachtas.

SECTION II.—LEGISLATIVE PROVISIONS.

E.—REFERENDUM AND INITIATIVE.

ARTICLE 46.

Any Bill passed or deemed to have been passed by both Houses may be suspended for a period of ninety days on the written demand of two-fifths of the members of the [Pg 81] Chamber/Dail Eireann or of a majority of the members of the Senate/Seanad Eireann presented to the President of the Executive Council not later than seven days from the day on which such Bill shall have been so passed or deemed to have been so passed. Such a Bill shall be submitted by Referendum to the decision of the people if demanded before the expiration of the ninety days either by a resolution of the Senate/Seanad Eireann assented to by three-fifths of the members of the Senate/Seanad Eireann, or by a petition signed by not less than one-twentieth of the voters then on the register of voters, and the decision of the people on such referendum shall be conclusive. These provisions shall not apply to Money Bills or to such Bills as shall be declared by both Houses to be necessary for the immediate preservation of the public peace, health or safety.

ARTICLE 47.

The Parliament/Oireachtas may provide for the initiation by the people of proposals for laws or constitutional amendments. Should the Parliament/Oireachtas fail to make such provision

within two years, it shall on the petition of not less than one hundred thousand voters on the register, of whom not more than twenty thousand shall be voters in any one constituency, either make such provisions or submit the question to the people for decision in accordance with the ordinary regulations governing the Referendum. Any legislation passed by the Parliament/Oireachtas providing for such initiation by the people shall provide (1) that such proposals may be initiated on a petition of fifty thousand voters on the register, (2) that if the Parliament/Oireachtas rejects a proposal so initiated it shall be submitted to the people for decision in accordance with the ordinary regulations governing the Referendum; and (3) [Pg 82] that if the Parliament/Oireachtas enacts a proposal so initiated, such enactment shall be subject to the provisions respecting ordinary legislation or amendments of the Constitution as the case may be.

ARTICLE 48.

Save in the case of actual invasion, the Irish Free State/Saorstat Eireann shall not be committed to active participation in any war without the assent of the Parliament/Oireachtas.

ARTICLE 49.

Amendments of this Constitution within the terms of the Scheduled Treaty may be made by the Parliament/Oireachtas but every such amendment must be submitted to a Referendum of the people and shall not be passed unless a majority of the voters on the register record their votes and either a majority of the voters on the register or two-thirds of the votes recorded are in favour of the amendment.

SECTION III.—THE EXECUTIVE.

A.—EXECUTIVE COUNCIL/AIREACHT.

ARTICLE 50.

The Executive Authority of the Irish Free State/Saorstat Eireann is hereby declared to be vested in the King, and shall be exercisable, in accordance with the law, practice and constitutional usage governing the exercise of the executive authority in the case of the Dominion of Canada, by the Representative of the Crown. There shall be a Council to aid and advise in the government of the Irish Free State/Saorstat Eireann to be styled the Executive [Pg 83] Council/Aireacht. The Executive Council shall be responsible to the Chamber/Dail Eireann, and shall consist of not more than twelve Ministers/Airi appointed by the Representative of the Crown, of whom four Ministers shall be Members of the Chamber/Dail Eireann and a number not exceeding eight, chosen from all citizens eligible for election to the Chamber/Dail Eireann, who shall not be members of Parliament/Oireachtas during their term of Office, and who, if at the time of their appointment they are members of Parliament/Oireachtas, shall by virtue of such appointment vacate their seats; Provided that the Chamber/Dail Eireann may from time to time on the motion of the President of the Executive Council determine that a particular Minister or Ministers not exceeding three, may be members of Parliament/Oireachtas in addition to the four members of the Chamber/Dail Eireann above mentioned.

ARTICLE 51.

The Ministers who are required to be members of the Chamber/Dail Eireann shall include the President of the Executive Council/Uachtaran and the Vice-President of the Executive Council/Tanaist.

The President of the Executive Council shall be the chief of the Executive Council and shall be appointed on the nomination of the Chamber/Dail, and the Vice-President of the Executive Council and the other Ministers who are members of Parliament/Oireachtas shall be appointed on the nomination of the President of the Executive Council; and he and the Ministers nominated by him shall retire from office should he fail to be supported by a majority in the Chamber/Dail, but the President of the Executive Council and such Ministers shall continue to carry on their duties until their successors are appointed.

[Pg 84]

ARTICLE 52.

Ministers who are not members of the Parliament/Oireachtas shall be nominated by a Committee of members of the Chamber/Dail Eireann chosen by a method to be determined by the Chamber/Dail so as to be impartially representative of the Chamber/Dail. Such Ministers shall be chosen with due regard to their suitability for office and should as far as possible be generally representative of the Irish Free State/Saorstat Eireann as a whole rather than of groups or of parties. Should a nomination not be acceptable to the Chamber/Dail, the Committee shall continue to propose names until one is found acceptable.

ARTICLE 53.

Each Minister not a member of the Parliament/Oireachtas shall be the responsible head of the Executive Department or Departments as head of which he has been appointed as aforesaid; Provided that should arrangements for Functional or Vocational Councils be made by the Parliament/Oireachtas these Ministers or any of them may, should the Parliament/Oireachtas so decide, be members of and be nominated on the advice of such Councils. The term of office of any such Minister shall be the term of the Chamber/Dail Eireann existing at the time of his appointment or such other period as may be fixed by law, but he shall continue in office until his successor shall have been appointed: and no such Minister shall be removed from Office during his term unless the proposal to remove him has been previously submitted to a Committee chosen by a method to be determined by the Chamber/Dail so as to be impartially representative of the Chamber/Dail and then only if the Committee shall have reported that such Minister has been guilty of malfeasance in office or has not been performing his duties in a competent and satisfactory manner, or has failed to carry out the lawfully-expressed will of Parliament/Oireachtas.

[Pg 85]

ARTICLE 54.

The Ministers who are members of the Parliament/Oireachtas shall alone be responsible for all matters relating to external affairs whether policy, negotiations, or executive acts. Subject to the foregoing provisions, the Executive Council shall meet and act as a collective authority: Provided, however, that each Minister shall be individually responsible to the Chamber/Dail Eireann for the administration of the Department or Departments of which he is head.

ARTICLE 55.

Ministers who are not members of the Chamber/Dail Eireann shall by virtue of their office possess all the rights and privileges of a member of the Chamber/Dail except the right to vote, and shall, if not members of the Parliament/Oireachtas, comply with the provisions of Article 17 as if they were members of the Chamber/Dail, and may be required by the Chamber/Dail to attend and answer questions.

ARTICLE 56.

Should the President of the Executive Council die, resign or be permanently incapacitated, the Vice-President of the Executive Council shall act in his place until a President of the Executive Council shall be elected. The Vice-President of the Executive Council shall also act in the place of the President of the Executive Council during his temporary absence.

[Pg 86]

ARTICLE 57.

The members of the Executive Council shall receive such remuneration as may from time to time be prescribed by law, but the remuneration of any Minister shall not be diminished during his term of office.

ARTICLE 58.

The Representative of the Crown, who shall be styled the Governor-General of the Irish Free State, shall be appointed in like manner as the Governor-General of Canada and in accordance with the practice observed in the making of such appointments. The salary of the Governor-General of the Irish Free State shall be of the like amount as that now payable to the Governor-General of the Commonwealth of Australia and shall be charged on the public funds of the Irish Free State/Saorstat Eireann and suitable provision shall be made out of those funds for the maintenance of his official residence and establishment.

ARTICLE 59.

The Executive Council shall prepare the Budget of receipts and expenditure of the Irish Free State/Saorstat Eireann for each financial year and shall present it to the Chamber/Dail Eireann before the close of the previous financial year.

[Pg 87]

SECTION III.—THE EXECUTIVE.

B.—FINANCIAL CONTROL.

ARTICLE 60.

All revenues of the Irish Free State/Saorstat Eireann from whatever source arising, shall, subject to such exception as may be provided by law, form one fund, and shall be appropriated for the purposes of the Irish Free State/Saorstat Eireann in the manner and subject to the charges and liabilities imposed by law.

ARTICLE 61.

The Chamber/Dail Eireann shall appoint a Comptroller and Auditor-General to act on behalf of the Irish Free State/Saorstat Eireann. He shall control all disbursements and shall audit all accounts of moneys administered by or under the authority of the Parliament/Oireachtas and shall report to the Chamber/Dail at stated periods to be determined by law.

ARTICLE 62.

The Comptroller and Auditor-General shall not be removed except for stated misbehaviour or incapacity on resolutions passed by the Chamber/Dail Eireann and the Senate/Seanad Eireann. Subject to this provision the terms and conditions of his tenure of office shall be fixed by law. He shall not be a member of the Parliament/Oireachtas nor shall he hold any other office or position of emolument.

[Pg 88]

SECTION IV.—THE JUDICIARY.

ARTICLE 63.

The judicial power of the Irish Free State/Saorstat Eireann shall be exercised and justice administered in the public Courts established by Parliament/Oireachtas by judges appointed in manner hereinafter provided. These Courts shall comprise Courts of First Instance and a Court of Final Appeal to be called the Supreme Court (Cuirt Uachtarach). The Courts of First Instance shall include a High Court (Ard Chuirt), invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal, and also Courts of local and limited jurisdiction with a right of appeal as determined by law.

ARTICLE 64.

The judicial power of the High Court shall extend to the question of the validity of any law having regard to the provisions of the Constitution. In all cases in which such matters shall come into question, the High Court alone shall exercise original jurisdiction.

ARTICLE 65.

The Supreme Court of the Irish Free State/Saorstat Eireann shall, with such exceptions (not including cases which involve questions as to the validity of any law) and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the [Pg 89] High Court. The decision of the Supreme Court shall in all cases be final and conclusive, and shall not be reviewed or capable of being reviewed by any other Court, Tribunal or Authority whatsoever.

Provided that nothing in this Constitution shall impair the right of any person to petition His Majesty for special leave to appeal from the Supreme Court to His Majesty in Council or the right of His Majesty to grant such leave.

ARTICLE 66.

The number of judges, the constitution and organisation of, and distribution of business and jurisdiction among, the said Courts and judges, and all matters of procedure shall be as prescribed by the laws for the time being in force and the regulations made thereunder.

ARTICLE 67.

The judges of the Supreme Court and of the High Court and of all other Courts established in pursuance of this Constitution shall be appointed by the Representative of the Crown on the advice of the Executive Council. The Judges of the Supreme Court and of the High Court shall not be removed except for stated misbehaviour or incapacity, and then only by resolutions passed by both the Chamber/Dail Eireann and the Senate/Seanad Eireann. The age of retirement, the remuneration and the pension of such judges on retirement and the declarations to be taken by them on appointment shall be prescribed by law. Such remuneration may not be diminished during their continuance in office. The terms of [Pg 90] appointment of the judges of such other courts as may be created shall be prescribed by law.

ARTICLE 68.

All judges shall be independent in the exercise of their functions, and subject only to the Constitution and the law. A judge shall not be eligible to sit in Parliament/Oireachtas, and shall not hold any other office or position of emolument.

ARTICLE 69.

No one shall be tried save in due course of law and extraordinary courts shall not be established. The jurisdiction of Courts Martial shall not be extended to or exercised over the civil population save in time of war, and for acts committed in time of war, and in accordance with the regulations to be prescribed by law. Such jurisdiction shall not be exercised in any area in which the civil courts are open or capable of being held, and no person shall be removed from one area to another for the purpose of creating such jurisdiction.

ARTICLE 70.

A member of the armed forces of the Irish Free State/Saorstat Eireann not on active service shall not be tried by any Court Martial for an offence cognisable by the Civil Courts.

ARTICLE 71.

No person shall, save in case of summary jurisdiction prescribed by law for minor offences, be tried without a jury on any criminal charge.

[Pg 91]

SECTION V.—TRANSITORY PROVISIONS.

ARTICLE 72.

Subject to this Constitution and to the extent to which they are not inconsistent therewith, the laws in force in the Irish Free State/Saorstat Eireann at the date of the coming into operation of this Constitution shall continue to be of full force and effect until the same or any of them shall have been repealed or amended by enactment of the Parliament/Oireachtas.

ARTICLE 73.

Until Courts have been established for the Irish Free State/Saorstat Eireann in accordance with this Constitution, the Supreme Court of Judicature, County Courts, Courts of Quarter Sessions and Courts of Summary Jurisdiction, as at present existing, shall for the time being continue to exercise the same jurisdiction as heretofore, and any judge or justice, being a member of any such Court, holding office at the time when this Constitution comes into operation, shall for the time being continue to be a member thereof and hold office by the like tenure and upon the like terms as heretofore, unless, in the case of a judge of the said Supreme Court or of a County Court, he signifies to the Representative of the Crown his desire to resign. Any vacancies in any of the said Courts so continued may be filled by appointment made in like manner as appointments to judgeships in the Courts established under this Constitution.

Provided that the provisions of Article 65 as to the decisions of the Supreme Court established under this Constitution shall apply to decisions of the Court of Appeal continued by this Article.

[Pg 92]

ARTICLE 74.

If any judge of the said Supreme Court of Judicature or of any of the said County Courts resigns as aforesaid, or if any such judge, on the establishment of Courts under this Constitution, is not with his consent appointed to be a judge of any such Court, he shall, for the purpose of Article 10 of the Scheduled Treaty, be treated as if he had retired in consequence of the change of Government effected in pursuance of the said Treaty, but the rights so conferred shall be without prejudice to any rights or claims that he may have against the British Government.

ARTICLE 75.

Every existing Officer of the Provisional Government who has been transferred to that Government from the British Government and every existing Officer of the British Government, who, at the date of the coming into operation of this Constitution, is engaged or employed in the administration of public services which on that date become public services of the Irish Free State/Saorstat Eireann (except those whose services have been lent by the British Government to the Provisional Government) shall on that date be transferred to and become an Officer of the Irish Free State/Saorstat Eireann and shall hold office by a tenure corresponding to his previous tenure, and shall be entitled to the benefit of Article 10 of the Scheduled Treaty.

ARTICLE 76.

As respects departmental property, assets, rights, and liabilities, the Government of the Irish Free State/Saorstat Eireann shall be regarded as the successors of the Provisional Government, and, to the extent to which functions of any department of the British

[Pg 93]

Government become functions of the Government of the Irish Free State/Saorstat Eireann, as the successors of such department of the British Government.

ARTICLE 77.

After the date on which this Constitution comes into operation the House of the Parliament elected in pursuance of the Irish Free State (Agreement) Act, 1922 (being the constituent assembly for the settlement of this Constitution), may, for a period not exceeding one year from that date, but subject to compliance by the Members thereof with the provisions of Article 17 of this Constitution, exercise all the powers and authorities conferred on the Chamber/Dail Eireann by this Constitution, and the first election for the Chamber/Dail Eireann under Articles 26 and 27 hereof shall take place as soon as possible after the expiration of such period.

ARTICLE 78.

The first Senate/Seanad Eireann shall be constituted immediately after the coming into operation of this Constitution in the manner following, that is to say:—

(a) The first Senate/Seanad shall consist of two members elected by each of the Universities in the Irish Free State/Saorstat Eireann and fifty-six other members, of whom twenty-eight shall be elected and twenty-eight shall be nominated.

(b) The twenty-eight nominated members of the Senate/Seanad shall be nominated by the President of the Executive Council who shall, in making such nominations, have special regard to the providing of representation for groups or parties not then adequately represented in the Chamber/Dail. [Pg 94]

(c) The twenty-eight elected members of the Senate/Seanad shall be elected by the Chamber/Dail Eireann voting on principles of Proportional Representation.

(d) Of the University members one member elected by each University, to be elected by lot, shall hold office for six years, the remaining University members shall hold office for the full period of twelve years.

(e) Of the twenty-eight nominated members, fourteen, to be selected by lot, shall hold office for the full period of twelve years, the remaining fourteen shall hold office for the period of six years.

(f) Of the twenty-eight elected members the first fourteen elected shall hold office for the period of nine years, the remaining fourteen shall hold office for the period of three years.

(g) At the termination of the period of office of any such members, members shall be elected in their place in manner provided by Article 31.

(h) Casual vacancies shall be filled in manner provided by Article 33. [Pg 95]

(i) For the purpose of the election of members for any University under this Article, all persons whose names appear on the register for the University in force at the date of the coming into operation of this Constitution shall, notwithstanding anything in Article 14, be entitled to vote.

ARTICLE 79.

The passing and adoption of this Constitution by the Constituent Assembly and the British Parliament shall be announced as soon as may be, and not later than the sixth day of December, Nineteen hundred and twenty-two, by Proclamation of His Majesty and this Constitution shall come into operation on the issue of such Proclamation.

SCHEDULE [Pg 96]

ARTICLES OF AGREEMENT FOR A TREATY BETWEEN GREAT BRITAIN AND IRELAND, DATED THE SIXTH DAY OF DECEMBER, NINETEEN HUNDRED AND TWENTY-ONE.

1. Ireland shall have the same constitutional status in the Community of Nations known as

the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa, with a Parliament having powers to make laws for the peace order and good government of Ireland and an Executive responsible to that Parliament, and shall be styled and known as the Irish Free State.

2. Subject to the provisions hereinafter set out the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice and constitutional usage governing the relationship of the Crown or the representative of the Crown and of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State.

3. The representative of the Crown in Ireland shall be appointed in like manner as the Governor-General of Canada, and in accordance with the practice observed in the making of such appointments.

4. The oath to be taken by Members of the Parliament of the Irish Free State shall be in the following form:—

> I ..... do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established and that I will be faithful to H.M. King George V., his heirs and successors by law in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations.

5. The Irish Free State shall assume liability for the service of the Public Debt of the United Kingdom as existing at the date hereof and towards the payment of war pensions as existing at that date in such proportion as may be fair and equitable, having regard to any just claims on the part of Ireland by way of set off or counterclaim, the amount of such sums being determined in default of agreement by the arbitration of one or more independent persons being citizens of the British Empire.

6. Until an arrangement has been made between the British and Irish Governments whereby the Irish Free State undertakes her own coastal defence, the defence by sea of Great Britain and Ireland shall be undertaken by His Majesty's Imperial Forces, but this shall not prevent the construction or maintenance by the Government of the Irish Free State of such vessels as are necessary for the protection of the Revenue or the Fisheries.

The foregoing provisions of this article shall be reviewed at a conference of Representatives of the British and Irish Governments to be held at the expiration of five years from the date hereof with a view to the undertaking by Ireland of a share in her own coastal defence. [Pg 97]

7. The Government of the Irish Free State shall afford to His Majesty's Imperial Forces:—

> (*a*) In time of peace such harbour and other facilities as are indicated in the Annex hereto, or such other facilities as may from time to time be agreed between the British Government and the Government of the Irish Free State; and
>
> (*b*) In time of war or of strained relations with a Foreign Power such harbour and other facilities as the British Government may require for the purposes of such defence as aforesaid.

8. With a view to securing the observance of the principle of international limitation of armaments, if the Government of the Irish Free State establishes and maintains a military defence force, the establishments thereof shall not exceed in size such proportion of the military establishments maintained in Great Britain as that which the population of Ireland bears to the population of Great Britain.

9. The ports of Great Britain and the Irish Free State shall be freely open to the ships of the other country on payment of the customary port and other dues.

10. The Government of the Irish Free State agrees to pay fair compensation on terms not less favourable than those accorded by the Act of 1920 to judges, officials, members of police forces, and other public servants who are discharged by it or who retire in consequence of the change of government effected in pursuance hereof.

Provided that this agreement shall not apply to members of the Auxiliary Police Force or to persons recruited in Great Britain for the Royal Irish Constabulary during the two years next preceding the date hereof. The British Government will assume responsibility for such compensation or pensions as may be payable to any of these excepted persons.

11. Until the expiration of one month from the passing of the Act of Parliament for the ratification of this instrument, the powers of the Parliament and the Government of the Irish Free State shall not be exercisable as respects Northern Ireland, and the provisions of the Government of Ireland Act, 1920, shall, so far as they relate to Northern Ireland, remain of full force and effect, and no election shall be held for the return of members to serve in the Parliament of the Irish Free State for constituencies in Northern Ireland, unless a resolution is passed by both Houses of the Parliament of Northern Ireland in favour of the holding of such elections before the end of the said month.

12. If before the expiration of the said month, an address is presented to His Majesty by both Houses of the Parliament of Northern Ireland to that effect, the powers of the Parliament and Government of the Irish Free State shall no longer extend to Northern [Pg 98] Ireland, and the provisions of the Government of Ireland Act, 1920 (including those relating to the Council of Ireland), shall so far as they relate to Northern Ireland, continue to be of full force and effect, and this instrument shall have effect subject to the necessary modifications.

Provided that if such an address is so presented a Commission consisting of three persons, one to be appointed by the Government of the Irish Free State, one to be appointed by the Government of Northern Ireland and one who shall be Chairman to be appointed by the British Government shall determine in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions the boundaries between Northern Ireland and the rest of Ireland, and for the purposes of the Government of Ireland Act, 1920, and of this instrument, the boundary of Northern Ireland shall be such as may be determined by such Commission.

13. For the purpose of the last foregoing Article, the powers of the Parliament of Southern Ireland under the Government of Ireland Act, 1920, to elect members of the Council of Ireland shall after the Parliament of the Irish Free State is constituted be exercised by that Parliament.

14. After the expiration of the said month, if no such address as is mentioned in Article 12 hereof is presented, the Parliament and Government of Northern Ireland shall continue to exercise as respects Northern Ireland the powers conferred on them by the Government of Ireland Act, 1920, but the Parliament and Government of the Irish Free State shall in Northern Ireland have in relation to matters in respect of which the Parliament of Northern Ireland has not power to make laws under that Act (including matters which under the said Act are within the jurisdiction of the Council of Ireland) the same powers as in the rest of Ireland subject to such other provisions as may be agreed in manner hereinafter appearing.

15. At any time after the date hereof the Government of Northern Ireland and the provisional Government of Southern Ireland hereinafter constituted may meet for the purpose of discussing the provisions subject to which the last foregoing Article is to operate in the event of no such address as is therein mentioned being presented and those provisions may include:—

(*a*) Safeguards with regard to patronage in Northern Ireland.

(*b*) Safeguards with regard to the collection of revenue in Northern Ireland.

(*c*) Safeguards with regard to import and export duties affecting the trade or industry of Northern Ireland.

(*d*) Safeguards for minorities in Northern Ireland.

(*e*) The settlement of the financial relations between Northern Ireland and the Irish Free State.

(*f*) The establishment and powers of a local militia in Northern Ireland and the relation of the Defence Forces of the Irish Free State and of Northern Ireland respectively.

and if at any such meeting provisions are agreed to, the same shall have effect as if they were included amongst the provisions subject to which the powers of the Parliament and Government of the Irish Free State are to be exercisable in Northern Ireland under Article [Pg 99] 14 hereof.

16. Neither the Parliament of the Irish Free State nor the Parliament of Northern Ireland shall make any law so as either directly or indirectly to endow any religion or prohibit or restrict the free exercise thereof or give any preference or impose any disability on account of religious belief or religious status or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at the school or make any discrimination as respects State aid between schools under the management of different religious denominations or divert from any religious denomination or any educational institution any of its property except for public utility purposes and on payment of compensation.

17. By way of provisional arrangement for the administration of Southern Ireland during the interval which must elapse between the date hereof and the constitution of a Parliament and Government of the Irish Free State in accordance therewith, steps shall be taken forthwith for summoning a meeting of members of Parliament elected for constituencies in Southern Ireland since the passing of the Government of Ireland Act, 1920, and for constituting a provisional Government, and the British Government shall take the steps necessary to transfer to such provisional Government the powers and machinery requisite for the discharge of its duties, provided that every member of such provisional Government shall have signified in writing his or her acceptance of this instrument. But this arrangement shall not continue in force beyond the expiration of twelve months from the date hereof.

18. This instrument shall be submitted forthwith by His Majesty’s Government for the

approval of Parliament and by the Irish signatories to a meeting summoned for the purpose of the members elected to sit in the House of Commons of Southern Ireland, and if approved shall be ratified by the necessary legislation.

(Signed)

On behalf of the British Delegation,	On behalf of the Irish Delegation,
D. Lloyd George.	Art O Griobhtha.
Austen Chamberlain.	(Arthur Griffith).
Birkenhead.	Michal O Coileain.
Winston S. Churchill.	Riobard Bartun.
L. Worthington-evans.	E. S. O Dugain.
Hamar Greenwood.	Seorsa Ghabhain Ui
Gordon Hewart.	Dhubhthaigh.

6th December, 1921.

ANNEX.

1. The following are the specific facilities required.

Dockyard Port at Berehaven.

(*a*) Admiralty property and rights to be retained as at the date hereof. Harbour defences to remain in charge of British care and maintenance parties.

Queenstown.

(*b*) Harbour defences to remain in charge of British care and maintenance parties. Certain mooring buoys to be retained for use of His Majesty's ships.

Belfast Lough. [Pg 100]

(*c*) Harbour defences to remain in charge of British care and maintenance parties.

Lough Swilly.

(*d*) Harbour defences to remain in charge of British care and maintenance parties.

Aviation.

(*e*) Facilities in the neighbourhood of the above ports for coastal defence by air.

Oil Fuel Storage.

(*f*) Haulbowline - {To be offered for sale to commercial companies under guarantee that
Rathmullen - {purchasers shall maintain a certain minimum stock for Admiralty purposes.

2. A convention shall be made between the British Government and the Government of the Irish Free State to give effect to the following conditions:—

(*a*) That submarine cables shall not be landed or wireless stations for communication with places outside Ireland be established except by agreement with the British Government; that the existing cable landing rights and wireless concessions shall not be withdrawn except by agreement with the British Government; and that the British Government shall be entitled to land additional submarine cables or establish additional wireless stations for communication with places outside Ireland:

(*b*) That lighthouses, buoys, beacons, and any navigational marks or navigational aids shall be maintained by the Government of the Irish Free State as at the date hereof and shall not be removed or added to except by agreement with the British Government:

(*c*) The war signal stations shall be closed down and left in charge of care and maintenance parties, the Government of the Irish Free State being offered the option of taking them over and working them for commercial purposes subject to Admiralty inspection and guaranteeing the upkeep of existing

telegraphic communication therewith.

3. A Convention shall be made between the same Governments for the regulation of Civil Communication by Air.

D. L. G. M. O. C.

A. C.

B.

W. S. C.

*** END OF THE PROJECT GUTENBERG EBOOK THE IRISH CONSTITUTION ***

outside the United States, check the laws of your country in addition to the terms of this agreement before downloading, copying, displaying, performing, distributing or creating derivative works based on this work or any other Project Gutenberg™ work. The Foundation makes no representations concerning the copyright status of any work in any country other than the United States.

1.E. Unless you have removed all references to Project Gutenberg:

1.E.1. The following sentence, with active links to, or other immediate access to, the full Project Gutenberg™ License must appear prominently whenever any copy of a Project Gutenberg™ work (any work on which the phrase “Project Gutenberg” appears, or with which the phrase “Project Gutenberg” is associated) is accessed, displayed, performed, viewed, copied or distributed:

> This eBook is for the use of anyone anywhere in the United States and most other parts of the world at no cost and with almost no restrictions whatsoever. You may copy it, give it away or re-use it under the terms of the Project Gutenberg License included with this eBook or online at www.gutenberg.org. If you are not located in the United States, you will have to check the laws of the country where you are located before using this eBook.

1.E.2. If an individual Project Gutenberg™ electronic work is derived from texts not protected by U.S. copyright law (does not contain a notice indicating that it is posted with permission of the copyright holder), the work can be copied and distributed to anyone in the United States without paying any fees or charges. If you are redistributing or providing access to a work with the phrase “Project Gutenberg” associated with or appearing on the work, you must comply either with the requirements of paragraphs 1.E.1 through 1.E.7 or obtain permission for the use of the work and the Project Gutenberg™ trademark as set forth in paragraphs 1.E.8 or 1.E.9.

1.E.3. If an individual Project Gutenberg™ electronic work is posted with the permission of the copyright holder, your use and distribution must comply with both paragraphs 1.E.1 through 1.E.7 and any additional terms imposed by the copyright holder. Additional terms will be linked to the Project Gutenberg™ License for all works posted with the permission of the copyright holder found at the beginning of this work.

1.E.4. Do not unlink or detach or remove the full Project Gutenberg™ License terms from this work, or any files containing a part of this work or any other work associated with Project Gutenberg™.

1.E.5. Do not copy, display, perform, distribute or redistribute this electronic work, or any part of this electronic work, without prominently displaying the sentence set forth in paragraph 1.E.1 with active links or immediate access to the full terms of the Project Gutenberg™ License.

1.E.6. You may convert to and distribute this work in any binary, compressed, marked up, nonproprietary or proprietary form, including any word processing or hypertext form. However, if you provide access to or distribute copies of a Project Gutenberg™ work in a format other than “Plain Vanilla ASCII” or other format used in the official version posted on the official Project Gutenberg™ website (www.gutenberg.org), you must, at no additional cost, fee or expense to the user, provide a copy, a means of exporting a copy, or a means of obtaining a copy upon request, of the work in its original “Plain Vanilla ASCII” or other form. Any alternate format must include the full Project Gutenberg™ License as specified in paragraph 1.E.1.

1.E.7. Do not charge a fee for access to, viewing, displaying, performing, copying or distributing any Project Gutenberg™ works unless you comply with paragraph 1.E.8 or 1.E.9.

1.E.8. You may charge a reasonable fee for copies of or providing access to or distributing Project Gutenberg™ electronic works provided that:

- You pay a royalty fee of 20% of the gross profits you derive from the use of Project Gutenberg™ works calculated using the method you already use to calculate your applicable taxes. The fee is owed to the owner of the Project Gutenberg™ trademark, but he has agreed to donate royalties under this paragraph to the Project Gutenberg Literary Archive Foundation. Royalty payments must be paid within 60 days following each date on which you prepare (or are legally required to prepare) your periodic tax returns. Royalty payments should be clearly marked as such and sent to the Project Gutenberg Literary Archive Foundation at the address specified in Section 4, “Information about donations to the Project Gutenberg Literary Archive Foundation.”
- You provide a full refund of any money paid by a user who notifies you in writing (or by e-mail) within 30 days of receipt that s/he does not agree to the terms of the full Project Gutenberg™ License. You must require such a user to return or destroy all copies of the works possessed in a physical medium and discontinue all use of and all access to other copies of Project Gutenberg™ works.

• You provide, in accordance with paragraph 1.F.3, a full refund of any money paid for a work or a replacement copy, if a defect in the electronic work is discovered and reported to you within 90 days of receipt of the work.
• You comply with all other terms of this agreement for free distribution of Project Gutenberg™ works.

1.E.9. If you wish to charge a fee or distribute a Project Gutenberg™ electronic work or group of works on different terms than are set forth in this agreement, you must obtain permission in writing from the Project Gutenberg Literary Archive Foundation, the manager of the Project Gutenberg™ trademark. Contact the Foundation as set forth in Section 3 below.

1.F.

1.F.1. Project Gutenberg volunteers and employees expend considerable effort to identify, do copyright research on, transcribe and proofread works not protected by U.S. copyright law in creating the Project Gutenberg™ collection. Despite these efforts, Project Gutenberg™ electronic works, and the medium on which they may be stored, may contain "Defects," such as, but not limited to, incomplete, inaccurate or corrupt data, transcription errors, a copyright or other intellectual property infringement, a defective or damaged disk or other medium, a computer virus, or computer codes that damage or cannot be read by your equipment.

1.F.2. LIMITED WARRANTY, DISCLAIMER OF DAMAGES - Except for the "Right of Replacement or Refund" described in paragraph 1.F.3, the Project Gutenberg Literary Archive Foundation, the owner of the Project Gutenberg™ trademark, and any other party distributing a Project Gutenberg™ electronic work under this agreement, disclaim all liability to you for damages, costs and expenses, including legal fees. YOU AGREE THAT YOU HAVE NO REMEDIES FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTY OR BREACH OF CONTRACT EXCEPT THOSE PROVIDED IN PARAGRAPH 1.F.3. YOU AGREE THAT THE FOUNDATION, THE TRADEMARK OWNER, AND ANY DISTRIBUTOR UNDER THIS AGREEMENT WILL NOT BE LIABLE TO YOU FOR ACTUAL, DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES EVEN IF YOU GIVE NOTICE OF THE POSSIBILITY OF SUCH DAMAGE.

1.F.3. LIMITED RIGHT OF REPLACEMENT OR REFUND - If you discover a defect in this electronic work within 90 days of receiving it, you can receive a refund of the money (if any) you paid for it by sending a written explanation to the person you received the work from. If you received the work on a physical medium, you must return the medium with your written explanation. The person or entity that provided you with the defective work may elect to provide a replacement copy in lieu of a refund. If you received the work electronically, the person or entity providing it to you may choose to give you a second opportunity to receive the work electronically in lieu of a refund. If the second copy is also defective, you may demand a refund in writing without further opportunities to fix the problem.

1.F.4. Except for the limited right of replacement or refund set forth in paragraph 1.F.3, this work is provided to you 'AS-IS', WITH NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.

1.F.5. Some states do not allow disclaimers of certain implied warranties or the exclusion or limitation of certain types of damages. If any disclaimer or limitation set forth in this agreement violates the law of the state applicable to this agreement, the agreement shall be interpreted to make the maximum disclaimer or limitation permitted by the applicable state law. The invalidity or unenforceability of any provision of this agreement shall not void the remaining provisions.

1.F.6. INDEMNITY - You agree to indemnify and hold the Foundation, the trademark owner, any agent or employee of the Foundation, anyone providing copies of Project Gutenberg™ electronic works in accordance with this agreement, and any volunteers associated with the production, promotion and distribution of Project Gutenberg™ electronic works, harmless from all liability, costs and expenses, including legal fees, that arise directly or indirectly from any of the following which you do or cause to occur: (a) distribution of this or any Project Gutenberg™ work, (b) alteration, modification, or additions or deletions to any Project Gutenberg™ work, and (c) any Defect you cause.

Section 2. Information about the Mission of Project Gutenberg™

Project Gutenberg™ is synonymous with the free distribution of electronic works in formats readable by the widest variety of computers including obsolete, old, middle-aged and new computers. It exists because of the efforts of hundreds of volunteers and donations from people in all walks of life.

Volunteers and financial support to provide volunteers with the assistance they need are critical to reaching Project Gutenberg™'s goals and ensuring that the Project Gutenberg™ collection will remain freely available for generations to come. In 2001, the Project

Gutenberg Literary Archive Foundation was created to provide a secure and permanent future for Project Gutenberg™ and future generations. To learn more about the Project Gutenberg Literary Archive Foundation and how your efforts and donations can help, see Sections 3 and 4 and the Foundation information page at www.gutenberg.org.

Section 3. Information about the Project Gutenberg Literary Archive Foundation

The Project Gutenberg Literary Archive Foundation is a non-profit 501(c)(3) educational corporation organized under the laws of the state of Mississippi and granted tax exempt status by the Internal Revenue Service. The Foundation's EIN or federal tax identification number is 64-6221541. Contributions to the Project Gutenberg Literary Archive Foundation are tax deductible to the full extent permitted by U.S. federal laws and your state's laws.

The Foundation's business office is located at 809 North 1500 West, Salt Lake City, UT 84116, (801) 596-1887. Email contact links and up to date contact information can be found at the Foundation's website and official page at www.gutenberg.org/contact

Section 4. Information about Donations to the Project Gutenberg Literary Archive Foundation

Project Gutenberg™ depends upon and cannot survive without widespread public support and donations to carry out its mission of increasing the number of public domain and licensed works that can be freely distributed in machine-readable form accessible by the widest array of equipment including outdated equipment. Many small donations ($1 to $5,000) are particularly important to maintaining tax exempt status with the IRS.

The Foundation is committed to complying with the laws regulating charities and charitable donations in all 50 states of the United States. Compliance requirements are not uniform and it takes a considerable effort, much paperwork and many fees to meet and keep up with these requirements. We do not solicit donations in locations where we have not received written confirmation of compliance. To SEND DONATIONS or determine the status of compliance for any particular state visit www.gutenberg.org/donate.

While we cannot and do not solicit contributions from states where we have not met the solicitation requirements, we know of no prohibition against accepting unsolicited donations from donors in such states who approach us with offers to donate.

International donations are gratefully accepted, but we cannot make any statements concerning tax treatment of donations received from outside the United States. U.S. laws alone swamp our small staff.

Please check the Project Gutenberg web pages for current donation methods and addresses. Donations are accepted in a number of other ways including checks, online payments and credit card donations. To donate, please visit: www.gutenberg.org/donate

Section 5. General Information About Project Gutenberg™ electronic works

Professor Michael S. Hart was the originator of the Project Gutenberg™ concept of a library of electronic works that could be freely shared with anyone. For forty years, he produced and distributed Project Gutenberg™ eBooks with only a loose network of volunteer support.

Project Gutenberg™ eBooks are often created from several printed editions, all of which are confirmed as not protected by copyright in the U.S. unless a copyright notice is included. Thus, we do not necessarily keep eBooks in compliance with any particular paper edition.

Most people start at our website which has the main PG search facility: www.gutenberg.org.

This website includes information about Project Gutenberg™, including how to make donations to the Project Gutenberg Literary Archive Foundation, how to help produce our new eBooks, and how to subscribe to our email newsletter to hear about new eBooks.