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THE FEDERAL
SOLUTION

MURRAY MACDONALD, M.P.
AND
LORD CHARNWOOD

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BY
J. A. MURRAY MACDONALD, M.P.
AND
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NOTE

PART I. of this book is by Mr. Murray Macdonald. Sections I. to IV. were published anonymously last year under the title of "The Constitutional Crisis." They are here reprinted with some alterations. The remaining sections of this part are new.

Part II. is by Lord Charnwood.

The two parts have been written independently, and to some extent they cover the same ground. Where they do so it is hoped that the one will be found to supplement the other.

January, 1914.

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THE FEDERAL SOLUTION

PART I

I

IN December, 1885, immediately after the General Election of that year, Mr. Gladstone,* encouraged by the alliance between the Conservatives and the Irish Nationalists both before and during the election, approached the Government of Lord Salisbury, then in power, with a view to the settlement of the Irish question by agreement. He appealed to the Prime Minister, through Mr. Balfour, and urged that "it would be a great calamity if so vast a question should fall into the lines of party conflict." But his appeal, unhappily, was made in vain.

Since then twenty-eight years have gone by; and the Irish question still persists and still remains unsettled. But nobody, I think, will deny that the period of settlement, with or without an agreement between parties regarding it, is now at hand. An Irish Home Rule Bill passed through the House of Commons in 1912 supported by the Liberal, Labour and Nationalist parties, against the opposi-

* See Lord Morley's *Life of Gladstone*, Vol. III., pp. 258-60 and 284.

tion of the Unionist party ; and was rejected by the Unionist party in the House of Lords. Last session the same Bill, backed by the same party forces, was passed a second time by the House of Commons ; and was a second time rejected by the House of Lords. This year (1914) if in the meantime no agreement between parties is arrived at, it will be passed a third time through the House of Commons, and, under the operation of the Parliament Act, will become law in spite of the opposition of the Unionist party, whether in the House of Commons or in the House of Lords.

The Irish Home Rule question must be settled. But to settle it by the agency of ordinary party forces is certain to produce grave and long-continued discontent and unrest ; and it may possibly produce consequences of an even more serious kind. The question demands settlement ; but it goes deeper down towards the very roots and foundations of our whole civil and political constitution than party questions ought to go ; or than they ever can go without our incurring the risks of that calamity which Mr. Gladstone foresaw when he proposed to Lord Salisbury that they should put their wisdom and their influence into a common stock and provide for its settlement by agreement.

It is not yet too late to do what Mr. Gladstone at the outset of the controversy proposed should be done. The vast change that has since taken place, both in the character of the controversy itself and in its surroundings, makes the proposal, in fact, at once more urgent and more opportune now than it was then. Then the concession of Home Rule

to Ireland was the only constitutional question that faced us in a practical and urgent form. Now that question is only one, and that not the most important, of several constitutional changes which press upon us for settlement. Then Home Rule was advocated solely as a means of conciliating opinion in Ireland and reconciling it to the Union. Now it is largely supported as a means of relieving congestion in the Imperial Parliament, and as a first step in a process of devolution that is to be applied, with the same object in view, to the other component parts of the United Kingdom. Then, also, it was discussed while the relations of the two Houses of Parliament still retained their old historic form. Now it is being discussed after these relations have been radically altered, and while the questions of the composition of the Second Chamber, and of the powers which it is permanently to possess in the political constitution of the country, remain in suspense.

These are changes of a vast and fundamental character, affecting our Constitution in all its parts, probing it to its depths, and bringing it into question in all its operations. If, therefore, it has been a calamity to us that the Irish question has been allowed, by the rejection of Mr. Gladstone's proposal, to fall within the lines of party controversy, how immeasurably greater must that calamity be if these larger questions are also allowed by our prejudices or our passions, to fall within the same lines. Yet this is the prospect that now faces us. To deal with them on party lines is necessarily to deal with them as the party exigencies and interests

of the moment permit or suggest. It is to make it impossible to look at them, as they ought to be looked at, in one connected view, and to treat them, as they ought to be treated, as parts of an indissoluble whole. They will inevitably and necessarily be taken up, one at one time, and one at another, just as they are pressed, and without any sort of regard to their relations and dependencies.

This is what is actually taking place. The Government of Ireland Bill is on its way towards enactment under the Parliament Act. Party exigencies demanded this, and party convictions sanctioned it. But the proposed extension of the principle of the Irish Bill to the other component parts of the United Kingdom is to remain indefinitely in abeyance. The exigencies of party do not, at the moment, call for its consideration. The Prime Minister even consented, last session, on the motion of Lord Robert Cecil, to the appointment of a Select Committee, which, if it could be conceived to be successful in its purpose, would destroy the very ground on which he has rested his view that the principle of Home Rule must be applied to England and Scotland as well as to Ireland. In making his motion, Lord Robert contended that the cause of congestion in the House of Commons was the defective character of its rules of procedure: if only we amend these we shall find that the House of Commons will have restored to it all its old efficiency as a deliberative assembly. But if this is true, what becomes of the case for a general scheme of devolution? That case rested on the view that congestion was due not simply to defective rules of procedure,

but to the growth in the volume of business, which had become in our time so overwhelming in its mass as to be far beyond the powers of any single deliberative assembly adequately to cope with.

This is one illustration of the occasional character of the course that we must pursue while we continue to deal with the general situation as we are now doing. The manner in which the Government proposes to approach the question of the House of Lords is another and far graver example of it.

That question is to be dealt with as an isolated problem in the amendment of the Constitution, and as if the Parliament of the United Kingdom were to continue permanently to exercise all its present powers, and no general scheme, involving a large devolution of these powers to subordinate Legislatures, was in contemplation. It is proposed, moreover, to deal with it during the lifetime of the present Parliament, while the prosecution of the general scheme of devolution is to stop short at the enactment, under the Parliament Act, of the Irish Home Rule Bill. And yet if this Bill is, as we are told, to be the model for the remaining stages of devolution, so far, at least, as general legislative and administrative functions are concerned, then, many if not all, of the subjects about which the disputes between the two Houses have actually arisen, would ultimately pass to the subordinate Legislatures, and the question of the House of Lords would thereby assume a totally different, and a much less threatening, aspect. A moment's consideration of the extent of Ireland's interest in the question, if the Home Rule Bill becomes law, will make this clear. Her interest in

it would then be practically limited to a consideration of the powers to be possessed by the House of Lords in regard to subjects of Imperial interest, about which no dispute between her and that House had ever arisen. And, similarly, if subordinate Legislatures in England and Scotland had conferred upon them powers of dealing with questions relating to religion, education, temperance, and land, as in the plan of the Government it is intended they should, then the creation of these Legislatures would undoubtedly put a new and a far less serious complexion on the controversy about the House of Lords. But ought not this obvious fact to have some influence upon us in considering the course which should be pursued in the situation in which we now find ourselves?

In truth, if that situation is looked at as a whole, if it is seen in all its relations and in its true perspective, it will be found that it is not the Irish question nor the question of the House of Lords that stands in the immediate foreground. It will be found that it is the question of the House of Commons, and the injury done to the United Kingdom as a whole, and to each of the countries composing it, by the excessive and impossible task which the conditions of our time impose upon it, that demands our first consideration. Nobody disputes that that House has broken down. Nobody denies that it has lost its freedom and efficiency as the great organ of our national life, or that some means of restoring to it what it has lost must be devised. And if, as the Government has contended, and as I believe, the only satisfactory means of doing this is to devolve

upon subordinate Legislatures some portion of the burden of work under which it now staggers and stumbles, then let us proceed first with this reform, and it will be found that the other questions will largely settle themselves.

But to proceed as we are now doing, to take things by bits and scraps, piecemeal and haphazard, is not only to fail to rise to the height of a great situation, but is to court inevitable disaster. And for this procedure both the great parties in the State are equally to blame. Liberals act as the party needs of the moment press them ; and all the energies of Conservatives are given to a rigid but ineffectual opposition to what in gross and in detail Liberals propose. We are in the midst of a great crisis in our national life. Everything at the moment is confused and uncertain ; and no leading idea prevails among us. And surely if ever the chief men of our country, irrespective of party, were called upon to put their patriotism, their love of our Constitution and their reverence for it, into a common stock, and to bring their differences to some reasonable accommodation, it is now.

II

I have said that in a general review of the situation what comes into the forefront is not the demand of Ireland for Home Rule, nor the need of changing the

composition, or diminishing the powers, of the House of Lords. It is the condition of the House of Commons. That House does not, and, as things at present are, it cannot, discharge its functions as a deliberative assembly. The business of the Empire, indeed, goes on ; but the power of the House of Commons to supervise and control it is passing to other bodies, and excrescences in our Constitution are everywhere showing themselves. In the debate in the House of Lords on the second reading of the Irish Home Rule Bill, answering the charge that the Government of the day controlled Parliament, the present Lord Chancellor said that he thought this was an imperfect diagnosis of what was taking place. What was true was that, owing to the impossibility of getting legislative business considered in Parliament, delegation of legislative functions, on a vast scale, to public departments, through Orders in Council, Provisional Orders, Departmental Committees, and other methods, was actually going on ; and he thought this a great evil which somehow or other must be dealt with.* I believe this to be a sound diagnosis. It is not the fault of the Government of the day that while its powers are increasing the powers of the House of Commons are correspondingly diminishing. It is the necessary consequence of the fact that there is a mass of business to be transacted which Parliament has no time to consider or to control. But this condition of things ought not to be allowed to continue. If our Constitution is to be for us, and for those who come after us, what

* House of Lords Debates, Vol. XIII., pp. 546-7. Session 1912-13.

it was for those from whom we have inherited it, some change in the mode of its working must be effected.

Two alternatives, and two alternatives only, have been suggested by way of remedy. The one is a change-of procedure. The other is a devolution of function. If Lord Robert Cecil is to be taken as a fair representative of his party, the former is the alternative supported by Unionists. I propose to examine it.

In his speech in the House of Commons, on March 14th, 1913, introducing the motion to which I have already referred, Lord Robert said: "The congestion in this House is not due to the great amount of business that it has to transact. It is due to obstruction." He then went into "the history of the matter." "Obstruction," he found, "was invented by the Irish Nationalists in 1877, or thereabouts." In that year "the House was able to transact its business without any rules of procedure"; but later, in consequence of obstruction, it became necessary "to devise further and further restrictions on debate." "The present state of things," he concluded, "is intolerable"; but alter the rules of procedure, so as to diminish the opportunities and the temptations to obstruct, and things will at once right themselves.

This presents a very sanguine view of the difficulties of the situation and a very easy method of escaping from them. But it is as ill-grounded as it is sanguine and easy. The noble Lord's investigation into "the history of the matter" did not carry him very far. He was right as to the date when

obstruction, as a Parliamentary art, was first invented. He was right in his view that obstruction hinders the transaction of business. But he was wrong, entirely wrong, in his view that obstruction and congestion appeared simultaneously, and that the one was the direct and immediate cause of the other. As a mere matter of fact, and without entering into the history of the subject at all, is it not obvious that obstruction could not have been the serious factor in our Parliamentary life that it undoubtedly has been if the House of Commons, independently of it, had not been overworked? It was the over-pressure of work that suggested the plan of obstruction, and it was the over-pressure that made the plan formidable.

Lord Robert Cecil made no reference to the vastly important change both in the character and in the scope of the work of Parliament brought about by each succeeding extension of the franchises of the people. He did not know, or did not tell the House, that ever since the Reform Act of 1832 there has been a constant and continually growing complaint that the House of Commons was incompetent to discharge the work that was steadily accumulating upon it. He either did not know, or he did not tell the House, that the Committee for which he asked would be the sixteenth Committee that had been appointed for precisely the same purpose and with precisely the same reference, namely, the changes in procedure that might be adopted with the view of expediting the transaction of public business. He either did not know, or he did not tell the House, that the first of these

Committees was appointed in 1837, forty years before the time he assigns for the invention of obstruction and for the appearance of the congestion which now clogs and obstructs the machinery of the Constitution. One of the most important of these, the Committee of 1848, stated in its Report that "the business of the House seems to be continually on the increase. The characteristic of the present session has been the number of important subjects under discussion at the same time, and adjourned debates on all of them. This intermingling of debates, adjourned one over the head of the other, has led to confusion, deadening the interest in every subject, and prejudicing the quality of the debates on all." The characteristic which was then noted as novel has become in our time so normal as hardly even to attract attention.

But the evidence furnished both by the appointment and by the Reports of these Committees is not the only evidence that we have to rely upon to prove that Lord Robert was wrong in his diagnosis of the seat and source of the evil. There is hardly one of our great and leading men, during the last seventy years of our history, who has not drawn attention to the ever-increasing accumulation of work and to the need of devising some adaptation of our Constitution that would enable us to cope with it.

In the record of an interview which Mr. Gladstone had with Sir Robert Peel in July, 1846, written

ten days after it took place, the fallen Minister is reported to have spoken " of the immense multiplication of details in public business and the enormous task imposed upon available time and strength by the work of attendance in the House of Commons. He agreed that it was extremely adverse to the growth of greatness among our public men ; and he said the mass of public business increased so fast that he could not tell what it was to end in, and did not venture to speculate even for a few years upon the mode of administering public affairs. He thought the consequence was already manifest in its being not well done." *

If that was true of the condition of things in 1846, what might be said of the state of things to-day ? Whole new departments of work, of the most onerous kind, have sprung into existence since then ; and in not one single department that then existed was the work comparable either in extent or character with what it now is. And yet even then it was already manifest that it was being not well done. And if it was then true that the mass of work was adverse to the growth of greatness among our public men, how much more true must this be in our time.

In 1872, in a letter to the *Times*, Lord John Russell, who had an experience and knowledge of Parliamentary affairs to which no statesman then living could pretend, drew attention to the subject, and, among other remedies, proposed to constitute four representative Assemblies for each of the four

* Lord Morley's *Life of Gladstone*, Vol. I., p. 299.

Irish provinces, and two for the Lowlands and Highlands of Scotland.*

Mr. Gladstone, in his second Midlothian speech, delivered in November, 1879, six years before he became a convert to Home Rule, and at a time when the House of Commons, according to Lord Robert Cecil, was still "able to transact its business without any rules of procedure," spoke as follows:—

"I desire, I may almost say, I intensely desire, to see Parliament relieved of some portion of its duties. I see the efficiency of Parliament interfered with not only by obstruction from Irish members, but even more gravely by the enormous weight that is placed upon the time and the mind of those whom you send to represent you. We have got an over-weighted Parliament; and if Ireland, or any other portion of the country, is desirous and able so to arrange its affairs that by taking the local part, or some local part, of its transactions off the hands of Parliament, it can liberate and strengthen Parliament for Imperial concerns, I say I will not only accord a reluctant assent, but I will give a zealous support to any such scheme."

Then, after indicating that the only limit he knew to the extension of local government was the limit imposed by the necessity of maintaining the supremacy of the Imperial Parliament, he went on:—

"The Parliament is over-weighted. The Parliament is almost overwhelmed. If we take off its

* Spencer Walpole's *Life of Lord John Russell*, Vol. II., p. 443. note.

shoulders that superfluous weight by the constitution of secondary and subordinate authorities, I am not going to be frightened out of a wise measure of that kind by being told that I am condescending to the prejudices of Home Rulers. I will condescend to no such prejudices. I will consent to give to Ireland no principle, nothing that is not upon equal terms offered to Scotland and to the different parts of the United Kingdom."

Again, in a speech delivered in the House of Commons on February 20th, 1882, in which he reviewed the history of the whole subject in great detail, he attributed the "constantly increasing labours of the House" mainly to three causes, the enlargement of the Empire, the extension of trade relations with all the countries of the world, and the changes in the ideas and views of men respecting the sphere of legislation and of government. All three causes operate in our day with a vastly increased power and effect.

In his Address to the Electors of Midlothian, issued on September 18th, 1885, he said:—

"It has gratified me to find abundant proof that the country was, and is, fully alive to the vital importance of devolution and generally of procedure in the House of Commons. . . . The task of the House of Commons in our time has habitually exceeded what had ever been imposed upon a Legislative body in the whole history of the world."

And again, speaking in Edinburgh on October 28th, 1890, he said:—

"You know that for a long time it has been

agreed on all hands that Parliament was not strong enough for its work. There was too much to be done, and they could not get through it. . . . Two methods of change have been proposed. We from the first have held, not that it was not right to make regulations more strict on this point and that, where it could be done without serious violation of principle. But we have held all along that the true method of making Parliament strong enough and free enough to do the business of the country was to adopt large plans of what is called devolution."

Sir Henry Campbell-Bannerman, speaking in Lancaster in November, 1901, on proposals that were then being made by Conservatives for easing the situation in the House of Commons by reducing the Irish representation and further altering the rules of procedure, said :—

" But all these proposals after all approach the question, I think, from the wrong side. The truth is that the great underlying evil is that Parliament has too much to do, and what is needed is not less liberty for the workers, but less work. Broadly, the cure is to be found in devolution . . . It is the only real way to bring health and vigour to our Parliamentary system of government."

It is unnecessary to multiply these quotations by giving extracts from the speeches of men still living. They are all to the same effect. But I make two exceptions. In the speech which Sir Edward Grey

delivered on the second reading of the Home Rule Bill in 1912, he said :—

“ The problem we have to deal with is how, under modern conditions, with a population far bigger than any population of one State in history before, with a civilisation more developed, with political problems more complex than ever existed before . . . to liberate and free ourselves from congestion caused by that unparalleled and unprecedented condition of affairs . . . Since 1893 the need for devolution has become more necessary than ever . . . Without devolution we shall have destruction.”

The second is from a speech by Mr. Balfour on November 11th, 1902, in moving the resolution for the closure by compartments of the Committee stage of the Education Bill of that year. After stating that the resolution was not brought forward because of obstruction, or because of any excessive burden of work imposed upon the House during that session, he went on to say that “ it amounts to an admission that our ordinary procedure is insufficient to carry on the business of the House.” He then mentioned various reforms of procedure that had been suggested as a means of facilitating the transaction of business, and having dismissed them all as inadequate, he said, “ I confess I am reluctantly compelled to the belief that what has been done hitherto three times, and after to-night’s debate will have been done four times, has not been done for the last time ; and the House ought really to take into serious consideration some better machinery for dealing with a situation like the present.”

III

In the face of a body of evidence such as I have just given it ought not to be difficult for us all to come to a common agreement that the future efficiency of the House of Commons cannot be secured by a change in its procedure. Congestion has not its source in obstruction. It is more deeply seated, and demands a more drastic remedy than can be secured by any amendment of procedure. But the only other remedy that has hitherto been suggested is the devolution of some portion of the work of Parliament on subordinate Legislatures. Nobody, I think, will dispute that at least a *primâ facie* case can be made out in support of this alternative. Nor will it be disputed that it would be effective. Two objections, however, have been taken to it, different in character, but equally fatal, if they can be sustained, to any agreement between parties regarding it. The first is that it is a retrograde proposal, and would tend to undo what the Union effected. And the second is that, even if it were in itself admissible, the Irish Home Rule Bill could not be accepted as a first step towards its realisation.

The first is the objection to Home Rule upon which Unionists have consistently grounded themselves. I submit that it rests on the assumption that the Union between the three countries has been so complete in its character as to bring them all under the same law and the same administration, and that the assumption is not justified by the facts. There is, of course, a region within which the interests of all

the component parts of the Union are common, and within which there prevails a common law and a common administration, to which all are equally and indiscriminately subject ; otherwise there could have been no Union. The attempt to devolve upon subordinate Legislatures powers to deal with any of the interests included within this region would unquestionably tend to undo what the Union effected, and be injurious to it. But there is also a sphere of interest within which this does not apply. The Union, in fact, has never been, nor was it ever intended that it should be, a completely incorporating one in the sense that all the interests brought within it were to be subject to the same law and the same administration. They were, indeed, to be brought under the authority of the same legislative body, the Parliament of the United Kingdom, but this body was to exercise its authority subject to the recognition of certain pre-existing differences among its component constituents ; and these differences are as pronounced to-day as they were when the Union was first effected. Scotland, for example, has never been, nor was it ever intended that it should be, a part of England in the sense in which Middlesex or Lancashire are parts of it. In most of the fundamental relations and interests of life, in the relations of husband and wife, of parent and child, of master and servant, of landlord and tenant, in all the interests associated with religion and education, England and Scotland had before the Union, and continue to have to-day, different laws and different and independent systems of administering them. Within the sphere of these relations and interests

the two countries were, and are, and, so far as can be foreseen, will continue to be, to all practical intents and purposes, separate and distinct countries. And this is largely true also of Ireland. The interests of the three countries were so far alike and common that they could be united, and yet so far dissimilar that they could not be completely brought under a single system of law and administration.

All this will not, and cannot, be disputed. The facts are too obvious, our everyday experience of them in Parliament too pressing and insistent, to allow of their being seriously questioned. The work of Parliament falls, year by year, almost day by day, into five separate and distinct divisions. It is concerned with the regulation and administration of the interests common to the Empire at large. It is concerned with the regulation and administration of the interests common to the United Kingdom, in which the outlying portions of the Empire have no direct or immediate interest. And it is concerned with the regulation and administration of the separate and peculiar interests of each of the three component parts of the Union.

But this is not all. The difficulties that Parliament has had to encounter, in the performance of its work, have never, in modern times, been associated with its treatment of the interests common to the Empire or common to the three countries constituting the United Kingdom. Within this sphere of its action the Union has been a great and unquestioned success. All its difficulties have sprung from the regulation and administration of the strictly domestic interests of one or other of the three

countries, and particularly, though by no means exclusively, of those of Ireland. Whatever may be said in praise of the letter of our Constitution as it at present stands, its success as a working instrument of government will ultimately be judged not by its efficiency in fostering and developing the interests common to the three countries, but by its efficiency in fostering and developing the interests peculiar to each. Within this latter department of its work it is essential to success that the opinion of England should predominate in regard to English interests, that the opinion of Scotland should predominate in regard to Scottish interests, and that the opinion of Ireland should predominate in regard to Irish interests. And it is within this department that it has actually failed.

A composite Parliament, such as ours is, may succeed in legislating for, and in administering, the separate interests of each of its component constituents, but the difficulties must always be great. The local knowledge and the local sympathy essential to success in the case of each can never be easy of acquirement by all. As a matter of fact, the ignorance of Englishmen and Scotchmen regarding the peculiar conditions of Irish life and Irish law and administration is notorious. Englishmen and Irishmen, moreover, know very little about the peculiarities of Scottish life and Scottish law and administration; and Scotchmen and Irishmen are equally ignorant of English conditions. But if this is true, as surely it is, can it reasonably be said that to devolve upon the people of England, and of Scotland, and of Ireland, the power to legislate for their own

separate interests is, in the circumstances of our time, a retrograde movement, and likely to undo what the Union effected? May it not, on the contrary, be said, with far more show of reason, that it would get rid of the one source of weakness in it, and give to it a strength and cohesion that it has never hitherto had? The authority of the Union, within its own peculiar region, has, in truth, become too deep-seated, the interests directly associated with it are now too varied and too large, our political horizon under it has become too extended, to make it probable or even possible that it could be injured or weakened by the giving, in our time, of a formal and express recognition, by means of subordinate Legislatures, to the differences in law and administration between the three countries which, in its actual working, it now involves and sanctions.

So much for the first objection. The second is that, even if it be admissible to accept the principle of devolution, the Irish Bill cannot be accepted as a first step towards its realisation. That Bill, it is said, must be withdrawn as a preliminary to a full and fair consideration of the subject as a whole. This is a hard saying, both for Liberals and for Irish Nationalists, and not easy of acceptance by them. I cannot help thinking that it rests on a misunderstanding of the conditions and limits of any general scheme of devolution. The objection was raised in the House of Commons, but with much more emphasis and insistence in the debate on the motion for the second reading of the Bill in the House of

Lords.* It is essential that its precise character and extent should be defined and understood. For, if it is persisted in, it will bar all progress towards agreement.

The objection has been urged either in quite general terms, or, in so far as it has condescended on detail, it has been confined to an examination of the finance provisions of the Bill. But these provisions do not, as a whole or in detail, affect the principle of the Bill itself.† They might be lifted out of it, as the original finance provisions were lifted out of the Bill of 1893, and other provisions incorporated in their place, without the principle being in any way changed or weakened. It has never been contended that these provisions were not open to alteration and improvement. Nor has it been contended that in a general scheme of devolution they could be applied to England or to Scotland. On this point no obstacle to agreement need present itself.

The principle of the Bill is to be found in the creation of an Irish Legislature, and an Irish Executive responsible to it, with powers to deal with those peculiarly Irish interests which are at present regulated by Irish law, administered by Irish officials, and provided for by Irish estimates. It is based on the firm foundation of existing historical differences both in law and administration between Ireland and Great Britain. What other principle

* Session 1912-13.

† This was confirmed, if confirmation was required, by the Prime Minister in the speech he delivered at Manchester on December 5th, 1913:—"Those are not of the essence of the measure. They do not go down to its foundations. They are not concerned with its principles."

than this could be adopted that would not lead to endless friction and confusion between the central and subordinate authorities? Similar differences, moreover, exist between England and Scotland, and the principle is equally applicable to all three countries. It is the acceptance of this principle, and of this principle only, that is the necessary preliminary to agreement. And if devolution is to be considered at all, its acceptance ought not to be impossible or even difficult.

IV

It is the distribution of taxing powers between the Parliament of the United Kingdom and the subordinate Legislatures that constitutes the great difficulty in framing any scheme of devolution; and it may be well to say something further regarding it. The conditions affecting it are totally different from the conditions affecting the distribution of general legislative and administrative powers. And this is due to the fact that within the region of finance the union between the three countries has been a completely integrating union. For over fifty years they have been in this relation as one country. Apart from certain small and unimportant exceptions, the taxpayer in Ireland has had to bear precisely the same burdens as the taxpayer in England and the taxpayer in Scotland. In regard, therefore, to the distribution of taxing powers, in a scheme of

devolution, we have no historical differences to guide us.

Not only do we derive no help from our own history towards its solution, but no light is thrown upon it from the example of other countries in which the responsibility for the conduct of public affairs is distributed between central and local Legislatures. In them the distribution of taxing power invariably limits the subordinate Legislatures to the imposition of direct taxes ; while invariably also the central Legislature has the exclusive power of imposing indirect taxes. And, though there are many indications that this will not long continue to be the case, it is still true to say, generally, that in these countries this allocation of the two spheres of taxation between the central and local Legislatures has satisfactorily met the revenue requirements of each.

But this is not our case. If it were, the distribution of taxing powers, in a scheme of devolution, would be as simple as the distribution of general legislative and administrative powers. No conceivable system of indirect taxation, however, whether it be of a protectionist or of a free trade character, can yield revenues sufficient to meet the requirements of the Imperial Parliament ; and no conceivable system of direct taxation can meet the revenue requirements of Ireland, though it could meet, and more than meet, the requirements both of England and of Scotland. For a period, far more distant in the future than any of us can now foresee, the Imperial Parliament must depend for some portion of its revenues on the proceeds of direct taxation ; and Ireland, at least, for some portion of

its revenues on the proceeds of indirect taxation. This is our difficulty. The spheres of taxation within which the Imperial Parliament and the subordinate Legislatures are to have power to operate cannot be marked off from each other in the same way as the spheres of general legislation and administration. On the assumption that the Imperial Parliament must retain exclusive power over Customs duties and the Excise duties that correspond to them, that Parliament must also retain powers over direct taxation concurrent with the powers given to the subordinate Legislatures ; and Ireland, for an indefinite but certainly distant period, must have the right to meet the chief portion of her expenditure from the proceeds of indirect taxes imposed by the Imperial Parliament.

It is impossible to believe that any distribution of taxing powers which involved such overlapping of interests and authority as this, and which would also necessarily involve cross accounts of the most confusing and complicated character between the Irish and Imperial Exchequers, if ever Ireland is to contribute to Imperial expenditure, could be accepted as final or satisfactory in its character. Either, therefore, the Imperial Parliament must remain practically the sole taxing authority both for Imperial and for local purposes, as it is now ; or it must denude itself of all taxing powers and give to the subordinate Legislatures absolute and complete fiscal autonomy, under an agreement that each shall contribute in a given proportion to Imperial expenditure.

It was an ingenious modification of the second of

these two alternatives that was suggested by the Committee appointed to advise the Government on the finance provisions of the Irish Bill. It was an equally ingenious modification of the first that was actually embodied in the Bill. And of the two the plan of the Government is certainly more consistent with the interests of the Union than the plan of the Committee.

The novel feature in the plan of the Government was the proposal to give to the Irish Legislature a restricted power to vary the rates of taxes imposed by the Imperial Parliament. And on the assumption that the Imperial Parliament is to remain practically the sole taxing authority, it is not difficult to justify the proposal, both in regard to Irish conditions and to conditions in England and Scotland, though the extent of its application in the case of the two latter countries might, and almost certainly would, be much more restricted than in the case of Ireland. The subordinate Legislatures must have the sole and exclusive power of framing their own estimates of expenditure. This is necessarily involved in any grant of legislative and executive power. But to give to these Legislatures an unlimited power of drawing upon the Imperial Exchequer is clearly impossible. If a subordinate Legislature is extravagant in the administration of the interests committed to its care, it is its own constituents that ought to bear the burden of its extravagance. If it is economical, it is its own constituents that ought to benefit by its economy. These are the essential conditions of sound finance. They are also the essential conditions of Parliamentary Government. But if they

are to be realised it is obvious that the rates of some at least of the taxes imposed by the Imperial Parliament to meet local expenditure must vary in each country in accordance with the varying rates of expenditure of each Legislature ; and as they would at present have varied had the Union, within the region of finance, not been a complete union ; and as they would in future vary, under a scheme of devolution, had it been possible to make the same clear and definite distribution of powers within this region as within the region of general legislation and administration.

The principle of variation is, therefore, applicable to, and, on the assumption that the Imperial Parliament is to impose the taxes, is an essential part of, any general scheme of devolution. The extent to which it is to go raises a question of greater difficulty, and one about which differences of opinion may easily and legitimately present themselves. In regard to it, the case of Ireland is exceptional, and seems to demand exceptional treatment. But the point is one rather of expediency than of principle, and it is not necessary now to argue it. What is of concern, at the moment, is that the principle should be understood.

V

This completes the case which I desire to present in favour of the proposal that the constitutional questions which now face us should not be allowed

to continue to fall within the lines of party conflict. Let me attempt, in conclusion, to summarise it.

We are in the midst of a constitutional crisis fraught with issues of the gravest consequence to our domestic life, to the life of the Empire as a whole, and to the position which we occupy among the nations of the world. Looking upon it as a whole the great outstanding feature in it that insistently presses itself upon us is the breakdown of the House of Commons. Beside it everything else is of secondary and subordinate importance. And all the evidence at our disposal goes to show that this breakdown is due not primarily to obstruction within the House, nor simply to defects in its mode of procedure, but to the steady, constant growth in the volume of its business, till that volume has in our time become so vast and varied in its proportions that no single body of men, however competent and earnest and industrious they may be, could possibly overtake it. To provide for the evils that arise from it the Government proposes to devolve upon subordinate Legislatures in the component parts of the United Kingdom powers to deal with the interests that are peculiar to each and that are defined by legislative and administrative differences at present existing between them. As a first step, in giving effect to this proposal, it has introduced and passed through the House of Commons an Irish Home Rule Bill ; while it proposes indefinitely to postpone the further steps in its realisation.

Behind the breakdown of the House of Commons stands the question of the relations between that House and the House of Lords. This question, we

are told, is to be dealt with during the lifetime of the present Parliament. That is to say, it is to be dealt with while the question of the functions both of the House of Commons itself and of the House of Lords, as they are ultimately to be affected by the completion of the scheme of devolution, is still in suspense, and without regard to the effect which devolution would have in limiting and restricting the exercise of these functions, or to its moderating influence on the whole character of the controversy that has arisen between the two Houses.

This, in barest outline, is the situation in which we now are. It is a situation uncertain and confused in its character, and, if we continue to deal with it as we are now doing, pregnant with disaster in its possible consequences. It springs from conditions which have originated in modern times and from which we cannot escape. There is no dispute among us as to its general character in relation both to the House of Commons and to the House of Lords. We are all agreed that some change, more or less drastic, must be made both in the machinery and in the working of our Constitution. Our danger lies in the manner in which we are approaching its consideration. We are allowing its settlement to fall within the lines of party conflict. From the moment when Mr. Gladstone's proposal to Lord Salisbury in 1885 was rejected, party spirit, both on the one side and on the other, has attended every step in the history of the events that have led up to it. But it far transcends party interests both in its nature and in its final results, whatever these may be. It goes

to the very foundation of our common life and the great constitutional structure by which we regulate and control it. Within the lines of party conflict it is impossible to deal with it as a whole and in accordance with some large and comprehensive plan. Within these lines a piecemeal and haphazard procedure is inevitable. Neither party has anything to gain from a continuance of the conflict, and the nation has everything to lose. And if this is true, as surely it is, it lies with our leading men, irrespective of party, to save us from it.

VI

Much has happened since the preceding sections of this work were written, now more than seven months ago. The opposition of Ulster to the Irish Home Rule Bill has assumed a significance and importance not then given to it; and leaders of parties have been forced by it to adopt a more sympathetic attitude towards the proposal that our constitutional difficulties should be settled by agreement between them than they had shown when the wider and more general, but less immediately pressing, considerations demanding it were urged upon their attention. Lord Loreburn's letter to the *Times* did much to bring about this change of attitude; but the first real indication of it was given in the Prime Minister's speech at Ladybank on October 25th. In it he said that "the proposal for something in the nature of a formal

conference between party leaders, without a more or less agreed basis and more or less defined limits, did not appear to him to be practically helpful"; but "if there was a genuine disposition in all quarters by an interchange of views and suggestions, free, frank, and without prejudice, to contribute to the common stock," he invited that interchange. "There was no scheme," he said, "for the adjustment of the Ulster problem, subject to certain simple and governing considerations, which he was not prepared to consider with a perfectly open mind"; and "these governing considerations" were, first, "that nothing was to be done that would interfere with the setting up in Dublin of a subordinate Irish Legislature, with an Executive responsible to it"; second, "that nothing was to be done which would erect a permanent, or insuperable, bar in the way of Irish unity"; and, third, "that while the importance of the extension of the principle of Devolution, in appropriate forms, to other parts of the United Kingdom was fully recognised, the claim of Ireland was prior in point of urgency and must be dealt with first."

From its wording, it seems to have been intended, if this invitation was to be accepted, that the first suggestion for the "adjustment of the Ulster problem" should come from the Unionist leaders. That, however, was not the view of the position taken by them. Speaking at Wallsend, four days after the Ladybank speech, Mr. Bonar Law said: "We shall not decline to respond to the invitation, and we shall carefully consider any proposals Mr. Asquith may make to us, and consider them

with a real desire to find a solution, if a solution be possible." There the matter rested, neither side making any approach to the other, till Lord Lansdowne spoke at Brighton on November 18th, three weeks later. He then said that "the idea of a settlement based on the exclusion of Ulster does not at all attract me," but "if an overture of the kind is made to us, it seems to me impossible that we should decline altogether to examine it." It would make revision of the Bill inevitable, and "revision may have the effect of rendering the measure one which might, perhaps, be made applicable in a suitable shape to the other parts of the United Kingdom, and one which would bear less unjustly on, and be more tolerable to, the Unionists of Ireland."

In the same spirit Mr. Austin Chamberlain, at Bromsgrove, on the 20th, said that the conditions of an agreed settlement as laid down by Mr. Asquith at Ladybank did not preclude a conversation if it was desired. But "it is necessary if there is to be any further extension of local government that all parts of the United Kingdom should share alike, and that condition, if fulfilled, would in itself be a great safeguard for Imperial unity" . . . "Though it may be desirable to deal with Ireland first it is not desirable to deal with Ireland exceptionally."

In both of these speeches there was a tentative approach towards the ground upon which a settlement by consent must, according to Mr. Asquith, rest; and this fact was very generally recognised. It seemed, therefore, that it was for him to take the next step; and the speech which he was to deliver at Leeds on November 27th was eagerly looked

forward to. Expectation, however, was disappointed. No reference was made to the suggestions of Lord Lansdowne and Mr. Chamberlain; and the silence regarding them was generally interpreted by Unionists as a closing of the door upon negotiations. This interpretation was, however, almost immediately rejected by Lord Haldane and Sir Edward Grey, who affirmed that the position as defined in the Ladybank speech was in no way altered by the Leeds speech.

Then came Sir Edward Carson's speech in Manchester on December 3rd :—

"I desire to state," he said, "if I can make any contribution towards this settlement, if it is ever approached seriously, that in satisfying the parties interested, first the United Kingdom must be considered, and then Ulster. I lay down these preliminaries to any possible settlement, and I do not think they will be considered unreasonable. I lay down, first, that no settlement must humiliate or degrade us. I lay down, secondly, that we must not get any treatment different and exceptional from the treatment offered to any other part of the United Kingdom. We must have preserved to us what every citizen has, neither more nor less. We must have the same protection of the Imperial Parliament, and above all we must have no deal and no Act which establishes the foundation for an ultimate separation of your country from ours."

Upon this there followed, two days later, the speech of the Prime Minister in the same city. After recalling the conditions for agreement laid down at Ladybank, he said :—

“ I have been looking all these weeks, and looking in vain, for some corresponding and, if possible, not irreconcilable statement, in equally general terms, from those of the Opposition who are ready, or profess to be ready, to attempt a settlement. I find it, or I fancy I find it, for the first time, in a speech delivered by Sir Edward Carson in this city only a couple of nights ago.”

He then quoted Sir Edward Carson's conditions, and on the most important of them, “ that the treatment of Ireland must not be different from that offered to other parts of the United Kingdom,” he said :—

“ If I am right, I understand this as pointing to some scheme of what is popularly called Home Rule all round, and if so I have two or three observations to make upon it. In the first place the case of Ireland is first in point of urgency and must come first. You cannot delay dealing with it till you have gone through what must of necessity be a long and complicated process, that of adapting the principle of Home Rule to the varied requirements of the different parts of the United Kingdom. I say in regard to Sir Edward Carson's stipulation that the treatment must not be different or exceptional that I agree, subject to this modification, that there are peculiar conditions, economic, social, historical, in Ireland, just as there are in Scotland, just as there are in Wales, and as there are in England, which make the application of a cast-iron, or, as I called it at Leeds, a standardised Home Rule a thing we cannot take up. The

principle, by all means the principle, in its fulness, applied equally and in the spirit of equality to all parts of the United Kingdom, but with due regard paid, when you are dealing with each of them, to those special circumstances which are appropriate to themselves and the neglect or ignoring of which has in the past led to so much foolish and futile legislation and administration."

He then added in conclusion :—

" I said I regarded those declarations, coming from the quarter from which they do, as a significant and a hopeful feature of the situation, and I cannot but express a belief and more than a belief, an expectation, that discussion, freely and frankly carried on on the lines which I myself indicated at Ladybank, on the one hand, and on the lines which Sir Edward Carson indicated in his Manchester speech, on the other, may lead, as Heaven grant it will lead, to what we all desire far more than a prolongation of an embittered controversy—a settlement which will command the assent and good-will of all parties. . . . These are the guiding and governing considerations which, at a critical moment like this, should operate on the minds of statesmen. They rise above the dusty arena of the partisan controversy. They bring us face to face with the realities of our intricate, complex, ever-varying political and social life. They ought to make us realise, as I believe they do, that in the face of such problems, division, dissension, and, above all, civil strife, are foreign to the best traditions of the true political genius of our race, and that we, one and

all, should regard it as our bounden duty to bring into the common stock the spirit of genuine co-operation and everything we can contribute to secure a real and lasting Imperial unity."

VII

Thus was closed, and closed in the spirit of a true statesmanship, the first chapter of the new stage in our present-day history opened at Ladybank. And there, so far as the general public is concerned, matters still rest. Two facts emerge from it. The first is that a common ground upon which agreement between parties may rest has revealed itself. And the second is that the common ground, thus revealed, brings the two great parties in the State face to face with the idea of a federal system for the United Kingdom as a practical problem demanding immediate consideration. I propose briefly to consider it.

The problem is colossal in its extent ; but, as I shall hope to show, it is capable, in its main outlines, of a simple and easily understood presentation. It involves the consideration, first, of the territorial areas of the several federal units ; second, of the powers to be entrusted to the subordinate Legislatures ; third, of the constitution of these Legislatures, whether they are to be unicameral or bicameral ; and, finally, it involves the consideration of the effect of the adoption of a federal system on the Imperial Parliament.

At the outset I lay down one rule upon which I shall confidently rely to guide me through the intricacies of the subject. It is that in changing the form and practice of our Constitution we should keep constantly in our view its existing form and practice and depart from them only to the extent demanded by the needs of our time, and no further. It is a safe rule. It is the rule by which our forefathers were guided when they made changes and improvements in the Constitution as it was handed down to them. It is the rule, and the only rule, by which we can preserve its spirit while we adapt its form to changing conditions. Guided by it I proceed to the consideration of the points I have mentioned.

The first is the territorial areas of the several federal units. At present we have what is called a unitary Constitution. That is to say, we legislate for each and all of the component parts of the United Kingdom by means of one united legislative body. But it is unitary more in form than in practice. It is not, indeed, untrue to say that since the Acts of Union we have, under the guise of a unitary Constitution, been living under what is in effect a federal Constitution. Excluding its functions in relation to the Empire at large, the Legislature created by the two Acts of Union, and in accordance with the provisions of these Acts, has four separate and distinct legislative and administrative functions within the United Kingdom. It legislates for, and administers, the interests common to all its constituent parts, interests which have been created by it, and which in the silent lapse of time have grown to immense dimensions under it.

Within this sphere it is unitary both in form and practice. It legislates, secondly, for interests peculiarly English and Welsh, interests which were not created by it, but which had a long and illustrious history before it ever came into being, and which have come down to our time as clearly and as peculiarly English in character as they were when the Union was first effected. Thirdly and fourthly, it legislates for interests peculiarly Irish, and for interests peculiarly Scottish, under conditions precisely similar to those that determine its legislation for England. Within this latter triple sphere of function it was never intended that the Legislature of the United Kingdom should be unitary in its practice, nor has it ever been so. Within a certain area of strictly domestic interests the three countries remain as clearly marked off from each other as they have been at any time in their history before or since the Union. But, whatever may be the extent of their powers to deal with them, it is clearly within this area of interests that subordinate Legislatures in a federal system must work. I contend, therefore, that, by adopting the constituent units of the Union in its present form as the constituent units of a federal Constitution we adhere to the practice of our present Constitution.

If the United Kingdom were a new and undeveloped country, with no history behind it, the question of federal areas would be a question simply of convenience. Or if it were an old country with a long history behind it, throughout which one law and one administration had run from end to end of the country, then also it might have been simply a

question of convenience. As it is, however, it is a question of a totally different order, involving the continuity of traditions and customs, laws and institutions, peculiar to each of the three peoples, a continuity which cannot be interrupted or dissected without incalculable loss to the life of them all.

The practical difficulties, moreover, which would attend the attempt to divide any or all of the three countries into several federal areas would be enormous. I believe they would prove to be insoluble. I do not, however, intend to deal with them. Lord Charnwood refers to them in the section which he adds to this book, and with a much clearer view of them than I possess.

That the territorial areas of the federal units should be England and Scotland and Ireland as separate wholes would, I believe, be generally agreed to were it not for the Ulster difficulty; and perhaps I ought to add, were it not also for the Welsh claim to separate recognition.

It is not denied that the destinies of Ulster have been, and are, identified with the destinies of Ireland as a whole. Ireland could not be dismembered without impoverishing its life in all its parts. It is from the religious differences that have distracted the country that the difficulty springs. But though these differences have their centre in Ulster, they are not confined to it. They extend, though in a modified form, to all other parts of the country. If Ulster were cut off from the rest of Ireland that would not meet the difficulty or tend to heal the divisions. On the contrary, the separation, being known and felt to be due to these differences and divisions, would

tend to perpetuate them, and surely also to weaken the spirit of true religion in Ireland. Happily Ulstermen themselves realise this, and they have never asked to have their destinies separated from the destinies of their fellow-countrymen. Nor, as we have seen, if Lord Lansdowne may be taken as the spokesman of the Unionist party in Great Britain, does that party ask for it.

The claim of Wales to recognition as a federal unit is one which, taken by itself and apart from historical conditions, everybody would willingly admit. But the claim raises a difficulty in the adjustment of the Constitution to a federal system not raised by the cases of England and Scotland and Ireland. So far as domestic law and administration are concerned, with some small and unimportant exceptions, Wales has been as much a part of England as Lancashire or Yorkshire. She does not occupy the same position in relation to England and Scotland and Ireland that they have always occupied in relation to each other. Whether, and to what extent, she can now assume a similar position will require careful consideration.

Before proceeding to the discussion of the second point it may be well to refer to a question much debated in connection with the Irish Bill of 1886, and since then not infrequently raised—the question whether the powers to be reserved to the Imperial Parliament should be enumerated or the powers to be delegated to the subordinate Legislatures. The Bill of 1886 enumerated the reserved powers; and in the two subsequent Bills the same procedure was followed. The objection taken to it has been stated

by Lord Morley in his "Life of Gladstone" (Vol. III., p. 302) to have been held by good authority "to be little more than a question of drafting." Whether this be so or not, it does not appear to be a question of vital importance.

The second point is the extent of the powers to be delegated. It is twofold in its nature, being concerned, first, with the general legislative and executive powers, and, secondly, with the powers over finance.

As to the first, on the assumption that the federal units are to be the same units as now compose the United Kingdom, there appears to me to be an unanswerable case in favour of making these powers correspond to the differences in law and administration that actually now exist between the several units. These differences cover what is practically the same area of interest in the life of the three countries. It was in the nature of things that this should be so. The interests common to the three, created and fostered by the Union, necessarily covered the same area for all; and the interests peculiar to each, the interests concerned with the the ordinary day-to-day life of the three peoples and not absorbed in the common interests, necessarily also covered the same area for all. By accepting this area as the area within which the subordinate Legislatures shall have power to act we follow our history both before and since the Union, and we give effect to the spirit and the practice of our existing Constitution.

There is, moreover, here also, as in the case of the

delimitation of the territorial areas of the federal units, an important practical reason why this principle of delimitation of powers as between the Imperial Parliament and the subordinate Legislatures should be adopted. You could not split up the Irish administrative system known as Dublin Castle and put one section of it under a Dublin Parliament, while the other section, still housed and working in Dublin, continued to be controlled by the Imperial Parliament. Nor could you do this with the Scottish Departments in Edinburgh, or with the English Departments in London. The thing would not work; and if it were attempted it would not last.

But, how for practical purposes are the powers to be defined? The answer briefly is—as they are defined in the separate English, Scottish, and Irish estimates annually presented to Parliament. These, it is true, do not give a complete definition of them, but not much falls outside it. And this, it may be noted, is, for all practical purposes, the definition embodied in the present Irish Bill.

I have already referred, in a preceding section, to the difficulties presented by the second division of this subject, namely, the distribution of taxing powers between the Imperial Parliament and the subordinate Legislatures. It is necessary now to go a little more into detail.

On grounds of general policy, as we have seen, the natural distribution would be to give to the subordinate Legislatures powers to impose and collect direct taxes, while powers to impose and collect Customs duties and such Excise duties as

correspond to them would be reserved to the Imperial Parliament. But as the expenditure on Irish services, which an Irish Parliament would inherit from the Imperial Parliament, cannot be met, for some indefinite future time, out of Irish revenues, derived from all sources, direct and indirect, such a distribution is, in the case of Ireland, clearly impossible. By no fault of her own, exceptional provisions must be made to meet her needs.

The cases of England and Scotland are entirely different. According to the Treasury White Paper, the respective contributions of these two countries from all sources to the Imperial Exchequer in the financial year 1912-13 were £154,389,000 and £19,950,000. Of these sums £71,289,000, in the case of England, and £8,309,000, in the case of Scotland, were derived from direct taxation, that is, from Estate Duties, Stamps, Land Tax, House Duty, Income Tax, and Land Value Duties. The English Civil Government charges, which are the charges that would fall upon an English Parliament in a federal system involving a distribution of general legislative and administrative powers such as I have suggested, amounted in the same year to £40,767,500; while the charges in the case of Scotland amounted to £6,751,500. Obviously, therefore, the English and the Scottish Legislatures could meet their revenue requirements within the domain of direct taxation. But they cannot be given exclusive or unrestricted power within this domain; for the Imperial Parliament depends, and must continue to depend, to some extent on the

yield of direct taxes to meet Imperial charges. This being so, there being no possibility of assigning to the subordinate Legislatures any clearly defined sphere of taxation without injury to Imperial requirements, it seems expedient to adopt the principle of the Irish Bill and to reserve to the Imperial Parliament the exclusive power to impose and collect all existing taxes, subject to the obligation to hand over to the subordinate Legislatures the cost, at the date of transfer, of the services actually committed to their control.

To this general principle there appears to me to be one exception worth consideration. It was inserted, at my instance, in the Report of the Scottish Liberal Members on the applicability to Scottish conditions of the scheme of Home Rule embodied in the Irish Bill. The subordinate Legislatures ought to have given to them some real and effective power of adjusting their own revenue to their own expenditure. The power to vary the rates of taxes imposed by the Imperial Parliament, though it goes some way in this direction, does not appear to be sufficient to meet the requirements of the case, even in regard to Ireland. It would be still less adequate in regard to England and Scotland, for they could not be given the right to vary Customs duties. In these circumstances I suggest that there is one group of taxes, all falling on the same subject, that could be lifted out of the Imperial system of taxation, without injury to it, and handed over to the control of the subordinate Legislatures both as regards imposition and collection. I refer to the Land Tax, the Inhabited House Duty (neither of

which, however, at present extends to Ireland), Estate Duties so far as they are levied upon real property, Schedules A and B of the Income Tax, Land Value Duties, and Stamp Duties on conveyances of real property and on mortgages. These taxes all fall upon real property, upon property which has a definite and known situation, and they are all collected where the property is situated. The yield of these taxes is relatively small, but the power to deal with them would add sensibly to the power of the local Legislatures to adjust their revenues to their expenditure. There is also another reason why this power should be given to them. It is upon real property that all local rates fall; and the problem of determining how the expenditure of local authorities can be most equitably distributed between the local taxpayers and the community as a whole, which has for so long engaged the attention of financial authorities, is one which, under a federal system, would fall to the local Legislatures to deal with. It would certainly enormously simplify their task if the suggestion I make were agreed to; and it could be agreed to without injury being done to our system of taxation, without any diminution in the total revenues derived from it, and without addition to the costs of collection.

The third of the four points relates to the constitution of the subordinate Legislatures, whether they are to be unicameral or bicameral. It is not a point on which there need be uniformity among the federal units. Whether the powers to be delegated to the subordinate Legislatures are of such a kind

as to require that their exercise should be subject to the debate and decision of two semi-independent Chambers is a question that may fittingly be left to the peoples of the several countries to determine for themselves. It is their several interests that are immediately concerned, and it is their several judgments that ought to prevail.

I pass to the last point. Though the immediate occasion of the consideration of a federal system for the United Kingdom is the Ulster protest against the Irish Bill, its underlying and permanent motive is the inveterate congestion of business in the Imperial Parliament and the need of devising a remedy for it. Under a federal system much of the work that now falls upon the Imperial Parliament would pass to the subordinate Legislatures. How would this affect the question of the relations of the two Houses of the Imperial Parliament? The question had its origin in a long series of disputes between these Houses, arising as often as there was a Liberal or Progressive majority in the House of Commons. The present Government passed the Parliament Act largely restricting the power of the House of Lords to reject measures passed by the House of Commons, promising at the same time to bring forward in the near future a measure "to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of a hereditary basis," and to make provision "for limiting and defining the powers of the new Second Chamber." A measure of this kind, while it would not very materially alter the form of our

Constitution, would fundamentally change its spirit and its accustomed mode of practice. Such a change might, and probably would, be necessary on the assumption upon which obviously the promise contained in the preamble to the Parliament Act was originally made. That assumption was that the Imperial Parliament was to retain all its existing functions, and particularly its functions in relation to the subjects about which disputes between the two Houses had in the main arisen. But the assumption is no longer valid in face of the proposal to adopt a federal system for the United Kingdom. This proposal, it is not too much to say, completely changes the whole character of the House of Lords question.

It is not difficult to prove this. The subjects about which disputes between the two Houses have arisen, are (1) Finance, (2) the Constitution, (3) Land, (4) the Liquor Trade, (5) Education, and (6) the Church. Beyond these there has never been any subject of dispute that would have justified the passing of the Parliament Act, or the proposed reconstruction of the Second Chamber. As to the first of them, by all our traditions the control of finance falls within the peculiar province of the House of Commons, and there ought to be no difficulty in obtaining an agreement that this should be, for the future, explicitly acknowledged. It is now proposed to settle the second, so far as it relates to Home Rule, by an agreement between parties on the basis of a federal scheme applicable to the United Kingdom as a whole. It is my contention that under a federal scheme the last four of the six

subjects should be handed over to the subordinate Legislatures. They are all of them regulated by laws not common to the United Kingdom, but peculiar to each of the units that compose it ; and, so far as they come under departmental action, they are all of them administered by separate administrative systems ; and to reserve any one of them to the control of the Imperial Parliament would inevitably lead to friction in the working of the federal scheme. If this be admitted, as I hold that it must, it is impossible to believe that parties can meet for the purpose of settling a federal scheme without considering the effect of its adoption on the question of the House of Lords, and without a large modification of their views regarding it. On the assumption that the delegation of powers to deal with these four subjects to the subordinate Legislatures is made, the Parliament Act might be repealed in all its provisions, except those relating to finance, without injury being done to the interests of any party in the State.

It is, moreover, no unimportant factor in favour of the adoption of a federal scheme that it would permit and enable us to modify our views regarding the House of Lords question. We shall not strengthen our Constitution by such a duplication of the representation of public opinion in the Imperial Parliament as the preamble to the Parliament Act seems to suggest. Instead of deriving their authority from contrasted origins, the two Chambers would, in this case, derive it practically from the same source, not only without adding anything to the potency or effect of public opinion, but with the certain result

that complications in the working of the Constitution would ensue.

I here recall the rule which I laid down at the outset as a guide in considering the changes that have now to be made in our Constitution—that we ought to depart from its present form and practice only so far as the needs of our time demand, and no further. If these needs demand a federal system for the United Kingdom, as most of us are now agreed that they do, then they do not, at the same time, demand any radical alteration in the present composition of the House of Lords, or any considerable restriction in the powers which it is to possess relative to the powers which the House of Commons under a federal system will possess. It ought not to be forgotten, moreover, in considering the relative merits of a popular and a hereditary Second Chamber, that the House of Lords does not stand alone as the sole hereditary factor in our Constitution. If it did the problem which its composition presents to us would be less serious than it is. But the monarchy also is hereditary, and no one desires that it should be injuriously affected by any of the changes now in contemplation. It is a source of universally admitted strength to us in the United Kingdom; and it is a source of still greater strength when the interests of the Empire at large are added to the account. But we do no good service to it by unnecessarily consenting to a change which would leave it as the solitary example of the hereditary principle in the life and working of the Constitution.*

* It is not a little significant of the tendency of opinion upon this subject to note that the following amendment to a resolution

There is one final word that I desire to say. It is of great moment to the public interest that the contemplated changes in the Constitution should be promptly and expeditiously dealt with, and dealt with as a whole and in all their relations. But this can be done only if parties agree to co-operate in their settlement. To deal with them piecemeal and haphazard, knowingly to consent to subject them to the chances of possible changes of Ministry and possible dissolutions of Parliament, is to consent to a long-continued disturbance of the action of our political system, is to impede the business of the country, and still further to derogate from the character of the House of Commons.

supporting the Government proposals regarding the House of Lords was lost at a Conference of the Scottish Liberal Association held on the 10th and 11th of October, 1913, by only 10 votes, 53 voting for the resolution against 43 for the amendment:—"This meeting strongly affirms that by devolving National Legislatures upon England, Scotland, Ireland and Wales on federal lines, and thus leaving the House of Commons free for the adequate discussion of United Kingdom and Imperial measures and affairs, no useful purpose would then remain for a reconstituted Second Chamber."

PART II

CHAPTER I

INTRODUCTORY

THERE is no doubt a very widespread disposition to look to what is called " Federation " as the true solution of the Irish difficulty and of other pressing difficulties no less. No one who has studied recent speeches of Unionists on this subject, who has noticed the steps lately taken towards claiming Home Rule for Scotland, who knows the weariness which our standing constitutional controversies create in England, and who reflects that the Irish Nationalist leader has long been (as the late Prime Minister was) a declared Federalist, can doubt that this is a living issue. To many, however, it still presents itself as, first, a vague suggestion, and, secondly, one which, if in principle accepted, would raise an intolerable number of doubts and difficulties of detail. Both these views seem to me natural mistakes, but mistakes beyond question.

My principal object in these pages is to show that, whether the " Federal Solution " be good or bad, the proposal is not vague, nor are its difficulties comparable to those which we must confront if we reject it. If the principle be seriously entertained

at all, certain broad outlines of the scheme become apparent on the least examination of the facts ; certain difficult questions at once postpone themselves because it is plain that they can wait and cannot be settled yet ; others are plainly matters which must and can be settled by conference, not by ordinary political controversy ; and as to the host of details, formidable enough, they are not nearly so formidable as those of some great recent measures, such, for example, as the National Insurance Act.

It is not my primary object to prove the advantages (as distinct from the practicability) of Federation, nor to contrast the arguments for the fully and consistently opposed "unitary" policy. I shall not, therefore, intentionally go over much of the ground which Mr. Murray Macdonald will have covered already.

I may be allowed to say that I write in pursuance of a recent suggestion, which must be obeyed with speed, if at all, and thus cannot avoid some degree of confusion of arrangement or disproportionate length in parts. Beyond, therefore, referring to a table of contents which I hope may help judicious skipping, I would point out that Chapter V. deals with what appears to me the root of the matter, and that I have at least brought together in it a number of detailed facts which it is necessary to consider in this relation and which I have not myself found stated in any book.

Chapter IV., in which I discuss Irish Nationalism, is a digression, not essential to the subject of this essay, and in some minor points it does not altogether

satisfy me. But I let it stand, because I have not lately seen any real attempt by an Englishman to deal with the subject, and I am absolutely convinced of its main thesis, that Nationalist sentiment is not a thing which in any Imperial interest one can wish to see decay.

CHAPTER II

FEDERALISM

I. Federalism here and in Other Countries.

THE term "Federalism" suggests at once a number of analogies with foreign countries and the British Dominions, which tell partly for, but partly also against, what we call a federal system at home, and which have their use upon condition only that we are aware of their misleading tendency. The experience of foreign countries has much to teach us in regard to our social problems, and in applying the lesson we cannot easily overlook the essential difference of our own conditions. It is otherwise with the questions that concern our machinery and methods of government. No other empire in the least like the British Empire ever existed, no union of countries quite analogous to the United Kingdom, no Parliamentary government whose traditions and whose outstanding difficulties can usefully be compared with ours; and there is danger here that by stress on foreign examples or foreign warnings we may be led to overlook our own peculiar conditions.

It may be added that we are not merely a singular country (as indeed every country is singular); we are still forced to be as before, the pioneer country

in many matters of government, for with greater experience behind us we have greater difficulties before us. Our Imperial problem is unique in its complexity; social and industrial problems have reached a stage not yet reached in any country whose development in commerce and manufactures started later. Out of these arise a constitutional problem which is in this respect entirely novel: the question is not merely how representative institutions can be fitted to confront great dangers and to reconcile divergent interests, but further, how they can cope with business which is overpowering in its volume and its multiplicity. Thus the facts of our own position are more important than principle or precedent; and that position is one in which we may well act boldly, since otherwise we shall act with imprudence.

The word "Federalism" has been adopted in recent discussion to describe the constitution of a country in which one important part of government is discharged by a number of different authorities belonging each to one district or province of the country, and another important part of government is discharged by a single authority distinct from all the others and belonging to the whole country. Foreign experience and that of our Dominions show us that such a system of government (apparently so far more complex than our own) can exist and work without serious friction and without loss of the sense of national unity.

Such systems of government, when they at present exist, are called "federal," and it would be pedantic to deny that name to the system proposed for our

own country, merely because in its origin the name suggests a treaty of alliance or partial union between previously independent States.

But it is doubtless an important fact that the chief federations of the world have—with the instructive exception that the federation of Canada has involved the separation of Ontario and Quebec—hitherto arisen through a process of bringing together political units which had been separate, while with us it is in an obvious sense a process of division that is proposed. This point has been used—and not altogether illegitimately—for the adornment of many speeches against Home Rule for Ireland, and may be directed, though with less force, against the later proposal of Federalism. “The word federalism,” it might be said, “claims for your policy a prestige to which it is in no way entitled. You, who presumably applaud the maintenance of Union by the Federalists of America, and the unification of Germany through federation, who would applaud, if possible more, the unfederal and far more drastic unification of Italy, are adopting for your own country a policy of disunion. Calling it ‘Federation’ does not make it any less the opposite of what you praise in other people.” This is a rhetorical point, but it is, so to speak, sound rhetoric; it proves nothing, but it raises a pertinent question and conveys a fair challenge.

A certain sort of division of labour between an Imperial or Federal authority and State or Provincial authorities has proved suitable for the United States, for the reason partly that the several States which formed the Union, though driven together

by the fear of common enemies, feared hardly less one another's interference, and could by no means persuade themselves to give the new Federal Government more than a minimum of power.

Statements somewhat to the same effect might be applied to Switzerland and to Germany, in a less degree to some (one can hardly say to all), the federations now existing within the British Empire. This in itself affords no reason why this country or any country so united should create within itself new States or Provinces and effect any similar division of functions between its existing Government and the provincial Governments it created. Certainly it does not. But then nobody ever thought it did, and—quite as certainly—it affords no argument to the contrary.

But we may go a little further than this. The particular federal arrangement which obtains in the United States—for it is less confusing to deal with a single example—was due in part to enmities which have long died down, and which are a caution rather than an example. But it was justified in part by conditions which remain to this day and which make the distinction of function between the Union and its several States, no longer thirteen, but forty-five, upon the whole an unquestionable convenience and a source of strength to the Union. Some inconveniences, due to its origin, and certain to be avoided by ourselves, the federal constitution of the United States retains: in certain directions it is likely enough that the States will tend to closer and more effective union; but it has not entered into the mind of any man to desire that the whole legislative business of

the country should be transacted by Congress at Washington or its whole executive government be imposed upon the President and his Cabinet. In this no doubt extreme case it would be a patent folly to impose upon any one Legislature or Executive so huge a task. Moreover, the day has long gone by when the existence of distinct States (even with the extravagant measure of independence which these States in fact possess) counted as a danger to the vigorous unity of a larger national life.* The origins of such a federation have little teaching for us. Its continued success is no doubt far from proving that we should do well to change our present highly unified system, yet it does make it possible to ask, whether a great modification of our present system would weaken our effective unity or actually strengthen it. It is a question to be determined by knowledge of our own country and of no other countries; and it is not a question which phrases about Union can settle any more than phrases about the rights of nationalities.

2. The Supremacy of the Imperial Parliament.

These considerations lead us at once to a most important point (in regard either to Federation for

* If we turn to the German Empire it must be doubted whether a wise Prussian would think it a misfortune to German national life that Prussia had coalesced with, but not annexed or obliterated five and twenty smaller States including some considerable kingdoms. From the widely different instances within the British Empire, it may be sufficient to take this single fact, that the division of the provinces of Quebec and Ontario, within the Canadian Dominion, is a division of two States once formally united and has notoriously strengthened the real unity of Canada.

the United Kingdom or to Home Rule for any part of it) upon which absolute agreement exists. The difference of our case from the circumstances out of which most Federations have arisen, makes possible one departure from the common federal type, which we all admit to be an unmixed advantage, though all do not appreciate its significance alike. In the United States, to return to that "leading case," an individual State, Massachusetts or Virginia, Rhode Island, Arkansas, or Idaho, is in no proper sense subordinate to the Union of the whole forty-five. It cannot, indeed, make peace or war, and the Union can, but it can hang a man for a crime, or educate children, or regulate factories, and the Union cannot. Within the same area two authorities rule in different matters; each within its own sphere is equally independent; each is equally confined to its own sphere by a rigid Constitution; there is no common ground between them; where the boundary between their spheres is confused or wrongly drawn, friction and mutual obstruction arise; moreover, some legislation, such as has been passed in the United Kingdom, would be outside the competence of either. There is, indeed, a possible method by which their powers can be readjusted, but the task is so formidable that generations pass without its being undertaken.

In any federal scheme for the United Kingdom, or in any measure of Home Rule for any part of it, the difficulties and dangers of such a system would be avoided in the simplest possible way. Whatever powers the Imperial Parliament might delegate to Provincial Parliaments, it would abate none of its

own powers, but remain in all matters legally supreme ; they, on the other hand, however wide their powers, and however freely exercised in practice, would remain in law as unquestionably subordinate as a town council or the board of a railway company. The subordination would show itself in two ways. First, the provisions of an Act of the Parliament, say of united Ireland, or say of Ulster, would be liable to be overridden by those of an Act of the Imperial Parliament. Where this occurred an Irish or an Ulster court of law would be bound to enforce the Imperial Act and disregard the provincial Act, so far as the two conflicted ; if it did not do so, a superior court (the present House of Lords) would certainly reverse its decision. Secondly, a Bill passed by an Irish or an Ulster Parliament would not become law till it received the assent of the Crown and that assent could in any case of emergency (probably would as a matter of course and of convenience in a number of cases neither very sensational nor very important) be granted, or delayed, or refused outright on the advice of the Imperial Ministers, notwithstanding any contrary advice of the Ministers of Ireland or of Ulster.

This legal supremacy of the Imperial authority would be relatively difficult to assert under a one-sided scheme of Home Rule for Ireland only, relatively effective (however seldom its exercise were necessary) under Federation or Home Rule All Round. The extent and importance of this difference will require our attention later, but a word or two must be said here as to the real significance of Imperial supremacy under either

system, for we shall misunderstand it if we think of its use on some grave emergency as its normal or its only important use. Its main significance is not to be found in the possible cases where the two authorities might find themselves in intentional opposition. Nobody (certainly no honest Irish Nationalist), who expected a subordinate Parliament to be habitually bent upon courses in which the Imperial Parliament would habitually feel bound to restrain it, could easily be reconciled to the creation of a Constitution which permitted this. Its main significance concerns cases (almost certain to arise) where there would usually be no real conflict of intention whatsoever. In a federal Constitution which rigidly limits the powers of the Federal and those of the Provincial Legislature there will certainly be some ambiguities; occasion may then arise for some enactment to which both would gladly agree, but which is not very clearly within the competence of either. That occasional source of embarrassment our federation would escape; but it would escape one more common and more serious. The Imperial Parliament might, to take an example, pass an Act as to the recruiting, training, quartering, and movements of troops which accidentally conflicted with the provisions of some Provincial enactment passed for some purpose of police administration, sanitation, education, development of lands, or what not, without the remotest view to obstruction of the Imperial power. The example may appear far-fetched; any lawyer, however, can say with certainty that analogous conflicts must arise which if predicted now would appear equally far-fetched. Now if such

conflicts of law come before the courts, they will be settled with least friction and jealousy, and with best service to the public interest, if the courts have not to discuss and delimit the provinces of the two authorities, restricting one or the other in unlooked-for ways upon grounds not of policy but of grammar, but can resort at once to the simple rule that the Imperial power, with its larger public interests, must prevail.

As to the power of the Crown to sanction or disallow Bills of a Provincial Parliament upon the advice of the Imperial Ministers, its principal use would be as a means of insuring correspondence and agreement beforehand between the Provincial and the Imperial Governments in matters in which both might have an interest, and in which both aimed not at conflict but at avoidance of future occasions of conflict. Such is, in fact, the use to-day of the corresponding power over the legislation of the self-governing Dominions. It is well to observe that there must be fairly frequent occasions for what may be called the uncontentious exercise of such a power ; suppose, for example, that an area on a part of the coast were occupied by the Imperial Government as a naval base and that the Provincial Parliament passed some public Bill relating to housing or sanitation or some local Bill authorising public works which specially affected that area. The normal course of business would, no doubt, be that the scrutiny of the Imperial Government would be directed, and indeed invited, to the Bill before it became law, instead of after.

Again, under any federal Constitution there are departments of legislation with which Provincial

Legislatures must clearly be able to deal if they wish, but in regard to which upon occasion public convenience will be best and most quickly served by a uniform enactment by the federal Legislature for all the Provinces. For example, it might be thought well to give the Provincial Parliaments power to amend company law, and yet under a federal system the passing by the Imperial Parliament of some legislation as to companies which should be uniform throughout the United Kingdom might come to be desired in many quarters and opposed in none. This sort of case is partly provided for in some of the federal Constitutions of the Empire by the enumeration of a number of subjects on which the Federal and the Provincial or State Parliaments have concurrent authority (the Federal authority prevailing in case of conflict). With us such cases would be provided for more completely and satisfactorily by the mere fact that the authority of the Imperial Parliament would remain unabated. One further use of this supreme authority must be noted. The most carefully devised written Constitution will exhibit in working some unforeseen imperfections; the continued power of the Imperial Parliament to amend the Acts by which the Provincial Parliaments had their being would be a great convenience; at the outset it would enable us to deal safely in a provisional way (with a view to amendment in the light of experience) with some of those points on which, though no controversy of principle is involved, there is considerable doubt and disagreement as to the best practical arrangement.

Thus, what at first may appear as an instrument of subjection, likely, whenever it is used, to provoke

natural resentment, becomes on closer examination a provision, primarily, for the smoother and more harmonious working of the machinery of government as a whole, to be used in the normal course not for imposing upon a reluctant portion of the federation the will of the other portions, but for securing what public opinion in all the portions alike demands. I say "primarily"; I am not wishing to deny that occasions must be contemplated as possible when one Provincial Legislature would seek to do what, in Imperial interests or in justice to some minority, the Imperial Parliament would be bound in duty to restrain. It is worth observing here that the use of the Imperial supremacy upon such grave occasions would not be quite the difficult or the invidious thing that it may at first appear; because, for the reason explained above, it would have a normal, recognised, perhaps even frequent use for perfectly inoffensive purposes, on occasions which could evoke no sort of passion.

It may be well to describe the judicial machinery by which in our case the legislation passed by a federal or by a provincial Legislature would be interpreted and enforced. The creation of the American Union involved the creation of a new federal Judicature which has continued to exist side by side with the Judicatures of the several States, and these in the vastly greater part of their functions continue wholly independent of it. The creation of subordinate Legislatures in the United Kingdom would not necessarily involve the creation of any new complication in our judicial system; certainly it would not involve the existence side by side of

separate courts administering separate systems of law. England, Scotland and Ireland have to-day their separate judicial systems, that of Scotland in particular administering a system of law different in its origin and in some of its fundamental principles from the law of England; while a single ultimate court of appeal, the House of Lords, common to the three Kingdoms, is called upon to give the final irreversible decision upon points of English, Scotch, and Irish law indifferently. The creation of an Irish or a Scotch subordinate Legislature would introduce no new complication into this system. A Scotch or Irish court would have, no doubt, to decide upon occasion whether such and such a section of a Scotch or Irish Act was or was not overridden or altered in effect by such and such a section of an Act of the Imperial Parliament. They are doing to-day exactly the same thing, owing to the fact that the three Kingdoms were not always united, and to the further fact that, though they are now united, an Act of the Imperial Parliament as often as not applies to one portion only of the United Kingdom. Above them all the House of Lords would have both to interpret the true meaning of several distinct bodies of law and to settle questions arising from their possible conflict with each other. It is doing the same to-day; and, sitting in another capacity at the other end of Parliament Street, its members are accustomed, as the supreme court of the Empire beyond the seas, to interpret, and sometimes to adjust with one another, systems of law so many and varied that only a professor of comparative jurisprudence could even enumerate them. Thus any conflict of laws

which the existence of subordinate Parliaments might occasion would introduce no novel principle into our judicial system. The question of alterations in our judicial machinery becomes, of course, more complicated if we assume that England or Scotland or Ireland is itself to be divided into provinces; for the present, perhaps, one may be allowed to assure the reader that the questions which would thus arise would not be very difficult, nor involve any more startling anomaly than the peculiar courts which now exist in the Duchy of Lancaster and elsewhere.

The important distinction then, in point of law and of working machinery, between the federalism possible to us, and what may be called the typical federal system arising from the attempt to unite several independent States, lies in the doctrine and practice of Imperial supremacy. There is more to be said about it, but two things are already clear: First, for the ordinary dull purpose of efficient government this is a great improvement upon the existing type of federal institution, tending in a great degree to neutralise the drawbacks which have elsewhere been found in so complicated a machine. Secondly, it renders the first drawing-up of the federal scheme a somewhat less critical proceeding than it might otherwise be. On certain main principles, momentous but fairly simple, we no doubt must choose as for all time, but on some tiresome minor questions we need not feel as if once the mistake were made we must ever thereafter hold our peace. A restriction unwisely imposed upon the subordinate authority can be removed by an

amending Act; a power once given to it in some minor matters of business, which would be better exercised by Imperial authority, need not even be recalled, for the Imperial Parliament will not have parted with it.

3. *Powers to be "Reserved" as necessary to National Unity.*

Subject to this great qualification, the form of institutions which we may be led to adopt for the United Kingdom is in a general sense analogous to that under which three well-known and several less-known foreign countries and three great portions of the British Empire are successfully governed. All these agree in the common characteristic that States retaining for many purposes a very full measure of self-government are for certain purposes of supreme importance absolutely one.

They may be said, further, to agree in treating as matters in which the utmost possible unity of government must be maintained all things relating to defence and all things which may bring the federated States, or any of them, into relations with Governments elsewhere. Even this statement requires in strictness certain qualifications,* so various and in some cases so complex are the conditions under which federal constitutions have been devised ;

* Some of their qualifications are even startling. Thus, the German Empire at war has but one German army under the sole command of the German Emperor. In time of peace there are three other monarchs in Germany, each of them in sole and supreme command of an army of his own. Several princes in Germany have special foreign representatives accredited to their Courts.

but the exceptions are curious, rather than, for our purpose, important. In considering the future government of the Empire as a whole, the question of the control of defensive forces would require elaborate consideration. In this case we may lay it down as, besides the supremacy of the Imperial authority, the one point of universal and unquestioning agreement about any possible federal scheme, or any past or possible Home Rule Bill, that the Imperial Parliament must retain sole and undivided control of the Navy and Army, of all questions of peace or war, of all matters of intercourse between this country and foreign countries or other parts of the Empire, as also of all questions touching the succession to the Crown, or its dignities and its powers. 47

4. *Concluding Remarks.*

Beyond this, there is no close agreement between existing federations. Each has been formed in compliance with considerations—generally very plain considerations—of history and tradition, of physical features, of geographical distance, of prevailing local sentiment, or of the claims of ruling families. The German Empire has been framed in spite of diversity in the condition of the several States, such that they could not conceivably be fitted into a symmetrical system in which each part bore the same relation to the other parts and to the whole.

Each of them may rank as a success, and the success has been due to the firm grasp by its founders of the governing facts of their own peculiar situation, rather than to any observation of precedents or of abstract

theory. Several of them are remarkable for the rapidity and comparative ease with which a problem even more complex than our own has been settled when the need of unity in some directions and diversity in others has once been admitted.

CHAPTER III

WHAT A FEDERAL CONSTITUTION HAS TO SETTLE

WITH the example of other federal Constitutions before us we may now roughly classify the principal questions which in our case have to be met, can distinguish the important from the unimportant, and suggest to some extent the way in which they will have to be determined. They present what, abstractly considered, is bound to seem a most intricate problem ; it is in reality a problem of which (if we take it up at all) the solution is in many important points pre-determined by irresistible force of circumstances.

The makers of federations have had to decide the constitutions of the federal Legislature, the federal Executive, and the federal Judiciary, and the relations of the three to each other. In our case, of course, these are there to start with. A much-vexed question does indeed exist in regard to the constitution of the Legislature, but instead of becoming more difficult, if we adopt the federal policy, it would immediately lose much of its difficulty and nearly all its bitterness.

We shall have to consider :—

1. What are the Provinces or areas to which powers of self-government shall be given ?
2. What are the principal functions of government,

apart from finance, which should be delegated to the new Provincial authorities ?

3. Upon what financial system should the cost of the functions exercised by them be defrayed ?

4. Are there any principles of justice or expediency which, for the sake of conformity with the common aims of the United Kingdom or for the sake of minorities, should be made formally and constitutionally binding upon them in the exercise of the powers delegated to them—as by the Constitution of the United States certain kinds of legislation are interdicted to the Legislatures of the Union and of the several States alike ?

5. How should their legislative, executive, and judicial authorities be constituted, and in what relation should they stand to each other ?

Now the first two of these questions are of governing importance, and the answers to the rest depend upon the answers to them. These two questions are very closely connected with each other. Together they form the principal subject of this essay. They are of considerable complexity, but by no means of corresponding difficulty. The complexity is one which some distinguished speakers who are familiar with the history and constitution of our Dominions and of the United States seem to have been unprepared to find, though it is a far less formidable complexity than that which confronted the architects of the German Empire, where obviously the relations of Prussia to Bavaria and of Prussia to Schwartzburg-Sondershausen were not and could not be made the same. In America thirteen States, each of them with quite similar self-governing

institutions, could coalesce in a federation on a perfectly simple plan; as population became denser in the East and also spread further West new States could be added or existing States could be divided by drawing straight lines on a map—it mattered little within fifty miles or so where they were drawn—and nothing could be simpler than to put the areas thus delimited on the same footing as the original States. Something of the same simplicity has applied to the development of the Dominions. In our case we have to deal with certain divisions of the country whose boundaries are fixed by nature or by history or by present popular sentiment. Some of these divisions are very clearly marked for us, but the most clearly marked are not all of the same character; all may be important, but they are not all important for the same reasons. The distinction between a part of Ulster and the rest of Ireland may, on the whole, be more important than the distinction between England and Scotland, but for legislative and administrative purposes there is now a deep and irrevocable severance between England and Scotland, and there is none whatever between Ulster and the rest of Ireland. The distinction between Wales and England is no doubt important, but is of a different character from the two previous distinctions. It may appear on consideration that for the purposes of a federal scheme all these divisions should be treated on the same footing, but it must not hastily be assumed. When people propose further the creation of wholly new divisions within England itself, or the revival of the ancient division of Ireland into four provinces—

a thing, totally obsolete, except, I believe, for purposes of football, so that when we speak of Ulster now we are not referring to the old province of that name—they may turn out to be suggesting a wholly impossible severance of existing unities.

Now this complication of the problem when first noted may seem to make it one of insoluble difficulty. It really only shows that the problem must be approached by seizing first on the points which can be most simply dealt with, and afterwards, in the light of what is certain about them, considering the more difficult questions. This (apart from the reserve with which it may be well to discuss the question of Ulster) must be my apology for dealing first and most fully—irritating though such a procedure may be—with a part of our problem which is not at the moment the subject of any burning emotion.

In one point further I may forecast the discussion which follows. It will (if it be sound) justify fully what may have so far seemed the unwarranted assumption that the delegation or devolution of powers (if any) which will take place will be one deserving of the name of Federalism. I have assumed that we shall proceed to create provinces whose Legislatures, though subordinate, will in the scope and importance of their functions be comparable with the Parliaments of the Provinces or States of existing great federations, and will need to have separate Executives responsible to them. I do not forget that some who have spoken favourably of Federalism or of Devolution would not at once admit this. But I think it can readily be shown

that they cannot either relieve the Imperial Parliament or satisfy local claims by anything that falls short of this, and will be driven either to enlarge their ideas of devolution or to return for the present to the mere maintenance of the *status quo*.

On the question of finance I shall not venture to say much. Mr. Macdonald has explained where the difficulty lies. In one sense this is the most difficult part of the whole problem. Indeed, it is not merely difficult to suggest a satisfactory solution of it; it is—and we must frankly face this—impossible to suggest a system of federal finance which will not *prima facie* be a worse financial system than we have at present. Finance is the weak part of the greatest existing federations—the United States and the German Empire. We, like them, shall have to set other political advantages against the disadvantage of a more cumbrous financial system. Real as the disadvantages will be, it is nevertheless certain that the restored efficiency of Parliamentary government, if that be gained, must result in great ultimate economies; if it cannot greatly retrench waste now going on, it is yet the only possible safeguard against further waste which will be otherwise inevitable. But I do not propose to discuss what financial system should be adopted, because I believe that the most satisfactory system can only be arrived at by the method of conference between statesmen who are already agreed that the federal principle must be accepted.

The fourth question, stated above, as to restrictions upon the action of Provincial Legislatures within the range of matters which are assigned to their

control, needs a word in explanation of its terms. A Legislature which was entrusted with the control of criminal law might be restricted from imposing cruel or unusual punishments, as Legislatures in the United States are in fact restricted by the Constitution, and as the Legislatures in some territories of the British Crown have been held to be restricted by our Common Law. Again, a Legislature entrusted with the control of education may be restricted from showing favours to the religious teaching of a particular Church, as each of the Home Rule Bills has restricted the proposed Irish Parliament. The subject, though it invites endless theoretic discussion, is not really of large practical importance. Such restrictions are apt to have unintended results, but the possibility of them has to be borne in mind in considering the possible position of an alarmed minority. It is probably safe to say in the case of Ireland that no restriction of this nature which a minority would be likely to claim and value would meet with any serious objection.

There remains the question of the constitution of the Provincial authorities, a question which in the abstract seems large enough, but of which, in our case, the answer is in large part fixed by precedent and constitutional habit to which we are well accustomed. As to their judicial machinery, enough has already been said, though in any actual settlement the appointment of judges may require careful consideration. As to the constitution of their Executives and the relation of these to their Legislatures, the Imperial Parliament has before now set up institutions

of self-government in many parts of the Empire, and has invariably taken the course of setting up an Executive power which is in essentials an exact miniature of the Imperial Government, and in its details (the number of Ministers, their names, and the precise limits of their respective duties) exactly what the Legislature concerned may choose to make it. (We shall see later that the machinery of the departments is in the main ready made for us.) Precisely this course will certainly be followed in the main provinces of our federal system. The terms of the enactment for this purpose in any Home Rule Bill probably seem both meagre and mysterious to most laymen; they present no mystery to constitutional lawyers; and to the best of my belief there is no chance of controversy about them. A question would doubtless arise as to Lord Lieutenants, Viceroys, High Commissioners, or other personages to represent the King in the different Provinces, but it is a question of legal formality, local sentiment, and possibly in some degree of the personal taste and convenience of His Majesty, not of any matter with which we need concern ourselves.

We are left then with the question of the constitution of the Provincial Parliaments. It is a question which can only be settled in view of the distinct requirements and preferences of the several Provinces concerned when it is definitely known what these shall be. There is not the slightest reason why the several parts of a federal system should in these details of their constitution conform to any uniform plan; the German Empire actually

exhibits in the inner constitution of its several parts almost every variety of monarchical or republican institutions. We need not contemplate any such diversity as that, but, on the one point on which we may expect controversy, that of a second chamber, we can certainly allow some variation. Of the nine Provincial Parliaments within the Dominion of Canada and the six State Parliaments within the Commonwealth of Australia, most have second chambers, but some have none, and the different second chambers are constituted on different principles. It is probable that if the Scotch have a Scotch Parliament they will prefer the single chamber system, and it is probable that no man outside Scotland will question their claim. It is otherwise in the case of Ireland ; English opinion interested in the rights of an Irish minority would lean towards a second chamber, and if the opinion of an Irish minority decidedly inclined towards a different kind of second chamber than has actually been proposed, it is improbable that anyone would grudge the satisfaction of their wish. In any case, the whole subject is most clearly a matter for give and take, after questions of a more important order have been fought out or settled. And here comes in the effect of the supremacy of the Imperial Parliament ; we shall not be settling these matters for all time (though some matters we shall no doubt be so settling), but can adopt the plan that seems best for the moment, with a prospect of improvement later if experience suggests it. The franchise would remain as it is. The distribution of seats would remain as it is, till the Imperial Parliament may alter it.

The question may present itself:—Ought the internal constitution of the Provinces in all these respects to be subject to alteration by the Imperial Parliament only, or ought the several Provinces, like States in the American Union, to be largely masters of their own franchise law and the like? The answer is certain: In future they may desire a free hand to make constitutional experiments, and it may be well to concede it; for the present the Imperial Parliament is bound to regard itself as a custodian for possible minorities which may be uncertain of their footing, and will in matters such as the redistribution of seats keep for the present sole control.

Before we consider the powers to be granted to these subordinate Parliaments, a word may be said upon a technical question which has sometimes been thought of importance:—Ought the terms in which their powers are granted to be a detailed specification of all the matters with which they may deal, all powers not so specified being reserved to the Imperial Parliament; or ought it, on the contrary (as in the Irish Home Rule Bills), to be a grant of a general power of legislation for the peace and good order of the respective Provinces, coupled with a reservation of certain specified powers to the Imperial Parliament? Now this question would be one of substance if we were considering the terms of a federal Constitution in the narrower sense, in which the federal Parliament had no powers whatever but those which were expressly granted to it; I venture to think myself that it has no substance at all where the Imperial Parliament,

there already, has always had and will retain supreme power in all matters whatsoever. The question, as it seems to me (and as, we are informed, it has seemed to the framers of the Irish Bills), is merely a question of brevity and simplicity of expression. As a matter of language, the whole of the powers which could conceivably be reserved to the Imperial Parliament could be expressed in comparatively few plain words, and the briefest detailed description of the powers which every one would delegate to the subordinate Parliaments would be lengthy and intricate. However that may be, it stands on record that the proposers of the present Home Rule Bill would be perfectly ready, for the purpose of a settlement, to adopt the other form of expression if the other parties to the settlement wished it.

We have now surveyed (noting the points which may be regarded as settled and classifying those which require settlement) the whole field of questions to be considered, with what may be excessive elaboration of prefatory matter. But the result is important; we have arrived at a sharp division between certain vital questions of policy on which public opinion must be formed, on which principles must be laid down, and certain questions of detail, some of them very important and some of them not, but all of them questions either for friendly bargaining or for purely expert discussion when the vital questions have been settled.

It is often said, by the way, that the present Irish Home Rule Bill stands out of relation to any possible federal solution. I do not care to contradict this

assertion, but it would help the Federalist critics of that Bill in approaching any settlement to grasp, as I do not think they have done, the distinction in its supporters' minds between the vital principles and the unessential details of the Bill ; it corresponds to the very distinction which I am now stating.

The vital question is :—What are the areas requiring subordinate Legislature and what shall be the distribution of functions as between them and the Imperial Parliament? All the other questions, including even finance, can either be left to experts or are mere matters for compromise or for confessedly provisional and temporary solution. I shall concern myself in the remainder of these pages (after the digression contained in the next chapter) with these two vital questions almost exclusively.

CHAPTER IV

NATIONALISM

IN a previous chapter I have discussed the idea conveyed by the word "Federalism"; I have dwelt on the fact that the formation of federations has, hitherto, been the creation of national unities where between citizens of distinct political units a common national life and national feeling has already prevailed or has, in spite often of bitter jealousy and sometimes after actual war,* been ready to spring up; I have claimed that federalism, in our case, though arising in a manner so different, far from weakening any kind of national union which we value, would make national life more vigorous, because more efficient in the conduct of national business, and more united by the satisfaction of local patriotism. I wish, therefore, to face the fact, that our question of "Federalism" has been brought forward by "Nationalism" in Ireland and that Ireland is actuated by the aspiration for a national life, distinct from the larger national life on which I have insisted. I will try to deal with the contention of an authority which I greatly respect,

* Bavaria, Würtemberg, and Saxony, federated with Prussia in 1871 during a war with France in which they were allies were all at war with Prussia in 1867. The case of South Africa is fresh in our memory.

that "Nationalism" in this sense and "Federalism" are two things with incompatible aims. The question is not merely one of sentiment; there is a tendency to assume that the Home Rule which would satisfy "Nationalist" aspirations must in some essential point be different from the Home Rule which Federalism requires. Cool inquiry will, I think, show that this assumption is extraordinarily mistaken; but cool inquiry may perhaps be helped by some reflection on what Nationalist aspirations mean.

Intelligent opinion has advanced beyond the stage when pedantic people could laugh down all Nationalist claims because no one can define a nation or say whether its nationhood is based on race, language, religion, geography, political union in the past, or some combination of these. Many of the most familiar things in the world are things of which no definition can be both correct and intelligible, of which the origins are uncertain or diverse, of which the existence or non-existence is sometimes a question of degree, and of which the name is ambiguous. Irish nationality presents all these opportunities of dialectical advantage to a politician who is ignorant or who honestly judges that it is a fact which is best neglected. Still, the ordinary Englishman is keenly aware of characteristics common to the Irish, which sometimes baffle him in dealing with them, and which, as a rule, he definitely likes or dislikes (oddly enough, he is more apt to like them if he is a Unionist and inclined to underrate the political consequence of Irish national feeling). Along with these characteristics,

indefinable but vivid, which would otherwise be not important but only curious, goes unquestionably a body of tradition and sentiment (habitual or stirred by occasion), local, historical or mythical, and in a loose sense, literary; no Englishmen, once aware of its existence, can doubt its force or the extent of its prevalence, or fail to mark how completely distinct it is from the powerful English tradition, too subtle and too intimate for analysis, which we yet know is one of the chief bonds of Empire. All this might exist in a people scattered among other races in many countries. In this case the central mass of the people in question dwell together in an island of which they occupy far the greater portion and which they are naturally apt to regard as their undivided own. This island, with its national tradition, attaches to itself the sentimental regard of large numbers dwelling, sometimes massed together, in distant countries; and the emigrant Irishman possesses in an altogether peculiar degree the habit of keeping up home connections and of revisiting old scenes after many years if he can. Of these emigrants and children of emigrants, a large number are in the United States; they are, and count themselves in the fullest sense, Americans, but are not the less ready to count themselves in the fullest sense Irishmen. A large number, on the other hand, are in the Dominions of the King: these, no less, belong fully to whichever Dominion they inhabit; they are not a bit less disposed than its other inhabitants to be dominated by Imperial patriotism, yet by becoming Canadians or Australians or the like, and therewith, perhaps, Imperialists,

they, too, do not cease to be emphatic Irishmen. To this analysis of a complex phenomenon, one thing needs to be added ; for reasons of religion, ancient custom and modern enactment, soil, climate, industrial conditions, and so forth, almost any subject of domestic legislation or administration in Ireland has, by common confession, a widely different character from the corresponding subject in England ; for perfectly sufficient causes Ireland and the predominant power did not achieve and could not have achieved a good mutual understanding in the past ; there have resulted blunders of government (sometimes most disastrous when best intentioned), the recollection of which could not be effaced by the conspicuous improvement produced by some recent measures ; even if it could be effaced, thoughtful Irishmen would still say, and be obviously justified in saying, that the changing times ahead will bring fresh Irish problems, in the midst of which Irishmen must work out their own salvation.

Hence we come to be confronted with a demand, the different manifestations of which are not very easy to understand. There is a mild enough demand for domestic self-government on grounds professedly belonging to the realm of business, which in itself seems no more romantic or conducive to passion than the demand which has carved out of the North-West territories the Provinces of Alberta and Saskatchewan. But this demand forms the rallying point of a sentiment of nationality—a passionate sentiment because its past is one of much suffering and not a little wrong, and a sentiment whose traditional expressions seem curiously unrelated to

present fact, but a sentiment which those who feel it regard as bound up with all that is sound and promising in the popular life of Ireland. They would admit that their sentiment was nourished on memories of long enmity to England, but they would say that their hope of a happy future for Ireland was within the Union, and that such greatness as they desired for Ireland was participation in the greatness of the Empire. They would claim for Ireland institutions not merely efficient, but gratifying to Irish national pride, and they would expect you take it as a matter of course that Irish pride thus gratified would be an element of loyalty and strength in the life of the United Kingdom and the Empire.

I have endeavoured to state, with the coherence which an outside observer may contribute to it, what I believe to be the feeling of thoughtful, disinterested, and moderate Irish Nationalists. I am not here trying to weigh their contention against that of broad-minded and well-informed Unionists, I am trying to make clear a confused issue.

Now Englishmen to-day are not as a rule disposed to meet this Nationalist contention by dwelling unduly on that meaner side of the Nationalist movement of which we are quite aware. We are most of us inclined to rate all that at its due importance, and to regard Nationalist claims with respect and sympathy, but it is natural that we should none the less scrutinise them very critically. Of course, there can be a deep-rooted national sentiment in a particular part of the Empire or the United Kingdom which is quite compatible with a larger patriotism

and with loyalty to a larger national unity, and which indeed supports and strengthens them. Scotland has, in fact, as strong a national sentiment as we know anywhere, stronger than the Irish, and Scotland is quite loyal; but then Scotch "nationalism," so to call it, is wholly unpolitical; it has never expressed itself in a demand for any political institution; and the new demand for Scotch Home Rule, seriously as it is intended, has been carefully dissociated from "nationalist" claims, which in this connection would ring false. People turn from this to Ireland, and they remember that Irish Nationalism, which does make a political demand, was in its earlier—they are now prepared to call them its more respectable—manifestations avowedly separatist and hostile to England. They ask if the older Nationalist movement does not remain in its essence unchanged, if the Home Rule movement is not partly rooted in blind discontent, partly a half-conscious subterfuge for obtaining independence by steps. The form in which Home Rule is now proposed meets, therefore, with suspicion at the outset—Irishmen who have cheered at a defeat of British troops cannot of course be indignant that this is so—and people who have come to think that after all some form of self-government is wanted in Ireland are still predisposed to think that the proper and business-like arrangement for Irish government will more likely than not be quite unrelated to the old Nationalist demand.

Now an inquiry later will show that, from the dry point of view of public business (apart from the question of Ulster), something very like the proposals of

the Home Rule Bill is the only form of Irish self-government that can be efficient in itself, or can relieve the Imperial Parliament. For the moment I am only concerned with the principle and sentiment of Nationalism. Speaking with a good deal of knowledge of the childish, the sordid, and the brutal sides (which also exist) of the Irish Nationalist movement, I venture to say as a fact that the thoughts which I have endeavoured to state are those which genuinely animate a number of active and enthusiastic Nationalists (a number which was certainly a little while ago considerable and presumably remains so now).

This, it may be said, is not really representative of Ireland. An Englishman cannot easily be in a position to dogmatise (in the face of adverse testimony) as to the prevailing sentiments of the mass of people in Ireland, and should, of course, check his opinion by that of Irishmen, quite as loyally Irish in their way as the rest, who live as unshaken Unionists in the midst of Nationalist Ireland. Their account is apt to begin with the assertion that the mass of Irishmen do not want Home Rule, but are rather alarmed at its probable consequences and are very well contented as they are (it does not go on to hold out any prospect that they will cease through their representatives to demand Home Rule with uncomfortable insistence); the appearance of unanimity in the demand is explained by the prevailing moral cowardice of Irishmen, which enables a spurious public opinion to be manufactured by influences of a vulgar or sinister kind, which in happier countries are less powerful, and makes that

public opinion no less tyrannous than it is spurious. A kind of subterranean sway appears to be exercised by a priestly power, respectable, but far from desirable, in combination with a variety of influences which would naturally be expected to be hostile to it.* Its strength is such that the fairly prosperous Irishman, now much more abundant than of old, though indifferent or even anti-Nationalist at heart, is afraid to do other than express Nationalist sentiment. It is not, I think, suggested that under Home Rule this sway would be used for any aggressive purpose, only that a low level of public and of social life will prevail, and the lowness of the possible level is plentifully illustrated by actual occurrences. Further, as a proof of the factitious hold, upon people individually indifferent and contented, of causes which cannot appeal to their reason, one hears of the ascendancy and the foolish excesses of a sentimental movement of which the attempt to revive the Irish language is typical. Lastly, the hearer infallibly draws for himself a picture of loyalist gentlemen genuinely liked and looked up to by their neighbours, and yet under present circumstances denied all public influence.

Now I cannot doubt for one moment that this view is occasioned by a serious consideration of facts. But the critical Englishman must wonder a little whether it includes all the important facts, and in any case what these facts really prove. They do not

* The main engine of this is, of course, the Ancient Order of Hibernians. There is no question of its criminal character in the past, but there is as little question now that it is under a priestly control which, if harmful and undesirable enough in some ways, has destroyed its criminal character.

conclusively, at any rate, prove anything as to the probable bad effects of Home Rule upon the internal life of Ireland; they do conclusively prove the prevalence under the Union (in spite of increased material prosperity and the removal of ancient animosities) of an evil state of social relations and public feeling which it is hard to conceive would be made worse by self-government. On the most cynical view, it must call into play healthy antagonisms now dormant, and break down the kind of morbid unanimity on which the alleged rule of the bully and the wirepuller depend. The acquiescent indifference of the prosperous will surely not continue when the electoral issue is not the carrying on of an ancient agitation on a single cry, but the actual management of business that concerns them; nor, one cannot help hoping, will the political ostracism of the gentleman last.* "Home Rule" has been said to mean "Rome Rule," but Rome Rule is there already, and it is a growing conviction, not merely of Englishmen, but I think of Irish Unionists living among Roman Catholics, that Home Rule must, for good or for evil, shake it. Enthusiastic Nationalists no doubt pitch their hopes too high; it is reasonable to suppose that Unionists upon the spot pitch their fears too high. The Irish Parliament will not be an ideal assembly from the start, but, so far as the internal welfare of Ireland is concerned, there is no

* The present Nationalist party is, of course, a combination of men who are Liberal and Conservative, Clericalist and Anti-Clerical, etc., etc., but who are held together by the common object of desiring Home Rule. When the Irish Local Government Act was passed, thoughtful Nationalists predicted the exclusion of landlords and other defects in its working so long as the temptation lasted to use local government as a means of agitating for Home Rule.

evidence to confute the English prejudice that self-government tells heavily for good in the long run.

But my immediate question is as to the reality of Nationalist sentiment and as to its compatibility, if it be real, with the maintenance of the Union and with the growth of Imperial loyalty.

Now the testimony of Irish Unionists to-day suffices to destroy any idea of a formidable Separatist movement in prospect or of a grave menace to this country in time of war as likely to follow from Home Rule. The mass of increasingly prosperous Irishmen, said, no doubt truly, to be critical towards the present Home Rule Bill, would be something more than critical towards a movement which meant their ruin. Nobody thinks that the influence of the priests tends that way. The lower sort of agitator, with a gift for village tyranny, and an eye to small pickings, who is alleged to flourish under present conditions, may continue to flourish, or may not, but is not of the stuff which makes serious revolutions. In any case one may ask: In the event of war, if any electoral influence prompted a Home Rule Government to give comfort or sustenance to an enemy, what power would it possess which Irish Nationalist organisations do not possess to-day? Very little in any way; and in one way far less—it would work in the light of day, and it would be the Government among a people understood to be constitutionally against the Government. But the fear of separation or the like is no longer alleged by men with knowledge. The most serious fear entertained is of quite the opposite kind, namely, that an Irish Government would continually press for undue

favours from the British Treasury. Indeed, it is a salient feature in the Home Rule problem as it stands to-day, that the menace of separation or of active hostility to this country, which once formed (and naturally) perhaps the largest part of the Unionist case, is part of that case no longer.

But the evidence which undoes any acute fear of the Nationalist spirit is very far from proving that that spirit in no way counts. Even as to the prosperous grazier, who is critical of Home Rule, but is afraid not to join in exhibitions of loyalty to the cause, one may ask first whether anyone ever received uncritically the actual approach of a long-promised reform, and secondly, whether it is not possible that beyond being afraid to seem unnational he would also be a little bit ashamed. But evidence is conclusive as to the rapid growth and the command over public opinion of a sort of "revival" which shows itself in many industrial efforts, but of which the simplest illustration is the attempt to resuscitate the Irish language. A mechanic in the country, who knows no word of Irish, after criticising freely everything else about his Nationalist neighbours, will repel criticism on this point with the simple remark, "It would be a nice thing to know *one's own* language." This particular revival—I dwell on it because it is not an isolated thing, but an illustration of much else—is *primâ facie* a "fad." On purely educational grounds no less than commercial grounds one may regret that young people's time should be spent upon Irish when the English language, which they talk from childhood, opens to them incomparably wider and richer fields of poetry and

imagination.* One may regret still more, by the way, that in Irish village schools children are taught a view of the world in which there is no history but that of Ireland, no great events of the past but the successive catastrophes of Ireland, no romance but that of a native Irish civilisation which perished in dim by-gone ages, no heroes or benefactors of mankind but the Irish leaders, from Owen Roe O'Neill to Parnell, who have resisted England and have come to a melancholy end. Surely an amazing dispensation of the governing British authority! But the dominance—whether one regrets it or not—of a spirit which is in this sense Nationalist is a fact beyond dispute. One may add at once that from the British Imperial point of view it is a perfectly inoffensive fact. Irish Unionist speakers—whose boyish recollections identify Nationalism with crime or at the best with rebellion, somewhat as Nationalist retrospect may identify the Union with oppression and decay—sometimes say that Nationalism is dead; what the facts which they advance prove is that it is no longer ferocious or formidable. Jealousy of Celtic ebullitions to-day is about as sensible as fear that a Jacobite spirit may be encouraged in the Highlands by the wearing of kilts instead of trousers.

Nationalism certainly lives, and—apart from the general consideration that a mass of people are most surely understood by a study of the best and most sensible men among them—it seems plain, on the whole, that the reasonable and highly educated

* Compare the movement in Norway for the institution of a "People's Language," which is an artificial compound of words and phrases from the very diverse dialects of a number of districts, and which is not naturally talked by anyone.

Nationalists, if comparatively few in number, interpret it rightly. No people, least of all the English, get along without a stock of what (mainly in a good sense) we call sentiment, without some characteristic intellectual or spiritual leaven, stirring among them. If, then, the question be asked what wholesome influence of this order breathes and moves in Southern and Western Ireland which is not in some sense intensely Nationalist, the emphatic answer must be that there is none.

The Nationalist, then, is appealing to common experience when he says that the force which will give rise to popular progress in Ireland, to any possible real improvement in Ireland, to any sort of enlightenment, will be Nationalist, if there is any such force at all. He is on equally sure ground when he contends that this force—be it weaker or stronger—of progress demands the outward symbol of a Nationalist State. It demands it—unlike a Scottish nationalism, which is detached from the demand for Home Rule—for the simple reason that the Irish have been as a nation a singularly and tragically unsuccessful nation, and that a visible token of national success and of satisfied national pride must be welcome to them and good for them. Lastly, he can claim absolute credit for his assurances (alternated, it may be, with ever so much that is most offensive to us) that his Nationalist aspirations are not Separatist and that it rests with us to make them very emphatically loyal. For why in the world should it be otherwise? The Irish are reputed to be unbusinesslike, but they are none the less reputed to have a keen eye to business, and if there were nothing

else, the moment British government ceased to be in some way oppressive to Irishmen or to any class of them, the material advantage to Ireland of the Union (in its essentials) became the most staring fact in the whole political situation. But there is something else. The Irish tendency to gird against Empire and anything else in which Englishmen are inclined to glory has all along been largely due to a sense that Ireland has not her fair share in the glories. No one suggests that there is a tendency in Ireland to dislike English people as such—far from it; and the springs of emotional disloyalty lie curiously close to those of an equally emotional loyalty. There has probably never been a pro-Boer in Ireland who could not be provoked into boasting that Ireland won Waterloo. Moreover, times have changed. The near memory of causes that made treason natural to an Irishman of spirit is not a near memory now. Visions of an important part in the world to be realised by an Irish republic have shifted to other ground. It is tiresome to reiterate that Irishmen abound in the Empire overseas, and are loyal, and are closely in touch with home; but it is absurd to forget it. Irishmen of a generation back set no value on their position in the British Empire; but then Englishmen of a generation back thought nothing of that Empire either.

If I could incorporate in the Irish Home Rule Bill, supposing it to pass, one amendment rather than another, it would provide that by agreement with the War Office the Irish Parliament might adopt the Territorial Forces Act for the whole or any part of Ireland.

The Nationalism of Ireland has provoked this long

digression, because it is a puzzling element in the problem, and I do not know that any English writer of late has been bold enough (or, perhaps, foolhardy enough) to attempt an analysis of it. Nationalism or national spirit in the other parts of the United Kingdom demands but few words.

We cannot now forget for a moment the existence of a very powerful local patriotism in Protestant Ulster, a part of Ireland which I believe could be fairly clearly marked out, but which is not marked out by any existing county boundary or by that of the old province of Ulster. It is of course highly antagonistic to Irish Nationalism, but it is quite distinct in character from the Unionism of the rest of Ireland, and while its distinctive note is the assertion of a loyalty which should be common to England and Scotland, it is curiously unlike either, and most of us are curiously unfamiliar with it. Like much of Nationalist sentiment, it is rooted in the past. It has had little opportunity, really, of defining its aims. It is an unquestionably serious fact; it is worthy of a respect which an Englishman can only learn for it by some study. We may be greatly inclined to rush to unwarranted conclusions about it. One thing only can safely be said about it: When these pages appear the time can scarcely yet have been reached when any final judgment can be passed on the methods by which justice can be done to it. Brief though the time for forming that judgment may be, it should not be premature.

The national spirit of Scotland is the only one of these with which Englishmen are really familiar. It is a rationalism as marked and intense as exists any-

where, but it is wholly non-political. There is a serious Scotch demand for Home Rule, but it is not based on an appeal to Scotch national pride. It is based on the experience that the Imperial Parliament has no time for Scotch business, not on any sense of grievance, or any failure of Scotsmen to observe that they get their own way. Scotch nationalism has not been used to demand any fresh Scotch institutions because it is that of a conspicuously successful nation. It has never been in any sense opposed to England or to the Union, and the historical cause of this throws a light upon the contrasted case of Ireland ; for the Scotch nationality as it exists—a thing common to the Lowlands and the Highlands—has not been thwarted in its growth by the English connection ; it is actually a product of the Union. In one point Scotch nationalism has a political significance of first-rate importance for our present purpose. If Scotland has self-government, it will have it for Scotland as a whole, not for two or more provinces of Scotland ; and there is an end of that matter.

Welsh nationalism, in the same sense, is undeniable ; moreover, it does throw itself into certain demands of legislation. Yet so far it is not in the main political ; it expresses itself in Eisteddfods and the like, but has made itself heard in no demand for a Welsh Parliament. If it did it might arouse no alarm ; for, though an Englishman may be permitted to like or dislike what he thinks characteristic of Wales, no sane person would suggest in this connection disloyalty or peril to the Empire. But a very wide distinction exists nevertheless between the

question of Welsh self-government and that of Scotch and Irish. Wales may be ever so Welsh, but it is in no appreciable degree separate in law or administration from England. Scotland and Ireland are.

It seems almost playing with words to speak of English nationalism; but seriously there is some room for such a thing. English conditions are in many ways widely removed from those of the adjacent smaller countries, which many Englishmen used to think of as outlying parts of England. And a people who outweigh in number and in wealth all the other peoples of the United Kingdom put together, even more than Prussia outweighs the rest of Germany, have never had acute occasion for self-assertion as one nation among the rest. Thus it has come upon us without our knowledge that we are liable to be ruled, in fact, by what the late Lord Salisbury bluntly and inaccurately called the "Celtic fringes" of England. This is not altogether well for the prospects of our ecclesiastical concerns or of our land system, things peculiar to us and not wisely to be handled without intimate and sympathetic knowledge. Nor as the demand grows for legislation which touches even more closely the life of the people should the government of England by men who are, in this sense, strangers leave us unconcerned.

CHAPTER V

THE REQUIRED PROVINCES AND THE POWERS REQUIRED FOR THEM

I. *Powers which no Province can have.*

WE have to ask: In a federal system for the United Kingdom, what should be the Provinces, and what powers should be delegated to their Legislatures. The two questions, as has been said, are closely interlocked. The problem is most complicated. The last chapter may throw some light upon it, but I should wish to approach the matter without any exclusive prepossession in favour of satisfying any Nationalist claim. The only way to approach the problem is to pick out first, not the most exciting points, or even the most urgent and burning questions, but the points which are simplest and most sure.

Some matters, as has been said, the Imperial Parliament, retaining in all matters supremacy, must reserve for its exclusive control. These are the great Imperial interests, vital to the existence of the greater nationality, including English, Welsh, Scotch, and Irish, for which it has never seemed worth while to coin a name.* But besides these there are several

* The names Great Britain and British, of course, couple this island not with Ireland but with Brittany. It is, I imagine, more polite to call an Irishman an Englishman than to call him British.

matters of common concern to the United Kingdom which must, undisputably be reserved to the Imperial Parliament. Lighthouses are an example; it is obviously well that they should be under the control of one authority all round our coast, and no inhabitant of the islands has the slightest jealousy of Imperial control of them.

It will clear the ground if we enumerate at once the „matters—other than matters of finance—which by universal consent must be thus “ reserved ” to the Imperial Parliament in any possible scheme of Federation or Devolution. For this purpose one may set out the greater part of Clause 2 of the present Government of Ireland Bill:—

Subject to the provisions of this Act, the Irish Parliament shall have power to make laws for the peace, order, and good government of Ireland with the following limitations, namely, that they shall not have power to make laws except in respect of matters exclusively relating to Ireland or some part thereof, and (without prejudice to that general limitation) that they shall not have power to make laws in respect of the following matters in particular, or any of them, namely—

- (1) The Crown, or the succession to the Crown, or a Regency; or the Lord Lieutenant except as respects the exercise of his executive power in relation to Irish services as defined for the purposes of this Act; or
- (2) The making of peace or war or matters arising from a state of war; or the regulation of the conduct of any portion of His Majesty's

- subjects during the existence of hostilities between Foreign States with which His Majesty is at peace, in relation to those hostilities ; or
- (3) The navy, the army, the territorial force, or any other naval or military force, or the defence of the realm, or any other naval or military matter ; or
 - (4) Treaties, or any relations, with Foreign States, or relations with other parts of His Majesty's dominions, or offences connected with any such treaties or relations, or procedure connected with the extradition of criminals under any treaty, or the return of fugitive offenders from or to any part of His Majesty's dominions ; or
 - (5) Dignities or titles of honour ; or
 - (6) Treason, treason felony, alienage, naturalisation, or aliens as such ; or
 - (7) Trade with any place out of Ireland (except so far as trade may be affected by the exercise of the powers of taxation given to the Irish Parliament, or by the regulation of importation for the sole purpose of preventing contagious disease) ; quarantine ; or navigation, including merchant shipping (except as respects inland waters and local health or harbour regulations) ; or
 - (8) Lighthouses, buoys, or beacons (except so far as they can consistently with any general Act of the Parliament of the United Kingdom be constructed or maintained by a local harbour authority) ; or

- (9) Coinage ; legal tender ; or any change in the standard of weights and measures ; or
- (10) Trade marks, designs, merchandise marks, copyright, or patent rights ; or
- (11) Any of the following matters (in this Act referred to as reserved matters), namely—

[These may be omitted here because the Bill contemplates the reservation of these matters, of which the chief is Police, only during a transitional period.]

Any law made in contravention of the limitations imposed by this section shall, so far as it contravenes those limitations, be void.

The corresponding clauses of the two previous Bills were substantially the same, though in two, much debated points, more stringent. They would have entirely debarred the Irish Parliament from imposing customs duties, while the present Bill would allow it to impose an additional duty on any article on which the Imperial Parliament had already imposed a duty. This, like the rest of the financial provisions of the Bill, is not an essential feature of it. Further, the earlier Bills reserved to Imperial control the whole of the postal services. The reason for the present proposal (surprising to many people) to give Ireland control of postage *within Ireland* is that, since the General Post Office naturally gives to Ireland, a poorer country, a service on the ample scale which is demanded in England, its Irish business is run at a loss. It has thus apparently been thought that here was an opportunity for an Irish administration to effect an

economy. But no one, I believe, cares to press this point against any strong objection.

These are the matters which everyone has always wished reserved. It remains, of course, to consider whether others should not be reserved. For a reason, however, which will very soon become plain, it is of little use to start discussing, on grounds of general principle or of example elsewhere, what are the sort of powers, besides the plainly Impérial powers, which are in their nature such as to be best regulated by the larger authority. On general grounds, for instance, one might plausibly desire to follow the founders of the Australian Commonwealth by keeping to the Imperial Parliament the control of marriage law—not to speak of other matters, such as inheritance or legitimacy, which affect the foundations of social life. The cautionary example of the United States, with its forty-five or more independent divorce laws, would confirm one in this. Only this happens to be one of the matters in which English, Scotch, and Irish law are already different, and neither England, Scotland, nor Ireland would endure the assimilation of its law to that of either of the other Kingdoms. We are here at once brought up against the fact that there are existing divisions and distinctions within the United Kingdom to which any federal scheme must conform.

2. The Main Data of the Problem.

Returning, then, to the question of Provinces and of matters suitable for Provincial control, there are

certain existing demands and existing institutions which together are the governing facts (or among the governing facts) of the whole problem. Nobody, surely, is going to devise an elaborate system of devolution which has no tendency to satisfy existing demands for self-government. Nobody, surely, would propose to create new machinery for this purpose without regard to existing machinery already pretty well adapted to local needs.

To begin with the case which happens to be simplest—Scotch people demand Home Rule for Scotland as an united whole. The demand is put forward without passion or hurry, but quite seriously. Nobody has any violent objection to raise. Nobody in Scotland would contemplate the partition of Scotland.

Irish people have passionately and persistently demanded Home Rule for Ireland as a whole. Few of them would contemplate it for Leinster, Munster, and Connaught, or the Catholic parts of Ulster. Objections of many kinds have been made, but the opposition has now been markedly concentrated on the matter of Protestant Ulster. The opposition of Ulster is based in set and solemn terms upon a principle of popular right which, applied to the rest of Ireland, would make the maintenance of the present terms of Union impossible.

Ulster, too, has made a demand. It is very emphatic, but it is purely negative. Unless we are prepared to comply with it, in its original form, by letting the whole question permanently alone, it is not for the moment clear how the interests or wishes of Ulster can best be consulted.

Beyond these there are no "clearly expressed demands, but there are some generally admitted facts, of which for our present purpose the chief is that the Imperial Parliament is altogether overstrained, so that any system of devolution which would be tolerable must be one that would appreciably relieve it, instead of (as it might be) one that would threaten it with added labour and cares.

Such are the broad facts as to existing demands. To them we have to add the simple but weighty facts of the existing practice and institutions. England, including Wales, Scotland as a whole, and Ireland as a whole are at the present moment governed, to an extent which probably few people realise, as three separate States having their separate Executive authorities, and possessing different laws, and requiring different new legislation—for the legislation for the three, even when in purpose identical, is as often as not contained in separate Acts. Moreover, except in some quite small particulars and in mere matters of form, whether we take the case of Scotland or that of Ireland, we shall find the existing administration to be separate from that of England in much the same respects as the legislation.

I think it will appear, if this is considered in detail, that, *so far as the main divisions of the United Kingdom are concerned*, the problem of devising a working Federal scheme is by no means the difficult or complex task that it would naturally be thought to be. I think it will also appear that in its vital portions the present Home Rule Bill is neither so inconsiderately drawn nor at all so inconsistent

with a general federal scheme as has been readily supposed, by critics who start with hostility to its principle or to the manner in which it has been pressed forward.

However that may be, these facts, once well considered, do lead to some practical conclusions which, *if the federal idea be seriously entertained at all*, are irresistible.

To begin again with the simplest case. If we proceed one step in the matter at all, obviously we shall give what Scotland asks, namely, Home Rule for Scotland as one undivided whole. We shall give it not merely because Scotland asks it, and partition of Scotland would offend a national instinct, but because long and well-founded usage make it convenient that Scotland should be treated in legislation and administration as a separate whole ; because the Imperial Parliament can thus be lightened of a distinct and considerable portion of its duties ; and because this process of devolution could be carried out with little need of creating new machinery, and the general course of political business, legislation, and administration would go forward with surprisingly little break or sense of violent transition. Obviously, moreover, the Scotch subordinate Parliament may be expected to have placed under its control and the control of the Executive responsible to it the whole of those matters which are now administered by distinct Scotch departments of the Imperial Government, or which are now admittedly subjects for separate Scotch legislation passed with the advice of those departments. This argument, of course, is not

conclusive before the matter has been examined in detail, but there is evident *prima facie* reason for saying that a people accustomed to be consulted about their own affairs would not demand a measure of self-government of less scope than this, and that less than this would not be worth giving them.

At the same time the scope of the Scotch Parliament's authority could hardly be limited to this (the actual demand made by Scotch members of Parliament is not so limited). There are some matters which it is now convenient to administer through a single central office for the whole United Kingdom, but which could very easily be handed over in Scotland to a Scotch Administration, and of which a people demanding self-government would demand separate control. But this last point need not be pursued further for the moment. The matters which are now, in legislation and administration, dealt with as separate affairs of Scotland, are not the lesser matters of internal government; they include, on the contrary, the weightiest matters of all. We have thus found a clue (apart from the actual provisions of the Scotch Home Rule Bill) which would carry us a long way in settling the powers to be delegated to a Scotch Parliament.

Now, subject to the grave reservation of the question of Ulster, exactly the same may be said in regard to Ireland. Having then (with whatever special provision for Ulster) accepted the principles here suggested with regard to Scotland and Ireland, we should be left to consider the remaining Kingdom

of England and Wales ; there would be ready to hand (for it exists now), as in the case of Scotland and Ireland, the greater part of the machinery for the administration of this third and largest province ; and we should observe, as in those cases, that there was what may be called a specially English branch of legislative work now done by the Imperial Parliament, roughly corresponding in character to the Scotch and Irish branches of legislation and not so much larger in bulk as the greater size of this Kingdom might suggest. Here too, of course, there are reservations to be made, but obviously the most simple and a quite tolerable way of completing the federal scheme would be the creation of a subordinate Parliament for England and Wales, with just the same powers as the other two.

Turning now to the questions which complicate a matter so far fairly simple. It has been suggested that we must consider as possible the partition of England into smaller Provinces ; we certainly must consider Wales ; and we certainly must consider Ulster. (I have already indicated my reason for thinking that no question of further partition in Ireland or Scotland has any actuality, and I may later return to it.) There is one obvious distinction between such divisions of the kingdom as Ulster and Wales, or again as Wessex or Northumbria, or whatever the imagined English Provinces may be, and the three big divisions constituted by the three Kingdoms ; these latter have already a distinct *political* existence, with different laws and institutions ; Wales, Ulster, and the rest are not *in that sense* separated from their neighbours at all. That is one

distinction ; it carries with it others possibly more important. Now take any one of them, say Wales ; in the absence of full information as to Welsh wishes and conditions one may say : that it might be left in its present relation to England, to share with England in the new subordinate Parliament ; that it might be given complete Home Rule for itself, a course which (unlike the grant of Home Rule to Scotland) would involve the creation of a whole new administrative system, with some avoidable re-duplication of machinery and expense, and with some breach of convenient continuity, but which would not be repugnant, and which would be symmetrical ; that it might, while sharing in the new English Parliament, have a certain much more limited autonomy of its own on the principle of " wheels within wheels," which is a less symmetrical, but also a milder, proposal ; and that (a verbal possibility) it might be politically severed from England and joined politically, say, with Ireland. Just the same may be said in each of the other cases. Looking at this case only, we may say at once that one of these suggested courses is absurd ; that another strikes us as possible but unlikely ; that we incline towards one of the other two, but have no ground for saying which.

It results, I think, that we had best make quite clear what should be done if we were concerned only with the three Kingdoms, and forbear till then to consider whether any portion of any of these areas must be dealt with separately, and whether by giving it separate institutions of the same type, by treating it in some way as a province within a province, or otherwise.

We have to ask more precisely what powers would require to be granted to subordinate Legislatures for England and Wales (together), for Scotland, and Ireland, if all three were to be given Home Rule by a single measure or by three successive measures. We are reserving entirely the question of finance, because financial autonomy is not desired for its own sake, but only so far as may be necessary for the exercise of other powers.

We have to be guided at the outset by the clue—though we need not be wholly bound to it—that the three countries have already much separate legislation passed for them, though by the same Parliament, and have to a great extent separate Administrations, though these are jointly responsible to Parliament through the same collective Ministry.

3. Federation as between the Three Kingdoms.

I shall therefore begin by stating in some detail the extent to which the central Administrations of England, Scotland, and Ireland are already distinct. This will sufficiently indicate the sort of subjects in which the three countries are found in experience to require separate legislation, for, of course, an Education Bill is generally in the charge of an Education Minister advised by an Education Department. It will be a highly unscientific way of classifying the different possible topics of legislation, and sufficiently cumbrous and difficult to follow, but less cumbrous and difficult than any more scientific way.

My classification will not be quite complete ; there may be some inadvertent omissions in it ; and in any

case I have omitted reference to the appointment of judges, because what I should be led to say about it would be disproportionately long. But I do not think I am in danger of any important inaccuracy.

Looking, then, at the great departments at Westminster and—since some of these have several very different functions to perform, which they perform through distinct sub-departments—at the different sub-departments of them, one may set aside for the present the departments and sub-departments concerned with finance, or with Imperial matters, or with the other matters mentioned already, which everybody is agreed should be reserved to the Imperial Parliament. If we set aside also two offices which, as their names imply, are concerned, not with England at all, but with Scotland and Ireland, we shall find remaining a number of departments and divisions of departments discharging various duties of domestic government for England and Wales. The following is an enumeration of duties of these departments, which are performed by them for England and Wales only, and belong in Scotland and in Ireland alike to totally distinct authorities :—

The functions in the administration of justice performed mainly by the Home Office, including :—

- a. Appointment of police magistrates.
- b. Supervision (and in some cases direct discharge) of police administration.
- c. Public prosecutions (in these the Law Officers, to some extent the Home Office, and a special department nominally belonging to the Treasury are concerned).

d. The advising of the Crown in the exercise of the prerogative of mercy.

e. Control of prisons, reformatories, and industrial schools, etc.

The care of lunatics (in which more than one department is concerned).

All functions of government in regard to education.

The oversight and occasional reform of all trusts and foundations of a religious, charitable, or other public nature.

The whole duties of the Local Government Board, including :—

a. Poor Law.

b. Public health, housing, town-planning, etc.

c. The oversight of local finance and of county and municipal administration generally.

The management of National Health Insurance.

The whole (or practically the whole) of the varied functions performed by the Board of Agriculture and Fisheries, except that in the case of Scotland, but not of Ireland, the Contagious Diseases of Animals Acts are administered by the English department, with, of course, a local Scotch staff.

The administration of bankruptcy and of the winding-up of companies.

The functions of the Stationery Office and of some other ancillary departments not needing special mention.

In addition to the above, there are duties, discharged by the Lord Chancellor (with the Law Officers), in the initiation or shaping of many measures of private law. These will be mentioned later, but a summary statement of them here would be misleading.

There are also to be noticed in Scotland and Ireland several special departments, such as the Scotch Land Court, and the Irish Congested District and Land Purchase Commission, to which there is nothing corresponding in England.

As might be expected, legislation on any of these matters is almost entirely contained in separate Acts for England and Wales, Scotland, and Ireland respectively. The result, which would probably be a surprise to most people, is that if you take almost any volume of the Statutes, and set aside the Acts of an Imperial kind and the financial and other recurring Acts, you find it to be the exception and not the rule for an Act to apply to England, Scotland, and Ireland together. When it does so it is often with many qualifications.

Now—it is a proposition to which a reader should not commit himself without pausing to think, but the matter does not invite elaborate argument—I submit that the whole of these departments of legislative and administrative activity (the only conceivable exceptions being too small to mention) must, if there be Scotch and Irish Parliaments at all, be delegated to their control either immediately or, as would sometimes be necessary, after a transitional period (for which the Irish Home Rule Bill contains careful provision, but which is a detail that need not concern us here). These matters are for the most part so bound up in each of the three Kingdoms with national or local peculiarities of institutions, customs, traditions, previous legislation, and social conditions, that the very language of discussion is, on some Irish Bills and nearly all Scotch Bills concerning them, unintelligible to English

Members of Parliament. For that very reason, in Scotland and Ireland at any rate, the popular interest attaching to such matters is of a special (national or local) kind, and is apt to be intense. The burden and the distraction to the Imperial Parliament must also be borne in mind. The very gravity and width of the public issues involved in some of them carries with it an especial need for close touch with local conditions and local habits. This is particularly the case with all matters concerning crime. Considerations arise as to safeguards against abuse, and certainly as to preserving the power of Imperial authorities to intervene in rare but important cases. But, briefly and emphatically, if Scotch and Irish Parliaments are not to be given a scope of work covering practically all these matters, the whole proposal of Federation or extensive Devolution in any form goes by the board, and we had better firmly resolve to stay just where we are.

I have not included with the above matters that important branch of legislation which concerns what we may call "lawyers' laws," as distinguished from the laws in which politicians and public officers are mainly interested. This rough heading covers reforms in such matters as the law of property and conveyancing, of inheritance, of trusts, of private torts, etc., etc.; it covers also reforms in judicial procedure, and the law of evidence, etc. It would be quite incorrect to say that Acts on these matters are generally applicable to one Kingdom only; several important recent Acts of this kind apply to England and Ireland, one at least to England and

Scotland, some perhaps to all three.* But it is nevertheless true that legislation touching the private law or the judicial processes of the three Kingdoms cannot be conducted except with the advice of responsible legal advisers for each of them. The whole structure of law is in Scotland so different from ours; Ireland could hardly be treated otherwise than Scotland, and, besides, social conditions, habits and national character are so different. I think it certain, therefore, that the whole of this class of legislation would be delegated to the subordinate Parliaments. If we may judge at all from such an example as New Zealand, we may feel confident that three Provincial Parliaments would be apt to be prompt in copying, adapting, and improving upon each other's reforms in such matters. Progress would almost certainly be quicker than now.

However it may be as to this last question, it is now, I think, quite clear that Provincial Parliaments, if there are to be any, will have powers which are in many aspects the most important, and which are certainly the most dangerous powers of domestic government. There may or may not be good reasons for still treating some of the matters which remain to be mentioned, such as factory law, as proper subjects for Imperial legislation alone, but distrust of the competence or integrity of the

* By way of illustration: our Settled Land Acts, Conveyancing Acts, and Trustee Acts apply to England and Ireland, but not to Scotland. The important reform in the law of evidence made in 1898 applies to Scotland but not to Ireland. The Court of Criminal Appeal, instituted in 1908 for England, has, I believe, no court corresponding to it in Scotland or Ireland.

subordinate Parliaments is not a possible reason to advance, if it is agreed to give them power over education, public health, and poor relief, justice, public order, and police.

Note also that there is no presumption whatever in favour of confining their powers to matters which are separately dealt with now. These latter have been kept under Provincial administration, or of late, years transferred to it (by the Secretary for Scotland Acts), not at all as being the only matters capable of being so dealt with, but rather as being matters which must be so dealt with if business is to go along at all.

The purely domestic matters, not marked by common consent for Imperial management, which are now dealt with by single administrative authorities for the whole of the United Kingdom are (with possible trifling additions to be made to the list) the following :—

The duties of the Home Office in regard to :

Factories and workshops, and mines and quarries.

The duties of the Board of Trade in regard to :

Railways, canals, and harbours ; conciliation in labour disputes ; labour exchanges, and registration of companies.

The duties of the Development Commissioners.

Those of the Roads Board.

Post Office Savings Banks.

Looking away for a moment from the important legislative issues that may arise out of some of these matters, and considering, as we no doubt must, the question of sound administration, we

may notice that in all these matters (or at least in all the more important of them) there would be no greater difficulty in dividing up the administration between the three Kingdoms than there has been in transferring powers from several great English departments to the office of the Secretary for Scotland, which has been done in our lifetime. Nor need there apparently be any greater loss of efficiency. In most of these cases the work of the central department is carried on through local staffs, and there would be no real disturbance of the course of events if, for example, the Factory Inspectors who work in Scotland were put under a Chief Factory Inspector for Scotland. Good officials dealing with cognate subjects keep in touch with one another and so keep up the common level, whether they are officially subordinate to a single Minister or not.

But, of course, the real question that here arises is about the effect on important branches of future legislation which would be produced by making these matters subject to Provincial Parliaments. Much may be said on both sides ; and, personally, I should be inclined to lay stress on the extreme importance which is likely to attach to fuller consideration of the different conditions of the several countries concerned in some matters of social legislation—(there is, I think, already a real danger, as well as some advantage, to Ireland in particular, in being tied in these matters to countries whose peoples are at a different stage). But I think there is one consideration which will be found to be quite decisive. A Parliament created to deal with the

principal domestic questions of England, or Scotland, or Ireland, would certainly desire and be compelled to legislate upon certain social questions, in dealing with which it would find itself intolerably hampered if (with conceivable unimportant exceptions) any of the matters which I have just set out above were excluded from its sphere of activity. For example, suppose a legislative body determined to deal with the question of unemployment, and to go to the roots of the matter, in the light supplied by the famous Minority Report, and still more by the Majority Report of the Royal Commission on Poor Law; it would be placed in a ridiculous and seriously crippling position if, while it had authority in the matters of poor relief, education, police, etc., it were debarred from touching the law as to factories, mines, railways, from making use of the labour exchanges, and from undertaking works of reclamation or afforestation. Other such illustrations occur readily; but I need not elaborate this point; it can easily be thought out.*

* I had better glance at the question of how the transfer (in administration) of all or most of these matters to provincial authorities would affect the Imperial administration. The problem of reorganisation which would arise is not one which need interest us greatly. Some of our great departments of State in London are purely Imperial already, and would remain so. Others are purely English already, and would remain so. Several departments have great Ministers at their head with no duties. Three departments would be specially affected:—The Lord Chancellor, apt to be a terribly overworked official, has large and increasingly important Imperial functions; he has also specially English functions quite distinct from these; in Scotland he appoints magistrates. The Home Secretary's department includes a large sub-department which is purely English, and other sub-departments, perfectly distinct from it, which have Scotch and Irish work that they would part with; it also has some entirely insignificant Imperial duties (chiefly collecting

I hope, by the way, that nothing above will suggest that each of the smaller countries would require exactly the same number of Ministers and the elaborate system of departments that is necessary for England. The Secretary for Scotland now does for Scotland the work of several English Ministers, and the like would continue to be the case in each of the smaller Provinces.

Thus, by a detailed survey of the more distinctly domestic branches of Government, we are compelled to say of one function after another that it would naturally be delegated to Provincial authorities if there were to be any Provincial authorities with great status and important duties at all. One might hesitate about some minor matters—I, for example, should, without knowledge which I have not got, hesitate about the bankruptcy business, which happens already to be decentralised, and about company law—but we have not yet come upon any important matter of which any man (granting the Provincial Parliaments) would say with assurance that this must be dealt with Imperially. We are, in fact, brought near to the conclusion that there are no powers which ought not to be thus delegated except those powers which have been enumerated earlier, ranging from those of the Foreign Office to those of the Patent Office, which

fees for the Crown from new peers, etc., and, I believe, granting the Lord Lieutenant of Ireland his holidays), which any clerk could do in any office. The Board of Trade, which would be considerably split up, is now a large and miscellaneous collection of separate departments, some of which are Imperial in character, one of which is at present purely English, while the rest would require to be and could easily be rendered purely English by the transfer of a portion of their business to Edinburgh and Dublin.

it is already universally agreed must be dealt with Imperially.

But we have so far been treating the matter, as it were, from the Provincial point of view. We can conclude nothing without further considering the question—most important of all—what is required for the strength and efficiency of the Imperial Parliament. As to this, two simple and important principles can be laid down. Given that the Imperial Parliament is to be mainly Imperial—that, indeed, one great object of our whole policy is to improve it as the arbiter of issues on which our national existence may depend—then the more its necessary tasks can be limited to those which are most plainly Imperial the better. Elections to it should not be liable to turn upon—its own proceedings should not be habitually distracted by—controversy on issues which, from this point of view, are local, subordinate, and irrelevant. Moreover, given that the Imperial Parliament and Government are to be put in a position in which they constantly have relations of one sort or another with subordinate Provincial authority, then to reserve to the Imperial authorities exclusive control of any matter which could with propriety and efficiency be dealt with by Provincial authority, would be to provide friction, embarrassment, and eventual weakness for the Imperial authority itself. The result of our consideration of what Provincial Parliaments can claim to do and should be allowed to do will equally result, I think, from any careful consideration of what will conduce to the strength and usefulness of the Imperial Parliament, and to its effective supremacy.

That result is a distribution of functions which reserves for the exclusive control of the Imperial Parliament only certain matters on which there has always been complete agreement. Subject only to an uncontroversial question about internal postage, it is exactly the distribution of functions effected in the case of Ireland by the most vital clauses of the present Home Rule Bill.

And it is to be observed that it applies to England, Scotland and Ireland, the differences between the three being entirely of a formal kind. It has been very naturally assumed that a comprehensive scheme for the whole United Kingdom would require a different adjustment of these matters than a scheme that dealt with one of them singly. But this is quite mistaken. The three several Kingdoms would require in substantial matters just the same provision made for them. There is this one important exception:—The English Board of Agriculture slaughters diseased cattle and swine in Scotland, but not Ireland.

I have entered into rather complicated detail for the purpose of showing—and any slips which I have made will not invalidate the conclusion—that the complexity of the question need trouble few but the Parliamentary draftsmen. To statesmen and to the people, *so far as the three prime divisions of the United Kingdom are concerned*, the federal solution presents no complication, only a momentous but simple question of Yes or No.

4. *Wales and Divisions of England*

And now—Is this provisional conclusion affected by the further problem of other divisions, within these three prime divisions?

There is the question of Wales. Of course, Wales is in some marked ways different from England, and its boundary, clearly marked on our maps, is the boundary which, I believe, is recognised by local sentiment.* No doubt, too, Welsh political opinion is, at this moment, deeply concerned with a particular political proposal of the first order for Wales as distinct from England.

But it is an equally important fact that, for purposes of legislation and administration, Wales has long been one with England, in a way which neither Scotland nor Ireland have ever been or can be made so. Nor, so far as I know, has there been any demand for Welsh Home Rule. But the imminence of Home Rule for Scotland and Ireland may call out such a demand. If it does it is plain from what has gone before that it would be a simple enough task to set up for Wales a comparatively small executive machine to take over the Welsh part of the work of our public departments. Of course, too, it would be a simple matter to set over this Executive a subordinate Parliament corresponding to the other three in its powers. No doubt, too, it would work well enough, and its existence could, I think, shock no English sentiment. But just possibly it might arouse real

* I am counting Monmouthshire as English and wishing to continue English, but I confess to having no knowledge of the matter.

opposition in England, and whether it would be gratifying to Welsh sentiment we have no means of knowing. It may be that Welsh people would distinctly prefer to retain their existing relations to England almost unaltered, and merely to provide means for the special consideration of special Welsh questions through some Grand Committee of the Parliament of England and Wales, or some Welsh Administrative Council, or both. It may be, lastly, that they would be in doubt.

There is a further question of a somewhat similar kind ; at least, we are told on really great authority, that of Sir Edward Grey, that there is a question of dividing England into Provinces. I believe that this means Provinces each with the same Provincial Home Rule that might be given to Scotland and Ireland, and is contemplated by some of us for England as one whole Province. If such a question is raised, then, to speak for the one Englishman whose feelings on the subject I know, I should be passionately on the side of unity. But I think we can say with certainty that most Englishmen would, at least, hesitate for long before they agreed to this partition of England.

That being so, there is one thing certain about this question :—It can wait. To proceed to-morrow to set up one subordinate Parliament now for England as a whole would put no barrier in the way of partition afterwards, if people came to desire it, and would not make it a more complicated or even much more costly process.

Surely there is an answer nearly as simple to the Welsh question. If there is in reality a

demand for Home Rule for Wales on the same lines as for the three Kingdoms, and no vehement movement of opposition anywhere, the question is settled. In any other case it can wait, and will not be prejudiced thereby.

There is, therefore, nothing but the Ulster question to complicate seriously the proposal of Federalism for the United Kingdom.

5. *Ulster.*

Ulster, however, cannot wait—at least not for long, and in all respects the question of Ulster is different from those which we have hitherto considered. There are very obvious reasons for reticence about it on the part of those to whom, as to myself and the overwhelming majority of Englishmen, this is curiously unfamiliar ground. But there are, I think, some fixed data on this question which it may be well to state—some of them are merely negative, but important because they guard against conclusions to which some people are inclined to rush.

The great fixed fact, and the great difficulty, is here a definite demand on the part of Ulster (how far unchanged at this moment I do not know)—a demand so vehement, so genuine, so natural, and, I would add, so far entitled to respect, that it would be monstrous not to give great weight to it, and yet a demand of which no man, looking steadily at the situation that has now arisen, could say with the slightest confidence that it can be granted. For

Ulster has so far said, "No Home Rule," and has definitely said nothing else.

I should like, briefly, to express my emphatic dissent from those who would say that Ulster must be put down and that there is no more to be said. This I think is only said in a mistaken belief that the excitement in Ulster is wholly factitious, or bitter and bigoted without any element of reasonable conviction that demands respect. I conceive the situation to be one in which statesmen (prepared as they should be to uphold their convinced policy by any effort which in the last resort may be necessary) are bound to seek for any reasonable settlement that would pacify Ulster, and bound, failing that, themselves to devise and offer such amendments of their policy as ought to remove (if they do not succeed in doing so) any reasonable fears.

I have, moreover, a strong suspicion that the people of Ulster are fundamentally reasonable and that the strongest way of meeting them is that which is itself most reasonable.

The elements of a possible compromise must, till conference has taken place in real earnest, remain doubtful. The sort of distinction that severs either Wales from England or Scotland from England is wholly different from the relation of Ulster to the rest of Ireland, with its strange blend of violent antagonism and of felt community of interests, and even in some sense of traditions. Thus it must not be taken for granted that partition of Ulster from Ireland (even though a satisfactory boundary might be drawn by a Royal Commission) would commend itself seriously and upon reflection to Ulster. Nor

even must it be assumed that such a solution could justly be imposed on the rest of Ireland. Certainly no barrier should be erected to obstruct future union between Ulster and the rest of Ireland—for the utmost respect for the present advocates of Ulster cannot conceal from us the possibility that such union may later on be desired.

A little ingenuity will suggest expedients whereby Protestant Ulster could, under a Parliament for all Ireland, be safeguarded against injustice of law or taxation, and even secured against the administrative abuses of which there is still more acute apprehension. There is reason to believe that Nationalist opinion would be by no means grudging in conceding anomalous privileges which would remove fears genuinely felt. It must be remembered that statesmanlike powers of contrivance have not yet (or till lately) been applied to this task.

But it would be idle—and conceivably rather worse—to attempt here closer discussion of matters which should soon be, and it may be hoped are, the subjects of actual negotiation.

There is but one thing of great importance which I do desire to emphasise, and that is the altered aspect which the question of Ulster must take on if we cease to have to contemplate Home Rule for Ireland alone and can think of the problem as one of Federalism for the United Kingdom.

A part, no small part, of the resentment against Home Rule felt among Irish Unionists generally, and—to how great an extent I cannot say—among Ulstermen in particular, is due to the feeling that they are being “deprived of their British citizen-

ship." This feeling could not be entertained—and there have been abundant indications that it would not—against a scheme under which England, Scotland, and Ireland shared alike in an Imperial Parliament. Under the Home Rule Bill, if it stands alone, not only would the number of the Irish representatives in the Imperial Parliament be reduced, and reduced on no ground of proportion to population, but, that Parliament being all the time the domestic Legislature of Great Britain, they would be there as an intrusive element in a body elected in the main upon issues which did not concern them. This is already the case with the Nationalist representatives of Ireland; it would then be the case also with the still smaller band who represented the Unionists of Ulster and in a manner those of Ireland. And the prospect to men who pride themselves intensely on their "Loyalism" is bitter. Federalism would do away with that. It would affect "Nationalist" Ireland by creating for the first time a sense that Ireland shared in the Empire on equal terms with England and Scotland; it would take from "Loyalist" Ireland a sense of humiliation.

If, again, we consider the supremacy of the Imperial Parliament in the light of a safeguard against possible emergencies in Ireland and a strong guarantee in the background against real oppression of minorities, it will be seen, I think, that the Imperial Parliament under a federal scheme, existing solely for Imperial tasks, and with England, Scotland, and Ireland meeting in it on equal terms, would for these purposes be incomparably stronger.

There is, therefore, good ground for saying that the frank adoption of the Federalist policy by the Government would set the whole Ulster problem in a new light. It may be added that a marked exhibition of readiness (a readiness which I, of course, do not doubt) to treat the question of Ulster with more than common candour, forbearance, and justice would not be without effect upon a quarrel which partly, perhaps, arises from a suspicious and sore state of mind.

CHAPTER VI

CONCLUSION

IN conclusion, I would refer briefly to what I believe are the main reasons for a shrinking on the part of some thoughtful politicians from the idea of Federalism.

It is said in effect that the Imperial Parliament, though preserving all its powers, would cease to be the Parliament which Englishmen have known and cherished, if it were no longer the one centre in which all our vital public questions are threshed out. This, I think, is founded on one of the illusions (for there are such illusions) common to men whose lives are devoted to active politics. The Imperial Parliament as they think of it is a thing of the irrecoverable past. It is one of the fundamental, and indeed unquestionable, data of our constitutional problem that the Imperial Parliament is ceasing—indeed has ceased—to be the Parliament which Englishmen knew and which they did deeply value. It can no longer be the one centre in which public issues are really threshed out. It tends even, as in some recent instances, to be a mechanical instrument for enacting provisions of which all real discussion has taken place outside its doors. If it is to preserve or recover its greatness, it must have a task possible to discharge.

The business which a federal scheme would reserve to it is not less but greater than that which fully occupies one at least of the other great Legislatures of the world, the American Congress. There could be no task more absorbing or more deeply and intimately touching national welfare than that control of finance which (under any possible financial provisions) will remain in its sole hands. Moreover, the closest and keenest popular interest in politics is likely to be directed to such matters. In its hands, moreover, will be the future of the British Empire, closely bound up as that is, through incessant emigration, likely to be hereafter directed and in some ways stimulated, with the most domestic of our interests; and in its hands will be the issues of peace or war.

Now, I am well aware that some people, who pay undue attention to a foolish or ignorant question now and then asked in Parliament, shrink from the thought of a Parliament which, with more leisure for the subject, would pay more attention to matters of foreign policy or, say, to India. They are certainly wrong. At any important crisis it will always be Parliament, or the expectation formed by Government of what Parliament would support; that decides the issue, and a Parliament out of touch with important dealings of the Executive, and uninformed by habitual discussion of the real state of some matters on which agitation has arisen, constitutes in many directions a real danger. I believe that upon reflection it will become plain that this is so. Moreover, if the Empire in future is in wise ways to be made a more united whole, a

Parliament here which is in its essence Imperial is one of our first requisites.

The objection is further raised that an innovation so great and so little talked of yet as Home Rule for England cannot be called a question of practical politics, and that we must wait till there is a distinctly English demand for Home Rule. Now the combined demands of Ireland and of Scotland for Home Rule are questions of practical politics, and the objection really comes to no less than this, that the English people are prepared to refuse these demands or postpone them quite indefinitely till an active agitation is in process for English Home Rule on purely English grounds. No such agitation is likely to arise, and the reason of this is one which, I think, points us to a profound misconception in the objection to which I have referred. England is a large country, Scotland and Ireland are small. Englishmen are well aware of this, and know that they could at any moment assert themselves as "the predominant partner." Therefore, though on one occasion or another they may grumble that they are in fact being overborne by others, they will never feel that the time has come for them to set their teeth and determine to have their own way as a nation. But there are certain things that they do profoundly feel, which remove all force whatever from this objection. Every Englishman to whom I have talked of the matter (with the possible exception of some men whose whole interest is, honourably enough, that of politicians and of party politicians) hates the long continuance, now threatening to go on with increasing bitterness for an indefinite time,

of absorbing party controversy upon constitutional questions. Every one of them also regards these questions as pre-eminently questions for statesmen, of which statesmen should find a solution for the people. Is it possible to doubt that a solution in which leading statesmen on both sides concurred, even though some of them accepted it merely as an escape from worse evils, would be welcomed by the people of England with intense relief?

It may be thought that the federal solution raises an issue so vast that weary men of State cannot contemplate it for a while. The irrefutable answer is that by evading it they will commit themselves to other issues far more troublesome and fraught in addition with great possibilities of discord and national enfeeblement.

